

## 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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

## Taking of Private Property

This rule will 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 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.

## 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 Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

## 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; Department of Homeland Security Delegation No. 0170.1.

■ 2. From, October 15, 2009 through August 31, 2010, § 117.781 is amended by suspending paragraph (c) and adding a temporary paragraph (d) to read as follows:

### § 117.781 East River.

\* \* \* \* \*

(d) The draw of the Roosevelt Island Bridge at mile 6.4, at New York City, need not open for the passage of vessel traffic from October 1, 2009 through August 31, 2010.

Dated: September 28, 2009.

**Joseph L. Nimmich,**

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

[FR Doc. E9–24744 Filed 10–14–09; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[Docket No. USCG–2009–0814]

RIN 1625–AA09

### Drawbridge Operation Regulation; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the Jordan (S337) Bridge, at AIWW mile 2.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, because the vertical-lift span has been removed.

**DATES:** This rule is effective October 15, 2009.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket, are part of docket USCG–2009–0814 and are available by going to <http://www.regulations.gov>, inserting USCG–2009–0814 in the “Keyword” box, and then clicking “Search.” This material is also available for inspection or copying at the 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,

between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District; telephone (757) 398-6222, e-mail [Waverly.W.Gregory@uscg.mil](mailto:Waverly.W.Gregory@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

The Coast Guard is issuing this final 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)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because prior removal of the bridge renders a notice and comment period unnecessary.

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**. This rule removes the regulation used for the operation of a movable bridge. Since the modification has already taken place, the removal of the regulation will not adversely affect mariners.

**Background and Purpose**

The Jordan (S337) Bridge vertical-lift span at AIWW mile 2.8, across the Elizabeth River (Southern Branch) in Chesapeake, VA, was removed on May 6, 2009, thereby eliminating the need for 33 CFR 117.997(b).

Since the vertical-lift span of the bridge has been removed, a special operating regulation for a movable bridge is unnecessary. This final rule removes the regulation regarding the Jordan (S337) Bridge.

**Discussion of Rule**

This change removes the regulation governing the operation of a movable bridge that has been removed.

This action necessitates redesignating the remaining regulations listed in 33 CFR 117.997 as (b), (c), (d), (e), (f), (g), (h), and (i) for the drawbridges at Norfolk and Western Railroad, Gilmerton (US13/460), Norfolk Southern #7 Railroad, I-64, Dominion

Boulevard (US 17), S168, Albemarle & Chesapeake Railroad, and Centerville Turnpike (SR170) along the AIWW, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.

**Regulatory Analyses**

We developed this 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 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. This rule is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS). We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS unnecessary. This rule merely removes an operating regulation for a movable bridge that has been removed. Therefore, the operating regulation is unnecessary and its removal will have a *de minimis* economic impact.

**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 will not have a significant economic impact on a substantial number of small entities. Since the bridge is no longer a movable bridge, the regulation controlling the opening and closing of the bridge is no longer necessary. Hence, this action will have no economic impact on small entities.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them

and participate in the rulemaking process.

**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 an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

**Taking of Private Property**

This rule will 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 rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminates 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 Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### 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; Department of Homeland Security Delegation No. 0170.1.

#### § 117.997 [Amended]

■ 2. In § 117.997, remove paragraph (b) and redesignate paragraphs (c) through (j) as paragraphs (b) through (i).

Dated: September 29, 2009.

**Patrick B. Trapp,**

*Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.*

[FR Doc. E9-24830 Filed 10-14-09; 8:45 am]

**BILLING CODE 4910-15-P**

#### DEPARTMENT OF HOMELAND SECURITY

##### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0896]

#### Drawbridge Operation Regulation; Three Mile Slough, Rio Vista, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eleventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the California Route 160 Drawbridge across Three Mile Slough, mile 0.1, near Rio Vista, CA. The deviation is necessary to allow Caltrans to conduct drawbridge maintenance. This deviation allows the bridge to remain in the closed-to-navigation position during the maintenance period.

**DATES:** This deviation is effective from 8 a.m. on October 15, 2009 through 4 p.m. on November 4, 2009.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG-2009-0896 and are available online by going to [www.regulations.gov](http://www.regulations.gov), inserting USCG-2009-0896 in the "Keyword" box and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays

**FOR FURTHER INFORMATION:** If you have questions on this rule, call or e-mail David H. Sulouff, Chief, Bridge Section, Eleventh Coast Guard District; 510-437-3516, [David.H.Sulouff@uscg.mil](mailto:David.H.Sulouff@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, 202-366-9826.

**SUPPLEMENTARY INFORMATION:** Caltrans requested a temporary change to the operation of the California Route 160 Drawbridge, mile 0.1, Three Mile Slough, near Rio Vista, CA. The drawbridge navigation span provides a vertical clearance of 12 feet above Mean High Water in the closed-to-navigation position. The drawbridge opens on signal as required by 33 CFR 117.5. Navigation on the waterway is commercial and recreational.

The drawbridge will be secured in the closed-to-navigation position from 8 a.m. through 4 p.m. Monday through Friday, from October 15, 2009 through November 4, 2009, to allow Caltrans to replace the industrial staircase leading to the control house. At all other times during this period the drawbridge will open on signal as required by 33 CFR 117.5. This temporary deviation has been coordinated with commercial and recreational waterway users. There is no anticipated levee maintenance during this deviation period. No objections to the proposed temporary deviation were raised.

Vessels that can transit the drawbridge, while in the closed-to-navigation position, may continue to do so at any time.

In the event of an emergency the drawbridge can be opened with 4 hours advance notice.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 01, 2009.

**S.P. Metruck,**

*Captain, U.S. Coast Guard, Acting Commander, Eleventh Coast Guard District.*

[FR Doc. E9-24831 Filed 10-14-09; 8:45 am]

**BILLING CODE 4910-15-P**