

U.S. Department of
Homeland Security

United States
Coast Guard



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MAR 26 2013

PUBLIC NOTICE 5-1295

TO WHOM IT MAY CONCERN:

SUBJECT: FINAL RULE GOVERNING THE OPERATION OF THE BERKLEY BRIDGE ACROSS THE EASTERN BRANCH OF THE ELIZABETH RIVER IN NORFOLK, VA.

Effective April 19, 2013, the Coast Guard is adopting the interim drawbridge rule published in August 2012, as a final rule, for the operating schedule that governs the Berkley Bridge (I-264), at mile 0.4, across the Eastern Branch of the Elizabeth River in Norfolk, VA. This rule allows only four scheduled bridge openings during the day, and is necessary to alleviate heavy vehicular traffic delays throughout the day and secondary congestion during the afternoon rush hour, while still providing for the reasonable needs of navigation. The draw of the bridge will continue to open on signal to vessels between the hours at 9-9:30 a.m., 11-11:30 a.m., 1-1:30 p.m. and 2:30-2:50 p.m., Monday through Friday, except Federal holidays. **A copy of the Docket USCG-2012-0357 published in the Federal Register on March 20, 2013 as a final rule is included as an enclosure to this notice.**

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

//s//

WAVERLY W. GREGORY, JR.
Bridge Program Manager
By direction of the Commander
Fifth Coast Guard District

This is a web-searchable copy and is not the official, signed version; however, other than the signature being omitted, it is a duplicate of the official version.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0357]

RIN 1625-AA09

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

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is adopting an interim drawbridge rule published in August 2012 as a final rule for the Berkley (I-264) Bridge, at mile 0.4, across the Eastern Branch of the Elizabeth River, Norfolk, VA. This rule, allowing only four scheduled bridge openings during the day, is necessary to alleviate heavy vehicular traffic delays throughout the day and secondary congestion during the afternoon rush hour, while still providing for the reasonable needs of navigation.

DATES: Effective April 19, 2013.

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-2012-0357 and are available online by going to www.regulations.gov, and inserting USCG-2012-0357 in the "Search" box, and then 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 or

email Terrance A. Knowles, Bridge Administration Branch, Fifth Coast Guard District, telephone (757) 398-6587, email terrance.a.knowles@uscg.mil. If you have questions on viewing or submitting material to the docket, call Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

- CFR Code of Federal Regulations
- DHS Department of Homeland Security
- FR Federal Register
- U.S.C. United States Code
- VDOT Virginia Department of Transportation
- VMA Virginia Maritime Association

A. Regulatory History and Information

On August 30, 2012, we published an interim rule (IR) entitled, "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the *Federal Register* (77 FR 52599). We received 545 comments on the proposed rule. No public meeting was requested, and none was held.

Other Related Regulatory Action: The following table describes regulatory actions related to this bridge. A discussion of those actions follows.

TABLE 1—RULEMAKINGS

Date	Action	FR Cite	Drawbridge operation regs. (Docket No.)
10/09/2009	Temporary Deviation	74 FR 52143	USCG-2009-0754.
10/09/2009	Proposed Rulemaking (NPRM)	74 FR 52158	USCG-2009-0754.
03/03/2010	Temporary Deviation	75 FR 9521	USCG-2010-0083.
03/03/2010	Supplemental NPRM	75 FR 9557	USCG-2009-0754.
08/06/2010	Temporary Final Rule	75 FR 47461	USCG-2009-0754.
08/30/2012	Interim Rule	77 FR 52599	USCG-2012-0357.

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 Regulation; Elizabeth River, Eastern Branch, Norfolk, VA" in the *Federal Register* (74 FR 52158). We received 861 comments for both the temporary deviation and NPRM. No public meeting was requested then, and none was held.

On March 3, 2010, we published a notice of temporary deviation request for comments entitled; "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, 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). That time we received four comments on the published deviation and SNPRM. No public meeting was requested then, and none was held.

On August 6, 2010, we published a temporary final rule entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the *Federal Register* (75 FR 47461) that temporarily changed the drawbridge operation regulations effective from 9 a.m. on September 4, 2010, until 2:30 p.m. on October 5, 2012.

The establishment of the recent interim rule, effective since October 6, 2012, and the previous temporary final

rule, with its similar operating rules/provisions, which was in effect since September 4, 2010, did not place any additional constraints on the waterway users because mariners already used the temporary schedule for almost two years and could still plan their trips in accordance with the scheduled bridge openings. Any operating schedule that would revert back to the previous on-demand operation of the drawbridge would produce a tremendous amount of delay. Prior to these four scheduled daytime openings, delays for motorists were unpredictable and were expected to increase with population growth and any increase in associated traffic.

B. Basis and Purpose

VDOT, which owns and operates the bascule-type Berkley Bridge, requested a

that occurred after 2:45 p.m. A majority of those openings were provided primarily for commercial vessels, with a maximum of four vessels transiting through a single bridge opening. The 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, the revised temporary rule was implemented with no changes to the SNPRM.

Between October 2010 and January 2012, from 9 a.m. and 3 p.m., according to data provided by VDOT, the Berkley Bridge averaged approximately 6,533 vehicles per hour which ranks it among the most heavily traveled routes in the region (See Table B).

TABLE B—AVERAGE DAILY VEHICULAR TRAFFIC COUNT

Hourly total	Oct 2010	Jan 2011	May 2011	Aug 2011	Jan 2012	Average
9AM–10AM	6,509	6,230	6,545	6,335	5,956	6,315
10AM–11AM	6,248	6,074	6,362	6,383	5,898	6,193
11AM–12PM	6,443	6,008	6,457	6,439	5,927	6,255
12PM–1PM	6,714	6,583	6,781	6,780	6,283	6,628
1PM–2PM	6,860	6,345	6,766	6,760	6,249	6,596
2PM–3PM	7,330	7,133	7,361	7,210	7,032	7,213
Total	40,103	38,373	40,270	39,906	37,345	39,199

Overall hourly average—6,533.

The temporary regulation schedule provided four bridge lift opportunities each weekday between 9 a.m. and 3

p.m. This equated to a maximum of 88 lifts per month (assuming 22 workdays per month). Since October 2010, there

has been an average of only 24 requested lifts per month—a usage rate of only 27% of capacity (See Table C).

TABLE C—BRIDGE OPENING COUNTS

2010	2010	2010	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2012	2012	Monthly average	Total
Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb			
30	15	23	28	27	29	23	22	28	20	9	21	19	34	15	23	35	23.6	401	

BRIDGE OPENING AVERAGE DURATION
[In minutes]

2010	2010	2010	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2011	2012	2012	Monthly average
Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb		
10.0	9.9	9.7	8.9	9.4	9.1	9.0	8.9	10.2	10.1	9.3	10.0	9.1	9.1	8.7	10.1	12.3	9.6	

Prior to execution of the temporary regulation period, the average duration of a bridge lift was approximately 15 minutes. Throughout the same periods, the average duration of bridge lifts has been 9.6 minutes—a reduction of 5.4 minutes per lift.

The temporary closures of two Norfolk-area bridges, forced increased use of the Berkley Bridge by vehicular traffic. Now with those bridges completed there is some temporary traffic relief, but VDOT suggests that the Berkley Bridge and its approaches will still experience back-ups, delays, and congestion, due to increased traffic and population growth. The Hampton Roads Planning District Commission projected a population growth of 31% by 2034. This continued increase in traffic volume in Norfolk and at the Berkley Bridge is not expected to decrease in the future. The interim rule draw opening schedule has helped to decrease the average bridge opening times, and the rule has led to only 27% of the available

opening time being utilized by mariners. Adopting the interim rule as final will help to mitigate future adverse impacts caused by the increased traffic congestion.

Assuming no reduction in maritime traffic volume, this reduction in lift duration has resulted in a significant efficiency increase in the use of time the bridge is actually opened for vessels and a significant reduction in delays to vehicular traffic during vessel openings. The reduction in lift duration combined with the predictability of scheduled lifts optimally balances the competing demands of both road and waterway users.

C. Discussion of Comments, Changes, and the Final Rule

The Coast Guard is adopting as final the interim rule (77 FR 52604, August 30, 2012) without changes, permanently amending the regulations governing the Berkley Bridge, mile 0.4, at Norfolk, Virginia, at 33 CFR 117.1007, by revising paragraph (b)(2) to read as

follows: 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; 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; open on signal at 9 a.m., 11 a.m., 1 p.m. and 2:30 p.m.; and if the bridge is not opened during a particular scheduled opening 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

8. Taking of Private Property

This rule would not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. 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.

10. 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 does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. 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.

12. 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.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this 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 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.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ For the reasons discussed in the preamble, under the authority of 33 U.S.C. 499; 33 CFR 1.05-1; and Department of Homeland Security Delegation No. 0170.1, the interim rule amending 33 CFR part 117 that was published at 77 FR 52604 on August 30, 2012, is adopted without change as a final rule.

Dated: February 28, 2013.

Steven H. Ratti,

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

[FR Doc. 2013-06428 Filed 3-19-13; 8:45 am]

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