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Dated: May 12, 2011.

Mark S. Ogle,*Captain, U.S. Coast Guard, Captain of the Port Hampton Roads.*

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

[Docket No. USCG-2010-1139]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operations of three North Carolina Department of Transportation (NCDOT) bridges: The S.R. 74 Bridge, across the AIWW, mile 283.1 at Wrightsville Beach, NC; the Cape Fear Memorial Bridge across the Cape Fear River, mile 26.8; and the Isabel S. Holmes Bridge across the Northeast Cape Fear River, mile 1.0, both at Wilmington, NC. This change will alter the dates these bridges are allowed to remain in the closed position to accommodate the annual Beach2 Battleship Iron and ½ Iron Triathlon and the Battleship North Carolina Half Marathon and 5K.

DATES: This rule is effective June 27, 2011.

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-2010-1139 and are available online by going to <http://www.regulations.gov>, inserting USCG-2010-1139 in the "Keyword" 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 proposed rule, call or e-mail Ms. Lindsey Middleton, Fifth District Bridge

Program, Coast Guard; telephone 757-398-6629, e-mail Lindsey.R.Middleton@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:**Regulatory Information**

On February 15, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), at Wrightsville Beach, NC; Cape Fear and Northeast Cape Fear River, at Wilmington, NC in the *Federal Register* (76 FR 8663). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Basis and Purpose

The Beach2 Battleship Iron and ½ Iron distance Triathlon competition is an annual event that is held in the Wrightsville Beach and Wilmington, NC area in late October or early November. The swimming portion of this triathlon is tide dependent and so it is difficult to determine the exact date to best hold the event.

The Battleship North Carolina Half Marathon & 5K is another annual event that occurs in the Wrightsville Beach and Wilmington, NC area on the second Sunday of every November. Because of the uncertainty of the tides and consequently the exact date for the Beach2 Battleship Iron and ½ Iron distance Triathlon competition, the Battleship Race group has agreed to schedule their race on the opposing weekend of the Iron Man competition.

As with the Iron Man race, the exact date of the closure will be published locally in the Local Notice to Mariners and the Broadcast Notice to Mariners. The local community has become accustomed to these annual events and the bridge closures that are necessary for them.

The S.R. 74 Bridge is a double leaf bascule drawbridge with a vertical clearance of 20 feet at mean high water in the closed position. The current operating schedule for the bridge is set out in 33 CFR 117.821(a)(4). This rule change will not affect the current operation of the bridge but add an additional closure period.

The regulatory change allows the S.R. 74 (Wrightsville Beach) Bridge to remain closed to navigation between 7 a.m. and 10:30 a.m. and to remain closed to navigation between 12 p.m. and 11:59 p.m. on the last Saturday in October or the first or second Saturday in November depending on the tides

and the date the event will be held. The exact date of the closure will be published locally in the Local Notice to Mariners and Broadcast Notice to Mariners.

The Cape Fear Memorial Bridge is a vertical lift drawbridge with a vertical clearance of 65 feet at mean high water in the closed position and the Isabel S. Holmes Bridge is a double leaf bascule drawbridge with a vertical clearance of 40 feet at mean high water in the closed position. The current operating schedules for these bridges are set out in 33 CFR 117.823 and 33 CFR 117.829(a)(4), respectively. This regulatory change modifies the existing annual November closure from just the second Sunday in November to the first or second Sunday in November for the Cape Fear Memorial Bridge and the Isabel S. Holmes Bridge. The closure time of 7 a.m. to 11 a.m. for the event for both bridges remains unaffected in this rule. The Isabel S. Holmes Bridge will have an additional regulatory change modification to include a closure from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year.

The waterway traffic consists mostly of recreational vessels with some barges and tugs during the daytime. There are no alternative routes available to vessels transiting these waterways. Vessels that can transit under the bridges without an opening may do so at any time. The bridges will be able to open for emergencies.

Discussion of Comments and Changes

No comments were received on the proposed rule and no changes were made to the proposed rule.

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.

The changes are expected to have minimal impact on mariners due to the short duration that the drawbridges will be maintained in the closed position. Both events have been observed in past

years with little to no impact to marine or vehicular traffic. It is also a necessary measure to facilitate public safety that allows for the orderly movement of participants and vehicular traffic before, during, and after the races.

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 rule will affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit any of the bridges between the hours of closure on either race day.

This action will not have a significant 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 closures can minimize delay. Vessels that can safely transit under the bridges may do so at any time.

Assistance for Small Entities

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

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 cause 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. 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.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.

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. Revise § 117.821(a)(4) to read as follows:

§ 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

(a) * * *

(4) S.R. 74 Bridge, mile 283.1, at Wrightsville Beach, NC, between 7 a.m. and 7 p.m., the draw need only open on the hour; except that from 7 a.m. to 11 a.m. on the third and fourth Saturday in September of every year and between 7 a.m. and 10:30 a.m. on the last Saturday of October each year or the first or second Saturday of November of every year the draw need not open for vessels due to annual triathlon events.

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■ 3. Revise § 117.823 to read as follows:

§ 117.823 Cape Fear River.

The draw of the Cape Fear Memorial Bridge, mile 26.8, at Wilmington need not open for the passage of vessels from 8 a.m. to 10 a.m. on the second Saturday of July of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year to accommodate annual marathon races.

■ 4. Revise § 117.829(a)(4) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(4) From 8 a.m. to 10 a.m. on the second Saturday of July of every year, from 12 p.m. to 11:59 p.m. on the last Saturday of October or the first or second Saturday of November of every year, and from 7 a.m. to 11 a.m. on the first or second Sunday of November of every year, the draw need not open for vessels to accommodate annual marathon and triathlon races.

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Dated: May 16, 2011.

William D. Lee,

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

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**ENVIRONMENTAL PROTECTION
AGENCY**

40 CFR Part 52

[EPA-R03-OAR-2009-0876; FRL-9311-9]

**Approval and Promulgation of Air
Quality Implementation Plans; West
Virginia; Permits for Construction and
Major Modification of Major Stationary
Sources of Air Pollution for the
Prevention of Significant Deterioration**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of West Virginia. The intended effect of this action is to

approve the inclusion of nitrogen oxides (NO_x) as a precursor to ozone in the State of West Virginia for permits for construction and major modification of major stationary sources of air pollution for the prevention of significant deterioration (PSD) areas in West Virginia. This action will also add the Federally equivalent provisions to the rules for the PSD program as they pertain to “reasonable possibility” and delete certain references to pollution control projects (PCPs) and clean units (CUs) to make the West Virginia PSD program consistent with the Federal PSD program. This action is being taken under the Clean Air Act (CAA).

DATES: *Effective Date.* This final rule is effective on June 27, 2011.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA-R03-OAR-2009-0876. All documents in the docket are listed in the www.regulations.gov website.

Although listed in the electronic docket, some information is not publicly available, i.e., confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through www.regulations.gov or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the West Virginia Department of Environmental Protection, Division of Air Quality, 601 57th Street, SE., Charleston, West Virginia 25304.

FOR FURTHER INFORMATION CONTACT: Sharon McCauley, (215) 814-3376, or by e-mail at mccauley.sharon@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Throughout this document, whenever “we,” “us,” or “our” is used, we mean EPA. On December 17, 2010 (75 FR 78949), EPA published a notice of proposed rulemaking (NPR) for the State of West Virginia. The NPR proposed approval of the inclusion of NO_x as a precursor to ozone for permits for construction and major modification of major stationary sources of air pollution for PSD. This action will replace the current SIP-approved version of 45CSR14, entitled, Permits for Construction and Major Modification of Major Stationary Sources of Air

Pollution for the Prevention of Significant Deterioration. The formal SIP revision was submitted by West Virginia on July 20, 2009.

II. Summary of SIP Revision

This SIP revision consists of replacing the current version of 45CSR14 approved by EPA on December 4, 2006 (71 FR 64470) with the regulations which were made effective as a legislative rule in West Virginia on June 1, 2009 and submitted to EPA on July 20, 2009. This revision governs the permitting for the construction of new major stationary sources and the significant modification of existing major stationary sources of air pollutants in areas designated attainment or non-classifiable for the National Ambient Air Quality Standards (NAAQS).

This approval of West Virginia’s SIP submission addresses changes needed to ensure consistency with the CAA’s part C PSD permit program. This SIP submission also corrects deficiencies identified by EPA in the March 27, 2008 **Federal Register** action entitled, “Completeness Findings for Section 110(a) State Implementation Plans for the 8-hour Ozone National Ambient Air Quality Standards (1997 Ozone NAAQS)” (73 FR 16205). EPA’s approval of this SIP submission addresses West Virginia’s compliance with the portion of CAA Section 110(a)(2)(C) & (J) relating to the Part C permit program for the 1997 Ozone NAAQS, because this action would approve regulating NO_x as a precursor to ozone in West Virginia’s SIP in accordance with the **Federal Register** action dated November 29, 2005 (70 FR 71612) that finalized NO_x as a precursor for ozone regulations set forth at 40 CFR 51.166 and in 40 CFR 52.21.

Additionally, in the course of taking action upon the previously approved NSR Reform SIP revision dated December 4, 2006 (71 FR 64470), West Virginia had requested that EPA not act upon certain provisions of 45CSR14.19.8 pertaining to the recordkeeping and reporting requirements for sources that elect to use the actual-to-projected actual emission test and where there is a “reasonable possibility” that a project may result in a significant net emissions increase. Based upon revisions to 45CSR14.19.8, EPA is now approving 45CSR14.19.8 in its entirety into the West Virginia SIP with this action as regulatory corrections have been made to the State’s regulations.

The references to pollution control projects (PCPs) and clean units (CUs) were deleted in the West Virginia