

premarket notification procedures in subpart E of part 807 of this chapter subject to the limitations in § 878.9.

Dated: December 24, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-02-054]

RIN 1625-AA09 [Formerly 2115-AE47]

Drawbridge Operation Regulations; Manasquan River, NJ

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to change the operating regulations that govern the Route 70 Bridge across the Manasquan River. The revised proposal would change the regulation with a new provision to limit 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. This proposed change is intended to reduce traffic delays while still providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before May 19, 2003.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398-6222. Commander (Aowb), 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 the above address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Waverly Gregory, Bridge Administrator,

Fifth Coast Guard District, at (757) 398-6222.

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 (CCGD05-02-054), 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 to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material 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 the Commander, 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**.

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 hearing 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, 33 CFR 117.727 requires the draw of the Route 70 Bridge, mile 3.4 at Riviera Beach, to 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 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. The Coast Guard reviewed NJDOT yearly drawbridge logs for 1999, 2000, and 2001. The logs 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. NJDOT contended that with an average of only five openings per day during the prime boating period 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. The Coast Guard believed based on the minimal number of openings identified by the bridge logs, that the initial proposal limiting the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and implementing closure periods from 4 p.m. to 7 p.m. on Fridays would more fairly balance the competing needs of vehicular and vessel traffic. However, the Coast Guard received 14 comments on the NPRM, most suggesting additional changes to the proposed regulations. After further review of the bridge logs, the Coast Guard has determined that since vessel use year-round is relatively low, an alternative proposal should be considered.

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 closure periods 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 closure periods of the bridge on all 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 suggested a reduction of the bridge closure period 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 this comment in writing and indicated that in the event of marine emergency 33 CFR 117.31(b) provides 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. All comments and the Coast Guard's written response to those comments are contained in the docket.

Based on these comments the Coast Guard conducted further review of the proposal. 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. In view of these statistics, the Coast Guard is proposing a different change to the regulation by scheduling the openings of the draw year-round from 7 a.m. to 11 p.m. to once an hour and with closure periods year-round from 4 p.m. to 7 p.m. Mondays to Fridays. These changes would enhance vehicular traffic without significantly affecting vessel traffic. Considering the minimal number of openings identified by the bridge logs, the Coast Guard believes that the revised proposal will more fairly balance the needs of vehicular and vessel traffic.

Discussion of Proposal

On September 12, 2002, the Coast Guard issued a NPRM proposing to amend 33 CFR 117.727 by inserting a provision to schedule 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. on Fridays.

Upon receiving comments to this proposal and further reviewing the bridge logs, the Coast Guard now proposes to amend 33 CFR 117.727 by inserting a new provision to limit 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.

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.

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 supplemental 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 further minimize delay.

Small Entities

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

The supplemental 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 supplemental 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 any questions concerning its provisions or options for compliance, please contact Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398–6222.

Collection of Information

This supplemental 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, 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 supplemental 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 supplemental 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 supplemental proposed 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 supplemental 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 supplemental 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 does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This supplemental proposed 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.

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 this to best carry out the Order. We invite your comments on how this supplemental proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this supplemental 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs 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 supplemental proposed rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant

Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

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; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 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: February 24, 2003.

Arthur E. Brooks,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-02-104]

RIN 1625-AA00, AA11

Regulated Navigation Areas, Safety and Security Zones; Long Island Sound Marine Inspection and Captain of the Port Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated navigation area (RNA) and two safety and security zones. The rule would regulate the circumstances under which certain vessels may enter, transit or operate within the RNA and would exclude all vessels from operating within the prescribed safety and security zones without first obtaining authorization from the Captain of the Port. This action

is necessary to ensure public safety and prevent sabotage or other subversive acts.

DATES: Comments and related material must reach the Coast Guard on or before May 19, 2003.

ADDRESSES: You may mail comments and related material to Waterways Management, Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Avenue, New Haven, CT 06512. Coast Guard Group/MSO Long Island Sound 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 Group/MSO Long Island Sound, New Haven, CT, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Lieutenant A. Logman, Waterways Management Officer, Coast Guard Group/Marine Safety Office Long Island Sound at (203) 468-4429.

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 (CGD01-02-104), 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 to know your submission reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material 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 Coast Guard Group/Marine Safety Office Long Island Sound 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 September 11, 2001, two commercial aircraft were hijacked from Logan Airport in Boston, Massachusetts