DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2020-0334]

RIN 1625-AA09

Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Atlantic City, NJ

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Route 30 (Absecon Boulevard) Bridge across the New Jersey Intracoastal Waterway (NJICW), Beach Thorofare, mile 67.2, at Atlantic City, NJ. This temporary modification will allow the drawbridge to remain in the closed-to-navigation position to accommodate critical bridge maintenance.

DATES: This temporary final rule is effective from [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 5 p.m. on March 31, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to https://www.regulations.gov. Type USCG-2020-0334 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 rule, call or e-mail Mr. Mickey Sanders, Bridge Administration Branch, Fifth District, U.S. Coast Guard, telephone (757) 398-6587, e-mail Mickey.D.Sanders2@uscg.mil.

SUPPLEMENTARY INFORMATION:
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II. Background Information and Regulatory History

On September 16, 2020, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; New Jersey Intracoastal Waterway, Atlantic City, NJ” in the Federal Register (85 FR 57808). We received one favorable comment and one irrelevant comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C 499. The New Jersey Department of Transportation, which owns and operates the Route 30 (Absecon Boulevard) Bridge, across the NJICW Beach Thorofare, at mile 67.2, in Atlantic City, NJ, requested the modification to allow the drawbridge to remain in the closed-to-navigation position. The closure is necessary to facilitate bridge maintenance of the drawbridge, while ensuring the safety of those performing bridge maintenance and vessels navigating in the area. A work platform will reduce the horizontal clearance of the navigation channel to approximately 30 feet and temporary shielding will reduce the vertical clearance of the entire bridge to approximately 19 feet above mean high water in the closed position.

Under the temporary final rule, the drawbridge will remain in the closed-to-navigation position from 8 a.m. on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 5 p.m. on March 31, 2021; from 8 a.m. on November 1, 2021, through 5 p.m. on March 31, 2022; and from 8 a.m. on November 1, 2022, through 5 p.m. on March 31, 2023. At all other times the
drawbridge will operate per 33 CFR § 117.733 (e). The bridge will not be able to open for emergencies and there is no immediate alternative route for vessels unable to pass through the bridge in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced vertical and horizontal clearances may do so, if at least 30 minutes notice is given, to allow for safe navigation.

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

The Coast Guard provided a period of 30 days and two comments were received. One was in favor of the schedule change, and the other was outside the scope of the proposed regulation. No changes were made to the regulatory text of this temporary final rule.

V. Regulatory Analyses

The Coast Guard developed this rule after considering numerous statues and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statues 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. 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 fact that the closure will occur outside of recreational boating season on the NJICW, and only during specific daily hours. An average of only 40 annual bridge openings occurred for recreational
vessels and light tugs from November 1 to March 31 between 2015 through 2017.

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 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 rule will not have a significant economic impact on any vessel owner or operator.

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, section.

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 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 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, 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 and is 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.

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:


2. Revise §117.733 by adding paragraph (e)(4) to read as follows:

§117.733 New Jersey Intracoastal Waterway.

* * * * *

(e) * * *
(4) From 8 a.m. on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER], through 5 p.m. on March 31, 2021; from 8 a.m. on November 1, 2021, through 5 p.m. on March 31, 2022; and from 8 a.m. on November 1, 2022, through 5 p.m. on March 31, 2023, the drawbridge will be maintained in the closed-to-navigation position. A work platform will reduce the horizontal clearance of the navigation channel to approximately 30 feet and temporary shielding will reduce the vertical clearance of the entire bridge to approximately 19 feet above mean high water in the closed position. Vessels that can safely transit through the bridge in the closed position with the reduced clearances may do so, if at least 30 minutes notice is given, to allow for safe navigation.

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Dated: January 13, 2021

L. M. Dickey,
Rear Admiral, U.S. Coast Guard,
Commander, Fifth Coast Guard District.

[FR Doc. 2021-02058 Filed: 1/29/2021 8:45 am; Publication Date: 2/1/2021]