

levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental Health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR, Part 199 is amended as follows:

PART 199—CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES

■ 1. The authority citation for Part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C., chapter 55.

■ 2. Section 199.4 is amended by:

■ A. Revising paragraphs (g)(37)(viii) and (ix).

■ B. Redesignating paragraphs (g)(37)(x) through (g)(37)(xii) as (g)(37)(xi) through (g)(37)(xiii).

■ C. Adding a new paragraph (g)(37)(x).

The revisions and additions read as follows:

§ 199.4 Basic program benefits.

* * * * *

(g) * * *

(37) * * *

(viii) Cervical and breast cancer screenings in accordance with standards issued by the Director, TRICARE Management Activity, based on guidelines from the U.S. Department of Health and Human Services. Such standards may establish a specific schedule, including frequency, age specifications, and gender of the beneficiary, as appropriate.

(ix) Health promotion and disease prevention visits may include all of the services provided pursuant to § 199.18(b)(2) and may be provided in connection with immunizations and cancer screening examinations authorized by paragraphs (g)(37)(ii) or (g)(37)(viii) of this section.

(x) Physical examinations for beneficiaries ages 5–11 that are required in connection with school enrollment, and that are provided on or after October 30, 2000.

* * * * *

Dated: July 26, 2010.

Patricia L. Toppings,

*OSD Federal Register Liaison Officer,
Department of Defense.*

[FR Doc. 2010–19307 Filed 8–5–10; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[USCG–2009–0754]

RIN 1625–AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operation regulations of the Berkley (I–264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. This change will allow the drawbridge to operate with four opening periods between the rush hours until October 5, 2012, relieving increased vehicular traffic congestion while still providing for the reasonable needs of navigation.

DATES: This rule is effective from 9 a.m. on September 4, 2010, until 2:30 p.m. on October 5, 2012.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0754 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0754 in the “Keyword” box, and clicking “Search.” This material is also available for inspection or copying at the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at 757–398–6587. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On October 9, 2009, we published a notice of temporary deviation request for comments entitled “Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA” in the **Federal Register** (74 FR 52143) and a notice of proposed rulemaking (NPRM)

entitled “Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA” in the **Federal Register** (74 FR 52158). We received 861 comments on the published deviation and NPRM.

On March 3, 2010, we published another notice of temporary deviation request for comments entitled “Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA” in the **Federal Register** (75 FR 9521) and a supplemental notice of proposed rulemaking (SNPRM) entitled “Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA” in the **Federal Register** (75 FR 9557). We received four comments on the published deviation and SNPRM. No public meeting was requested, and none was held.

Background and Purpose

On behalf of the Cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT) who owns and operates the lift-type Berkley Bridge requested a temporary change to the existing bridge regulations. In the closed to navigation position, the Berkley Bridge has a vertical clearance of 48 feet above mean high water. The current regulation set out in Title 33 CFR Part 117.1007(b) and (c) allows the Berkley Bridge, mile 0.4, in Norfolk, Virginia to remain closed one hour prior to the published start of a scheduled marine event regulated under § 100.501, and remain closed until one hour following the completion of the event unless the Patrol Commander designated under § 100.501 allows the bridge to open for commercial vessel traffic. In addition, the bridge shall open on signal any time except from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m., Monday through Friday, except Federal holidays, and shall open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room at (757) 494–2490, as required by 33 CFR 117.1007(b) and (c). Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs seeking repairs. There is no alternate waterway route.

Due to a temporary closure of two area bridges, there has been a significant increase in vehicular traffic on the Berkley Bridge causing back-ups, delays, and congestion on the bridge and its approaches. The NPRM proposed opening the draw of the Berkley Bridge on signal at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m. from October 9, 2009 to October 5, 2012, and

permitted VDOT to monitor, measure, and identify congested roadway locations during heavy traffic periods. By implementing scheduled bridge openings, we anticipated a decrease in vehicular traffic congestion during the daylight hours.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG-2009-0754] was issued to allow VDOT to test the proposed schedule and to obtain data and public comments. The test period was in effect during the entire Notice of Proposed Rulemaking comment period. Also, a count of the delayed vessels during the closure periods was taken to determine the impact of the proposed regulation on navigation.

The Berkley Bridge is the principle arterial route in and out of the City of Norfolk and serves as the major evacuation highway in the event of emergencies. The average daily traffic volumes at the Berkley Bridge for the last quarter of calendar year 2008, as submitted by VDOT with its request for schedule change, are as follows:

October, 2008—83,296 vehicles
November, 2008—99,643 vehicles
December, 2008—106,856 vehicles

The traffic counts revealed that from October 2008 to December 2008, the Berkley Bridge experienced a seven percent (or 23,560-car) increase in traffic flow. The Coast Guard received 861 responses to the NPRM. The vast majority of those responses (850) were supplied from an internet Web site survey posted by VDOT. Of the 850 VDOT-sponsored surveys, 484 had written comments in addition to responses to the survey with the other 366 comments containing only responses to the survey questionnaire. The remaining 11 responses consisted of 7 paper comments and 4 e-mails.

All but five of the favored the new schedule presented in the temporary deviation and NPRM. Many responses stated that planned openings would permit motorists to better plan their commutes and thereby avoid delays.

Four local maritime facilities and the Virginia Maritime Association (VMA), who represents waterborne commerce in the Port of Hampton Roads, responded with their concerns opposing the new schedule. These organizations expressed concerns that the proposed regulatory actions created unsafe conditions for navigation particularly for vessels carrying hazardous cargoes, vessels with a draft of greater than 18 feet, and vessels delayed through due to uncontrollable external factors. The maritime community offered recommendations for changes that they

believe will provide a reasonable balance between marine and land based transportation.

The Coast Guard has reviewed the additional bridge data supplied by VDOT. The information indicated that the test deviation reduced the amount of time the bridge opened for vessels. Between October 20, 2009, and December 30, 2009, there were approximately 85 vessel passages requiring 69 bridge openings. Most of these openings were provided for commercial vessels, with a maximum of four vessels transiting through a single bridge opening.

With an average of fewer than two openings per day (1.23) during the test deviation, VDOT contended that when bridge openings in 2009 (during the test deviation) were compared to the same months in 2008 (before the test deviation) there was a 30 percent reduction in the total number of minutes the bridge was opened for vessels and the number of openings also decreased by 21 percent. In 2009, the Berkley Bridge averaged 97,135 vehicles per day.

VDOT, VMA and the local maritime facilities (VDOT/VMA) identified a need for mariners to have more access transiting through the Berkley Bridge. The parties recommended operating procedures for inclusion in the regulatory language. The recommended operating procedures and the Coast Guard responses are as follows:

1. The bridge is to open on signal at any time for vessels carrying hazardous cargo.

2. The bridge is to open at any time for vessels with a draft of 18 feet or more, provided that at least 6 hours advance notice has been given to the Berkley Bridge Traffic Control Room.

VMA stated that certain vessels and conditions make safe bridge transits more difficult and dangerous. VMA/VDOT recommended establishing provisions that would exempt vessels from only transiting at the scheduled opening time.

The Coast Guard proposed the following: The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204; and for all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times: The draw shall open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control Room at (757) 494-2490.

3. If a vessel has made prior arrangements for a delayed opening, and there are vessels awaiting transit, the opening may be delayed if the master(s) of the waiting vessel(s) agree to a delayed opening to accommodate the delayed vessel. Otherwise the opening will accommodate the waiting vessel(s) only, and close upon their clearing the bridge.

VMA stated that communication between vessels is important to scheduling a single opening at the Berkley Bridge. The Coast Guard asserts that communication between vessels and the bridge tender should be coordinated to insure and maintain the safety of navigation. However, specific regulatory language controlling communication between vessels is unwarranted and not within the scope of drawbridge operating regulations.

4. An opening will be provided to a transiting vessel up to, but no more than, 30 minutes following the scheduled opening time provided the transiting vessel has communicated their estimated time of arrival to the Berkley Bridge tender prior to the scheduled opening time.

VMA stated that the timing of large vessel movements is affected by a number of uncontrollable and external factors. The effects of winds, currents, and tides have an important impact on safe navigation and those conditions.

In addition, VMA indicated that the current test deviation creates a situation whereby marine traffic will stack up while waiting for an opening, thus creating vessel congestion, a navigational hazard.

For these situations, the Coast Guard proposed the following: If the bridge is not opened during a particular scheduled opening per paragraph (d)(3)(ii) and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control Room at (757) 494-2490.

5. The bridge is to open at any time if, in the professional judgment of the vessel operator, the environmental or operating conditions compromise navigational safety.

The Coast Guard responded to this comment by indicating that under 33 CFR 117.31, "Drawbridge operations for

emergency vehicles and emergency vessels”, paragraph (b)(2) adequately provides for unscheduled vessel openings of the bridge in the event of a marine emergency.

The supplemental proposed rule was also rephrased to integrate the restricted morning and evening rush hour times (from 5 a.m. to 9 a.m. and from 3 p.m. to 7 p.m.) with the test deviation period from 9 a.m. to 3 p.m. The Coast Guard suggested the following paragraph: For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays.

Based on all of the comments received, the Coast Guard issued the SNPRM.

Discussion of Comments and Changes

The Coast Guard received four responses to the SNPRM and the second temporary deviation, two e-mails and one each by letter and to the Web site at <http://www.regulations.gov>.

VMA, who represents waterborne commerce in the Port of Hampton Roads, responded in writing with its support of the revised proposed regulation and its statement that the current operating regulation incorporates the minimum degree of flexibility that the maritime industry can accept. VDOT also indicated that the operating schedule in the temporary deviation and the revised proposed regulation has improved the flow of vehicular traffic while still meeting the minimum needs of navigation.

VMA, VDOT and two private citizens expressed concerns about unscheduled openings that caused vehicular traffic congestion. The unscheduled openings were provided for Government vessels, vessels with a draft of 18 feet or more that provided at least 6 hours advance notice and for vessels hauling dangerous cargo.

The Coast Guard reviewed the bridge data supplied by VDOT. The information indicated that during the deviation test period (from March 3, 2010 to July 1, 2010), that a total of 260 potential bridge openings for vessels could have been provided Monday through Friday, except Federal holidays, at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. The data showed the bridge actually opened only 88 of the 260 potential openings. The data also revealed that seven bridge openings were provided approximately 15 minutes past the scheduled opening times of 9 a.m., 11 a.m. and 1 p.m. and that the average opening usually lasted 12 minutes; a later opening at 2:30 p.m. would add to the traffic congestion during the rush hour. A majority of these openings were

provided for commercial vessels, with a maximum of four vessels transiting through a single bridge opening.

These subsequent changes to the operating procedures appear to have reduced vehicular traffic congestion while still providing for the reasonable needs of navigation. Based on the information provided, we will implement a final rule with no changes to the SNPRM.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation 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 still plan their trips in accordance with the scheduled bridge openings, and to minimize delays, vessels that can pass under the bridge without a bridge opening may do so at all times.

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.

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 and vessels that can

pass under the bridge without a bridge opening may do so at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), in the SNPRM 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). 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 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 (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.

Taking of Private Property

This rule will not effect 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, 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 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 is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

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. From September 4, 2010, to October 5, 2012, in § 117.1007, suspend paragraphs (b) and (c) and add new paragraph (d) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

* * * * *

(d) The draw of the Berkley Bridge, mile 0.4, at Norfolk, shall operate as follows:

(1) The draw shall remain closed one hour prior to the published start of a scheduled marine event regulated under Sec. 100.501, and shall remain closed until one hour following the completion of the event unless the Patrol Commander designated under Sec. 100.501 allows the bridge to open for commercial vessel traffic.

(2) The draw shall open on signal at any time for vessels carrying, in bulk, cargoes regulated by 46 CFR subchapters D or O, or Certain Dangerous Cargoes as defined in 33 CFR 160.204.

(3) For all other vessels, the draw shall open on signal at any time, except from 5 a.m. to 7 p.m., Monday through Friday, except Federal holidays. During these times, the draw shall:

(i) Open for commercial vessels with a draft of 18 feet or more, provided at least 6 hours notice was given to the Berkley Bridge Traffic Control room at (757) 494-2490.

(ii) Open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.

(4) If the bridge is not opened during a particular scheduled opening per paragraph (d)(3)(ii) of this section and a vessel has made prior arrangements for a delayed opening, the draw tender may provide a single opening up to 30 minutes past that scheduled opening time for that signaling vessel, except at 2:30 p.m. The draw tender may provide a single opening up to 20 minutes past the 2:30 p.m. scheduled opening time for a signaling vessel that made prior arrangements for a delayed opening. A vessel may make prior arrangements for a delayed opening by contacting the Berkley Bridge Traffic Control room at (757) 494-2490.

Dated: July 23, 2010.

William D. Lee,

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

[FR Doc. 2010-19518 Filed 8-5-10; 8:45 am]

BILLING CODE 9110-04-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2008-8]

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

AGENCY: Copyright Office, Library of Congress.

ACTION: Final Rule; correction.

SUMMARY: The Copyright Office makes a nonsubstantial correction to its regulation announcing the prohibition against circumvention of technological measures that effectively control access to copyrighted works shall not apply to persons who engage in noninfringing uses of six classes of copyrighted works.

EFFECTIVE DATE: August 6, 2010.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Assistant General Counsel, and David O. Carson, General Counsel, Copyright GC/I&R, P.O. Box 70400, Washington, D.C. 20024.