

conspicuously disclose all material terms of the transaction before obtaining the consumer's billing information." The requirement in ROSCA to disclose "all material terms of the transaction" cannot reasonably be interpreted to include all product efficacy claims or any material fact about the underlying good or service. A term of the transaction is distinct from an advertising claim or other potentially material information.

The cases in which I supported alleging violations of ROSCA under this Section clearly involved material terms of the transaction. In *MoviePass*, consumers purchased a movie subscription and the term at issue was whether the subscription was unlimited.⁹ In *WealthPress*, another recent matter alleging violations of ROSCA under this Section, the terms at issue were included by the marketer in the "terms and conditions" section of the website and consumers were required affirmatively to agree to accept the terms to complete the transaction.¹⁰ The facts in these cases do not support a reading of the ROSCA "material term of the transaction" language to include any advertising claim.

It is useful also to recall the genesis of ROSCA and the specific grant of authority Congress provided the Commission. As noted in the findings, ROSCA was promulgated to address a specific abuse in negative option marketing prevalent at that time—third-party upsells of products or services made during check-out for an initial purchase that included negative option features.¹¹ The terms of the third-party offer that included the negative option feature were not adequately disclosed and consumers were not given an opportunity to consent to a transfer of their billing information to a third-party. They were then locked into recurring charges to which they had not consented and often had difficulty cancelling. The provisions in Section 8403 were ancillary to the intent of the statute and there is no indication in the statute or the legislative history that they were intended to confer on the Commission authority to seek civil penalties or redress for representations wholly unrelated to the terms of the negative option feature. In other words,

this proposed Negative Option Rule is inconsistent with the FTC's prior ROSCA cases.

The proposed Rule also will treat marketers differently for purposes of potential monetary liability for Section 5 violations, depending on whether they sell products or services with or without negative option features.

The careful reader may observe that the Commission's Telemarketing Sales Rule (TSR) also includes a prohibition on general misrepresentations.¹² But the TSR was promulgated pursuant to Congressional authorization.¹³ The legislative history and Statement of Basis and Purpose of the TSR also provide a substantial evidentiary basis establishing that outbound telemarketing routinely was used as a vehicle for fraud and deception—marketers disturbed consumers in the solitude of their homes, and subjected them to deception and aggressive sales tactics that caused significant consumer injury.¹⁴

I appreciate staff's steadfast efforts to protect consumers from deceptive negative option practices. I might have supported a tailored rule to address the negative option marketing abuses prevalent in our law enforcement experience that consolidated various legal requirements. This proposal instead attempts an end-run around the Supreme Court's decision in *AMG* to confer *de novo* redress and civil penalty authority on the Commission for Section 5 violations unrelated to deceptive or unfair negative option practices.

For these reasons, I dissent.

[FR Doc. 2023-07035 Filed 4-21-23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0221]

RIN 1625-AA09

Drawbridge Operation Regulation; Rancocas Creek, Burlington County, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the US Route 543 (Riverside-Delanco) Bridge across Rancocas Creek, mile 1.3, at Burlington County, NJ. The proposed rule allows the drawbridge to change its operating schedule to reduce the number of bridge openings during off-peak hours. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must reach the Coast Guard on or before May 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG-2022-0221 using Federal Decision Making Portal at <https://www.regulations.gov>. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTAR INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Mickey D. Sanders, Fifth Coast Guard District (dpb); telephone (757) 398-6587, email Mickey.D.Sanders2@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
OMB Office of Management and Budget
NPRM Notice of Proposed Rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose and Legal Basis

On May 23, 2022, we published a Test Deviation (TD) entitled Drawbridge Operation Regulation; Rancocas Creek, Burlington County, NJ, in the **Federal Register** (86 FR 16153). We received no comments on this rule. The US Route 543 (Riverside-Delanco) Bridge across Rancocas Creek, mile 1.3, at Burlington County, NJ, has a vertical clearance of 4 feet above mean high water in the closed-to-navigation position. The bridge currently operates under 33 CFR 117.745(b).

The Rancocas Creek is used predominately by recreational vessels and pleasure crafts. The three-year, monthly average number of bridge openings from 7 a.m. to 3 p.m., Monday through Friday, 7 a.m. to 1 p.m., Saturday and Sunday, and from 8 p.m. to 11 p.m., daily, as drawn from the data contained in the bridge tender logs, is presented below.

⁹ See Concurring Statement of Commissioner Christine S. Wilson, *In re Moviepass, Inc.* (June 7, 2021), https://www.ftc.gov/system/files/documents/public_statements/1590708/commissioner_wilson_concur_moviepass_final.pdf.

¹⁰ See Christine S. Wilson, Concurring Statement of Commissioner Christine S. Wilson, *WealthPress Holdings, LLC* (Jan. 2023), https://www.ftc.gov/system/files/ftc_gov/pdf/2123002wealthpresswilson_concurstmt.pdf.

¹¹ See 15 U.S.C. 8401.

¹² 16 CFR 310.3(a)(2)(iii) (prohibiting misrepresentations regarding "[a]ny material aspect of the performance, efficacy, nature, or central characteristic of the goods or services that are the subject of a sales offer").

¹³ Telemarketing and Consumer Fraud and Abuse Prevention Act. 15 U.S.C. 6101 *et seq.*

¹⁴ See, e.g., 60 FR 43842 (Aug. 23, 1995) (Statement of Basis and Purpose for the Commission's Rule).

April to October (2018, 2019 and 2020)	Average monthly openings
Monday–Friday, 7 a.m. to 3 p.m. ..	4
Saturday & Sunday, 7 a.m. to 1 p.m	2
Daily, 8 p.m. to 11 p.m	7

III. Discussion of Proposed Rule

The bridge owner requested to modify the operating regulation for the bridge, due to the limited number of requested openings of the bridge from April 1 to October 31, over a period of approximately three years. The data presented in the table above demonstrates the requested modification may be implemented with de minimis impact to navigation. The modification will allow the drawbridge to open on signal from 3 p.m. to 8 p.m., Monday through Friday, and from 1 p.m. to 8 p.m., Saturday and Sunday, from April 16 through October 15.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive Orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB). This regulatory action determination is based on the fact that an average of only four bridge openings occurred Monday through Friday, from 7 a.m. to 3 p.m., two openings Saturday and Sunday, from 7 a.m. to 1 p.m., and seven openings daily, from 8 p.m. to 11 p.m., from April 1 to October 31, of 2018, 2019 and 2020.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above, this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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.

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. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section. 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.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, (Federalism), if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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. If you believe this proposed rule has implications for federalism or Indian tribes, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

E. 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 proposed rule will not result in such an expenditure, we do discuss the potential effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2022–0221 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If you cannot submit your material by using <https://www.regulations.gov>, call or email the person in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule for alternate instructions.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published of any posting or updates to the docket.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions to the docket in response to this document, see DHS’s eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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; and DHS Delegation No. 00170.1, Revision No. 01.3.

■ 2. Revise § 117.745 paragraph (b)(1) to read as follows:

§ 117.745 Rancocas Creek.

* * * * *

(b) * * *

(1) From April 16 through October 15, open on signal from 3 p.m. to 8 p.m., Monday through Friday, and from 1 p.m. to 8 p.m., Saturday and Sunday.

* * * * *

Dated: April 6, 2023.

S.N. Gilreath,

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

[FR Doc. 2023–08554 Filed 4–21–23; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2023–0234]

RIN 1625–AA00

Safety Zone; Fireworks Display, Great Egg Harbor Bay, Ocean City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of Great Egg Harbor Bay in Ocean City, NJ. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a barge-based fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP) Delaware Bay. Vessels within the zone prior to the enforcement period must leave the zone before the enforcement period begins. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before May 24, 2023.

ADDRESSES: You may submit comments identified by docket number USCG–2023–0234 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public

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

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Petty Officer Dylan Caikowski, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271–4814, email SecDelBayWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background, Purpose, and Legal Basis

On February 16, 2023, Ocean City, New Jersey notified the Coast Guard that it will be conducting a fireworks display from 9:15 p.m. to 9:30 p.m. on July 29, 2023. The fireworks are to be launched from a barge in Great Egg Harbor Bay in the vicinity of Rainbow Channel. Hazards from a fireworks display include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 600-foot radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 600-foot radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.

III. Discussion of Proposed Rule

The COTP is proposing to establish a safety zone from 9 p.m. to 9:45 p.m. on July 29, 2023. The safety zone would cover all navigable waters within 600 feet of a barge in Great Egg Harbor Bay located at approximate position latitude 39°17'23.7" N, longitude 074°34'31.3" W. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and after the scheduled 9:15 p.m. to 9:30 p.m. fireworks display. No vessel or person would be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative. The regulatory text we are proposing appears at the end of this document.