



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

**[Docket No. USCG-2017-0060]**

**RIN 1625-AA09**

### **Drawbridge Operation Regulation; Banana River, Indian Harbour Beach, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Mathers Bridge across the Banana River, mile 0.5, in Indian Harbour Beach, FL.

Inconsistent bridge openings for vessels passing through the bridge have been causing vehicle traffic backups on the roads in and around the vicinity of the bridge. This action is necessary to help reduce vehicle traffic congestion in this area. The proposed rulemaking would only allow the bridge to open for vessels at specific periods.

**DATES:** Comments and related material must reach the Coast Guard on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0060 using Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Mr. Rod Elkins with the Seventh Coast Guard District Bridge Office; telephone 305-415-6989, e-mail [rodney.j.elkins@uscg.mil](mailto:rodney.j.elkins@uscg.mil).

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

### **II. Background, Purpose and Legal Basis**

On January 12, 2017, the Brevard County Public Works Department requested the Coast Guard consider allowing the bridge to not open for vessels except every 30 minutes on the hour and half hour. The County conducted traffic studies and reviewed bridge logs which showed the change would alleviate vehicle traffic without adversely affecting vessel traffic. The data supporting the request will be included in the electronic docket for this proposed rulemaking.

Mathers Bridge across Banana River, mile 0.5, at Indian Harbour Beach, FL is a swing bridge. It has a vertical clearance of 7 feet at mean high water in the closed position and a horizontal clearance of 74 feet and 81 feet. Presently, in accordance with 33 CFR 117.263, the Mathers Bridge is required to open on signal for the passage of vessels except that, from 10 p.m. to 6 a.m. Monday through Friday except Federal holidays, the draw shall open on signal if at least two hours notice is given.

### **III. Discussion of Proposed Rule**

The Coast Guard proposes to modify the operating schedule that governs the Mathers Bridge across the Banana River, mile 0.5, in Indian Harbour Beach, FL.

This proposed rule would implement regulations for the bridge to only open for vessels

requesting passage through the bridge on the hour and half hour, from 6:00 a.m. to 10:00 p.m., on Sunday through Thursday. On Fridays, Saturdays and all Federal Holidays, the bridge will only open for vessels requesting passage through the bridge on the hour and half hour. At all other times, the bridge shall open on signal if at least two hours notice is given.

#### **IV. Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on these statutes and Executive orders and we discuss First Amendment rights of protestors.

##### **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. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

The Coast Guard has determined that this NPRM is not a significant regulatory action because of the minimal impact to vessels on the waterway; as the bridge will have an opening every 30 minutes to allow vessel traffic to pass. Additionally, vessels that can transit under the bridge without an opening may do so.

##### **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 proposed 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 IV.A above this proposed 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 rulemaking 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 rulemaking would economically affect it.

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. If the proposed 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**, above. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. 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.).

D. Federalism and Indian Tribal Government

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 proposed 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 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### F. Environment

We have analyzed this proposed 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 made a preliminary determination 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 proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

### **V. 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 eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the *Federal Register* (70 FR 15086).

Documents mentioned in this proposed rule, and all public comments, are in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

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. Amend §117.263 by revising paragraph (a) to read as follows:

§ 117.263 Banana River

(a) The draw of the Mathers Bridge, mile 0.5, at Indian Harbour Beach, will operate in accordance with the following schedule:

(1) Sundays through Thursdays, between 6 a.m. and 10 p.m., the draw will open on signal, on the hour and on the half hour.

(2) Fridays, Saturdays, and Federal holidays, 24 hours a day, the draw will open on signal, on the hour and on the half hour.

(3) At all other times, the bridge shall open on signal if at least two hours notice is given.

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Dated: April 7, 2017.

**S. A. Buschman,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, Seventh Coast Guard.*

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