



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2018-0729

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the A1A North Causeway Bridge across the Atlantic Intracoastal Waterway (AICW), mile 964.8 at Fort Pierce, St Lucie County, FL. This proposed action would eliminate the on-demand drawbridge openings. This proposed action is intended to reduce vehicular traffic congestion and provide scheduled openings for the bridge.

DATES: Comments and related material must reach the Coast Guard on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: You may submit comments identified by docket number USCG-2018-0729 using Federal e-Rulemaking 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 LT Samuel Rodriguez-Gonzalez, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4307, e-mail Samuel.Rodriguez-Gonzalez@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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|--------|---|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | <i>Federal Register</i> |
| OMB | Office of Management and Budget |
| NPRM | Notice of Proposed Rulemaking (Advance, Supplemental) |
| § | Section |
| U.S.C. | United States Code |
| AICW | Atlantic Intracoastal Waterway |
| FL | Florida |
| FDOT | Florida Department of Transportation |

II. Background, Purpose and Legal Basis

The Florida Department of Transportation (FDOT), who owns and operates the A1A North Causeway Bridge, has requested a rule to allow for scheduled drawbridge openings. There has been an increase in vehicular traffic over the bridge in recent years due to residential development along the beach.

The existing A1A North Causeway Bridge across the AICW, mile 964.8 in Fort Pierce, St Lucie County, FL is a bascule bridge. It has a vertical clearance of 26 feet at mean high water in the closed position and a horizontal clearance of 90 feet. The bridge currently operates under 33 CFR 117.5.

On August 30, 2018, the Coast Guard published a Test Deviation entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL in the *Federal Register* (83 FR 44233). We received 113 comments.

During the test, the majority of comments received were in support of scheduled openings. However, most felt that the bridge was still opening too frequently. A review of the bridge tender logs did not support the claim that the bridge was opening too frequently. The logs did show, however, that openings tended to be twice per hour as opposed to three times per hour. In addition, the majority of comments recommended scheduled openings during the evening and on weekends.

In response to all of the comments from the original Test Deviation, on March 21, 2019, the Coast Guard published an alternate Test Deviation entitled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Fort Pierce, FL in the *Federal Register* (84 FR 10411). This test deviation was issued to determine if an alternate operating schedule to the previous test deviation is appropriate to better balance the needs of marine and vehicle traffic. We received 33 comments.

During this test, all comments were in favor of the alternate operating schedule that included around the clock scheduled weekday and weekend openings.

III. Discussion of Proposed Rule

The proposed rule will allow the drawbridge to be placed on a regular operating schedule. Under this proposed regulation, the draw of the A1A North

Causeway Bridge would open on the hour and half-hour.

This proposed change would still allow vessels that can transit under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. Vessels in distress, public vessels of the United States, and tugs with tows must be passed at any time.

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 13771 directs agencies to control regulatory costs through a budgeting process. 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 (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge twice an hour, and vessels that can transit under the bridge without an opening may do so at any time. Vessels in distress, public vessels of the United States and tugs with tows will be allowed to pass 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 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 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.

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 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 rule under Department of Homeland Security Management Directive 023-01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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.

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, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be 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; DHS Delegation No. 0170.1.

2. Amend § 117.261 by adding paragraph (n) to read as follows:

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

Largo.

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(n) *AIA North Causeway Bridge, mile 964.8 at Fort Pierce.* The draw shall open on the hour and half-hour.

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Dated: July 22, 2019.

Eric C. Jones,

Rear Admiral, U. S. Coast Guard,

Commander Seventh Coast Guard District.

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