

Dated: January 8, 2008.

**J.H. Korn,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist., Acting.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-07-026]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the drawbridge operating regulations that govern the S.R. 1172 Bridge, at AIWW mile 337.9, Sunset Beach, NC. This final rule will allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The reason for this change would be to improve the schedule for both roadway and waterway users.

**DATES:** This rule is effective February 28, 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 CGD05-07-026 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:** Gary Heyer, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6629.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On May 8, 2007, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Sunset Beach, NC" in the *Federal Register* (72 FR 26038). We received 10 comments on the proposed rule. No public meeting was requested, and none was held.

##### Background and Purpose

The S.R. 1172 Bridge at Sunset Beach has zero vertical clearance to vessels when in the closed position at mean high water.

The North Carolina Department of Transportation (NCDOT) owns and operates this single-lane, floating steel-barge, swing-span referred to as a pontoon drawbridge. Current regulations set out at 33 CFR 117.821(a)(5) require the bridge to open on signal for commercial vessels at all times; and on the hour on signal for pleasure vessels between 7 a.m. and 7 p.m., April 1 to November 30, except

that on Saturdays, Sundays, and Federal holidays, from June 1 through September 30, the bridge shall open on signal on the hour between 7 a.m. and 9 p.m.

NCDOT and the residents of the Town of Sunset Beach requested a change to the operating regulations for the S.R. 1172 Bridge in an effort to improve the schedule for both roadway and waterway users. The S.R. 1172 Bridge provides the only route on and off Sunset Beach Island. This rule will not change the requirement for the bridge to open on signal at any time for commercial vessels.

The Coast Guard reviewed the bridge logs for 2005 and 2006 provided by NCDOT which illustrate a small decrease in the numbers of vessels passing through the bridge during the spring, summer, and fall over the past year. Most vessels transiting the area in the spring and fall are operated by owners commonly referred to as "snowbirds". Owners of these transitory recreational vessels are either traveling north to south towards a warmer climate in the fall or south to north towards a cooler climate in the spring which can result in frequent bridge openings due to increased vessel numbers. During the spring and fall months, the flow of recreational vessels is constant.

There were approximately 10,461 and 11,429 vessel passages occurring in 2006 and 2005, respectively, over an eight-month period (during the peak boating season from April to November) according to records furnished by the NCDOT. (See Table A)

TABLE A

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEPT	OCT	NOV	DEC
<b>BRIDGE OPENINGS FOR 2006</b>											
233	191	307	392	436	394	451	392	349	386	326	317
<b>BOAT PASSAGES FOR 2006</b>											
273	157	463	1207	1659	1538	1486	1024	921	1234	1392	481
<b>BRIDGE OPENINGS FOR 2005</b>											
218	165	313	322	441	439	474	413	327	393	331	297
<b>BOAT PASSAGES FOR 2005</b>											
294	211	532	1041	1767	1438	1639	1152	834	1302	2256	538

The final rule will facilitate pleasure vessels in navigating the AIWW, while also helping to ease vehicular traffic congestion.

#### Discussion of Comments and Changes

The Coast Guard received 10 comments to the NPRM published on May 8, 2007 (72 FR 26038). The comments included nine letters from homeowners and one written request

from the North Carolina Department of Environment and Natural Resources, Division of Coastal Management (NCDCM).

Of the nine comments received from homeowners, eight favored the proposal

to allow the bridge to open on the hour on signal for pleasure vessels from 7 a.m. to 9 p.m. year round. The remaining comment opposed the proposal. However, that comment inaccurately concluded that the proposal would change the opening schedule to "on demand" for pleasure vessels. This rule will not create an "on demand" schedule, therefore we do not consider this comment to oppose the NPRM or this final rule.

The last comment from NCDRCM contained a request that the NPRM be subject to a consistency review under the Coastal Zone Management Act. The Coast Guard response is included in the "Environment" section below.

Based on all of the comments received, we are publishing this final rule with no changes from the NPRM. Under this final rule, the draw of the S.R. 1172 Bridge will open on signal at all times for commercial vessels and on the hour on signal between 7 a.m. and 9 p.m., year-round for pleasure vessels. At all other times, the draw shall open on demand.

#### Discussion of Rule

The Coast Guard is amending 33 CFR 117.821, by revising paragraph (a)(5) for pleasure vessels to read "shall open on the hour on signal from 7 a.m. to 9 p.m." What this means is that the bridge shall only open on the hour, but that it may remain closed on certain hours if no one has requested an opening for that hour.

#### 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).

In accordance with 15 CFR part 930.35(a)(1) Negative determinations of proposed activities, we based this action on careful review of the waterway use, historical reports, and dated records seeking past impacts on coastal and natural resources around the bridge and within the surrounding areas.

#### 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 can plan their trips in accordance with the scheduled bridge openings to minimize delays.

#### 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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

#### 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 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 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. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32) (e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

The Coast Guard has determined that changing the operating schedule for the SR 1172 Bridge will not have any foreseeable effect on any coastal uses or natural resources within the coastal zone of the State of North Carolina.

#### 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 OPERATING 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. In § 117.821, paragraph (a)(5) is revised to read as follows:

#### § 117.821 Atlantic Intracoastal Waterway, Albermarle Sound to Sunset Beach.

\* \* \* \* \*

(a) \* \* \*

(5) S.R. 1172 Bridge, mile 337.9, at Sunset Beach, NC, shall open on the hour on signal between 7 a.m. to 9 p.m.

\* \* \* \* \*

Dated: December 18, 2007.

**Fred M. Rosa, Jr.,**

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

[FR Doc. E8–1476 Filed 1–28–08; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG–2007–0065 [previously published as CGD05–07–100]]

RIN 1625–AA09

#### Drawbridge Operation Regulations: Isle of Wight Bay (Sinepuxent Bay), Ocean City, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final temporary rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulations that govern the operation of the U.S. 50 Bridge across the Isle of Wight Bay (Sinepuxent Bay), at mile 0.5, in Ocean City, MD. This closure is necessary to facilitate extensive rehabilitation and to maintain the bridge's operational integrity. Vessels that can pass under the bridge without a bridge opening may do so at all times.

**DATES:** This rule is effective from 8 a.m. on Monday, January 7, 2008 until and including 5 p.m. on Thursday, February 21, 2008.

**ADDRESSES:** Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket USCG–2007–0065. The docket is available at <http://www.regulations.gov> and will include any personal information you have provided.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Sandra S. Elliott, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6557. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

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](http://www.regulations.gov). The FDMS number assigned to this rule is USCG–2007–0065.

On November 8, 2007, we published a notice of proposed rulemaking (NPRM) entitled “Drawbridge Operation Regulations: Isle of Wight Bay

(Sinepuxent Bay), Ocean City, Maryland” in the **Federal Register** (72 FR 63156). The previously assigned NPRM docket number was CGD05–07–100. We received no comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge repairs, scheduled to begin on January 7, 2008, are necessary repairs that must be performed with all due speed to assure the continued safe and reliable operation of the bridge. Any delay in making this rule effective would not be in the best interest of public safety and the marine interests that use Isle of Wight Bay (Sinepuxent Bay). We received no comments on the published NPRM, which included the effective period, indicating a need to delay the effective date of this temporary final rule.

#### Background and Purpose

Maryland Department of Transportation-State Highway Administration (MDOT) owns and operates the bascule span of the U.S. 50 Bridge, at mile 0.5, across Isle of Wight Bay (Sinepuxent Bay) in Ocean City, MD. The bridge has a vertical clearance in the closed position to vessels of 13 feet, above mean high water (vertical clearance at center of channel increased by five feet). The current regulations are outlined at 33 CFR 117.559, which require the bridge to open on signal except: From October 1 through April 30 from 6 p.m. to 6 a.m., the draw shall open if at least three hours notice is given and from May 25 through September 15 from 9:25 a.m. to 9:55 p.m., the draw shall open at 25 minutes after and 55 minutes after the hour for a maximum of five minutes to let accumulated vessels pass, except that, on Saturdays from 1 p.m. to 5 p.m., the draw shall open on the hour for all waiting vessels and shall remain in the open position until all waiting vessels pass.

The Office of Bridge Inspection and Remedial Engineering, a division under MDOT, requested a change to the existing operating drawbridge regulations to accommodate the necessary repairs. The repairs include replacing the existing north and south pinion/bull gear sets in the west bascule leaf and replacing the existing grid deck in the bascule span. To facilitate the repairs, the drawbridge will be locked in the closed-to-navigation position from 8 a.m. on Monday, January 7, 2008 until