



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0257]

RIN 1625-AA09

Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating regulation that governs the DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ. This proposed regulation will allow the bridge to be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, instead of being operated by an on-site bridge tender. This regulation will not change the operating schedule of the bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before August 18, 2017.

**ADDRESSES:** You may submit comments identified by docket number USCG-2016-0257 using Federal eRulemaking Portal at <http://www.regulations.gov>.

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 Mr. Hal R. Pitts, Fifth Coast Guard District (dpb); telephone (757) 398-6222, email Hal.R.Pitts@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The DELAIR Memorial Railroad Bridge across the Delaware River, mile 104.6, at Pennsauken Township, NJ, owned and operated by Conrail Shared Assets, has a vertical clearance of 49 feet above mean high water in the closed-to-navigation position. There is a daily average of 28 New Jersey Transit trains and eight Conrail freight trains that cross the bridge and a daily average of three bridge openings that allow one or more vessels to transit through the bridge during each opening. The bridge is normally maintained in the closed position due to the average daily number of trains crossing the bridge. The operating schedule is published in 33 CFR 117.716. This current operating schedule has been in effect since 1984 and will not change with the implementation of remote operation of the bridge. However, within this proposed operating schedule, §117.716 will be restructured from its current configuration to clearly distinguish the remote operation of the DELAIR Memorial Railroad Bridge. This proposed operating regulation allows the bridge to be operated remotely from the bridge owner's South Jersey dispatch center in Mount Laurel, NJ.

The Delaware River is used by a variety of vessels, including deep draft commercial vessels, tug and barge traffic, recreational vessels, and public vessels, including military vessels of various sizes. The three-year average number of bridge openings and maximum number of bridge openings by month and overall for 2013 through 2015, as drawn from the data contained in the bridge tender logs, is presented below.

<b>Month</b>	<b>Average Openings</b>	<b>Maximum Openings</b>
January	73	88
February	54	56
March	80	94
April	55	68
May	60	67
June	60	71
July	122	162
August	112	138
September	143	201
October	109	117
November	100	116
December	100	122
Monthly	89	201
Daily	3	7

The bridge owner and the maritime community have been working together since 2013 in an effort to incorporate sensors and other technologies into the bridge and the Conrail South Jersey dispatch center to allow for the safe and effective remote operation of the bridge.

On April 12, 2017, the Coast Guard published a temporary deviation entitled “Drawbridge Operation Regulation; Delaware River, Pennsauken Township, NJ” in the Federal Register (82 FR 17561). This test deviation allows the bridge to be operated remotely from the bridge owner’s South Jersey dispatch center in Mount Laurel, NJ. This

test deviation is effective from 8 a.m. on April 24, 2017, to 7:59 a.m. on October 21, 2017.

### III. Discussion of Proposed Rule

This proposed operating regulation will allow the bridge to be operated remotely from the bridge owner's South Jersey dispatch center in Mount Laurel, NJ. The remote operation system will include eight camera views (four marine and four rail), two forward-looking infrared equipped camera views (marine), marine radar, a dedicated telephone line for bridge operations, radio telephone on VHF-FM channels 13 and 16, and an automated identification system (AIS) transmitter to provide bridge status. The AIS transmitter has been installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position 39°58'50.52" N (39.9807), 75°03'58.75" W (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001 and will provide the status of the bridge (open/closed/inoperative) via the name transmitted by the private aids to navigation as DELAIR BRG-OPEN (fully open and locked position, channel light green), DELAIR BRG-CLOSED (other than fully open, not inoperative), or DELAIR BRG-INOP (other than fully open, inoperative). The AIS transmitter will transmit the bridge status every two minutes and upon a change in the bridge status.

The remote operation system is designed to provide equal or greater capabilities compared to the on-site bridge tender in visibility of the waterway and bridge and in signals (communications) via sound and visual signals and radio telephone (voice) via VHF-FM channels 13 and 16. The remote operation system also incorporates real-time bridge status via AIS signal to aid mariners in voyage planning and navigational decision-making, a dedicated telephone line (856) 231-2301 for bridge operations, and push-to-talk (PTT) capability on VHF-FM channel 13.

The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening will include: (1) when the draw can be opened immediately - a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately - five short blasts sounded in rapid succession and illumination of a fixed red light not more 30 seconds after the vessel's opening signal. The signals for the remote operation center or on-site bridge tender to respond to a visual signal for a bridge opening will include: (1) when the draw can be opened immediately - illumination of a fixed white light not more than 30 seconds after the requesting signal, and (2) when the draw cannot be opened immediately - illumination of a fixed red light not more 30 seconds after the vessel's opening signal. The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Vessels that require an opening shall continue to request an opening via the methods defined in 33 CFR 117.15(b) through (d) (sound or visual signals or radio telephone (VHF-FM) voice communications), via telephone at (856) 231-2301, or via push-to-talk (PTT) on VHF-FM channel 13. Vessels may push the PTT button five times while on VHF-FM channel 13 to request an opening.

The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found: (1) the remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center, (2) visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender (all eight

camera views are required), (3) signals (communications) via sound or visual signals or radio telephone (voice) via VHF-FM channels 13 or 16 become inoperative, or (4) AIS becomes inoperative.

#### IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders, and we discuss First Amendment rights of protestors.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This NPRM has not been designated a “significant regulatory action” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB), and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

The determination that this NPRM is not a significant regulatory action is based on the findings that: (1) vessels will continue to transit the bridge in accordance with 33 CFR 117.716, (2) the remote operation system is designed to provide equal or greater capabilities compared to the on-site bridge tender, and (3) the bridge owner will be capable of restoring on-site operation of the bridge within 60 minutes if the remote operation system fails.

##### B. 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 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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. There are no known adverse impacts to any entities related to this proposed rule, given no aspects of the remote operating system for the bridge will create any burdens on any entity as described in section IV.A above. The incorporation of the automated identification system (AIS) capability into the remote operation system is expected to aid mariners who have AIS capability or access to computer-based AIS data in safely navigating through the bridge by providing real-time bridge status.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies, and how, and to what degree this rule would economically affect it.

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 proposed 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 section above. 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.

### C. Collection of Information

This proposed rule would call for no new collection of information under the

Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

D. Federalism and Indian Tribal Government

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 proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Act) (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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally, such actions are categorically excluded from further review under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. 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 their message can be received without jeopardizing the safety or security of people, places, or vessels.

#### V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice of proposed rulemaking and all public comments are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. Revise §117.716 to read as follows:

§ 117.716 Delaware River.

- (a) The following apply to all drawbridges across the Delaware River:
- (1) The draws of railroad bridges need not be opened when there is a train in the bridge block approaching the bridge with the intention of crossing or within five minutes of the known time of the passage of a scheduled passenger train.
  - (2) The opening of a bridge may not be delayed more than five minutes for a highway bridge or 10 minutes for a railroad bridge after the signal to open is given.
  - (3) The owners of drawbridges shall provide and keep in good legible condition two board gages painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.
- (b) The draw of the Conrail Memorial Railroad Bridge, mile 104.6, at Pennsauken Township, NJ shall be operated as follows:
- (1) The bridge will be remotely operated from the Conrail South Jersey dispatch center in Mount Laurel, NJ, unless the remote operation system is in a failed condition.
  - (2) An AIS transmitter has been installed on the New Jersey side of the bridge at the bridge and land intersection in approximate position 39°58'50.52" N (39.9807), 75°03'58.75" W (-75.06632). The AIS transmitter is assigned maritime mobile service identity (MMSI) number 993663001. The status of the bridge (open/closed/inoperative) will be provided via the name transmitted by the AIS private aids to navigation as DELAIR BRG-OPEN (fully open and locked position, channel light green), DELAIR BRG-CLOSED (other than fully open,

not inoperative), or DELAIR BRG-INOP (other than fully open, inoperative).

The AIS transmitter will transmit the bridge status every two minutes and upon a change in the bridge status.

(3) The remote operation system will be considered in a failed condition and qualified personnel will return and operate the bridge within 60 minutes if any of the following conditions are found:

(i) The remote operation system becomes incapable of safely and effectively operating the bridge from the remote operation center; or

(ii) Visibility of the waterway or bridge is degraded to less than equal that of an on-site bridge tender; or

(iii) Signals (communications) via sound or visual signals or radio telephone (voice) via VHF-FM channels 13 or 16 become inoperative; or

(iv) AIS becomes inoperative.

(4) Vessels that require an opening shall continue to request an opening via the methods defined in § 117.15(b) through (d) (sound or visual signals or radio telephone (VHF-FM) voice communications), via telephone at (856) 231-2301, or via push-to-talk (PTT) on VHF-FM channel 13. Vessels may push the PTT button five times while on VHF-FM channel 13 to request an opening.

(5) The signals for the remote operation center or on-site bridge tender to respond to a sound signal for a bridge opening include:

(i) When the draw can be opened immediately - a sound signal of one prolonged blast followed by one short blast and illumination of a fixed white light not more than 30 seconds after the requesting signal; or

- (ii) When the draw cannot be opened immediately - five short blasts sounded in rapid succession and illumination of a fixed red light not more 30 seconds after the vessel's opening signal.
- (6) The signals for the remote operation center or on-site bridge tender to respond to a visual signal for a bridge opening include:
  - (i) When the draw can be opened immediately - illumination of a fixed white light not more than 30 seconds after the requesting signal; or
  - (ii) When the draw cannot be opened immediately - illumination of a fixed red light not more 30 seconds after the vessel's opening signal.
- (7) The fixed white light will remain illuminated until the bridge reaches the fully open position. The fixed white and red lights will be positioned on the east (New Jersey) bridge abutment adjacent to the navigation span.

Dated: June 19, 2017.

M. L. Austin,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.

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