

by mail early. For additional information on submitting comments and the rulemaking process, see the "Public Participation" heading of the **SUPPLEMENTARY INFORMATION** section of this document.

**Docket:** For access to the docket to read background documents or comments received, go to the federal eRulemaking Portal at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Richard M. Brennan, Director, Office of Interpretations and Regulatory Analysis, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S-3506, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-0051 (this is not a toll-free number). Copies of this notice may be obtained in alternative formats (Large Print, Braille, Audio Tape or Disc), upon request, by calling (202) 693-0023 (not a toll-free number). TTY/TDD callers may dial toll-free (877) 889-5627 to obtain information or request materials in alternative formats.

Questions of interpretation and/or enforcement of regulations issued by this agency or referenced in this notice may be directed to the nearest Wage and Hour Division (WHD) District Office. Locate the nearest office by calling our toll-free help line at (866) 4USWAGE ((866) 487-9243) between 8 a.m. and 5 p.m. in your local time zone, or log onto the WHD's Web site for a nationwide listing of Wage and Hour District and Area Offices at: <http://www.dol.gov/esa/contacts/whd/america2.htm>.

#### SUPPLEMENTARY INFORMATION:

##### I. Electronic Access and Filing Comments

**Public Participation:** This notice is available through the **Federal Register** and the <http://www.regulations.gov> Web site. You may also access this notice via the WHD home page at <http://www.dol.gov/esa/whd/regulations/FLSA2008.htm>. To comment electronically on federal rulemakings, go to the federal eRulemaking Portal at <http://www.regulations.gov>, which will allow you to find, review, and submit comments on federal documents that are open for comment and published in the **Federal Register**. Please identify all comments submitted in electronic form by the RIN docket number (1215-AB13). Because of delays in receiving mail in the Washington, DC, area, commenters should transmit their comments electronically via the federal eRulemaking Portal at <http://www.regulations.gov>, or submit them by mail early to ensure timely receipt prior

to the close of the comment period. Submit one copy of your comments by only one method.

##### II. Request for Comment

In the **Federal Register** of July 28, 2008 (73 FR 43654), the Department of Labor published a notice of proposed rulemaking requesting public comments on proposed revisions to update existing outdated regulatory provisions under the FLSA and the Portal Act. The proposed revisions are intended to conform the regulations to FLSA amendments passed in 1974, 1977, 1996, 1997, 1998, 1999, 2000, and 2007, a Portal Act amendment passed in 1996, and to several authoritative federal appellate court rulings that have invalidated portions of the existing regulations. Interested parties were requested to submit comments on or before September 11, 2008.

The Department has received requests to extend the period for filing public comments from representatives of the following organizations: American Federation of Labor and Congress of Industrial Organizations; National Employment Lawyers Association; National Employment Law Project; International Association of Fire Fighters; American Federation of State, County and Municipal Employees, AFL-CIO; and Service Employees International Union CTW, CLC. Because of the interest that has been expressed in this matter, the Department has decided to extend the period for submitting public comments for 15 additional days, to September 26, 2008.

Signed at Washington, DC this 18th day of August 2008.

**Victoria A. Lipnic,**

*Assistant Secretary, Employment Standards Administration.*

**Alexander J. Passantino,**

*Acting Administrator, Wage and Hour Division.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG-2008-0697]

RIN 1625-AA09

**Drawbridge Operation Regulation; Intracoastal Waterway (ICW), Barnegat Bay, Seaside Heights, NJ**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operation regulations of the S37 Bridge, at ICW mile 14.1, across Barnegat Bay at Seaside Heights, NJ. This proposal would allow the drawbridge to operate on an advance notice basis during specific times of the year. The proposed change would result in more efficient use of the bridge during months of infrequent transit.

**DATES:** Comments and related material must reach the Coast Guard on or before October 6, 2008.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG-2008-0697 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) **Online:** <http://www.regulations.gov>.

(2) **Mail:** Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(3) **Hand delivery:** Room W12-140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(4) **Fax:** 202-493-2251.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Terrance A. Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398-6587. 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:

##### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided. We have an agreement with the Department of Transportation (DOT) to use the Docket Management Facility. Please see DOT's "Privacy Act" paragraph below.

##### Submitting Comments

If you submit a comment, please include the docket number for this

rulemaking (USCG–2008–0697), indicate the specific section of this document to which each comment applies, and give the reason for each comment. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

#### Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov> at any time. Enter the docket number for this rulemaking (USCG–2008–0697) in the Search box, and click “Go>>.” You may also visit either the Docket Management Facility in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays or at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 233704–5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

#### Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation’s Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit <http://DocketsInfo.dot.gov>.

#### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management

Facility 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

The New Jersey Department of Transportation (NJDOT) is responsible for the operation of the S37 Bridge, at ICW mile 14.1, across Barnegat Bay at Seaside Heights, NJ. NJDOT requested advance notification for vessel openings from December 1 to March 31 from 8 a.m. to 11 p.m. for the drawbridge due to the infrequency of requests.

In the closed-to-navigation position, the S37 Bridge, at ICW mile 14.1, across Barnegat Bay at Seaside Heights, has a vertical clearance of 30 feet, above mean high water. The existing operating regulation for the drawbridge is set out in 33 CFR 117.733(c), which requires the bridge to open on signal except from December 1 through March 31 from 11 p.m. to 8 a.m., the draw need not be opened; from April 1 through November 30, from 11 p.m. to 8 a.m. the draw shall open if at least four hours notice is given; and from Memorial Day through Labor Day from 8 a.m. to 8 p.m., the draw need only open on the hour and half hour.

A review of the bridge logs for 2005 to 2007 supplied by NJDOT revealed that, from December 1 through March 31, between 8 a.m. to 11 p.m., the drawbridge opened for vessels a total of 5, 9, and 35 times per year, respectively. The year of 2007 was an anomaly, based on unseasonably warm weather for the winter months.

Due to the infrequency of requests for vessel openings during the winter months, NJDOT requested to change the current operating regulations from December 1 through March 31 of every year from 8 a.m. to 11 p.m. by requiring the draw span to open on signal if at least four hours notice is given.

#### Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR § 117.733(c) which governs the S37 Bridge across Barnegat Bay, at ICW mile 14.1, at Seaside Heights, NJ, by revising paragraph (c)(1) to read that from December 1 to March 31 the draw shall open on signal if at least four hours notice is given. The change is due to the infrequency of requests for vessel openings during the winter months.

#### Regulatory Analysis

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses

based on 13 of these statutes or executive orders.

#### Regulatory Planning and Review

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.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation 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 and vessels that can pass under the bridges without a bridge opening may do so at all times.

#### 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 could affect the following entities, some of which might be small entities: The owners or operators of vessels, unable to transit under the bridge, needing to transit the bridge on December 1 through March 31 from 8 a.m. until 11 p.m.

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, mariners who plan their transits in accordance with the scheduled bridge openings and/or by giving timely notice can minimize delay and vessels that can pass under the bridges without a bridge opening may continue to do so at all times.

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 effect 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 M16475.1D and the Department of Homeland Security Management Directive 5100.1, 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 preliminary determination that this action is not likely to have a significant effect on the human environment because it simply promulgates the operating regulations or procedures for drawbridges. See paragraph 32(e) of Commandant Instruction M16475.1D. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### List of Subjects in 33 CFR Part 117 Bridges.

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; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.733(c)(1) to read as follows:

#### § 117.733 New Jersey Intracoastal Waterway.

\* \* \* \* \*

(c) \* \* \*

(1) From December 1 through March 31, the draw need only open if at least four hours notice is given.

\* \* \* \* \*

Dated: July 28, 2008.

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

*Rear Admiral, United States Coast Guard,  
Commander, Fifth Coast Guard District.*  
[FR Doc. E8–19530 Filed 8–21–08; 8:45 am]

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