



DEPARTMENT OF HOMELAND SECURITY

9110-04-P

Coast Guard

33 CFR Part 117

[USCG-2012-0357]

RIN 1625-AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Berkley (I-264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. The current temporary regulation for the Berkley Bridge is scheduled to end on October 5, 2012.

This regulation will make the provisions of the temporary regulation permanent. This change to the regulation is necessary to alleviate heavy vehicular traffic delays throughout the day and secondary congestion during the afternoon rush hour, while still providing for the reasonable needs of navigation.

DATES: This interim rule is effective at 5 a.m. on October 6, 2012. Comments and related material must reach the Coast Guard on or before [Insert date 30 days after date of

publication in the FEDERAL REGISTER.]

ADDRESSES: You may submit comments identified by docket number USCG-2012-0357 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard

District, at (757) 398-6587, 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:

A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0357), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via www.regulations.gov, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received

at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2012-0357" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the

"Keyword" box insert "USCG-2012-0357" and click "Search."
Click the "Open Docket Folder" in the "Actions" column.
You may also visit either the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

For information on facilities or services for individuals with disabilities or to request special assistance at the public meeting, contact Terrance Knowles at the telephone number or e-mail address indicated under the FOR FURTHER INFORMATION CONTACT section of this notice.

B. Regulatory History and Information

The Coast Guard is issuing this interim final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule for the following reasons:

On October 9, 2009, we published a notice of temporary deviation request for comments entitled; "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the Federal Register (74 FR 52143) and a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the Federal Register (74 FR 52158). We

received 861 comments for both the temporary deviation and NPRM. No public meeting was requested, and none was held.

On March 3, 2010, we published a notice of temporary deviation request for comments entitled; "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the Federal Register (75 FR 9521) and a supplemental notice of proposed rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the Federal Register (75 FR 9557). We received four comments on the published deviation and SNPRM. No public meeting was requested, and none was held.

On August 6, 2010, we published a final rule entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the Federal Register (75 FR 47461) that temporarily changed the drawbridge operation regulations effective from 9 a.m. on September 4, 2010 until 2:30 p.m. on October 5, 2012.

The establishment of this regulation, effective since September 4, 2010, does not place any additional constraints on the waterway users because mariners have been using the temporary schedule for almost two years and can still plan their trips in accordance with the scheduled bridge openings. Any delay in the issuance of this rule after October 5, 2012 will result in the bridge operating

schedule reverting back to the previous on-demand operation of the bridge that produced a tremendous amount of delay. These delays were unpredictable for motorists, and will continue to increase with population growth and any increase in associated traffic. We, therefore, believe to avoid any increased traffic delays and since this rule makes permanent an already existing bridge schedule, it is unnecessary and contrary to the public interest to publish an NPRM.

C. Basis and Purpose

On behalf of the Cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT), which owns and operates the bascule-type Berkley Bridge, has requested a permanent change to the bridge regulations. The proposed regulation would implement and make permanent those temporary regulations currently in effect.

The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. In the closed to navigation position, the Berkley Bridge has a vertical clearance of 48 feet above mean high water. Vessel traffic on this portion of the Elizabeth River waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no

alternate waterway route.

The regulation set out in Title 33 CFR Part 117.1007 (b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, Virginia to remain closed one hour prior to the published start of a scheduled marine event regulated under §100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under §100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time, except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494-2490 as required by 33 CFR 117.1007(b) and (c).

The temporary regulation, which modified the above schedule, is effective from 9 a.m. on September 4, 2010 until 2:30 p.m. on October 5, 2012. During the temporary regulation, the draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under §100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under §100.501 allows the bridge to open for

commercial vessel traffic. The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204. For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494-2490; open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; and if the bridge is not opened during a particular scheduled opening and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494-2490.

The temporary regulation, detailed in the immediately preceding paragraph, is scheduled to expire on October 5,

2012. This new Interim Final Rule would make those temporary opening procedures permanent. By imposing the temporary regulation as permanent; we anticipate less vehicular traffic congestion between 9 a.m. and 3 p.m., while causing fewer secondary back-ups during rush hours, as compared to increased traffic when the bridge opens on signal.

In 2008, prior to implementing the temporary regulation, a Test Deviation published in the Federal Register (75 FR 52143) was issued to allow VDOT to test the proposed schedule and to obtain data and public comments. During that Test Deviation period, a count of the delayed vessels during the closure periods was taken to ensure the regulation would not have a significant impact on navigation. The monthly vehicular traffic counts submitted by VDOT for the last quarter of calendar year 2008 showed the average daily traffic volumes at the Berkley Bridge (See Table A):

Table A

<i>OCT 2008</i>	<i>83,296 vehicles</i>
<i>NOV 2008</i>	<i>99,643 vehicles</i>
<i>DEC 2008</i>	<i>106,856 vehicles</i>

The traffic counts revealed that from October 2008 to

December 2008, the Berkley Bridge experienced a seven percent (or 23,560-car) increase in vehicular traffic flow. The Coast Guard believes that the increase was due to the previously referenced temporary closure of two Norfolk-area bridges and that vehicular traffic will subside when those bridges return to service.

The Coast Guard received 861 comments on both the temporary deviation and NPRM originally proposed in 2009. A large majority of the responses from commuters were in support of the scheduled opening set-up. However, the local maritime community expressed some objections to the schedule change to vessels.

After review of all of the comments and bridge-related data received, the Coast Guard had determined that an alternative proposal should be considered.

From September 3, 2010 to October 5, 2012, an alternative proposal was offered with changes made that allowed for the draw of the Berkley Bridge to open on signal for the proposed drawbridge openings (scheduled during the daytime) which expected to similarly cause a decrease in traffic congestion. Concurrent with the publication of the Supplemental Notice of Proposed Rulemaking (SNPRM), another Test Deviation was issued to allow VDOT to test another proposed schedule and to acquire

additional data and public comments.

The Coast Guard received four responses to the SNPRM and the second temporary deviation, one each by letter and to the website at www.regulations.gov along with two e-mails.

The Virginia Maritime Association (VMA), which represents waterborne commerce in the Port of Hampton Roads, responded in writing with its support of the revised regulation and its statement that the current operating regulation incorporates the minimum degree of flexibility that the maritime industry can accept. VDOT also indicated that the new Berkley Bridge operating regulation had improved the flow of vehicular traffic while still meeting the minimum needs of navigation.

VMA, VDOT and two private citizens expressed concerns about unscheduled openings that caused vehicular traffic congestion. The unscheduled openings were provided for Government vessels, vessels with a draft of 18 feet or more that provided at least 6 hours advance notice and for vessels hauling dangerous cargo.

The Coast Guard reviewed the bridge data supplied by VDOT. The information indicated that during the deviation test period (from March 3, 2010 to July 1, 2010), that a total of 260 potential bridge openings for vessels could

have been provided Monday through Friday, except Federal holidays, at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. The data showed the bridge only opened 88 times of the 260 potential openings. The data also revealed that seven bridge openings were provided just about 15 minutes past the scheduled opening time at 9 a.m., 11 a.m. and 1 p.m. and that the average opening usually lasted 12 minutes; a later opening at 2:30 p.m. would add to the traffic congestion during the rush hour. However, due to good communication with the general public by using road signs and broadcasts, there was only one opening that occurred after 2:45 p.m. A majority of those openings were provided primarily for commercial vessels, with a maximum of four vessels transiting through a single bridge opening. The subsequent changes to the operating procedures appear to have reduced vehicular traffic congestion while still providing for the reasonable needs of navigation. Based on the information provided, the revised temporary rule was implemented with no changes to the SNPRM.

Since October 2010, according to recent data provided by VDOT, the Berkley Bridge average daily traffic volume is approximately 106,000 vehicles per day which ranks it among the most heavily traveled routes in the region (See Table B).

Table B**AVERAGE DAILY VEHICULAR TRAFFIC COUNT**

HOURLY TOTAL	OCT 2010	JAN 2011	MAY 2011	AUG 2011	JAN 2012	AVERAGE
9AM-10AM	6,509	6,230	6,545	6,335	5,956	6,315
10AM-11AM	6,248	6,074	6,362	6,383	5,898	6,193
11AM-12PM	6,443	6,008	6,457	6,439	5,927	6,255
12PM-1PM	6,714	6,583	6,781	6,780	6,283	6,628
1PM-2PM	6,860	6,345	6,766	6,760	6,249	6,596
2PM-3PM	7,330	7,133	7,361	7,210	7,032	7,213
TOTAL	40,103	38,373	40,270	39,906	37,345	39,199

Overall hourly average - 6,533

The temporary regulation schedule provides four bridge lift opportunities each weekday between 9 a.m. and 3 p.m. This equates to a maximum of 88 lifts per month (assuming 22 workdays per month). Since October 2010, there has been an average of only 24 requested lifts per month - a usage rate of only 27% of capacity (See Table C).

Table C**BRIDGE OPENING COUNTS**

2010	2010	2010	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011
OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
30	15	23	28	27	29	23	22	28	20	9	21	19

BRIDGE OPENING COUNTS - CONT'D

2011	2011	2012	2012	MONTHLY	TOTAL
NOV	DEC	JAN	FEB	AVERAGE	
34	15	23	35	23.6	401

BRIDGE OPENING AVERAGE DURATION (IN MINUTES)

2010	2010	2010	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011
OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT
10.0	9.9	9.7	8.9	9.4	9.1	9.0	8.9	10.2	10.1	9.3	10.0	9.1

BRIDGE OPENING AVERAGE DURATION (IN MINUTES) - CONT'D

2011	2011	2012	2012	MONTHLY
NOV	DEC	JAN	FEB	AVERAGE
9.1	8.7	10.1	12.3	9.6

Prior to execution of the temporary deviation and

temporary regulation periods, the average duration of a bridge lift was approximately 15 minutes. Throughout the same periods, the average duration of bridge lifts has been 9.6 minutes - a reduction of 5.4 minutes per lift.

The temporary closures of two Norfolk-area bridges, forced increased use of the Berkley Bridge by vehicular traffic. Now with those bridges near completion, the Berkley Bridge and its approaches still experience back-ups, delays, and congestion, due to increased traffic and population. The Hampton Roads Planning District Commission projected a population growth of 31% by 2034. This continued increase in traffic volume in Norfolk and at the Berkley Bridge is not expected to decrease in the future. The temporary rule draw opening schedule has helped to decrease the average bridge opening times, and the rule has led to only 27% of the available opening time being utilized by mariners. Continuing this schedule as proposed in the Interim Final Rule will help to mitigate future adverse impacts caused by the increased traffic congestion.

Assuming no reduction in maritime traffic volume, this reduction in lift duration has resulted in a significant efficiency increase in the use of time the bridge is actually opened for vessels and a significant reduction in delays to vehicular traffic during vessel openings. The

reduction in lift duration combined with the predictability of scheduled lifts optimally balances the competing demands of both road and waterway users.

D. Discussion of Interim Rule

The Coast Guard is amending the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, Virginia, at 33 CFR §117.1007, by revising paragraph (b)(2) to read as follows: The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494-2490; open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; and if the bridge is not opened during a particular scheduled opening and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for

a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494-2490.

The Coast Guard believes that this permanent change is necessary to reduce vehicular traffic congestion throughout the day and during rush hour time periods. Results of studies conducted since the temporary regulation went into effect in September 2010 confirm that scheduled lifts have decreased congestion without negatively impacting waterway users. Scheduled lifts, according to the statistics, are currently being utilized well under capacity by the maritime public. Furthermore, waterway users are accustomed to this schedule, as it has been in effect since September 2010.

E. Regulatory Analyses

We developed this interim 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.

We reached this conclusion based on the fact that the changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

2. Impact on Small Entities

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 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 interim rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, in allowing four scheduled openings during the day, outside of the advance notice request opening.

Mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay. And, vessels that can pass under the bridge without a bridge opening may do so at all times. Before the effective period, we will issue maritime advisories widely available to users of the river.

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 proposed rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule would 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 would 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 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 would 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 would 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

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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 made a preliminary determination 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 simply promulgates the operating regulations or procedures for drawbridges. 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; and Department of Homeland Security Delegation No. 0170.1.

2. In § 117.1007, revise paragraph (b) and remove paragraph (c) to read as follows:

§117.1007 Elizabeth River -- Eastern Branch.

* * * * *

(b) The draw of the Berkley Bridge, mile 0.4 in Norfolk:

(1) Shall remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501 of this chapter, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 of this chapter allows the bridge to open for commercial vessel traffic.

(2) Shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR

160.204.

(3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall:

(i) Open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494-2490.

(ii) Open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.

(4) If the bridge is not opened during a particular scheduled opening per paragraph (b)(3)(ii) of this section and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494-2490.

* * * * *

Dated: August 16, 2012

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

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