



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0682]

RIN 1625-AA09

Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina. This temporary modification will allow the drawbridge to be maintained in the closed position and is necessary to accommodate bridge maintenance.

DATES: This temporary final rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER] through 12:01 a.m. on June 30, 2021. For the purposes of enforcement, actual notice will be used from 7 p.m. on February 1, 2020 until [INSERT 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-2019-0682 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 Mr. Michael Thorogood, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6557, email Michael.R.Thorogood@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
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 19, 2019, the Coast Guard published a notice for proposed rulemaking entitled “Drawbridge Operation Regulation; Northeast Cape Fear River, Wilmington, NC” in the Federal Register (84 FR 69685). The Coast Guard received one “unrelated” comment on this rule.

We are issuing this rule and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register. This rule will take immediate effect. Good cause exists because work has been ongoing and we have not received any negative feedback from the maritime.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina, is a double bascule span bridge, and has a vertical clearance of 40 feet above mean high water in the closed position and unlimited vertical clearance above mean high water in the open position. The current operating schedule for the drawbridge is published in 33 CFR 117.829(a).

The North Carolina Department of Transportation, who owns and operates the Isabel S. Holmes Bridge (US 74/SR 133), across the Northeast Cape Fear River, at mile 1.0, at Wilmington, North Carolina, has requested this modification to allow the drawbridge to be maintained in the closed-to-navigation position to facilitate bridge maintenance of the drawbridge.

This temporary final rule is necessary to facilitate safe and effective bridge maintenance of the drawbridge, while providing for the reasonable needs of navigation. A work platform will reduce the vertical clearance of the entire bridge span to approximately 34 feet above mean high water in the closed position. Vessels that can safely transit through the bridge in the closed position, with the reduced clearance may do so, if at least a thirty minute notice is given, to allow for navigation safety. The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position.

Under this temporary final rule, the drawbridge will be maintained in the closed-to-navigation position twenty-four hours a day, seven days a week from 7 p.m. on February 1, 2020 through 12:01 a.m. on June 30, 2021. The bridge will open on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR 117.829 (a)(4). The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with 117.829 (a)(4). At all other times the drawbridge will operate per 33 CFR 117.829(a).

IV. Discussion of Comments, Changes and the Temporary Final Rule

The Coast Guard received one “unrelated” comment on this rule. The one comment received did not influence any changes to the regulatory text. Due to time restraints a change was made to the regulatory text from the text noted in the NPRM, we had to amend the start date of the closure period from “January 1, 2020” to “February 1, 2020” as the regulation was not published prior to January 1, 2020. All other portions of the NPRM coincide with this current temporary final rule.

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.

This regulatory action determination is based on the fact that vessels can still transit the bridge on signal for daily scheduled openings at 6 a.m., 10 a.m., 2 p.m., and 7 p.m., if at least a twenty-four hour notice is given; except for bridge closures authorized in accordance with 33 CFR 117.829(a)(4). The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel’s draft; except for bridge closures authorized in accordance with 33 CFR 117.829(a)(4). At all other times the drawbridge will operate per 33 CFR 117.829(a).

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 rule will 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.

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.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). We have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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; DHS Delegation No. 0170.1.

2. Amend §117.829 by adding paragraph (a)(5) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(5) From 7 p.m. on February 1, 2020, through 12:01 a.m. on June 30, 2021, the draw will be maintained in the closed-to-navigation position. The draw will open on signal, if at least a twenty-four hour notice is given, for scheduled openings at 6 a.m., 10 a.m., 2 p.m. and 7 p.m.; except for bridge closures authorized in accordance with (a)(4) of this section. The draw will open on signal, if at least a twenty-four hour notice is given, for vessels unable to transit through the bridge during a scheduled opening, due to the vessel's draft; except for bridge closures authorized in accordance with (a)(4) of this section.

* * * * *

Dated: February 7, 2020.

Gregory G. Stump,
Captain, U.S. Coast Guard,
Acting Commander, Fifth Coast Guard District.

[FR Doc. 2020-02773 Filed: 2/12/2020 8:45 am; Publication Date: 2/13/2020]