



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0144]

RIN 1625-AA09

Drawbridge Operation Regulations; Long Island, New York
Inland Waterway from East Rockaway Inlet to Shinnecock
Canal, NY

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the drawbridge operating regulations governing the operation of the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel at Lawrence, New York. The owner of the bridge has requested a temporary change to the regulations to facilitate major rehabilitation at the bridge. It is expected that this temporary change to the regulations will help facilitate the bridge rehabilitation. This interim rule is intended to better meet the present needs of navigation by allowing the bridge rehabilitation repairs to continue on schedule while providing the public the opportunity to submit comments.

DATES: This interim rule is effective from April 23, 2012 through May 15, 2013. Comments and related material must reach the Coast Guard on or before May 15, 2012.

ADDRESSES: You may submit comments identified by docket number USCG-2012-0144 using any one of the following methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) 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.

(4) 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 four 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 interim rule, call or e-mail Ms. Judy Leung-Yee, the Coast Guard Project Officer; telephone 212-668-7165, e-mail judy.k.leung-yee@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 materials. 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-2012-0144), indicate the specific section of this document to which each comment applies, and give the reason for each suggestion or recommendation. You may submit your comments and material online, 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 deliver, 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> and 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-2012-0144" 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 this 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> and click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2012-0144" 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 all 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.

Regulatory Information

The Coast Guard is issuing this interim final rule

without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because sufficient time to promulgate a notice of proposed rulemaking with a comment period and then a final rule would result in the temporary final rule not going into effect until July 2012, which would then impact two boating seasons instead of just one, and delay of the bridge rehabilitation would result in significant additional taxpayer expense.

We received the bridge owner's request for deviation on February 9, 2012. The bridge owner mistakenly believed they were required to provide only 30 days notice to the Coast Guard to implement the temporary regulation change.

The Coast Guard normally requires 30 days advance notice for temporary deviations from the drawbridge operation regulations of less than 180 days in total duration.

In this case, the total time the regulations will be temporarily changed exceeds 180 days, which requires at least 90 days notice in order to allow sufficient time for the Coast Guard to promulgate a notice of proposed rulemaking with a comment period and a final rule.

Failure to commence the rehabilitation project on April 23, 2012 will cause a significant delay to this project. The bridge rehabilitation repairs scheduled to commence April 23, 2012, include the removal and replacement of the following: the primary and secondary gear drive motors, brakes, shafts, couplings, bearings, lubrication lines, span lock motors, span lock reducers, span lock guides, receiver bushings, electrical bridge controls, bridge power and lighting, motor control center, navigation lighting, and electrical conduits and wiring.

The contractor has arranged for personnel and equipment to be available between April 2012 and May 2013 to conduct the bridge rehabilitation repairs. Should the project not commence on April 23, 2012, a significant financial loss to the bridge owner and taxpayers would result, and this bridge rehabilitation project would continue into a second recreational boating season further impacting marine interests.

As a result of the information above, the Coast Guard

believes that delaying this bridge repair project would be contrary to the best interest of the general public and the marine transportation system that transit Reynolds Channel.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists, for the reasons discussed above, for making this rule effective less than 30 days after publication in the Federal Register.

Basis and Purpose

The Atlantic Beach Bridge, mile 0.4, across Reynolds Channel at Lawrence, New York, has a vertical clearance in the closed position of 25 feet at mean high water and 30 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.799(e).

The existing drawbridge operation regulations require the draw to open on signal October 1 through May 14. From May 15 through September 30 the draw shall open on signal, except that it need only open on the hour and half hour from 4 p.m. to 7 p.m. on weekdays, and from 11 a.m. to 9 p.m. on Saturday and Sunday, Memorial Day, Independence Day, and Labor Day.

The Coast Guard received a request from the owner of the bridge, Nassau County, asking permission to temporarily change the drawbridge operation regulations to help facilitate major rehabilitation at the bridge.

During the bridge rehabilitation project only one of the two movable spans will be raised for the passage of vessel traffic when work is underway.

In order to facilitate the extensive rehabilitation required at the bridge, scheduled bridge openings will be necessary from April 23, 2012 through May 15, 2013.

The horizontal clearance of the navigable channel is 125 feet when both spans are opened. A horizontal clearance of 62.5 feet, available during single span openings, is expected to be sufficient for the anticipated vessel traffic transiting the bridge during the bridge rehabilitation period.

The owner of the bridge and the Coast Guard coordinated and discussed this rehabilitation project and the necessary temporary changes to the drawbridge regulations with the commercial and recreational waterway users that normally transit the bridge. Users of the waterway consist of oil barges and tugs as well as power and sail recreational craft. No objections were raised.

As a result of the above coordination, the drawbridge regulations will be temporarily changed from April 23, 2012 through May 15, 2013, to facilitate the bridge repairs. Based on our coordination with the waterway users it is expected that this action will meet the reasonable needs of

navigation.

Because the temporary change to the operating schedule of the drawbridge will be greater than 180 days, we are issuing a temporary interim rule requesting public comment in order to both facilitate completion of the bridge rehabilitation and to have the public participate in the rulemaking process.

Discussion of Proposed Rule

The Coast Guard proposes to temporarily suspend 33 CFR 117.799(e) and add a temporary paragraph (k) from April 23, 2012 through May 15, 2013, to read as follows:

From April 23, 2012 through September 30, 2012, except for the closure period identified in the following paragraph, from Monday through Friday the Atlantic Beach Bridge, mile 0.4, across Reynolds Channel, may operate a single span every two hours on the even hour between 6 a.m. and 8 p.m. and on signal between 8 p.m. and 6 a.m. On weekends and holidays the bridge shall open both spans every hour on the hour from Friday at 8 p.m. through Monday at 6 a.m.

From July 23, 2012 through July 30, 2012, the bridge may remain in the closed position between 12 a.m. and 5 a.m., daily.

From October 1, 2012 through May 15, 2013, the bridge

shall operate a single span, Monday through Sunday, at 6 a.m., 12 p.m., 4 p.m., and 8 p.m. Between 8 p.m. and 6 a.m. the bridge will operate a single span on signal. During the above time period the bridge will open both spans for commercial vessel traffic at all times after at least a 48 hour advance notice is given.

Regulatory Analysis

We developed this interim rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis 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, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866. The Office of Management and Budget has not reviewed it under that Order.

The Coast Guard determined that this rule is not a significant regulatory action because the bridge will continue to open on a set schedule that was discussed with the waterway users in advance and no objections were received.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule will 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 section 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 may be small entities: the owners or operators of vessels intending to transit the bridge between April 23, 2012 and May 15, 2013. The bridge will open on a set schedule that was discussed with the waterway users in advance and no objections were received.

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 (Public Law 104-121), we want to assist small entities in understanding this interim final rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (dpb), First Coast Guard District Bridge Branch, One South Street, New York, NY, 10004. The telephone number is (212) 668-7165. The Coast Guard will not retaliate against small entities that question or complain about this interim rule or any policy or action of the Coast Guard.

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 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 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 interim rule under Department of Homeland Security Management Directive 023-01, and Commandant Instruction M16475.1D 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 interim rule.

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 is amending 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(g);

Department of Homeland Security Delegation No. 0170.1.

2. Effective April 23, 2012 through May 15, 2013, § 117.799 is amended by suspending paragraph (e) and adding a

temporary paragraph (k) to read as follows:

§ 117.799 Long Island, New York Inland Waterway from East
Rockaway Inlet to Shinnecock Canal.

* * * * *

(k) The draw of the Atlantic Beach Bridge at mile 0.4,
across Reynolds Channel shall open on signal as follows:

(1) Except as provided in paragraph (k)(2) of this section,
from April 23, 2012 through September 30, 2012, Monday
through Friday, the draw may operate a single span on
signal, every two hours, on the even hour, between 6 a.m.
and 8 p.m. Monday through Friday from 8 p.m. through 6
a.m. the draw may operate a single span on signal. On
weekends and holidays from Friday at 8 p.m. through Monday
at 6 a.m. the bridge shall open both spans every hour on
the hour.

(2) From July 23, 2012 through July 30, 2012, the bridge
may remain in the closed position between 12 a.m. and 5
a.m., daily.

(3) From October 1, 2012 through May 15, 2013, the draw may
operate a single span on signal at 6 a.m., 12 p.m., 4 p.m.,
and 8 p.m. and at any time between 8 p.m. and 6 a.m. The

draw shall open both spans at all times for commercial vessel traffic after at least a 48 hour advance notice is given by calling the number posted at the bridge.

Dated: March 23, 2012

Daniel A. Neptun
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

[FR Doc. 2012-9056 Filed 04/13/2012 at 8:45 am; Publication
Date: 04/16/2012]