

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

[USCG-2007-0026; [formerly published under CGD05-07-093]]

RIN 1625-AA09

Drawbridge Operation Regulations; Corson Inlet, New Jersey Intracoastal Waterway (NJICW), Townsend Inlet, NJ

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulations of four Cape May County Bridge Commission (the Commission) bridges: The Corson Inlet Bridge, at mile 0.9, at Strathmere; the Stone Harbor Boulevard Bridge, at NJICW mile 102.0, across Great Channel at Stone Harbor; the Two-Mile Bridge, at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest; and the Townsend Inlet Bridge, at mile 0.3 in Avalon, NJ. This final rule allows the drawbridges to operate on an advance notice basis for specific dates, times and holiday in December of every year. These changes will still provide for the reasonable needs of navigation.

DATES: This rule is effective March 3, 2008.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG-2007-026 and are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:**Regulatory History**

On October 1, 2007, the new Federal Docket Management System (FDMS) was established and FDMS numbers were assigned to all actions published in the **Federal Register**. New FDMS numbers are posted and requested comments are reviewed at www.regulations.gov. The FDMS number assigned to this rule was USCG-2007-0026.

On October 11, 2007, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Corson Inlet, New Jersey Intracoastal Waterway (NJICW), Townsend Inlet, NJ" in the **Federal Register** (72 FR 57904). We received three comments on the proposed rule. The previously assigned NPRM docket number was CGD05-07-093. No public meeting was requested, and none was held.

Background and Purpose

The owner of the drawbridges, the Cape May County Bridge Commission (the Commission), requested changes to the operating regulations for the four drawbridges to allow them to operate on an advance notice basis at different times on December 24th, 25th and 26th of every year.

A review of the bridge logs supplied by the Commission for the Corson Inlet Bridge, at mile 0.9, at Strathmere; the Stone Harbor Boulevard Bridge, at NJICW mile 102.0, across Great Channel at Stone Harbor; the Two-Mile Bridge at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest; and the Townsend Inlet Bridge, at mile 0.3 in Avalon; reveals that these drawbridges have not received any requests nor performed any bridge openings on the aforementioned dates for at least the previous nine years.

The Cape May County Bridge Commission Department of Public Works currently maintains a 24-hour telephone at (609) 368-4591 to request bridge openings. Qualified personnel will be on-call and ready for dispatch with two-hour advance notice for the following drawbridges:

Corson Inlet

The Corson Inlet Bridge, mile 0.9, at Strathmere has a vertical clearance of 15 feet above mean high water (MHW) and 18 feet above mean low water (MLW) in the closed position to vessels. The existing operating regulations are set out in 33 CFR 117.714.

New Jersey Intracoastal Waterway

The Stone Harbor Boulevard Bridge, at NJICW mile 102.0, across Great Channel at Stone Harbor has a vertical clearance of 11 feet above MHW and 15 feet above MLW in the closed position to vessels. The existing operating regulations are set out in 33 CFR § 117.733(i).

The Two-Mile Bridge, at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest has a vertical clearance of 23 feet above MHW and 27 feet above MLW. The existing regulations are set out in 33 CFR § 117.733(k).

Townsend Inlet

The Townsend Inlet Bridge, at mile 0.3, in Avalon has a vertical clearance of 23 feet above MHW and 26 feet above MLW in the closed position to vessels. The existing regulations are set out in 33 CFR 117.757.

Discussion of Comments and Changes

The Coast Guard received three comments to the NPRM. One written comment was from the U.S. Department of the Interior, Fish and Wildlife Service (the Service). The Service has no objection to the issuance of the NPRM.

We received two comments from the same respondent at www.regulations.gov under the new FDMS docket number USCG-2007-0026. In both comments, the respondent essentially agreed with the issuance of the NPRM.

Based on the comments received and information provided, we will implement a final rule with no changes to the NPRM.

Discussion of Rule**Corson Inlet**

The Coast Guard is amending 33 CFR 117.714 by revising the operating regulations by extending the two-hour notice period in effect during the off season to include all of December 25. The final rule would read as follows: The draw of the Corson Inlet Bridge, mile 0.9, at Strathmere, shall open on signal: Except, that from October 1 through May 15 from 10 p.m. to 6 a.m. and from 6 a.m. to 10 p.m. on December 25 the draw need open only if at least two hours notice is given.

New Jersey Intracoastal Waterway

The Coast Guard is amending 33 CFR 117.733 by revising paragraph (i), which details the operating regulations for the Stone Harbor Boulevard Bridge at NJICW mile 102.0, across Great Channel at Stone Harbor.

A new paragraph will be added at § 117.733(i)(3) to read that the draw shall open on signal from 10 p.m. on December 24 until 6 a.m. on December 26 if at least two hours notice is given.

The Coast Guard is also amending 33 CFR 117.733 by revising paragraph (k), which details the operating regulations for the Two-Mile Bridge, at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest.

Paragraph (k) will state that the draw shall open on signal except: (1) From 9:15 a.m. to 10:30 a.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open for

vessels from 9:15 a.m. to 10:30 a.m. on the third Sunday of March of every year; and (2) from 10:30 p.m. on December 24 until and including 10:30 p.m. on December 26, the draw need open only if at least two hours notice is given.

Townsend Inlet

The Coast Guard is amending 33 CFR 117.757 by revising the operating regulations to read as follows: The draw of Townsend Inlet Bridge, mile 0.3 in Avalon, shall open on signal except: (1) From 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open from 9:15 a.m. to 2:30 p.m. on the third Sunday of March of every year; and (2) from 11 p.m. on December 24 until 11 p.m. on December 25, the draw need open only if at least two hours notice is given.

Regulatory Evaluation

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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This conclusion is based on the fact that these changes have only a minimal impact on maritime traffic transiting the bridges. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays, and vessels that can pass under the bridges without a bridge opening may do so at all times.

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 would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the changes will have only a minimal impact on maritime traffic transiting the bridge. Mariners who plan

their transits in accordance with the scheduled bridge openings can minimize delay and vessels that can pass under the bridges without a bridge opening may do so at all times.

Assistance for Small Entities

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

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.

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

Taking of Private Property

This rule would 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 rule under 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction because this rule involves drawbridge regulations. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Words of Issuance and Regulatory Text

■ 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 § 117.714 to read as follows:

§ 117.714 Corson Inlet.

The draw of the Corson Inlet Bridge, mile 0.9, at Strathmere, shall open on signal; except that from October 1 through May 15 from 10 p.m. to 6 a.m. and from 6 a.m. to 10 p.m. on December 25 the draw need open only if at least two hours notice is given.

■ 3. § 117.733 is amended by adding a new paragraph (i)(3) and revising paragraph (k) to read as follows:

§ 117.733 New Jersey Intracoastal Waterway.

* * * * *

(i) * * *

(3) From 10 p.m. on December 24 until 6 a.m. on December 26, the draw need open only if at least two hours notice is given.

* * * * *

(k) The draw of Two-Mile Bridge, mile 112.2, across Middle Thorofare in Wildwood Crest, shall open on signal except:

(1) From 9:15 a.m. to 10:30 a.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open for vessels from 9:15 a.m. to 10:30 a.m. on the third Sunday of March of every year.

(2) From 10:30 p.m. on December 24 until 10:30 p.m. on December 26, the draw need open only if at least two hours notice is given.

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■ 4. § 117.757 is revised to read as follows:

§ 117.757 Townsend Inlet.

The draw of Townsend Inlet Bridge, mile 0.3 in Avalon, shall open on signal except:

(a) From 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year, the draw need not open for vessels. If the fourth Sunday falls on a religious holiday, the draw need not open from 9:15 a.m. to 2:30 p.m. on the third Sunday of March of every year.

(b) From 11 p.m. on December 24 until 11 p.m. on December 25, the draw need open only if at least two hours notice is given.

Dated: January 16, 2008.

Fred M. Rosa, Jr.,

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

[FR Doc. E8–1764 Filed 1–30–08; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2007–0169]

RIN 1625–AA00

Safety Zone: Trent River Between New Bern and James City, NC

AGENCY: Coast Guard, DHS.

ACTION: Temporary Final Rule.

SUMMARY: The Coast Guard will reinstate a safety zone on the waters of the Trent River between New Bern and James City, North Carolina in the vicinity of the U.S. Route 70 Highway Swing Bridge. This safety zone is necessary to provide for safety of life on navigable waters during the movement of bridge construction equipment from the southern end of the bridge construction project to the northern end of the project.

DATES: This rule is effective from January 25, 2008 through February 28, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2007–0169 and are available online at www.regulations.gov. They are 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:

Commander Jennifer Williams, Prevention Department Head, United States Coast Guard Sector North Carolina at (252) 247–4570 or (252) 247–4546.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The publishing of an NPRM would be impracticable and contrary to public interest since immediate action is needed to protect the maritime public from the hazards associated with this maintenance project. The necessary information to determine whether the construction poses a threat to persons and vessels was not provided with sufficient time to publish an NPRM. For the safety concerns noted, it is in the public interest to have this regulation in effect during the construction.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date would be contrary to the public interest, since immediate action is needed to ensure the public's safety.

Background and Purpose

Originally, Balfour Beatty Infrastructure, Inc. planned to relocate construction equipment on Tuesdays, Wednesdays and Thursdays from 10 a.m. to 2 p.m. from January 8, 2008 through January 24, 2008. Balfour has since determined that they need another month to complete the project. For this reason, the Coast Guard is reinstating this regulation through February 28, 2008. The construction will take place in the vicinity of the U.S. Route 70 Highway Swing Bridge from James City, NC to New Bern, NC. To provide for the safety of the public, the Coast Guard