



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2013-0926]

RIN 1625-AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway (NJICW), Barnegat Bay, Seaside Heights, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

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SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the S37 Bridge, at NJICW mile 14.1 over Barnegat Bay, at Seaside Heights, NJ. Over the span of two and half years, the bridge will be closed to navigation for three four-month closure periods. Extensive replacement of parts and repairs to the bridge necessitate these closures.

DATES: This temporary final rule is effective from 8 a.m., on December 1, 2015 to 8 p.m., March 31, 2018.

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2013-0926. To view documents mentioned in this preamble as being available in the docket, go to

<http://www.regulations.gov>, type the docket number in the

"SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. 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.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail Mr. Jim Rousseau, Bridge Management Specialist, Coast Guard, telephone (757) 398-6557, e-mail [James.L.Rousseau2@uscg.mil](mailto:James.L.Rousseau2@uscg.mil). If you have questions on reviewing the docket, call Cheryl Collins, Program Manager, Docket Operations, (202)366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On December 17, 2013, we published a NPRM titled, "Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Barnegat Bay, Seaside Heights, NJ" in the Federal

Register (78 FR 76255). We received no comments on the proposed rule. No public meeting was requested, and none was held.

B. Basis and Purpose

Parsons Brinkerhoff, a design consultant on behalf of NJDOT, requested a temporary change to the existing regulations for the S37 Bridge to facilitate necessary repairs. The repairs consist of extensive structural rehabilitation, decking replacement, bearing replacement, electrical repairs, gate replacement and improvements to necessitate this closure. To facilitate repairs, the bascule span will be maintained in the closed position to navigation on three four-month closure periods beginning at 8 a.m., December 1, 2015 until 8 p.m., March 31, 2016; from 8 a.m., December 1, 2016 until 8 p.m., March 31, 2017; and from 8 a.m., December 1, 2017 until 8 p.m. March 31, 2018.

The Coast Guard has reviewed the bridge data provided by NJDOT. The data, from years 2004 to 2013, shows a substantial decrease in the number of bridge openings and vessel traffic transiting the area between December and March. Spring and fall average openings are approximately 100 per month. In the winter months, openings average approximately 6 vessel openings per month. A survey was conducted with nine local commercial marinas that also indicated, there will be minimal impact to their customers

and operations. The S37 Bridge, also known locally as the Thomas A. Mathis Bridge, is a double leaf bascule bridge with a vertical clearance of approximately 30 feet, above mean high water. Based on the data provided, the proposed closure dates will have minimal impact on vessel traffic.

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

The Coast Guard will temporarily revise the operating regulations at 33 CFR 117.733(c)(1) governing the S37 Bridge, at NJICW mile 14.1, over Barnegat Bay, at Seaside Heights, NJ. The Coast Guard will temporarily suspend 33 CFR 117.733(c)(1) and insert this new regulation at 33 CFR 117.733(c)(4).

Paragraph (c)(4) will allow the draw to be maintained in the closed position to vessels during the extensive rehabilitation project on three four-month closure periods beginning 8 a.m., December 1, 2015 until 8 p.m., March 31, 2016; from 8 a.m., December 1, 2016 until 8 p.m., March 31, 2017; and from 8 a.m., December 1, 2017 until 8 p.m., March 31, 2018. Vessels with a mast height of less than 30 feet can pass underneath the bridge in the closed position at anytime. The Atlantic Ocean is the only alternate route available for vessels unable to pass underneath the bridge and the bridge will be unable to open during the closure period. The Coast Guard provided a comment period of 60

days and no comments were received on the proposed rule.

#### D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders

##### 1. 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 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. This change is not a significant regulatory action because it is expected to have minimal impact on mariners due to a slow down of users in the winter months with no anticipated change to vessel traffic.

##### 2. 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 will not have a significant economic impact on a substantial number of small entities

This action will not have a significant economic impact on a substantial number of small entities for the following reasons. There have been minimal vessel requests requiring openings for the past 9 years in the winter months. Vessels that can safely transit under the bridge may do so at any time.

### 3. 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 rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business

and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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.

#### 4. 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).

#### 5. Federalism

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 rule under that Order and have determined that it does not have implications for federalism.

#### 6. 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.

#### 7. 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 expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. 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.

#### 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 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have 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 involves the change to the operating schedule for the S37 Barnegat Bay Bridge in order to accommodate necessary repair. 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 temporarily 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. In §117.733, suspend paragraph (c)(1) and add a new paragraph (c)(4), to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

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(c) \* \* \* \*

(4) From 8 a.m. December 1, 2015 until 8 p.m. March 31, 2016; from 8 a.m. December 1, 2016 until 8 p.m. March 31, 2017; and from 8 a.m. December 1, 2017 until 8 p.m. March 31, 2018, the S37 Bridge, mile 14.1, at Seaside Heights may remain closed to navigation.

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Dated: April 2, 2014

STEVEN H. RATTI  
Rear Admiral, U.S. Coast Guard  
Commander, Fifth Coast Guard District

[FR Doc. 2014-08787 Filed 04/16/2014 at 8:45 am; Publication Date: 04/17/2014]