



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG 2017-0162]

RIN 1625-AA09

Drawbridge Operation Regulation; Nanticoke River, Seaford, DE

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the SR 13 Bridge across the Nanticoke River, mile 39.6, in Seaford, DE. This proposal will require the bridge to open on signal every Saturday and Sunday during the winter season, if at least 24 hours notice is given. This action is necessary to balance bridge operations and maintenance with the existing needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the Federal Register].

**ADDRESSES:** You may submit comments identified by docket number USCG 2017-0162 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. Martin A. Bridges, Fifth Coast Guard District (dpb), at (757) 398-6422,

e-mail Martin.A.Bridges@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 US 13 Bridge across the Nanticoke River, Mile 39.6, in Seaford, DE, owned and operated by the Delaware Department of Transportation, has a vertical clearance of three feet above mean high water in the closed-to-navigation position. There is a monthly average of three bridge openings on Saturdays and Sundays, from 7:30 a.m. to 3:30 p.m., from November 1 through March 31, which 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 volume of vehicular traffic crossing the bridge. The current operating schedule is published in 33 CFR 117.243(b). The Coast Guard's authority to make a permanent change to a drawbridge operating schedule is contained in 33 CFR 117.8.

The Nanticoke River is predominately used by recreational vessels and pleasure craft. Data contained in the bridge tender logs provided by the Delaware Department of Transportation documenting the three-year average number of bridge openings, maximum number of bridge openings, and weekend bridge openings between 7:30 a.m. and 3:30 p.m., by month and overall for 2014 through 2016, is presented below.

<b>Month</b>	<b>Average Openings</b>	<b>Maximum Openings</b>	<b>Proposed Weekends - Average Openings 7:30 a.m. – 3:30 p.m.</b>
January	11	31	3
February	1	3	1
March	21	53	4
April	72	91	N/A
May	138	192	N/A
June	150	168	N/A
July	280	175	N/A
August	198	223	N/A
September	144	214	N/A
October	51	66	N/A
November	8	13	5
December	1	4	1
Monthly	89	223	3
Daily	3	7	< 1

This proposed modification of the operating schedule for the bridge is designed to balance bridge operations and maintenance with the existing needs of navigation.

### III. Discussion of Proposed Rule

The Delaware Department of Transportation requested to modify the operating regulation for the bridge, due to the limited number of requested openings of the bridge on Saturday and Sunday, from 7:30 a.m. to 3:30 p.m., from November 1 through March 31, over approximately the past three years. The data presented in the table above demonstrates that the requested modification may be implemented with de minimis impact to navigation. The modification requested will require the bridge to open on signal on Saturday and Sunday;

from 7:31 a.m. to 3:29 p.m., from November 1 through March 31, if at least 24 hours notice is given. All other provisions of 33 CFR 117.243(b) will remain the same.

#### 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.

This is not considered a significant regulatory action. This determination is based on the findings that: (1) The potential impact is small, given the limited number of vessels requiring a bridge opening during the time frame of the proposed modification, and (2) vessels will be able to transit through the bridge during the time frame of the proposed modification, given the bridge will open on signal, if at least 24 hours notice is given.

##### 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. The potential impact to all vessels is small, given the limited number of vessels requiring a bridge opening during the time frame of the proposed modification. All vessels will be able to transit through the bridge during the time frame of the proposed modification, given the bridge will open on signal, if at least 24 hours notice is given.

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, 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 (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 M16475.1 (series), 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.

Under figure 2-1, paragraph (32) (e), of the Instruction, a Record of Environmental Consideration (REC) and a Memorandum for the Record (MFR) 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 your 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 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 §117.243(b) to read as follows:

§ 117.243 Nanticoke River.

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(b) The draw of the SR 13 Bridge, mile 39.6, in Seaford shall:

(1) Open on signal, except from 6 p.m. to 8 a.m., from April 1 through October 31; from November 1 through March 31, Monday to Friday and on Saturday and Sunday from 3:30 p.m. to 7:30 a.m., if at least four hours notice is given.

(2) Open on signal, on Saturday and Sunday, from 7:31 a.m. through 3:29 p.m., from November 1 through March 31, if at least 24 hours notice is given.

Dated: June 21, 2017.

M. L. Austin,  
Rear Admiral, U.S. Coast Guard,  
Commander, Fifth Coast Guard District.  
[FR Doc. 2017-14068 Filed: 7/3/2017 8:45 am; Publication Date: 7/5/2017]