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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0601]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway; West Palm Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Flagler Memorial (SR A1A) Bridge, mile 1021.8, the Royal Park (SR 704) Bridge, mile 1022.6, and the Southern Boulevard (SR 700/80) Bridge, mile 1024.7, across Atlantic Intracoastal Waterway (AICW), at West Palm Beach, FL. Palm Beach County and the communities surrounding the bridges have requested the Coast Guard consider placing additional weekday restrictions during peak traffic hours to assist with alleviating vehicle congestion. This proposed modification will allow the drawbridges to operate in concert and determine whether a permanent change to the schedules is needed. We invite your comments on this proposed rulemaking.

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-2023-0601 using Federal Decision Making 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. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone (571) 607-5951, email Jennifer.N.Zercher@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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
FL	Florida
TD	Temporary Deviation
AICW	Atlantic Intracoastal Waterway

II. Background, Purpose and Legal Basis

The Flagler Memorial (SR A1A) Bridge, across the AICW, mile 1021.8, at West Palm Beach, FL is a double-leaf bascule bridge with a 24-foot vertical clearance at mean high water in the closed position. The normal operating schedule is set forth in 33 CFR 117.261(u). The Royal Park (SR 704) Bridge, across the AICW, mile 1022.6, at West

Palm Beach, FL is a double-leaf bascule bridge with a 21-foot vertical clearance at mean high water in the closed position. The normal operating schedule is set forth in 33 CFR 117.261(v). The Southern Boulevard (SR 700/80) Bridge, across the AICW, mile 1024.7, at West Palm Beach, FL is a double-leaf bascule bridge with a 25-foot vertical clearance at mean high water in the closed position. The normal operating schedule is set forth in 33 CFR 117.261(w).

On July 31, 2023, the Coast Guard published a temporary deviation entitled “Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, West Palm Beach, FL” in the *Federal Register* (88 FR 49287). That temporary deviation, effective from 12:01 a.m. on August 1, 2023, through 11:59 p.m. on January 22, 2024, allows Flagler Memorial Bridge to operate a restricted opening schedule during peak traffic hours in the morning and evening. The comment period ended September 29, 2023, with 529 comments received.

Most of the comments received during the temporary deviation request for comments for the Flagler Memorial Bridge were in favor of the temporary deviation. A total of 380 comments supported the deviation and included generic comments, such as “I support” or “I support this initiative.” The second highest group included 64 comments that were either outside the scope of temporary deviation or did not provide an opinion. Instead, comments were given on the adjacent drawbridges and school zones in the area. These comments were not considered actionable as they were not associated to the temporary deviation. Next, 63 commentors proposed alternate operating schedules. Those proposed alternate schedules included not opening during rush hour, or only open once an hour and at various morning and afternoon rush hour times. The designated times

included in the rule proposal to allow the drawbridge to open on the hour during rush hour was previously determined by local authorities. The Coast Guard feels that a modification to those time periods is not necessary because the blocks of time presented have been determined to be the best use of hourly openings. To allow the drawbridge to remain closed to navigation during the designated times or to only open once an hour would result in an unreasonable obstruction to navigation on this waterway. The AICW is a Federal Project Waterway extending over 1500 miles from Boston to Florida Bay. It is the main waterway artery for all recreational and commercial traffic that are unable to safely transit offshore. The Coast Guard has the responsibility to ensure reasonable access to this waterway is maintained. Allowing the Flagler Memorial Bridge to remain closed to navigation of would be contrary to our responsibility. Finally, 10 comments were received which were against the proposed change. The main concern is that the bridge openings will be longer in duration during the hourly openings. An effect of limiting drawbridge openings is the possibility of longer openings to allow all vessels to safely pass. This may or may not occur. However, vehicles have alternate routes across the waterway that they may use if the bridge is open to navigation. The only alternate route available to vessels is open ocean, which may not be safe or reasonable to navigation. Another concern is that more vessels will be waiting for an opening which may cause conditions that are hazardous to navigation. Mariners must constantly maneuver and move to maintain control of their vessels, whereas vehicles are stationary while waiting for drawbridges. There are areas on either side of the bridge for mariners to maintain control of their vessels during the bridge openings. The Coast Guard understands this concern and we feel this is the reason for not allowing the bridge to

remain closed to navigation but allow for hourly openings at the designated times and then twice an hour all other times. There were also 12 comments that were duplicate and not considered actionable.

III. Discussion of Proposed Rule

Under this proposed rule, the Flagler Memorial (SR A1A), the Royal Park (SR 704), and the Southern Boulevard (SR 700/80) Bridges will open hourly during pre-designated times. Vehicle traffic across these bridges is exceeding the roadway capacity during certain times of the day. The Coast Guard is proposing to limit drawbridge openings during high vehicle traffic times to assist with vehicle congestion while requesting state and local agencies consider alternate mitigation measures to improve traffic flow and roadway congestion. The drawbridges will open twice an hour at all other times or as outlined in each drawbridge operating regulation. Vessels that can pass beneath the bridge without an opening may do so 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.

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. This proposed rule has not been designated a “significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM

has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge during the designated times and vessels able to pass 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 (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 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 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 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.

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.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2023-0601 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. 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.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, 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 of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> 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).

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. Revision No.01.3

2. Amend § 117.261 by revising paragraphs (u)(1), (v)(1), and (w)(1) to read as follows:

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

(u) Flagler Memorial (SR A1A) Bridge, mile 1021.8, at West Palm Beach.

(1) The draw will open on the quarter and three-quarter hour, except that Monday through Friday (except Federal holidays) from 7:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m., the draw need only open on the quarter hour.

(v) Royal Park (SR 704) Bridge, mile 1022.6, at West Palm Beach.

(1) The draw will open on the hour and half hour, except that Monday through Friday (except Federal holidays) from 7:29 a.m. to 9:01 a.m. and from 4:01 p.m. to 6:01 p.m., the draw need only open on the three-quarter hour.

(w) Southern Boulevard (SR 80) Bridge, mile 1024.7, at West Palm Beach.

(1) The draw will open on the quarter and three-quarter hour, except that Monday through Friday (except Federal holidays) from 7:30 a.m. to 9:00 a.m. and from 4:00 p.m. to 6:00 p.m., the draw need only open on the quarter hour.

Dated: May 14, 2024.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard,

Commander, Coast Guard Seventh District.

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