



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**Docket No. USCG-2017-0311**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Quantuck Canal, Westhampton Beach, NY**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the Beach Lane Bridge across Quantuck Canal, mile 1.1, at Westhampton Beach, New York. This action is necessary to allow for an unexpected delay in the rehabilitation of the bascule leaves and painting of the bridge. A temporary deviation was previously granted for a length of 180 days. As the Coast Guard may not approve extensions beyond that allotted timeframe nor approve back-to-back or sequential deviations, it is necessary to issue this rule in order to allow the bridge owner to complete the remaining work items.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until 11:59 p.m. on January 11, 2018. For the purposes of enforcement, actual notice will be used from 12:01 on December 1, 2017 until [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]."

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2017-0048 in the "SEARCH" box

and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this interim rule, call or email Judy Leung-Yee, Bridge Management Specialist, U.S. Coast Guard; telephone 212-514-4336, e-mail Judy.K.Leung-Yee@uscg.mil.

SUPPLEMENTARY INFORMATION:

**I. Table of Abbreviations**

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

**II. Background Information and Regulatory History**

On September 13, 2017, we published a temporary deviation entitled, “Drawbridge Operation Regulation; Beach Lane Bridge, Quantuck Canal, Westhampton Beach, NY” in the Federal Register (see 82 FR 42940). Although we did not request public comments, outreach conducted with mariners utilizing the waterway indicated no objections to the temporary deviation. No complaints were submitted during the temporary deviation.

The Coast Guard is issuing this temporary 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. Due to unanticipated difficulties and delays impacting the schedule and pace of rehabilitation of the bascule leaves and painting of the bridge additional time is required to finalize and complete the work necessary in order to restore the bridge to full operational capacity. We must modify the operation schedule of the bridge by December 1, 2017 to allow the completion of rehabilitation of the bascule leaves and painting of the bridge. We therefore lack sufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

We are issuing this rule and under 5 U.S.C. 553(d)(3), and for the reasons stated above, the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register.

### **III. Legal Authority and Need for the Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the Beach Lane Bridge across Quantuck Canal, mile 1.1, at Westhampton Beach, New York. The Beach Lane Bridge is a double-leaf bascule bridge offering mariners a vertical clearance of 13.9 feet at mean high water and 16.2 feet at mean low water in the closed position.

The existing drawbridge regulations are listed at 33 CFR 117.799(d). The Suffolk County Department of Public Works, the bridge owner, has requested this modification as additional time is required to complete the final rehabilitation of the bascule leaves and painting of the bridge.

The Suffolk County Department of Public Works has also requested that the

Beach Lane Bridge be allowed to open on signal only one of two bascule spans for bridge openings with the understanding that dual lift-span operations will occur for vessels requiring such an opening provided a 48 hour advance notice was furnished to the owner of the bridge.

The bridge generally opens for seasonal recreational craft and small scale tug/barge combinations occasionally transit the waterway. Vessels that can pass under the bridge without an opening may do so at all times. The bridge will be able to open for emergencies and there is no alternate route for vessels unable to pass through the bridge when in the closed position.

#### **IV. Discussion of the Rule**

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the Beach Lane Bridge across Quantuck Canal, mile 1.1, at Westhampton Beach, New York. The rule is necessary to accommodate the completion of rehabilitation of the bascule leaves and painting of the bridge. This rule allows for single-leaf operations upon signal and dual lift-span operations will be provided for vessels requiring such an opening given 48 hours of advance notice.

#### **V. Regulatory Analyses**

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

##### **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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771. This regulatory action determination is based on the ability of the majority of vessels to successfully transit through the draw of the bridge with a single-leaf opening. Vessels requiring dual lift-span operations may continue to transit the draw provided submission of advance notice.

#### 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 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.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this interim rule will not have a significant economic impact on any vessel owner or operator. Mariners requiring dual lift-span operations have been able to transit the draw following provision of advance notice. Single-leaf operations will be furnished on signal for those vessels requiring such an opening.

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.

#### C. 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).

#### D. Federalism and Indian Tribal Government

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 is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, 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.

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

F. 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 made a 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. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction. A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this 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.

**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. In § 117.799, effective from 12:01 a.m. on [INSERT DATE OF PUBLICATION], through 11:59 p.m. on January 11, 2018, suspend paragraph (d) and add paragraph (j) to read as follows:

**§ 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to**

**Shinnecock Canal.**

\* \* \* \* \*

- (j) The draws of the West Bay bridge, mile 0.1, across Quantuck Canal, Quoque bridge, mile 1.1, across Quoque Canal and the Smith Point bridge, mile 6.1, across Narrow Bay shall open on signal from October 1 through April 30 from 8 a.m. to 4 p.m. and from May 1 through September 30 from 6 a.m. to 10 p.m. At

all other times during these periods, the draws shall open as soon as possible but no more than one hour after a request to open is received.

(1) The draw of the Beach Lane bridge, mile 1.1, across Quantuck Canal shall open only one of two bascule spans on signal for bridge openings. Dual lift-span operations will occur for vessels requiring such an opening provided a 48 hour advance to the owner of the bridge.

Dated: December 5, 2017

S. D. Poulin

Rear Admiral, U. S. Coast Guard

Commander, First Coast Guard District

[FR Doc. 2017-27403 Filed: 12/19/2017 8:45 am; Publication Date: 12/20/2017]