



DEPARTMENT OF HOMELAND SECURITY

9110-04-P

Coast Guard

33 CFR Part 117

USCG-2012-1085

RIN 1625-AA09

Drawbridge Operation Regulation; Christina River,
Wilmington, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Walnut Street Bridge at mile 2.8, and the Market Street Bridge at mile 3.0, both located on the Christina River in Wilmington, DE. Originally it was also proposed that the Third Street Drawbridge at mile 2.3 be included in this rule change but that request was withdrawn. Since the two other drawbridges are located near one another and the few vessels that do transit this waterway usually go through all three bridges, the Walnut Street and Market Street bridges will now open on the same eight hour advance notice. This rule will change the current regulations by allowing the Third Street and Walnut Street drawbridges to be opened in sequence with the same eight hour advance notice presently given to the Market Street drawbridge.

This schedule clarifies the sequencing of these drawbridge openings, and provides for the reasonable needs of navigation.

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

ADDRESSES: Documents mentioned in this preamble are part of docket number USCG-2012-1085. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this rulemaking. You may also visit 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.

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, at (757) 398-6587, terrance.a.knowles@uscg.mil. If you have questions on viewing, call Barbara Hairston, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR Code of Federal Regulations

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

A. Regulatory History and Information

On January 24, 2013, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Christina River, Wilmington, DE in the Federal Register (78 FR 5156). We received one comment on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Delaware Department of Transportation (DELDOT) who owns and operates these bascule-type drawbridges have requested a permanent change to the existing bridge regulations, allowing the Walnut Street bridge to also open on signal with eight hours advance notice as does the Market Street Bridge. This schedule allows for both of the drawbridges to be opened in sequence on the same opening request if required. Vessel traffic on this part of the Christina River consists of a few commercial and pleasure craft.

Three vessels make-up 97% of the number of openings at these bridges: The Kalmar Nyckel sail ship, the River Taxi,

and the River Boat Queen. The Market Street bridge has the most restrictive clearance of the three (8 ft. vertical clearance), and was opened a total 578 times in 2011. In 2011 the Walnut Street Bridge was opened 244 times. The River Taxi does not require an opening to pass under the Walnut Street Bridge. The Third Street Bridge was opened 250 times, but it will continue to open on signal.

C. Discussion of Comments, Changes and the Final Rule

The City of Wilmington Fire Department requested that the Third Street Bridge continue to have a bridge tender to open it on signal twenty-four hours per day, as it is currently regulated. The Fire Chief wanted a bridge tender to be available to open all the bridges during an emergency. DELDOT agreed with this proposal and now only Market Street and Walnut Street Bridges will require 8 hours advance notice.

The Coast Guard will not finalize the proposed change to the operating schedule that governs the Third Street Drawbridge. Since the two other drawbridges are located near one another and the few vessels that do transit this waterway usually go through all three bridges, the Walnut Street and Market Street bridges will now open on the same eight hour advance notice.

This rule changes the current regulations by allowing the Third Street and Walnut Street drawbridges to be opened in sequence with the same eight hour advance notice presently given to the Market Street drawbridge.

We are also modifying the existing regulations by removing the last sentence in 33 CFR 117.237(c), "The draws of these bridges shall open at all times as soon as possible for passage of a public vessel of the United States". This sentence is being removed because it is redundant and already exists in 33 CFR 117.31(b) (1).

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 rule is expected to have minimal impact on mariners due to the low number of vessels requiring openings on the river. In addition, the fact that an 8-hour advance notice is presently required for the Market Street Bridge opening, it is understood that time for passage through all bridges, under the this rule, will be consistent with the current regulation.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (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 will not have a significant economic impact on a substantial number of small entities because only a few vessels transit through both these bridges and it is rare that in such cases any vessel stops between the

bridges being regulated. Most commercial traffic will leave and return during the day. This rule would possibly affect small entities such as owners/operators of vessels needing to transit through the bridges but requiring more than eight feet of vertical clearance (the most vertically restrictive Market Street Bridge). These vessels can minimize delays and plan their transits in accordance with the opening schedule.

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 calls 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 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 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

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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 simply promulgates the operating regulations or procedures for drawbridges. The Christina River, Walnut Street and Market Street bridges will only open with eight hours of advance notice. 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. In § 117.237, revise paragraph (c) to read as follows:

§ 117.237 Christina River.

* * * * *

(c) In Wilmington DE, the draw of the Third Street Bridge at mile 2.3, shall open on signal, the draws of the Walnut Street Bridge at mile 2.8, and the Market Street Bridge at mile 3.0, shall open on signal if at least eight hours notice is given. From 7 a.m. to 8 a.m. and 4:30 p.m. to 5:30 p.m., Monday through Saturday except holidays, the draws of these three bridges need not be opened for the passage of vessels. Any vessel which has passed through one or more of these bridges immediately prior to a closed period and which requires passage through the other bridge or bridges in order to continue to its destination shall be passed through the draw or draws of the bridge or bridges without delay.

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Dated: September 18, 2013

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

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