

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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

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.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under 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 concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ 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(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of P. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. on April 1 to 6 p.m. on July 1, 2004, add temporary § 117.T1102 to read as follows:

§ 117.T1102 Sturgeon Bay Ship Canal.

The draw of the Bayview bridge, mile 0.3 at Sturgeon Bay, shall operate as follows:

(a) Between the hours of 6 a.m. and 6 p.m., Monday through Friday, the bridge shall open once an hour, on the hour, for recreational vessels. (b) Commercial vessels shall provide at least 2-hours advance notice prior to passage. (c) Public vessels shall be passed at all times.

Dated: February 25, 2004.

R. F. Silva,

Rear Admiral, Coast Guard Commander, Ninth Coast Guard District.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–011]

Drawbridge Operation Regulations; Ocean Springs, MS

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. This deviation allows the bridge to remain closed to navigation from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004. The deviation is necessary to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the drawbridge. **DATES:** This deviation is effective from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004.

ADDRESSES: Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Mississippi Department of Transportation has requested a temporary deviation in order to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. The replacement of the old flooring plates and alignment of the speed reducer is necessary for the continued safe operation of the draw span of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position continuously

from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004.

Presently the bridge opens on signal except that from 6:30 a.m. to 7:05 a.m., 7:20 a.m. to 8:05 a.m., 4 p.m. to 4:45 p.m. and 4:55 p.m. to 5:30 p.m., Monday through Friday except holidays, the draw need not open for the passage of vessels.

The bascule span bridge has a vertical clearance of 14 feet above mean high water, elevation 1.75 feet Mean Sea Level in the closed-to-navigation position. Navigation at the site of the bridge consists mainly of commercial fishing vessels, tugs with barges in tow and various sizes and types of recreational pleasure craft including sailing vessels. Bridge tender logs show that in February, 2003 the bridge was opened 120 times to pass navigation, an average of 4 times per day. In March, 2003 it was opened 164 times to pass navigation, an average of 5.4 times per day. The bridge will not be able to open for emergencies during the closure period. Alternate routes are not available.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: February 23, 2004.

Bradford W. Black,

Captain, U.S. Coast Guard, Acting Bridge Administrator.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-02-147]

RIN 1625-AA09

Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, Mile 1059.0, Lauderdale-by-the-Sea, Broward County, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing the operation of the Commercial Boulevard Bridge (SR 870), Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Florida. This rule requires the bridge to open on

signal, except that from 7 a.m. to 6 p.m. each day of the week, the bridge need only open on the hour, twenty minutes past the hour and forty minutes past the hour. This action is intended to improve vehicular traffic movement while not unreasonably interfering with vessel traffic movement.

DATES: This rule is effective April 5, 2004.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07-02-147] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, Florida 33131 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Bridge Branch, Seventh District maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Project Manager, Seventh Coast Guard District, Bridge Branch, (305) 415-6744.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 18, 2003, we published a temporary deviation (TD) entitled Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, Florida in the **Federal Register** (67 FR 11919). We received 38 letters commenting on the temporary deviation. No public meeting was requested, and none was held. On February 28, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulations; Commercial Boulevard Bridge (SR 870), Atlantic Intracoastal Waterway, mile 1059.0, Lauderdale-by-the-Sea, Broward County, Florida in the **Federal Register** (68 FR 9609). We received three letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The City of Fort Lauderdale requested a change in regulations governing the operation of the Commercial Boulevard Bridge (SR 870) to ease vehicular traffic congestion approaching the bridge and in the surrounding beachside intersections and roadways. Commercial Boulevard is congested in this area due to an abundance of condominiums on the beach and an increase of non-seasonal tourism. The existing regulations for this bridge are published in 33 CFR 117.261(ee) and require the bridge to open on signal, except that,

from November 1 through May 15, from 8 a.m. to 6 p.m., Monday through Friday, the draw need only open on the hour, quarter-hour, half-hour, and three-quarter hour, and from 8 a.m. to 6 p.m. on Saturday, Sunday, and Federal holidays, the draw need open only on the hour, twenty minutes after the hour, and forty minutes after the hour. The bridge has a vertical clearance of 15 feet and a horizontal clearance of 90 feet. This rule will improve vehicular traffic movement by placing the bridge on a twenty minute schedule from 7 a.m. to 6 p.m., each day of the week.

Discussion of Comments and Changes

We received thirty-eight comments on the temporary deviation; thirty-one were in favor of the twenty minute schedule, and seven comments requested that the schedule be changed to an hour and half-hour schedule. We also received three comments on the notice of proposed rulemaking, which were all in favor of the twenty minute schedule.

We have carefully considered the comments and decided not to change the proposed rule. A thirty minute schedule is not practicable as vessels would experience a greater delay in traversing the waterway, especially due to other bridge operating schedules in the area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary, because the rule provides for regularly scheduled openings and only differs from the current operating schedule by several minutes per opening per hour.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.