



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0719]

RIN 1625-AA09

Drawbridge Operation Regulation; Biscayne Bay, Miami Beach, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the East Venetian Causeway Bridge across Miami Beach Channel, Miami-Dade County, Florida. For approximately nine months, the West Venetian Causeway Bridge will remain in the open position to complete necessary repairs. This rule will temporarily authorize the fulltime closure of the East Venetian Causeway Bridge to ensure that vehicular traffic will be able to access and depart from the Venetian Causeway while emergency repairs are completed.

DATES: This temporary final rule is effective from 7 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 7 p.m. on February 28, 2016.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0719]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary final rule, call or e-mail Robert Glassman at telephone 305-415-6746, e-mail Robert.S.Glassman@uscg.mil. If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking
§	Section Symbol
U.S.C.	United States Code

A. Regulatory History and Information

On September 11, 2014, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulation; Biscayne Bay, Miami Beach, FL" in the Federal Register (79 FR 54241-54244). We received 13 comments on the proposed rule. No public meeting was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register. This provision authorizes an agency to make a rule effective less than 30 days after publication in the Federal Register when the agency for good cause finds that delaying the effective period for 30 days or more is "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the Federal Register because the East Venetian Causeway Bridge experienced a mechanical failure that prevents it from being opened. Therefore, it is impracticable to make this rule effective 30 days or more after publication in the Federal Register.

B. Basis and Purpose

The East Venetian Causeway Bridge connects Rivo Alto Island and the four Venetian Causeway islands east of Miami to Belle Isle and Miami Beach, Florida. The vertical clearance of

the East Venetian Causeway Bridge is five feet above mean high water and the horizontal clearance is 57 feet between fenders.

Emergency repairs are required on both the East Venetian Causeway Bridge and the West Venetian Causeway Bridge. This rule will allow repairs to be completed on both bridges while minimizing impacts on vehicular and waterway traffic.

On August 12, 2014, the East Venetian Causeway Bridge bridge owner, Miami-Dade County, and the Mayor of Miami Beach requested that the Coast Guard consider closing the East Venetian Causeway Bridge to all marine traffic during repairs to the approach span on west side of the Venetian Islands. The roadway leading to the West Venetian Causeway Bridge will be closed to vehicular traffic while repairs are completed on the approach span and Miami-Dade County will leave the West Venetian Causeway Bridge in the open to navigation position. While the West Venetian Causeway Bridge is in the open position, vehicles accessing islands along the Venetian Causeway will use the East Venetian Causeway Bridge.

On April 20, 2015, the Coast Guard was advised that the East Venetian Bridge experienced an extensive mechanical breakdown which cannot be fixed prior to the start of West Venetian Approach replacement. These repairs can be completed while the bridge is in the closed position. However, due to the extensive repairs required to fix the East Venetian

Bridge, all parties have agreed to allow the repairs to be completed after vehicle traffic is restored on the West Venetian Bridge. This rule will allow the East Venetian Bridge to remain closed to navigation until the repairs to the West Venetian Approach are completed and vehicle traffic movement has been restored.

C. Discussion of Comments, Changes and the Temporary Final Rule

Title 33, Code of Federal Regulations, Section 117.269 requires the East Venetian Causeway Bridge to open on signal except from 7 a.m. to 7 p.m., Monday through Friday when it opens on the hour and half-hour (Federal holidays excluded). On September 11, 2014, the Coast Guard published a NPRM that proposed amending the operating schedule for the East Venetian Causeway Bridge by authorizing it to remain closed except for an opening at 10:30 a.m. and 7:30 p.m. daily from November 1, 2014 until August 1, 2015. This opening schedule was proposed to limit openings during West Venetian Causeway Bridge approach span repairs. Following publication of this proposed rule, Miami-Dade County determined that waterway and vehicular traffic would be least affected if repair work started during the summer months, after the conclusion of peak tourist season. Therefore, repair work did not commence during the time period proposed.

Miami-Dade County recently notified the Coast Guard that it will be able to commence repairs to the West Venetian Causeway Bridge in June 2015. Due to the recent mechanical failure of the East Venetian Causeway Bridge, the Coast Guard is making this rule effective prior to the commencement of construction on the West Venetian Causeway Bridge.

In response to the NPRM, the Coast Guard received 13 comments, all of which expressed concerns with the ability of emergency vehicles to respond to incidents on Venetian Causeway islands in a timely manner if the East Venetian Causeway bridge operation fails while it is in the open to navigation position. The Coast Guard received no comments from the maritime community, but the proposed rule noted that maritime traffic can use the West Venetian Causeway Bridge to gain access to adjacent waterways while the East Venetian Causeway is closed.

Based on draw tender logs, the Coast Guard found that vessel traffic on this waterway typically consists of recreational boats and two commercial passenger vessels. These vessels can use the West Venetian causeway bridge as a route of similar convenience while this rule is in effect.

After considering comments received, the recent mechanical failure of the East Venetian Causeway Bridge, and the ability of maritime traffic to safely operate on waters

adjacent to the East Venetian Causeway Bridge, the Coast Guard is amending the operating schedule for the East Venetian Causeway Bridge by authorizing full time closure until repairs can be made to the East and West Venetian Causeway Bridges. Miami-Dade County has confirmed that repairs to both bridges will be completed by the end of February 2016. Therefore, this rule is effective until February 28, 2016

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule authorizes the East Venetian Causeway Bridge to remain in the closed to navigation position at all times while repairs are made. During the time period needed for these

repairs, vessel traffic seeking access through the Venetian Causeway may transit through the West Venetian Causeway bridge or, alternatively, vessels may transit around Miami Beach. Therefore, this is not a significant regulatory action because alternative routes of similar convenience are available to maritime traffic.

2. 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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

No changes were made to accommodate small entities. This rule would affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit the East Venetian Causeway Bridge. As discussed in

1. Regulatory Planning and Review above, these operators may use other routes to seek access to adjacent waterways.

3. Assistance for Small Entities

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 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 above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

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 rule under that Order and have determined that it does not have implications for federalism.

6. 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.

7. 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

8. Taking of Private Property

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

9. 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.

10. 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 does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. 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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, 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 this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

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; and Department of Homeland Security Delegation No. 0170.1.

2. Effective 7 a.m. on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] to 7 p.m. on February 28, 2016, suspend §117.269 and add §117.T269 to read as follows:

§117.T269 Biscayne Bay.

The Venetian Causeway Bridge (East) shall remain closed to navigation.

Dated: May 7, 2015

Melissa Bert,

Captain, U.S. Coast Guard,
Commander, Seventh Coast Guard District, Acting
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