



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0193]

RIN 1625-AA09

Drawbridge Operation Regulation, Atlantic Intracoastal Waterway (AIWW); Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River; Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0; both in Wilmington, NC. The modification will alter the dates and times these bridges are allowed to remain in the closed position to accommodate the time and route change of the annual YMCA Tri Span 5K & 10K races.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER.]

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2012-0193 and are available online by going to <http://www.regulations.gov>, by inserting USCG-2012-0193 in the "Keyword" box, and then clicking "Search". This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District; telephone (757) 398-6587, email terrance.a.knowles@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking

A. Regulatory History and Information

On May 1, 2012 we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington NC" in the Federal Register (77 FR 25652). We received no comments on the published NPRM. No public meeting was requested, and none was held. The current operating schedule for the S.R. 74 Bridge at Wrightsville Beach, NC, the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge both at Wilmington, NC are located at 33 CFR 117.821(a)(4), 33 CFR 117.822, and 33 CFR 117.829 (a), respectively. All three operating regulations were last amended on May 27, 2011 regarding an unrelated issue. There have been no other publications or efforts to reach out to the public in the development of this rule modification because these races are annual races that mariners are familiar with and this rule makes minor adjustments to the times the bridges will be unable to open.

B. Basis and Purpose

The YMCA Tri Span 5K and 10K races are annual events that are held in the Wrightsville Beach and Wilmington, NC areas. Recently, the Wilmington Family YMCA made a permanent change to both the time and route of the events. The races will continue to be held on the second Saturday of July of every year; however, the events will now begin and end an hour earlier (7 a.m. to 9 a.m.) and the race routes will now include the S.R. 74 Bridge. As a result, the Wilmington Family YMCA, on behalf of NCDOT, requested a change to the operating regulations for the S.R. 74 Bridge, the Cape Fear Memorial Bridge, and the Isabel S. Holmes Bridge. This final rule allows the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year.

The S.R. 74 Bridge is a double-leaf bascule drawbridge across AIWW, mile 283.1, at Wrightsville Beach, NC. It has a vertical clearance of 20 feet at mean high water in the closed position. The Cape Fear Memorial Bridge is a vertical-lift bridge across the Cape Fear River, mile 26.8, at Wilmington, NC. It has a vertical clearance of 65 feet above mean high water in the closed position. The Isabel S. Holmes Bridge is a double-leaf bascule drawbridge with a

vertical clearance of 40 feet at mean high water in the closed position.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided sixty days for review but received no comments on the NPRM. The Coast Guard is amending 33 CFR 117.821 (a)(4) for the S.R. 74 Bridge, mile 283.1 at Wrightsville Beach, NC to allow the bridge to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year. The Coast Guard is amending 33 CFR 117.822 and 33 CFR 117.829 (a)(4) for the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge, respectively, to allow the bridges to remain in the closed position from 7 a.m. to 9 a.m. on the second Saturday of July of every year from the current closure times of 8 a.m. to 10 a.m. on the second Saturday of July of every year. The amendments to these operating regulations will allow the bridges to remain in the closed position for the racers of the annual YMCA Tri Span 5K & 10K races to safely cross the bridges. The Coast Guard will issue Local Notices to Mariners and Broadcast Notices to Mariners every year to remind mariners of the annual closures which will allow them to plan their scheduled transits accordingly.

There are no alternative routes available to vessels transiting these waterways. Vessels that can transit under

the bridges without an opening may do so at any time. The bridges will be able to open for emergencies.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

The changes are expected to have minimal impacts on mariners due to the short duration that the moveable bridges will be maintained in the closed position. The races have been reserved in years past with little to no impact to marine traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants before, during, and after the races.

2. Impact on Small Entities

Under the Regulatory Flexibility Act of 1980 (RFA), (5 U.S.C. 601-612), as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit any of the effected bridges from 7 a.m. to 9 a.m. on the second Saturday of July of every year. This action will not have a significant economic impact on a substantial number of small entities because the rule adds minimal restrictions to the movement of navigation and mariners who plan their transits in accordance with the scheduled bridge closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular,

the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets the applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117
Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.821 (a) (4) to read as follows:

§117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) * * *

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 7 a.m. to 11 a.m. on the third and fourth Saturday of September of every year, and from 7 a.m. to 10:30 a.m. on the last Saturday of October of every year or the first or second Saturday of November of every year, the draw need not open for vessels due to annual races.

* * * * *

3. Revise §117.822 to read as follows:

§117.822 Cape Fear River.

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 7 a.m. to 9 a.m. on the second Saturday of July of every

year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual races.

4. Revise §117.829(a)(4) to read as follows:

§117.829 Northeast Cape Fear River.

(a)* * *

(4) From 7 a.m. to 9 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual races.

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Dated: August 8, 2012

STEPHEN H. RATTI
Rear Admiral, U.S. Coast Guard
Commander, Fifth Coast Guard District

[FR Doc. 2012-20481 Filed 08/20/2012 at 8:45 am;

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