

**§ 71.1 [Amended]**

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019, is amended as follows:

*Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

\* \* \* \* \*

**AAL AK E5 Sleetmute, AK [New]**

Sleetmute Airport, AK

(Lat. 61°42'02" N, long. 157°09'57" W)

That airspace extending upward from 700 feet above the surface within 6 miles of the Sleetmute Airport, Sleetmute Alaska; and that airspace 2 miles each side of the 166° bearing from the airport extending from the 6-mile radius to 19 miles south of the Sleetmute Airport.

Issued in Seattle, Washington, on April 23, 2020.

**Shawn M. Kozica,**

*Group Manager, Operations Support Group, Western Service Center.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2020-0052]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Long Creek, Nassau, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Loop Parkway Bridge across Long Creek, mile 0.7 at Nassau, New York. The bridge owner, New York State Department of Transportation (NYSDOT), submitted a request to modify bridge openings and expects that this change to the regulations will better serve the needs of the community while continuing to meet the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before June 1, 2020.

**ADDRESSES:** You may submit comments identified by docket number USCG-2020-0052 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 email Ms. Stephanie E. Lopez, First Coast Guard District, Project Officer, telephone 212-514-4335, email [Stephanie.E.Lopez@uscg.mil](mailto:Stephanie.E.Lopez@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
OMB Office of Management and Budget  
NPRM Notice of Proposed Rulemaking (Advance, Supplemental)  
§ Section  
U.S.C. United States Code

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

The Loop Parkway Bridge at mile 0.7, across Long Creek, Nassau, New York, has a vertical clearance of 21 feet at mean high water and 25 at mean low water. Horizontal clearance is approximately 75.5 feet. The waterway users include recreational and commercial vessels including fishing vessels.

The existing drawbridge operating regulations are listed at 33 CFR 117.799(f).

In 2005, the owner of the bridge, New York State Department of Transportation, requested a temporary test deviation for an alternate drawbridge operation regulation; however, it was never followed up with a rulemaking. The bridge owner assumed since the temporary test deviation was a success, new signage reflecting the temporary deviation was installed and the bridge has been operating under that temporary test deviation for the past 15 years. After a recent construction operation commenced, the bridge operator began operating the bridge under the existing regulation. USCG Sector Long Island Sound received several complaints from mariners who were upset the bridge was no longer operating under the old temporary test deviation. We have implemented a new temporary test deviation for this proposed rule change. Based on the data that was provided by the bridge owner, the number of requested bridge openings has decreased over the years, while the vehicular traffic has increased. The schedule restricts bridge openings during vehicular rush hours, allowing openings twice per hour. This schedule allows less congestion buildup of vehicular traffic while providing

mariners with a reliable, consistent time they can request a bridge opening.

##### III. Discussion of Proposed Rule

The proposed rule provides for commercial vessels engaged in commerce, the draw shall open Monday thru Friday from 6:20 a.m. to 9:50 a.m. and 3:20 p.m. to 7:20 p.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times. For all other vessels, the draw shall open on Monday thru Friday from 6:20 a.m. to 7:20 a.m. on signal at 20 and 50 minutes after the hour, and the draw shall open on Saturday, Sunday and Federal Holidays from 7:20 a.m. to 8:20 a.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times. The reason for these changes is to minimize excessive bridge openings which were a direct cause of accelerated deterioration of the bridge.

##### 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 given advanced notice.

###### 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** 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 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.

#### 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, 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 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.

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 <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; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.799(f) to read as follows:

#### § 117.799 Long Island, New York Inland Waterway from East Rockaway Inlet to Shinnecock Canal.

\* \* \* \* \*

(f) The draw of the Loop Parkway Bridge across Long Creek, mile 0.7, shall open for commercial vessels engaged in commerce, the draw shall open Monday thru Friday from 6:20 a.m. to 9:50 a.m. and 3:20 p.m. to 7:20 p.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times. For all other vessels, the draw shall open on Monday thru Friday from 6:20 a.m. to 7:20 p.m. on signal at 20 and 50 minutes after the hour, and the draw shall open on

Saturday, Sunday and Federal Holidays from 7:20 a.m. to 8:20 p.m. on signal at 20 and 50 minutes after the hour, and on signal at all other times.

\* \* \* \* \*

Dated: April 21, 2020.

**A.J. Tiongson,**  
Rear Admiral, U.S. Coast Guard, Commander,  
First Coast Guard District.

[FR Doc. 2020-08803 Filed 4-29-20; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

#### 36 CFR Parts 1 and 13

[NPS-AKRO-29973; PPAKAKROZ5,  
PPMPRL1Y.L00000]

**RIN 1024-AE63**

#### National Park Service Jurisdiction in Alaska

**AGENCY:** National Park Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** This rule would revise National Park Service regulations to comply with the decision of the U.S. Supreme Court in *Sturgeon v. Frost*. In the *Sturgeon* decision, the Court held that National Park Service regulations apply exclusively to public lands (meaning federally owned lands and waters) within the external boundaries of National Park System units in Alaska. Lands which are not federally owned, including submerged lands under navigable waters, are not part of the unit subject to the National Park Service's ordinary regulatory authority.

**DATES:** Comments on the proposed rule must be received by June 29, 2020.

**ADDRESSES:** You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE63, by either of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov> and search for "1024-AE63". Follow the instructions for submitting comments.

(2) *By hard copy:* Mail or hand deliver to: National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

*Instructions:* Comments will not be accepted by fax, email, or in any way other than those specified above. All submissions received must include the words "National Park Service" or "NPS" and must include the RIN 1024-AE63 for this rulemaking. Bulk comments in any format (hard copy or electronic) submitted on behalf of others

will not be accepted. Comments received may be posted without change to [www.regulations.gov](http://www.regulations.gov), including any personal information provided.

*Docket:* For access to the docket to read background documents or comments received, go to [www.regulations.gov](http://www.regulations.gov) and search for "1024-AE63".

#### FOR FURTHER INFORMATION CONTACT:

Donald Striker, Acting Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644-3510. Email: [AKR\\_Regulations@nps.gov](mailto:AKR_Regulations@nps.gov).

#### SUPPLEMENTARY INFORMATION:

##### Background

##### *Sturgeon v. Frost*

In March 2019, the U.S. Supreme Court in *Sturgeon v. Frost* (139 S. Ct. 1066, March 26, 2019) unanimously determined the National Park Service's (NPS) ordinary regulatory authority over National Park System units in Alaska only applies to federally owned "public lands" (as defined in section 102 of the Alaska National Interest Lands Conservation Act, 16 U.S.C. 3102)—and not to State, Native, or private lands—irrespective of unit boundaries on a map. Lands not owned by the federal government, including submerged lands beneath navigable waters, are not deemed to be a part of the unit (slip op. 17). More specifically, the Court held that the NPS could not enforce a System-wide regulation prohibiting the operation of a hovercraft on part of the Nation River that flows through the Yukon-Charley Rivers National Preserve (Preserve). A brief summary of the factual background and Court opinion follow, as they are critical to understanding the purpose of this proposed rule.

The Preserve is a conservation system unit established by the 1980 Alaska National Interest Lands Conservation Act (ANILCA) and administered by the NPS as a unit of the National Park System. The State of Alaska owns the submerged lands underlying the Nation River, a navigable waterway. In late 2007, John Sturgeon was using his hovercraft on the portion of the Nation River that passes through the Preserve. NPS law enforcement officers encountered him and informed him such use was prohibited within the boundaries of the Preserve under 36 CFR 2.17(e), which states that "[t]he operation or use of a hovercraft is prohibited." According to NPS regulations at 36 CFR 1.2(a)(3), this rule applies to persons within "[w]aters subject to the jurisdiction of the United States located within the boundaries of

the National Park System, including navigable waters" without any regard to ownership of the submerged lands. See 54 U.S.C. 100751(b) (authorizing the Secretary of the Interior to regulate "boating and other activities on or relating to water located within System units").

Mr. Sturgeon disputed that NPS regulations could apply to his activities on the Nation River, arguing that the river is not public land and is therefore exempt from NPS rules pursuant to ANILCA section 103(c) (16 U.S.C. 3103(c)), which provides that only the public lands within the boundaries of a System unit are part of the unit, and that State-owned lands are exempt from NPS regulations, including the hovercraft rule. Mr. Sturgeon appealed his case through the federal court system.

In its March 2019 opinion, the Court agreed with Mr. Sturgeon. The questions before the Court were: (1) Whether the Nation River in the Preserve is public land for the purposes of ANILCA, making it indisputably subject to NPS regulation; and (2) if not, whether NPS has an alternative source of authority to regulate Mr. Sturgeon's activities on that portion of the Nation River. The Court answered "no" to both questions.

Resolution turned upon several definitions in ANILCA section 102 and the aforementioned section 103(c). Under ANILCA, 16 U.S.C. 3102, "land" means "lands, waters, and interests therein"; "Federal land" means "lands the title to which is in the United States"; and "public lands" are "Federal lands," subject to several statutory exclusions that were not at issue in the *Sturgeon* case. As such, the Court found "public lands" are "most but not quite all [lands, waters, and interests therein] that the Federal Government owns" (slip op. 10). The Court held that the Nation River did not meet the definition of "public land" because: (1) "running waters cannot be owned"; (2) "Alaska, not the United States, has title to the lands beneath the Nation River"; and, (3) federal reserved water rights ("not the type of property interests to which title can be held") do not "give the Government plenary authority over the waterway" (slip op. 12-14).

Regarding the second question, the Court found no alternative basis to support applying NPS regulations to Mr. Sturgeon's activities on the Nation River, concluding that, pursuant to ANILCA section 103(c), "only the federal property in system units is subject to the Service's authority" (slip op. 19). As stated by the Court, "non-federally owned waters and lands inside system units (on a map) are declared outside them (for the law). So those