

Under this 90-day temporary deviation, effective from May 1, 2004 through July 29, 2004, the Route 70 Bridge across Manasquan shall open on signal on the hour, except that from 5 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.

This deviation from the operating regulations is authorized under 33 CFR 117.43.

Dated: April 12, 2004.

Waverly W. Gregory, Jr.,

Chief, Bridge Branch, Fifth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-03-121]

RIN 1625-AA09

Drawbridge Operation Regulation: Mantua Creek, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Mantua Creek at mile 1.4, in Paulsboro, New Jersey. The final rule for the CONRAIL Railroad Bridge will increase vessel openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. The final rule will provide for the reasonable needs of navigation.

DATES: This rule is effective May 20, 2004.

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 CGD05-03-121 and are available for inspection or copying at Commander (obr), 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 History

On November 25, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Mantua Creek, New Jersey" in the **Federal Register** (68 FR 66062). We received two letters commenting on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 1.4 across Mantua Creek, in Paulsboro, New Jersey. Currently, 33 CFR 117.729(a) requires the bridge to open on signal except, that from December 1 through March 1, the draw must open on signal at all times upon four hours notice.

CONRAIL installed a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Mantua Creek in Paulsboro, New Jersey. This rule allows a radio-controlled system to operate the opening and closing of the swing span from the cab of the locomotive. From March through November, the swing bridge will normally be left in the fully opened position displaying flashing green channel lights indicating that vessels may pass through. At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231-2393.

Discussion of Comments and Changes

The Coast Guard received two comments on the NPRM. The first comment, from CONRAIL, noted that when the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red. The proposed rule, in paragraph (a) (1)(iv), stated that the channel traffic lights "will extinguish".

The second comment, from New Jersey Department of Transportation (NJDOT), had expressed concerns that the method of signaling proposed by CONRAIL for the opening and closing of the span might cause boater confusion and reduce safety. The NJDOT operates the upstream Route 44 Bridge at mile 2.7 across Mantua Creek in Paulsboro, and uses the standard signaling for drawbridges delineated in 33 CFR 117.15. NJDOT correctly indicated that, at 33 CFR 117.15(a)(4), the sound signal for a horn to acknowledge that the drawbridge is about to open for vessels is one prolonged blast followed by a short blast. The proposed rule, in

paragraph (a)(1)(iv), stated the horn would sound, "twice" followed by "five repeated blasts".

NJDOT also indicated that before closing a draw span to vessels, 33 CFR 117.15(a)(5) requires the acknowledging signal as five short blasts of the horn in rapid succession. The proposed rule, in paragraph (a)(1)(v), stated that the horn would sound "twice" then "two horn blasts".

The Coast Guard considers these changes proposed to be more reliable and the final rule was changed to reflect these procedures.

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 this final rule for the CONRAIL Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge.

Under the current regulations, the CONRAIL Railroad Bridge remains closed and opens after proper signal from March 1 through November 30. The final rule will require the bridge to remain in the open position during this period, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

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 for the following reasons. The final rule will provide for the CONRAIL Railroad Bridge to remain in the open position

from March through November, allowing the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

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 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 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.

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. 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 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 on 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. 0170.1; 33 CFR 1.05–1(g); § 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. Amend § 117.729 by revising paragraph (a) to read as follows:

§ 117.729 Mantua Creek.

(a) The draw of the CONRAIL Railroad Bridge, mile 1.4 at Paulsboro, shall operate as follows:

(1) From March through November, the draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(ii) Before the bridge closes for any reason, an on-site train crewmember will observe the waterway for approaching craft, which will be allowed to pass. An on-site train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if an on-site train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, an on-site train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the on-site train crewmember will stop the bridge and return the bridge to the open position.

(iv) During closing of the span, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice warning device will announce bridge movement, and the bridge will close. When the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red. When the rail traffic has cleared the swing span, the horn will sound one prolonged blast followed by one short blast to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position to vessels.

(v) During open span movement, the channel traffic lights will flash red, the horn will sound one prolonged blast followed by one short blast, then a pause, and an audio voice warning will announce bridge movement until the bridge is in the full open position. In the full open position, the channel traffic lights will flash green.

(2) From December to February, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231–2393.

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Dated: April 13, 2004.

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 117

[CGD07-04-039]

Drawbridge Operation Regulations; Royal Park (SR 704) Bridge, Atlantic Intracoastal Waterway Mile 1022.6, Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Royal Park (SR 704) Bridge across the Atlantic Intracoastal Waterway, mile 1022.6, Palm Beach, Florida. This deviation allows for bridge closures during certain times due to bridge alignment of the new spans.

DATES: This deviation is effective from 7 a.m. on April 15, 2004, until 5 p.m. on May 29, 2004.

ADDRESSES: Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07-04-039] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131-3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415-6744.

SUPPLEMENTARY INFORMATION: The Royal Palm (SR 704) Bridge across the Atlantic Intracoastal Waterway, mile 1022.6, Palm Beach, Florida, is a new double-leaf bascule bridge with a vertical clearance of 25 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 125 feet. The current operating regulation in 33 CFR 117.261(v) requires that the Royal Park (SR 704) Bridge, mile 1022.6 at Palm Beach, shall open on signal, except that from October 1 through May 31, Monday through Friday, except Federal

holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m., and from 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

On March 2, 2004, the bridge owner, Florida Department of Transportation, requested a deviation from the current operating regulations to allow the owner and operator to close the bridge during certain times. On March 10, 2004, a meeting was held to determine an operating schedule for both the temporary bridge and the new bridge that would not unreasonably restrict navigation and allow for workers' safety during alignment of the new bridge. On April 2, 2004, this office received a revised schedule. Based on this paperwork, the following operating schedule has been approved:

From April 15 to April 20, 2004 the bridge will remain closed to navigation from 7:01 a.m. to 12:59 p.m. and 2:01 p.m. to 5:59 p.m. daily. From April 21 to May 16, 2004, from 7 a.m. to 5 p.m. daily, the bridge will only open at 7 a.m., 8:30 a.m., 10 a.m., 11:30 a.m., 1 p.m., 2:30 p.m., 4 p.m. and 5 p.m. On May 17, 2004, the bridge will remain closed to navigation from 9 a.m. to 5 p.m. From May 18 to May 22, 2004, the bridge will remain closed to navigation from 7:01 a.m. to 12:59 p.m. and 2:01 p.m. to 5:59 p.m. daily.

From May 24 to May 29, 2004, from 7 a.m. to 5 p.m. daily, the bridge will only open at 7 a.m., 8:30 a.m., 10 a.m., 11:30 a.m., 1 p.m., 2:30 p.m., 4 p.m. and 5 p.m. This deviation is necessary to ensure workers' safety during the alignment of the bridge. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.261(v) to complete the alignment of the new bridge leafs. Under this deviation, both the temporary Royal Park Bridge and the new Royal Park bridge (SR 704), Atlantic Intracoastal Waterway mile 1022.6, Palm Beach, Florida, shall remain closed to navigation from April 15 to April 20, 2004, from 7:01 a.m. to 12:59 p.m. and 2:01 p.m. to 5:59 p.m. daily. From April 21 to May 16, 2004, from 7 a.m. to 5 p.m., the bridges will only open at 7 a.m., 8:30 a.m., 10 a.m., 11:30 a.m., 1 p.m., 2:30 p.m., 4 p.m. and 5 p.m. On May 17, 2004, the bridges will remain closed to navigation from 9 a.m. to 5 p.m. From May 18 to May 22, 2004, the bridges shall remain closed to navigation from 7:01 a.m. to 12:59 p.m. and 2:01 p.m. to 5:59 p.m. daily. From May 24 to May 29, 2004, from 7 a.m. to

5 p.m., the bridges will only open at 7 a.m., 8:30 a.m., 10 a.m., 11:30 a.m., 1 p.m., 2:30 p.m., 4 p.m. and 5 p.m. At all other times, the bridges shall open on signal, except Monday through Friday, except Federal holidays, from 7:45 a.m. to 9:45 a.m. and from 3:30 p.m. to 5:45 p.m., the draw need open only at 8:45 a.m., 4:30 p.m., and 5:15 p.m., and, from 9:30 a.m. to 3:30 p.m., the draw need open only on the quarter-hour and three-quarter hour.

Dated: April 9, 2004.

Greg Shapley,

Chief, Bridge Administration, Seventh Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD01-04-023]

Drawbridge Operation Regulations: Newtown Creek, Dutch Kills, English Kills, and Their Tributaries, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Metropolitan Avenue Bridge, mile 3.4, across English Kills at New York City, New York. Under this temporary deviation the bridge may remain closed from 7 a.m. on April 26, 2004 through 4 p.m. on May 1, 2004, and from 7 a.m. on June 9, 2004 through 4 p.m. on June 12, 2004, to facilitate necessary bridge maintenance.

DATES: This deviation is effective from April 26, 2004 through June 12, 2004.

FOR FURTHER INFORMATION CONTACT: Joe Arca, Project Officer, First Coast Guard District, at (212) 668-7069.

SUPPLEMENTARY INFORMATION: The New York City Department of Transportation (NYCDOT) Metropolitan Avenue Bridge has a vertical clearance in the closed position of 10 feet at mean high water and 15 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.801(e).

NYCDOT, requested a temporary deviation from the drawbridge operation regulations to facilitate repairs to the electrical controls at the bridge. The bridge must remain in the closed position to perform these repairs.