



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2017-0460

RIN 1625-AA09

Drawbridge Operation Regulation; Shrewsbury River, Monmouth County

Highway Bridge, Sea Bright, New Jersey.

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Monmouth County Highway Bridge (alternatively referred to as the “Sea Bright Bridge” or the “S-32 Bridge”) across the Shrewsbury River, mile 4.0 at Sea Bright, New Jersey. The owner of the bridge, the Monmouth County Board of Chosen Freeholders (Monmouth County), submitted a request to reduce the number of bridge openings during the summer months to better serve the needs of the community while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective [INSERT DATE 14 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2017-0460 in the

“SEARCH” box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Donna D. Leoce, Bridge Management Specialist, First Coast Guard District, telephone (212) 514-4332, e-mail Donna.D.Leoce@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 18, 2017, we published a notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Shrewsbury River, Sea Bright, New Jersey” in the **Federal Register** (82 FR 32777). We received 129 comments from the NPRM. Further, Commander (dpb), First Coast Guard District also published a Public Notice 1-155 dated July 28, 2017. The notice requested comments and directed those comments be added to the docket. In response to the 129 comments received, additional data was gathered, including follow-up meetings

with Monmouth County officials and review of bridge logs and traffic counts. Subsequently, the Coast Guard tested a temporary deviation with an alternate schedule for the 2018 boating season. On May 22, 2018 the Coast Guard published a temporary deviation from the operating schedule entitled, “Drawbridge Operation Regulation; Shrewsbury River, Sea Bright, New Jersey” in the **Federal Register** (83 FR 23581). The 2018 proposed change to the bridge operating schedule was tested to determine whether a permanent change was warranted to allow the draw to open as follows:

The draw shall open on signal at all times; except that, from the Friday before Memorial Day through Labor Day, on Friday, Saturday, Sunday, and holidays, between 9 a.m. and 7 p.m., the draw need only open on the hour.

One-hundred-twelve comments were received in response to the test deviation. This number includes the comments received directly to U.S. Coast Guard District One, Bridge Branch. We received a total of 241 comments from the 2017 NPRM and the 2018 test deviation.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. This final rule lessens prior restrictions for notice requirements on the weekends and holidays during the summer months, and provides set schedules for bridge openings. The public comments in response to the test deviation and the NPRM support the promulgation of the modified regulation to reduce the notice required for bridge openings and set hourly openings for a specific period of time during the summer months. Making this rule effective as soon as possible within

the timeframe most impacted (Memorial Day to Labor Day) will serve the needs of the community while continuing to meet the reasonable needs of navigation.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Monmouth County Highway Bridge, mile 4.0, across the Shrewsbury River at Sea Bright, New Jersey, has a vertical clearance of 15 feet at Mean High Water and 17 feet at Mean Low Water when the span is in the closed position. Vertical clearance is unlimited when the draw is open. Horizontal clearance is 75 feet. Waterway users include recreational vessels and a limited number of commercial vessels including tug/barge combinations.

The existing drawbridge regulation, 33 CFR 117.755, requires the draw of the Monmouth County Highway Bridge to open as follows: The draw shall open on signal at all times; except that, from May 15 through September 30, Saturday, Sunday and holidays, between 9 a.m. and 7 p.m., the draw need open only on the hour and half hour. This regulation has been in effect since July 6, 2010. Monmouth County, the owner of the bridge, requested a change to the drawbridge operating regulations given the increased volume of vehicular traffic crossing the bridge associated with the summer months. The increase of vehicular traffic resulted in significant traffic congestion on either side of the bridge during peak travel hours. The owner of the bridge asserted that traffic congestion will be improved or relieved through reduction of required bridge openings for vessels. In the summer of 2018, a deviation from the operating regulation was tested, from the Friday before Memorial Day through Labor Day. The operating regulations

presently encompassing Saturdays, Sundays, and holidays was expanded to include Fridays as well, between 9 a.m. and 7 p.m., the draw was open only on the hour to allow for more efficient and economical operation of the bridge, given the volume of vehicular traffic crossing the bridge at the beginning of the weekend.

Density patterns were recorded from the Monmouth County 2018 bridge logs for the Friday, Saturday, Sunday, and Holiday timeframes. In June, from the first through the fifth weekends, boats requiring bridge openings numbered: 42, 50, 59, 52, and 76 respectfully. In July, from the first through the fourth weekends, including the July 4th holiday, boats requiring bridge openings numbered: 101, 41, 29, and 66, respectively. In August through September 3, 2018, from the first through the fifth weekend, boats requiring bridge openings numbered: 53, 40, 40, 77, and 22 respectively. The vessels that utilize the waterway are primarily recreational power boats, as well as sailboats and occasional commercial vessels including tugs and barges.

Recorded from the Monmouth County vehicle traffic counts transiting east and west bound over the bridge from the first through the fifth weekends, July through September 3, 2018 range from 11,000 to over 15,000 vehicle crossings.

IV. Discussion of Comments, Changes and the Final Rule

One-hundred and ninety-three comments of the 241 comments received supported the modified and expanded bridge operating schedule; the majority of comments citing an improved difference in the vehicle traffic congestion or no difference in marine navigation, and recommended making the regulation permanent. Additionally, comments stated that emergency vehicles (including

Fire Department/EMS and Law Enforcement) are better able to respond to emergency calls. Some comments indicated that switching to hourly weekend openings between 9 a.m. and 7 p.m. (as opposed to openings on the hour and the half-hour) would likely mitigate (if not eliminate entirely) the worst aspects of recurrent traffic jams through reduced bridge openings.

Thirty-one comments of the 241 comments received did not support the proposed hourly weekend opening schedule. These comments suggested that the modified bridge operation schedule either did not make a difference in the level of vehicular traffic congestion and actually created even more vehicular traffic or that hourly openings created marine safety issues or were inconvenient for boaters. Some commenters additionally note that a backup in marine traffic could pose an environmental issue, due to increased diesel exhaust in the area from boats idling awaiting the bridge opening. In addition, some commenters stated bridge tenders tend to leave bridge open too long. While this may be the case, the Coast Guard believes on-site bridge tenders have a clear view of the waterway and are the best persons to determine safe situations for vessel transits.

Some commenters suggested instead of changing the bridge opening schedule that unnecessary bridge openings could be avoided by training bridge tenders to demand antennas and outriggers be lowered. The Coast Guard disagrees with this suggestion, as the regulations found in 33 CFR 117.11 discuss the unnecessary openings of drawbridge, including vessels who have not lowered

all appurtenances that can be lowered. Any complaints of non-compliance of these regulations shall be reported to the Coast Guard.

Other comments stated when the bridge is open every hour and half hour, boat traffic moves through more quickly and road traffic is not delayed as long as during the hourly openings. While the Coast Guard agrees that boat traffic would be faster with the half hour openings compared to hourly openings, we disagree with the assertion that road traffic is not effected. After review of the vessel and traffic counts presented in Section III above and follow-up discussions with Monmouth County engineers, the Coast Guard concluded that there is an improvement to land traffic with little effect to marine traffic. Lastly, some commenters stated the test deviation created more hazardous conditions, including increased congestion on the water and a higher risk for accidents due to inexperienced boaters, currents, and difficulty maneuvering. While the Coast Guard agrees the waterway is narrow and challenging to maneuver during tidal cycles, mariners should be knowledgeable of the waterway “Rules of the Road” and be able to plan their voyages accordingly under this modified regulation to enable safe transits through the bridge. In response to the additional comments summarized that a new, higher bridge should be built, Monmouth County is in the pre-application phase of concept development for a new bridge and the public will have an opportunity to comment.

Some comments expressed either no clear preference or alternate suggestions to the proposed rule change. The suggested alternatives offered by commenters included: 1. Curtailing the bridge openings on the weekends further

to every two hours or not at all; 2. Opening the bridge every 45 minutes within the specific hour window in the proposed rule; 3. Shrinking the hourly opening window to between 11:00 and 4:00 PM. The agency considered all options presented by commenters. As stated, the agency feels that the proposed rule strikes the correct balance between relieving traffic congestion issues and boater safety, and declines to adopt the proposed suggestions.

It is the Coast Guard's opinion that this rule meets the reasonable needs of marine navigation with a positive effect on vehicular and pedestrian traffic. The rule allows for more efficient and economical operation of the bridge. Further, the new schedule balances the seasonally high volume of roadway traffic crossing the bridge during peak hours, with the existing needs of marine traffic.

V. 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 and Executive Orders, and we discuss First Amendment rights of protesters.

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 rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it 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 Coast Guard believes this rule is not a significant regulatory action. The bridge will open on the hour from 9 a.m. to 7 p.m., during Friday, Saturday, Sunday, and holidays, throughout the summertime boating season, while still opening on signal during evening hours as well as through the autumn, winter and spring months. The minimum 15 foot vertical clearance available while the bridge is in the closed position is sufficient to allow a significant number of recreational vessels to safely and expeditiously pass through the draw without opening.

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 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.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A. above, this final rule would not have a significant economic impact on any vessel owner or operator.

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.

C. 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).

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 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 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. The Coast Guard received no comments on this section. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received no comments on this section.

F. Environment

We have analyzed this 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 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 action is 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.

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.

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 § 117.755, paragraph (a) is revised to read as follows:

§ 117.755 Shrewsbury River.

* * * * *

(a) The draw shall open on signal at all times; except that, from the Friday before Memorial Day through Labor Day, on Friday, Saturday, Sunday and holidays, between 9 a.m. and 7.p.m., the draw need only open on the hour.

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Dated: June 17, 2019.

R.W. Warren,

Captain, U.S. Coast Guard,

Acting Commander, First Coast Guard District.

[FR Doc. 2019-14496 Filed: 7/8/2019 8:45 am; Publication Date: 7/9/2019]