

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-05-102]

RIN 1625-AA09

**Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AICW), Cape Fear River, and Northeast Cape Fear River, NC**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of three North Carolina Department of Transportation (NCDOT) bridges: the S.R. 74 Bridge, across the AICW mile 283.1 at Wrightsville Beach; the Cape Fear River Memorial Bridge, mile 26.8, at Wilmington; and the Isabel S. Holmes (US 117) Bridge, at mile 1.0, across Northeast Cape Fear River at Wilmington, North Carolina. This proposal will allow the bridges to remain in the closed position at particular dates and times to accommodate road races, marathons and triathlons. Vessels that can pass under the bridges without a bridge opening may do so at all times.

**DATES:** Comments and related material must reach the Coast Guard on or before November 17, 2005.

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

**FOR FURTHER INFORMATION CONTACT:** Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05-05-102, indicate the specific section of this

document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submissions received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

On behalf of the Young Men's Christian Association (YMCA), NCDOT requested changes to the operating drawbridge regulations to accommodate the Tri-Span Run, Battleship Half Marathon, and Triathlon Run. The races are annual events sponsored by the YMCA, attracting spectators and participants from the surrounding cities and states.

In accordance with 33 CFR 117.37(a) for reasons of public safety or for public functions, the District Commander may authorize the opening and closing of a drawbridge for a specified period of time.

NCDOT who owns and operates the S.R. 74 Bridge across the AICW mile 283.1 at Wrightsville Beach; the Cape Fear River Memorial Bridge mile 26.8 across the Cape Fear River, at Wilmington, North Carolina; and the Isabel S. Holmes Bridge mile 1.0 (US 117, across Northeast Cape Fear River at Wilmington, North Carolina, requested the following drawbridge changes:

*Atlantic Intracoastal Waterway*

The S.R. 74 Bridge, at AICW mile 283.1 at Wrightsville Beach, has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water in the closed position to vessels. The existing operating regulations are set out in 33 CFR 117.821(a)(5).

The Triathlon race is held on the third Saturday in September of every year with the fourth Saturday used as the alternate day. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year.

*Cape Fear River*

The Cape Fear Memorial Bridge mile 26.8, in Wilmington, has a vertical clearance of 65 feet at mean high water and 68 feet at mean low water in the closed position to vessels. The existing regulation is listed at 33 CFR 117.5, which requires the bridge to open on signal.

Both the Tri-Span run and the Battlefield Half Marathon, cross the Cape Fear River Memorial Bridge in Wilmington. The Tri-Span run is held on the second Saturday of July. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year.

The Battleship Half Marathon is held on the second Sunday of November. To facilitate the marathon, the proposal will maintain the bridge in the closed-to-navigation position from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

*Northeast Cape Fear River*

The Isabel S. Holmes Bridge, U.S. 17, SR 133 at mile 1.0, in Wilmington has a vertical clearance of 26 feet at mean high water and 30 feet at mean low water in the closed position to vessels. The existing regulation is listed at 33 CFR 117.829.

Both the Tri-Span run and the Battlefield Half Marathon, cross the Isabel S. Holmes Memorial Bridge in Wilmington. The Tri-Span run is held on the second Saturday of July. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year.

The Battleship Half Marathon is held on the second Sunday of November of every year. To facilitate the marathon, the proposal will maintain the bridge in the closed-to-navigation position from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

The Coast Guard believes that the proposed changes are reasonable due to the short duration that the drawbridges will be maintained in the closed position to vessels, because these events have been observed in past years with little or no impact to marine or vehicular traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants and vehicular traffic before, during and after the races.

## Discussion of Proposed Rule

### *Atlantic Intracoastal Waterway*

This proposed rule amends 33 CFR 117.821 by revising paragraph (a)(5), which details the operating regulations for the S.R. 74 Bridge.

Paragraph § 117.821 (a)(5) will be amended to allow the S.R. 74 Bridge to remain in the closed position from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year.

### *Neuse River*

Section 117.823 Neuse River will be redesignated as § 117.824 to allow alphabetical placement and codification of Cape Fear River at § 117.823.

### *Cape Fear River*

Cape Fear River will be added at new § 117.823, detailing the operating regulations and allowing the Cape Fear Memorial Bridge to remain in the closed-to-navigation position from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year. The current operating regulations set out in 33 CFR 117.5 require the drawbridge to open on signal when a request to open is given.

### *Northeast Cape Fear River*

This proposed rule amends 33 CFR 117.829 by revising paragraph (a), which details the operating regulations for the Isabel S. Holmes Bridge.

A new paragraph will be added to 117.829, which allows the Isabel S. Holmes Bridge to remain in the closed position from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

## Regulatory Evaluation

This proposed 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 proposed 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 the proposed 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 proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would 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.

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.

## Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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.

## 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.).

## Federalism

A rule has implications for federalism under Executive Order 13132,

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 proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 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.

## Energy Effects

We have analyzed this proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed rule under 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 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 proposed 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.

#### Regulations

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; 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. Section 117.821 is amended by revising paragraph (a)(5) to read as follows:

#### § 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) \* \* \*

(5) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year, the draw need not open for vessels due to the Triathlon run.

\* \* \* \* \*

#### § 117.823 [Redesignated]

3. Redesignate § 117.823 as § 117.824.

4. Add new § 117.823 to read as follows:

#### § 117.823 Cape Fear River.

The draw on the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessel from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year.

5. Section 117.829 is amended by adding a new paragraph (a)(4) to read as follows:

#### § 117.829 Northeast Cape Fear River

(a) \* \* \*

(4) From 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the second Sunday of November of every year, the draw need not open for vessels.

\* \* \* \* \*

Dated: September 20, 2005.

**S.H. Ratti,**

*Captain, U. S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. 05–19664 Filed 9–30–05; 8:45 am]

**BILLING CODE 4910–15–P**

### LIBRARY OF CONGRESS

#### Copyright Office

#### 37 CFR Part 201

[Docket No. RM 2005–11]

#### Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Copyright Office of the Library of Congress is preparing to conduct proceedings in accordance with section 1201(a)(1) of the Copyright Act, which was added by the Digital Millennium Copyright Act and which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumvention of technological measures that control access to copyrighted works. The purpose of this rulemaking proceeding is to determine whether there are particular classes of works as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses due to the prohibition on circumvention. This notice requests written comments from all interested parties, including representatives of copyright owners, educational institutions, libraries and archives, scholars, researchers and members of the public, in order to elicit evidence on whether noninfringing uses of certain classes of works are, or are likely to be, adversely affected by this prohibition on the circumvention of measures that control access to copyrighted works.

**DATES:** Written comments are due by December 1, 2005. Reply comments are due by February 2, 2006.

**ADDRESSES:** Electronic submissions must be made through the Copyright Office website: [http://www.copyright.gov/1201/comment\\_forms](http://www.copyright.gov/1201/comment_forms); see section 3 of the SUPPLEMENTARY INFORMATION section for file formats and other information about electronic and non-electronic filing requirements. Addresses for nonelectronic submissions are as follows: If hand delivered by a private party, deliver to Room LM–401 of the James Madison Memorial Building between 8:30 a.m. and 5 p.m. and the envelope should be addressed as follows: Office of the General Counsel, U.S. Copyright Office, James Madison Memorial Building, Room LM–401, 101 Independence