



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0891]

RIN 1625-AA09

Drawbridge Operation Regulation; Mill Neck Creek, Bayville, NY

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary interim rule and request for comments.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Bayville Highway Bridge across the Mill Neck Creek, mile 0.1, at Bayville, NY. This action is necessary to allow the bridge owner to complete the remaining replacements and repairs.

DATES: This temporary interim rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], through January 31, 2024.

Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type the docket number (USCG-2022-0891) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Stephanie E. Lopez, Bridge Management Specialist, First Coast Guard District; telephone (212) 514-4335, e-mail Stephanie.E.Lopez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim 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. This bridge is operating under single leaf openings and will continue to operate in this way until rehabilitation work can be completed in January 2024.

On May 10, 2022, the Coast Guard issued a General Deviation which allowed the bridge owner, Nassau County, to deviate from the current operating schedule in 33 CFR 117.800 to conduct major mechanical rehabilitation of the bridge. Due to delays in procuring materials, the project has run past the end date of April 12, 2023, of the General Deviation. The bridge cannot be brought back to operating condition until the completion of the mechanical rehabilitation. Therefore, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable

and contrary to the public interest because the bridge is currently incapable of normal operations and will not be back into full operation until the rehabilitation work can be completed.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the Bayville Highway Bridge across the Mill Neck Creek, mile 0.1, Bayville, New York. The Bayville highway bridge has a vertical clearance, in the closed position, of 9 feet at mean high water and unlimited vertical clearance when opened.

The existing drawbridge regulation, 33 CFR 117.800, states that the draw of the Bayville highway bridge, mile 0.1, shall open on signal from May 1 through October 31 and at all other times at least two-hour advance notice. Nassau County, the bridge owner, has requested to operate under single leaf openings so they may continue rehabilitation on the bridge while providing minimal impact on marine traffic.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the Bayville Highway Bridge across the Mill Neck Creek, mile 0.1, Bayville, New York. The rule is necessary to accommodate the completion of the bridge mechanical repairs. This rule allows the bridge to operate under single leaf openings until January 31, 2024. Vessels that can transit under the bridge without an opening may do so.

V. Regulatory Analyses

We developed this temporary interim 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.

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. This temporary interim rule has not been designated a “significant regulatory action,” under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the temporary interim rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge through a single leaf operation as well as all vessels that do not require an opening may transit.

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

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 explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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. 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 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.

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. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 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.

VI. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or

recommendation.

We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG-2022-0891 in the search box and click "Search." Next, look for this document in the "Search Results" column, and click on it. Then click on the "Comment" option. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

To view documents mentioned in this rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. We review all comments received, but we will only post comments that address the topic of the rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. Additionally, if you click on the "Dockets" tab and then the rule, you should see a "Subscribe" option for email alerts. Selecting this option will enable notifications when comments are posted, or if/when a final rule is published.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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; and DHS Delegation No. 00170.1,

Revision No. 01.3.

§ 117.800 [Stayed]

2. Stay § 117.800.
3. Add § 117.T800 to read as follows:

§ 117.T800 Mill Neck Creek.

The draw shall operate on single leaf operations from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], to 11:59 p.m. on January 31, 2024.

Dated: August 20, 2023.

J. W. Mauger,
Rear Admiral, U.S. Coast Guard,
Commander, First Coast Guard District.

[FR Doc. 2023-18324 Filed: 8/24/2023 8:45 am; Publication Date: 8/25/2023]