

FDC date	State	City	Airport	FDC No.	Subject
08/16/06	NH	MANCHESTER	MANCHESTER	6/6868	ILS OR LOC/DME RWY 17, ORIG.
08/16/06	MD	EASTON	EASTON/NEWMAM FIELD	6/6872	ILS OR LOC/DME RWY 4, ORIG.
08/16/06	NY	WESTHAMPTON BEACH.	FRANCIS S. GABRESKI	6/6881	COPTER ILS OR LOC RWY 24, AMDT 2.
08/16/06	NY	HUDSON	COLUMBIA COUNTY	6/6930	GPS RWY 21, ORIG-A.
08/16/06	NY	WESTHAMPTON BEACH.	FRANCIS S. GABRESKI	6/6931	ILS OR LOC RWY 24, AMDT 9.
08/16/06	WV	WHEELING	WHEELING OHIO COUNTY	6/6957	ILS RWY 3, AMDT 20A.
08/17/06	MS	GRENADA	GRENADA MUNI	6/6875	NDB RWY 13, AMDT 1A.
08/18/06	GA	ATLANTA	COBB COUNTY-MCCOLLUM FIELD ...	6/6939	ILS OR LOC RWY 27, AMDT 2.
08/18/06	GA	ATHENS	ATHENS/BEN EPPS	6/6940	VOR OR GPS RWY 2, AMDT 10A.
08/18/06	GA	ATHENS	ATHENS/BEN EPPS	6/6941	VOR RWY 27, AMDT 11A.
08/18/06	GA	MADISON	MADISON MUNI	6/6942	VOR/DME OR GPS A, AMDT 7.
08/18/06	GA	MADISON	MADISON MUNI	6/6944	GPS RWY 14, AMDT 1.
08/18/06	GA	WINDER	WINDER-BARROW	6/6945	LOC RWY 31, AMDT 8A.
08/18/06	GA	WINDER	WINDER-BARROW	6/6946	VOR/DME OR GPS A, AMDT 9A.
08/18/06	GA	WINDER	WINDER-BARROW	6/6947	NDB OR GPS RWY 31, AMDT 8A.
08/21/06	NC	NEW BERN	CRAVEN COUNTY REGIONAL	6/7175	ILS RWY 4, ORIG-A.
08/22/06	PA	ERIE	ERIE INTL/TOM RIDGE FIELD	6/7169	ILS RWY 24, AMDT 7B.
08/22/06	PA	KUTZTOWN	KUTZTOWN	6/7170	VOR-A, AMDT 1.
08/22/06	NE	OMAHA	MILLARD	6/7233	NDB RWY 12, AMDT 10B.
08/22/06	CT	HARTFORD	HARTFORD-BRAINARD	6/7249	LDA RWY 2, AMDT 1D.
08/22/06	KS	LAWRENCE	LAWRENCE MUNI	6/7250	ILS OR LOC RWY 33, AMDT 1.
08/22/06	KS	NEWTON	NEWTON-CITY-COUNTY	6/7254	ILS OR LOC RWY 17, AMDT 4.
08/22/06	KS	WINFIELD/ARKANSAS.	STROTHER FIELD	6/7308	ILS RWY 35, AMDT 4.
08/22/06	ND	JAMESTOWN	JAMESTOWN REGIONAL	6/7277	ILS RWY 31, AMDT 7B.
08/23/06	KS	TOPEKA	FORBES FIELD	6/7570	ILS RWY 31, AMDT 9A.
08/23/06	GA	ALBANY	SOUTHWEST GEORGIA REGIONAL ...	6/7471	ILS RWY 4, AMDT 10A.
08/23/06	WA	EPHRATA	EPHRATA MUNI	6/7512	VOR OR GPS RWY 20, AMDT 18A.
08/23/06	WA	EPHRATA	EPHRATA MUNI	6/7513	VOR/DME OR GPS RWY 2, AMDT 3A.

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-06-044]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Broad Creek, Cedar Creek, and Nanticoke River, DE

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operation regulations of four Delaware Department of Transportation (DelDOT) bridges: the Poplar Street Bridge, at mile 8.2, and the U.S. 13A Bridge, at mile 8.2, both across Broad Creek in Laurel, DE; the SR 36 Bridge, at mile 0.5, over Cedar Creek in Cedar Beach; and SR 13 Bridge, at mile 39.6, across Nanticoke River in Seaford, DE. This final rule allows the bridges to open on signal if advance notice is given at different times from 4 to 48 hours. This change will eliminate the continual attendance of draw tender services during the non-peak boating periods

while still providing for the reasonable needs of navigation.

**DATES:** This rule is effective October 11, 2006.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-06-044 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On June 29, 2006, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Broad Creek, Cedar Creek, and Nanticoke River, DE" in the **Federal Register** (71 FR 37024). We received no comments on the proposed rule. No public meeting was requested, and none was held.

#### Background and Purpose

DelDOT, who owns and operates the Poplar Street Bridge and the U.S. 13A Bridge, at mile 8.2, both across Broad Creek in Laurel; the SR 36 Bridge, at mile 0.5, over Cedar Creek in Cedar Beach; and the SR 13 Bridge, at mile 39.6, across Nanticoke River in Seaford, requested advance notification for vessel openings and a reduction in draw tender services for the following explanations:

##### *Broad Creek*

In the closed-to-navigation position, the Poplar Street Bridge, mile 8.2, and the U.S. 13A Bridge, mile 8.2, both in Laurel, have vertical clearances of five feet and two feet, above mean high water, and eight feet and five feet, above mean low water, respectively. The existing operating regulations for these drawbridges are set out in 33 CFR 117.233, which requires the bridges, along with the Conrail Bridge (at mile 8.0) in Laurel, to open on signal if at least four hours notice is given.

DelDOT provided information to the Coast Guard about the conditions and reduced operational capabilities of the draw spans. Due to the infrequency of requests for vessel openings of the drawbridge for the past 10 years, the final rule changes the current operating regulations by requiring the draw spans

to open on signal if at least 48 hours notice is given year-round.

#### *Cedar Creek*

The SR 36 Bridge, at mile 0.5 in Cedar Beach, has a vertical clearance of two feet, above mean high water, and six feet, above mean low water, in the closed-to-navigation position. The existing regulation is listed at 33 CFR 117.5, which requires the bridge to open on signal.

Bridge opening data submitted by DelDOT revealed significantly fewer openings at certain hours of the night in the spring and summer months; and during the fall and winter months. The bridge logs also show the majority of drawbridge openings were performed year-round between the hours of 6 a.m. and 6:30 p.m. This final rule requires the draw to open on signal from April 1 through November 30, except from 2 a.m. to 4 a.m., when at least four hours notice must be given. From 6 a.m. to 6:30 p.m., from December 1 through March 31, the draw will open on signal. At all other times, the draw will open on signal if at least four hours notice is given.

These changes reduce bridge tender services required at the SR 36 Bridge due to the decrease in vessel opening requests.

#### *Nanticoke River*

The SR 13 Bridge, at mile 39.6, in Seaford has a vertical clearance of three feet, above mean high water and seven feet, above mean low water in the closed-to-navigation position. The existing regulation found at 33 CFR 117.5 requires the bridge to open on signal.

Bridge opening data submitted by DelDOT revealed significantly fewer openings between the hours of 8 a.m. and 6 p.m. in the spring and summer months; and on weekdays in the fall and winter months.

The final rule requires the draw to open on signal from 8 a.m. to 6 p.m. from April 1 through October 31; and at all other times, if at least four hours notice is given. From 7:30 a.m. to 3 p.m., from November 1 through March 31, on weekends (Saturdays and Sundays), the draw will open on signal; and at all other times, if at least four hours notice is given.

These changes reduce bridge tender services required at the SR 13 Bridge due to the decrease in vessel opening requests.

#### **Discussion of Comments and Changes**

The Coast Guard did not receive any comments on the NPRM. Therefore, no changes were made to the final rule.

#### **Discussion of Rule**

##### *Broad Creek*

The Coast Guard is revising 33 CFR 117.233, which governs the Conrail Bridge, mile 8.0, the Poplar Street bridge, mile 8.2 and the U.S. 13A bridge, mile 8.2, all in Laurel.

The current regulation is divided into paragraphs (a) and (b) by this final rule. New paragraph (a) contains the existing rule for the Conrail Bridge, mile 8.0, in Laurel and states that the draw shall open on signal if at least four hours notice is given.

Paragraph (b) contains the requirements for the Poplar Street Bridge, mile 8.2 and the U.S. 13A Bridge, mile 8.2, both in Laurel. The final rule requires the drawbridges to open on signal if at least 48 hours notice is given.

##### *Cedar Creek*

A new § 117.234, allows SR 36 Bridge, mile 0.5 in Cedar Beach, to open on signal from April 1 through November 30, except from 2 a.m. to 4 a.m., if at least four hours notice is given.

From December 1 through March 31, from 6 a.m. to 6:30 p.m., the draw will open on signal; and at all other times, if at least four hours notice is given.

##### *Nanticoke River*

In 33 CFR 117.243, this final rule redesignates paragraphs (a) through (c) as paragraph (a)(1) through (a)(3). The redesignated paragraph (a) contains the existing rules for the Norfolk Southern Railway Bridge, mile 39.4, at Seaford. The contact information for advance notice at the Norfolk Southern Railway Bridge is changed to the "train dispatcher" vice "bridge tender." the telephone numbers are changed to (717) 215-0379 or (609) 412-4338.

The redesignated paragraph (b) contains the requirements for the SR 13 Bridge, mile 39.6, in Seaford. The final rule requires the draw to open on signal from 8 a.m. to 6 p.m. from April 1 through October 31; and at all other times, if at least four hours notice is given. From 7:30 a.m. to 3 p.m., from November 1 through March 31, on weekends (Saturdays and Sundays), the draw will open on signal; and at all other times, if at least four hours notice is given.

#### **Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and

Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that these changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings, to minimize delays.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 rule would not have a significant economic impact on a substantial number of small entities.

This rule would not have a significant economic impact on a substantial number of small entities for the following reason. The rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

#### **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 so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

#### **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.).

#### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed

this rule under that Order and have determined that it does not have implications for federalism.

#### 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 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.

#### Taking of Private Property

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 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, eliminates ambiguity, and reduce burden.

#### 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.

#### Indian Tribal Governments

This 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.

#### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of

energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

#### 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Revise § 117.233 to read as follows:

#### § 117.233 Broad Creek.

(a) The draw of the Conrail Bridge, mile 8.0 at Laurel, shall open on signal if at least four hours notice is given.

(b) The draws of the Poplar Street Bridge, mile 8.2, and the U.S. 13A Bridge, mile 8.2, all at Laurel, shall open on signal if at least 48 hours notice is given.

■ 3. Add new § 117.234 to read as follows:

#### § 117.234 Cedar Creek.

The SR 36 Bridge, mile 0.5 in Cedar Beach, shall open on signal. From April 1 through November 30 from 2 a.m. to 4 a.m.; and from December 1 through March 31 from 6:30 p.m. to 6 a.m., the draw shall open on signal if at least four hours notice is given.

■ 4. Revise § 117.243 to read as follows:

#### § 117.243 Nanticoke River.

(a) The draw of the Norfolk Southern Railway Bridge, mile 39.4 in Seaford, will operate as follows:

(1) From March 15 through November 15, the draw will open on signal for all vessels except that from 11 p.m. to 5 a.m. at least 2½ hours notice will be required.

(2) At all times, from November 16 through March 14, the draw will open on signal if at least 2½ hours notice is given.

(3) When notice is required, the owner operator of the vessel must provide the train dispatcher with an estimated time of passage by calling (717) 215–0379 or (609) 412–4338.

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

Dated: August 25, 2006.

**L.L. Hereth,**

*Rear Admiral, United States Coast Guard, Commander, Fifth Coast Guard District.*

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#### LIBRARY OF CONGRESS

#### Copyright Royalty Board

#### 37 CFR Chapter III

[Docket No. RM 2005–1]

#### Procedural Regulations for the Copyright Royalty Board

**AGENCY:** Copyright Royalty Board, Library of Congress.