

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05-06-045]

RIN 1625-AA09

**Drawbridge Operation Regulations; New Jersey Intracoastal Waterway (NJICW), Grassy Sound Channel, Great Channel, and Townsend Inlet, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of four Cape May County Bridge Commission (CMCBC) bridges: the Townsend Inlet Bridge, at mile 0.3 in Avalon; the County of Cape May Bridge, at mile 0.7, across Great Channel between Stone Harbor and Nummy Island; the Ocean Drive Bridge, at mile 1.0, across Grassy Sound Channel in North Wildwood; and the Two-Mile Bridge, at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest, in NJ. This proposal will allow the bridges to remain in the closed position at particular dates and times to accommodate the Ocean Drive Marathon. Vessels that can pass under the bridges without a bridge opening may do so at all times.

**DATES:** Comments and related material must reach the Coast Guard on or before August 14, 2006.

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

**FOR FURTHER INFORMATION CONTACT:** Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and

address, identify the docket number for this rulemaking, CGD05-06-045, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (dpb), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

On behalf of the Ocean Drive Run Club, Inc., (Ocean Drive RC), CMCBC requested changes to the operating drawbridge regulations to accommodate the Ocean Drive Marathon. The race is an annual event sponsored by the Ocean Drive RC, attracting spectators and participants from the surrounding cities and states.

In accordance with 33 CFR 117.37(a) for reasons of public safety or for public functions, the District Commander may authorize the opening and closing of a drawbridge for a specified period of time.

CMCBC who owns and operates the Townsend Inlet Bridge, at mile 0.3 in Avalon; the County of Cape May Bridge, at mile 0.7, across Great Channel between Stone Harbor and Nummy Island; the Grassy Sound Channel Bridge, at mile 1.0 in North Wildwood; and the Two-Mile Bridge, at NJICW mile 112.2, across Middle Thorofare in Wildwood Crest, requested the following drawbridge changes:

*Great Channel*

The County of Cape May Bridge, at mile 0.7, across Great Channel between Stone Harbor and Nummy Island has a vertical clearance of 15 feet above mean high water (MHW) and 19 feet above mean low water (MLW) in the closed position to vessels. The existing regulation is listed at 33 CFR 117.720.

The Ocean Drive Marathon is held on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls

on a religious holiday. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year.

*Grassy Sound Channel*

The Grassy Sound Channel Bridge, at mile 1.0 in Middle Township, has a vertical clearance of 15 feet above MHW and 19 feet above MLW in the closed position to vessels. The existing regulation is listed at 33 CFR 117.721.

The Ocean Drive Marathon is held on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year.

*New Jersey Intracoastal Waterway*

The Two-Mile Bridge, at NJICW mile 112.2 at Wildwood Crest, has a vertical clearance of 23 feet above MHW and 27 feet above MLW in the closed position to vessels. The existing operating regulations are set out in 33 CFR 117.5 which requires the bridge to open on signal.

The Ocean Drive Marathon is held on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 9:15 a.m. to 10:30 a.m. on the fourth Sunday in March of every year.

*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 regulation is listed at 33 CFR 117.5, which requires the bridge to open on signal.

The Ocean Drive Marathon is held on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday. To facilitate the race, the proposal will maintain the bridge in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year.

The Coast Guard believes that the proposed changes are reasonable due to the short duration of the drawbridges will be maintained in the closed position to vessels and because this event has been observed in past years with little or no

impact to marine or vehicular traffic. This is also a necessary measure to facilitate public safety and allow for the orderly movement of participants and vehicular traffic before, during and after the race.

#### Discussion of Proposed Rule

##### *Great Channel*

This proposed rule amends 33 CFR 117.720 which details the operating regulations for the County of Cape May Bridge.

A new paragraph (c) will be added to § 117.720, which allows the County of Cape May Bridge to remain in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday.

##### *Grassy Sound Channel*

This proposed rule amends 33 CFR 117.721 which details the operating regulations for the Grassy Sound Channel Bridge. Section 117.721 will be revised to allow the Grassy Sound Channel Bridge to remain in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday.

##### *New Jersey Intracoastal Waterway*

This proposed rule amends 33 CFR 117.733 by redesignating paragraph (k) as paragraph (m) and adding new paragraph (k) which details the operating regulations for the Two-Mile Bridge, at mile 112.2, across Middle Thorofare in Wildwood Crest.

A new paragraph (k) will be added to § 117.733, which allows the Two-Mile Bridge to remain in the closed-to-navigation position from 9:15 a.m. to 10:30 a.m. on the fourth Sunday in March of every year with the third Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday.

##### *Tuckahoe River*

Section 117.757 Tuckahoe River will be redesignated as § 117.758 to allow alphabetical placement and codification of Townsend Inlet at § 117.757.

##### *Townsend Inlet*

Townsend Inlet will be added at new § 117.757, detailing the operating regulations and allowing the Townsend Inlet Bridge to remain in the closed-to-navigation position from 9:15 a.m. to 2:30 p.m. on the fourth Sunday in March of every year with the third

Sunday used as the alternate day, if the fourth Sunday falls on a religious holiday.

#### Regulatory Evaluation

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can plan their trips in accordance with the scheduled bridge openings to minimize delays.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because the rule only adds minimal restrictions to the movement of navigation, and mariners who plan their transits in accordance with the scheduled bridge openings can minimize delay.

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 (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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 proposed rule would call 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

This proposed 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 proposed 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 proposed 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 proposed 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

**Environment**

We have analyzed this proposed rule under Commandant Instruction M16475.ID and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination 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. Therefore, we believe that this proposed rule should be categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Under figure 2–1, paragraph (32)(e), of the Instruction, an "Environmental Analysis Check List" is not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

**List of Subjects in 33 CFR Part 117**

Bridges.

**Regulations**

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.720 is amended by adding a new paragraph (c) to read as follows:

**§ 117.720 Great Channel.**

\* \* \* \* \*

(c) 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.

3. Section 117.721 is revised to read as follows:

**§ 117.721 Grassy Sound Channel.**

The draw of the Grassy Sound Channel Bridge, mile 1.0 in Middle Township, shall open on signal from 6 a.m. to 8 p.m. from May 15 through September 30. 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. Two hours advance notice is required for all other openings by calling (609) 368–4591.

4. Section 117.733 is amended by redesignating paragraph (k) as paragraph (m) and adding a new paragraph (k) to read as follows:

**§ 117.733 New Jersey Intracoastal Waterway.**

\* \* \* \* \*

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

\* \* \* \* \*

**§ 117.757 [Redesignated]**

5. Redesignate § 117.757 as § 117.758.  
6. Add new § 117.757 to read as follows:

**§ 117.757 Townsend Inlet.**

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

Dated: June 16, 2006.

**Larry L. Hereth,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[CGD05–06–044]

RIN 1625–AA09

**Drawbridge Operation Regulations; Broad Creek, Cedar Creek, and Nanticoke River, DE**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation