

U.S. Department of
Homeland Security

United States
Coast Guard



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OCT 14 2009

PUBLIC NOTICE 5-1157

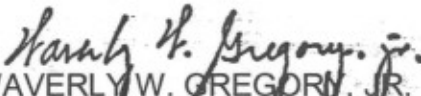
TO WHOM IT MAY CONCERN:

**SUBJECT: PROPOSED MODIFICATION TO THE REGULATIONS GOVERNING
THE OPERATION OF THE BERKLEY BRIDGE ACROSS THE
EASTERN BRANCH OF THE ELIZABETH RIVER IN NORFOLK VA.**

The Coast Guard proposes to temporarily change the regulations that govern the operation of the Berkley Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River in Norfolk VA. Due to the temporary closure of two area bridges, the Berkley Bridge has experienced an increase in traffic volume. This temporary change will allow from March 9, 2010, to October 5, 2012, the draw of the bridge to open on signal to vessels at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m., Monday through Friday, except Federal holidays. The proposed change would provide set opening periods for the bridge during the day, relieving vehicular traffic congestion between the weekday rush hours while still providing for the reasonable needs of navigation. Concurrent with this proposal, a test deviation has been issued to allow the bridge owner, Virginia Department of Transportation, to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire proposed comment period. **A copy of the Docket USCG-2009-0754 published in the Federal Register on October 9, 2009, as a proposed rule is included as enclosure (1) to this notice.**

Interested parties are requested to express their views, in writing, on the proposed changes to the operating regulations. Comments will be received for the record at the office of the Commander (dpb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. Written comments on this proposal must be submitted on or before **December 8, 2009.**

It is requested that this information be brought to the attention of any person having a possible interest in the proposed changes to the regulations who may not have received a copy of this Public Notice.


WAVERLY W. GREGORY, JR.
Chief, Bridge Administration Branch
By direction of the Commander
Fifth Coast Guard District

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

[Docket No. USCG-2009-0754]

RIN 1625-AA09

Drawbridge Operation Regulation; Elizabeth River, Eastern Branch, Norfolk, VA**AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to temporarily change the regulations that govern the operation of the Berkley Bridge, mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. Due to the temporary closure of two area bridges, the Berkley Bridge has experienced an increase in traffic volume. The proposed change would provide set opening periods for the bridge during the day, relieving vehicular traffic congestion during the weekday daytime hours while still providing for the reasonable needs of navigation.

DATES: Comments, related material, and requests for public meeting must be received by the Coast Guard on or before December 8, 2009.

ADDRESSES: You may submit comments identified by docket number USCG-2009-0754 using any one of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.
- **Hand delivery:** Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public

Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Waverly Gregory, Bridge Administrator, Fifth Coast Guard District, telephone 757-398-6222, e-mail Waverly.W.Gregory@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2009-0754), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "Submit a Comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Proposed Rules" and insert "USCG-2009-0754" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an

unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2009-0754" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC, 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the *Federal Register* (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain 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 cities of Chesapeake and Norfolk Virginia, the Virginia Department of Transportation (VDOT) who owns and operates the lift-type Berkley Bridge has requested a temporary change to the existing bridge regulations. The current regulation set out in 33 CFR 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. 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 the temporary closure of two area bridges, this bridge and its approaches have experienced traffic back-ups, delays, and traffic congestion due to an increase in vehicular traffic. This temporary change will allow from March 9, 2010 to October 5, 2012, the draw of the Berkley Bridge to open on signal to vessels at 9 a.m., 11 a.m., 1 p.m., and 2:30 p.m. and permit VDOT to monitor, measure, and identify congested roadway locations during heavy traffic periods. By implementing scheduled bridge openings, we anticipate a decrease in vehicular traffic congestion during the daytime hours.

Concurrent with the publication of the Notice of Proposed Rulemaking, a Test Deviation [USCG-2009-0754] has been issued to allow VDOT to test the proposed schedule and to obtain data and public comments. The test period will be in effect during the entire Notice of Proposed Rulemaking comment period. Also, a count of the delayed vessels during the closure periods will be taken to ensure any future regulation will not have a significant impact on navigation. This NPRM has been coordinated with the main commercial waterway user group that has vessels transiting in this area and there is no expectation of any significant impacts 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 monthly vehicular traffic count submitted by VDOT for the last quarter of calendar year 2008 shows the average daily traffic volumes at the Berkley Bridge as shown below:

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

The traffic counts reveal that from October 2008 to December 2008, the Berkley Bridge has experienced a seven percent (or 23,560-car) increase in traffic flow during the morning and evening

rush hours. The Coast Guard believes that this traffic increase is due to the previously referenced temporary closure of two area bridges in November, 2008. The Coast Guard anticipates a continued increase in vehicular traffic over the bridge until one or both bridges are reopened to traffic at which time the vehicular traffic on the Berkley Bridge will subside.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily amend the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, Virginia, at 33 CFR 117.1007, by inserting a new paragraph(c)(3) to read as follows: From March 9, 2010 to October 5, 2012, the draw shall open on signal to vessels at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m. This temporary change will reduce the daytime openings to specific times which will help to alleviate the congestion on the Berkley Bridge and its approaches from the increased vehicular traffic during repair work of the aforementioned bridges.

Regulatory Analyses

We developed this proposed 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 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, in allowing four scheduled openings during the day, outside of the advance notice request opening. 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, 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 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 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 Department of Homeland Security Management Directive 023-01, and 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 made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

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; 33 CFR 1.05-1; Department of Homeland Security Delegation No.0170.1.

2. In § 117.1007 add a new paragraph (c)(3) to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch

(c) ***

(3) From March 9, 2010 to October 5, 2012, the draw shall open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m., Monday through Friday, except Federal holidays.

Dated: August 20, 2009.

Wayne E. Justice,

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

[FR Doc. E9-24485 Filed 10-7-09; 11:15 am]

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