

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD05-02-054]

RIN 1625-AA09

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Route 70 Bridge across Manasquan River, mile 3.4, at Riviera Beach, New Jersey. The final rule will require the draw of the bridge to open on signal on the hour, except that from 11 p.m. to 7 a.m. and on Monday through Friday from 4 p.m. to 7 p.m., the draw need not be opened. This change would reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: This rule is effective July 11, 2003.

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 CCGD05-02-054 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On September 12, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Manasquan River, New Jersey" in the **Federal Register** (67 FR 57773). We received 14 letters commenting on the proposed rule. No public meeting was requested, and none was held.

On March 20, 2003, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Manasquan River, New Jersey" in the **Federal Register** (68 FR 13641). We received 10 letters commenting on the supplemental proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The Route 70 Bridge is a movable bridge (single-leaf bascule) owned and operated by the New Jersey Department of Transportation (NJDOT) connecting the Borough of Point Pleasant and Brick Township in Ocean County with Brielle Borough and Wall Township in Monmouth County. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.727 requires that the draw of the S70 Bridge, mile 3.4 at Riviera Beach, shall open on signal from 7 a.m. to 11 p.m. The draw need not be opened from 11 p.m. to 7 a.m. In the closed position to vessels, the bridge has a vertical navigation clearance of approximately 15 feet at mean high water.

On behalf of residents and business owners in the area, NJDOT requested changes to the existing regulations for the Route 70 Bridge in an effort to balance the needs of mariners and vehicle drivers transiting in and around this seaside resort area. Route 70 is a principal arterial highway that serves as a major evacuation route in the event of tidal emergencies. Bridge openings at peak traffic hours during the tourist season often cause considerable vehicular traffic congestion while accommodating relatively few vessels. To ease traffic congestion, NJDOT requested that the movement of marine traffic be regulated. We reviewed NJDOT's yearly drawbridge logs for 1999, 2000, and 2001, which revealed that the bridge opened for vessels 1028, 1026, and 1020 times, respectively. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened 750, 792, and 794 times, respectively. With an average of only five openings per day during the prime boating period, NJDOT contends that vessel traffic through the bridge is minimal. Also, NJDOT officials, residents and business owners pointed out that from 4 p.m. to 7 p.m. on Fridays, vehicular traffic congestion is at its peak. During the peak boating season from May through September, the logs revealed from 1999 to 2001, the bridge opened from 4 p.m. to 7 p.m. on Fridays, 36, 35, and 26 times, respectively. Limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and no openings required from 4 p.m. to 7 p.m. on Fridays would enhance vehicular traffic without significantly affecting vessel traffic. The Coast Guard received 14 comments on the NPRM; most suggesting additional changes to the proposed regulations.

Based on these comments and our further review of the bridge logs, the

Coast Guard considered the minimal number of openings year-round during the closure period from 4 p.m. to 7 p.m. that included Monday through Thursday, an alternative proposal, as set forth in the SNPRM, was appropriate.

Discussion of Comments and Changes

The Coast Guard received 14 comments on the NPRM. Eleven letters supported the proposed changes to the regulations, two responses opposed the proposed changes and another comment suggested a height restriction placed on vessels that travel under the bridge.

Of the 11 letters supporting the proposed changes to the regulations, five letters went further in asking to extend the suggested "no openings" on Fridays from 4 p.m. to 7 p.m. to include Monday through Thursday; two letters supported the proposal without changes; one comment requested commuter hours from 6:30 a.m. to 8:30 a.m. and 5 p.m. to 7 p.m.; one comment requested no openings of the bridge on any days between 5 p.m. and 7 p.m.; and another letter considered operating the bridge to open hourly from 8 a.m. to 4 p.m. during the months of March, April, October and November and only open with a 24-hour advance notice during December, January and February. Two comments, one from the U.S. Fish and Wildlife Service and the other from the New Jersey Historic Preservation Office, had no objection to the issuance of the proposed regulations.

Two of the remaining three comments opposed the proposed changes to the regulations and one had no opinion to the proposed regulation. One comment from a yacht club stated that their membership objects to any changes to the proposed regulations for the following reasons: safety, the environment and liability losses. Another comment had suggested a reduction of the bridge closure to 5 p.m. to 7 p.m. especially if done five days a week, and emergency openings for boater safety. The Coast Guard responded to these comments and indicated that in the event of marine emergency Title 33 CFR part 117.31, "Operation of draw for emergency situations," adequately provides for vessels for unscheduled openings of the bridge. The last comment requested a height restriction placed on vessels with lowerable appurtenances (*i.e.* antennas etc.) that transit under the bridge. Further review of the bridge logs reveal from 1999 through 2001, the bridge opened year-round from 4 p.m. to 7 p.m., Mondays through Thursdays, 72, 73, and 60 times respectively. The Coast Guard responded to the comments by limiting the required openings of the

draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

The Coast Guard received ten comments on the SNPRM. Eight supported, one opposed and another had no opinion to the supplemental proposal. Of the eight supporting the supplemental proposed changes, four also indicated that passage under the bridge can also be accomplished by vessel owners lowering their lowerable appurtenances (*i.e.* antennas, outriggers etc.), two supported the regulations without changes, one was a resolution from the Borough of Brielle in support of the regulations, and one from the U.S. Fish and Wildlife Service which had no objections to the issuance of the supplemental proposed regulations.

One of the remaining two comments opposed and the other had no opinion to the supplemental proposed changes. The opposing comment considered the weekday closure period from 4 p.m. to 7 p.m. a major inconvenience to commercial fishing boats entering Manasquan Inlet. The remaining comment only indicated that the bridge should never have been "on demand." All comments and the Coast Guard's written response to those comments are contained in the docket.

Based on these comments to the new proposal, the lowering of non-structural vessel appurtenances that are not essential to navigation and the minimal number of openings identified by the bridge logs, the Coast Guard is amending 33 CFR 117.727 with a new provision to limit the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour with closure periods from 4 p.m. to 7 p.m. Mondays through Fridays.

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 reached this conclusion based on the fact that the final rule has only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings and lower their non-structural appurtenances that are not essential to navigation to further minimize delay.

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 will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities because 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 offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

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).

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 will 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, eliminate 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 does not create an environmental risk to health or risk to safety that may 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

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.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

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; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of P.L. 102-587, 106 Stat. 5039.

■ 2. § 117.727 is revised to read as follows:

§ 117.727 Manasquan River.

The draw of the Route 70 Bridge, mile 3.4, at Riviera Beach, shall open on signal on the hour, except that from 4 p.m. to 7 p.m. Monday through Friday and from 11 p.m. to 7 a.m., every day the draw need not be opened.

Dated: June 3, 2003.

Sally Brice-O'Hara,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-03-215]

RIN 1625-AA00

Safety Zone; Lake Michigan, Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety encompassing a portion of Lake Michigan, Chicago, IL. This safety zone is necessary to protect vessels and spectators from potential airborne hazards during a planned fireworks display over a portion of Lake Michigan. The safety zone is intended to restrict vessel traffic from a portion of Lake Michigan, Chicago, Illinois.

DATES: This temporary final rule is effective from 10 p.m. (local), until 11 p.m. on June 14, 2003.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket CDG09-03-215 and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Chicago, 215 W. 83rd Street, Chicago, Illinois 60527 between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: MST2 Kenneth Brockhouse, U. S. Coast Guard Marine Safety Office Chicago, at (630) 986-2125.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Similarly, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The permit application was not received in time to publish an NPRM followed by a final rule before the effective date. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. The Coast Guard has not received any complaints or negative comments previously with regard to this event.

Background and Purpose

A temporary safety zone is necessary to ensure the safety of vessels and spectators from the hazards associated with fireworks display. Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard of fireworks, the Captain of the Port Chicago has determined fireworks launches in close proximity to watercraft pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

The safety zone will encompass all waters of Lake Michigan bounded by the arc of a circle with a 1000 foot radius with its center in approximate position 41° 52'15" N; 087° 36'44" W. These coordinates are based upon North American Datum 1983 (NAD 83). All vessels except those officially participating in this event are prohibited from entering the safety zone without the permission of the Captain of the Port Chicago or his on-scene representative. The on-scene representative will be the Patrol Commander, and may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 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 this rule 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 DOT is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is in an area where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered