



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2016-0205

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Coronado Beach (George Musson) Bridge across the Atlantic Intracoastal Waterway, mile 845, at New Smyrna Beach, FL. This rule will change the existing 20 minute opening schedule to a 30 minute opening schedule between 7 a.m. and 7 p.m. The rule will also add the local bridge name to the regulation published in the Code of Federal Regulations, George Musson/Coronado Beach (SR44).

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0205 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Eddie Lawrence with the Coast Guard; telephone 305-415-6946, email

Eddie.H.Lawrence@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| E.O. | Executive order |
| FR | Federal Register |
| NPRM | Notice of proposed rulemaking |
| SNPRM | Supplemental notice of proposed rulemaking |
| Pub. L. | Public Law |
| § | Section |
| U.S.C. | United States Code |

II. Background Information and Regulatory History

On May 10, 2016, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, New Smyrna Beach, FL in the Federal Register (81 FR 28791). We received 5 comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499.

George Musson/Coronado Beach (SR 44) bridge, mile 845 at New Smyrna Beach is a bascule bridge with a vertical clearance of 24 feet in the closed position and unlimited in the open position. Per 33 CFR 117.261(h), the current operating schedule states the bridge shall open on signal, except that from 7 a.m. until 7 p.m., each day of the week, the draw need only open on the hour, twenty minutes past the hour and forty minutes past the hour.

On April 25, 2015, the City of New Smyrna Beach requested the Coast Guard review the current operating schedule for the Coronado Beach (George Musson) Bridge (SR 44) to determine whether a change could be made to improve vehicle traffic flow in the area. The bridge owner, Florida Department of Transportation, was also consulted on this issue and it

concurrent with the recommendation to change the current schedule, from an opening every 20 minutes to an opening every 30 minutes; every day of the week.

This regulatory action determination is based on the limited impact that it will have on vessel traffic on the Atlantic Intracoastal Waterway. This rule changes the opening schedule from three times an hour to two times an hour. The bridge logs show that the Bridge generally only opens twice an hour already because vessel traffic volumes do not require three openings per hour. Therefore, there should be no actual change to the number of bridge openings per hour. Also, vessels that can transit under the bridge without an opening may do so at any time. Emergency vessels and tugs with tows can still request openings at any time.

IV. Discussion of Comments, Changes and the Final Rule

There were five comments received during the comment period. Three commenters were in favor of the proposed rule and two commenters were opposed the proposed changes. These two commenters stated that changing the bridge schedule would not alleviate the City's traffic problems, and might impact vessel traffic during peak transient seasons. The Coast Guard agrees in part that in the majority of cases, a change to a bridge regulation will not solve a traffic problem. However, the purpose of the final rule is to balance the needs of all modes of transportation. As this bridge opens mostly two times an hour rather than the permitted three times an hour now, this will be a minor adjustment for vessel traffic. For these reasons, no changes have been made to the final rule.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below, we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

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 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the continued ability for vessels to transit the bridge during the twice-an-hour opening schedule. Vessels in distress, Public vessels of the United States and tugs with tows must be passed at any time.

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 received no comments from the Small Business Administration on this rule. 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.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this final rule would not have a significant economic impact on any vessel owner or operator as there are generally only two

openings an hour currently. This regulation changes the schedule from three times an hour to twice an hour.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. 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 the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). 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.

C. 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).

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 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 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.

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

F. 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 made a 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

rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not required for this 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.

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. Revise §117.261(h) to read as follows:

§ 117.261 Atlantic Intracoastal Waterway from St. Marys River to Key Largo.

* * * * *

(h) *George Musson/Coronado Beach (SR 44) bridge, mile 845 at New Smyrna Beach.*

The George Musson/Coronado Beach (SR 44) bridge, mile 845, shall open on signal, except that from 7 a.m. to 7 p.m., the draw shall open on the hour and half-hour, seven days a week.

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Dated: August 1, 2017

P. J. Brown,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District

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