



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2020-0658]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the 63<sup>rd</sup> Street Bridge, across Indian Creek, mile 4.0, at Miami Beach, Florida. A request was made to place the drawbridge on a weekend operating schedule to alleviate vehicle congestion due to on-demand bridge openings. This proposed change would place the bridge on an operating schedule during the weekend at specified times. The Coast Guard is seeking comments from the public regarding this proposed change.

**DATES:** Comments and relate material must reach the Coast Guard on or before [INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0658 using Federal e-Rulemaking Portal at <https://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, U.S. Coast Guard, Sector

Miami Waterways Management Division; telephone 305-535-4307, e-mail

Samuel.Rodriguez-Gonzalez@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

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

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FL	Florida
FDOT	Florida Department of Transportation
LNM	Local Notice to Mariners

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

The 63<sup>rd</sup> Street Bridge across Indian Creek, mile 4.0, at Miami Beach, Florida is a double-leaf bascule bridge with an 11 foot vertical clearance at mean high water in the closed position. Navigation on the waterway is commercial and recreational.

A private citizen, with the support from the bridge owner, Florida Department of Transportation (FDOT), requested the Coast Guard consider changing the drawbridge schedule due to an increase in vehicle traffic during the weekends. The operating schedule for the bridge is set forth in 33 CFR 117.293.

On December 3, 2020, the Coast Guard published a Test Deviation entitled “Drawbridge Operation Regulation; Indian Creek, Miami Beach, FL” in the **Federal Register** (85 FR 77994). We received 31 comments.

Twenty-two comments were in favor of the proposed changes. The majority of commenters felt that placing the bridge on a specified operating schedule during the weekend eased vehicle traffic in a congested area and allowed for residents to plan outings accordingly. One commenter was in favor of the proposed weekend schedule but asked if the bridge opened all hours of the day and night. All bridges operate 24 hours a

day, either on-demand or on a published schedule. One commenter in support of the proposed change stated the Coast Guard should monitor the no wake situation in Indian Creek during the weekends. The Florida Fish and Wildlife Conservation Commission (FWC) is responsible for enforcing state boating rules and regulations. One commenter was in favor of the proposed schedule but felt that Federal holidays and the weekday curfew should not be included. The proposed change does not include Federal holidays nor will a curfew be added during the weekend.

Six comments were in favor of the proposed change but requested additional weekend restrictions be placed on the operation of the bridge. The additional restrictions included adding the weekday curfew, opening once an hour for vessels, adding a toll for vessels, extending the hours of the proposed schedule and removing the on-demand openings completely. The Coast Guard made the determination that adding additional restrictions on the bridge does not meet the reasonable needs of navigation for this area. Vessels have only one way to transit through Indian Creek at this location. Other modes of transportation have alternate routes to travel around this waterway.

One commenter submitted comments in favor of the proposed changes but is not in favor of including the weekday curfew during the weekend. This commenter was traversing the waterway after the Test Deviation was implemented and was unreasonably delayed by the draw tender. The draw tender was not following the Coast Guard approved Test Deviation. This error was corrected without further incident.

One commenter stated they needed to know the schedule of the bridge. The schedule for the bridge is published in 33 CFR 117.293 and the Test Deviation for the proposed changes was published in the regulation they were commenting on as well as in the Local Notice to Mariners (LNM).

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

The proposed rule will allow the drawbridge to operate on a more predictable

weekend schedule. Under this proposed regulation change, the draw of the 63<sup>rd</sup> Street Bridge would provide twice an hour openings from 7:00 a.m. to 7:00 p.m. on Saturdays and Sundays, while maintaining the weekday schedule and curfew hours. On Federal holidays and at all other times not designated, the bridge will operate on-demand. These proposed changes will improve the flow of vehicle traffic while meeting the reasonable needs of navigation.

This proposed change would still allow vessels that are capable of transiting 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 and public vessels of the United States must be allowed to pass 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 the fact that vessels can continue to transit the bridge at designated times throughout the day and vessels that can transit under the bridge without an opening may do so 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 (Public Law 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 section. 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 Governments*

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.

*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, Rev.1, associated implementing instructions, and Environmental

Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). The Coast Guard has determined that this action is one of a category of actions that does not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 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. 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 <https://www.regulations.gov>. If your material cannot be submitted using <https://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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://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; and Department of Homeland Security Delegation No. 0170.1.

2. Amend §117.293 by revising the introductory text and paragraph (a) to read as follows:

#### **§ 117.293 Indian Creek.**

The draw of the 63<sup>rd</sup> Street Bridge across Indian Creek, mile 4.0 at Miami Beach, shall open on signal except that:

- (a) From 7:00 a.m. to 7:00 p.m., except Federal holidays, the draw need open only on the hour and half-hour.

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Dated: March 25, 2021.

Eric C. Jones,  
Rear Admiral, U. S. Coast Guard,  
Commander Seventh Coast Guard District.  
[FR Doc. 2021-07430 Filed: 4/9/2021 8:45 am; Publication Date: 4/12/2021]