



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0768]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway and Indian Creek, Miami, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

---

**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the West 79th Street Bridge across the Atlantic Intracoastal Waterway mile 1084.6, Miami, FL and the operating schedule that governs the East 79th Street Bridge across Miami Beach Channel, Miami, FL. This action will place the East and West 79th Street Bridges across Miami Beach Channel and Atlantic Intracoastal Waterway, Miami, FL on a twice an hour opening schedule between 7 a.m. and 7 p.m., Monday through Friday, except Federal holidays. This action is intended to reduce vehicular traffic caused by these bridges opening on demand.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0768. In the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Michael Lieberum of the Coast Guard; telephone 305-415-6744, e-mail Michael.b.lieberum@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 10, 2016, we published a notice of proposed rulemaking (NPRM) titled Drawbridge Operation Regulation; Atlantic Intracoastal Waterway and Indian Creek, Miami, FL in the **Federal Register** (81 FR 28795). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to the East and West 79th Street Bridges. During the comment period that ended on June 11, 2016, we received 12 comments.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 33 U.S.C. 499. The East and West 79th Street Bridges currently open upon request or signal, pursuant to 33 CFR 117.5, which results in frequent openings that restrict vehicle traffic during the day, especially during morning and afternoon rush hour traffic.

The Florida Department of Transportation (FDOT), the bridge owner, and the City of North Bay Village requested a change to the current operating schedule for both bridges to

allow for scheduled openings twice an hour during peak traffic times. Bridge logs indicate these bridges open up to four times an hour or more during peak travel times, which results in frequent vehicular traffic disruptions. This regulation would reduce vehicle traffic backups without unreasonably restricting vessel traffic by scheduling two openings per hour during peak traffic times, thereby balancing the needs of both modes of transportation.

Additionally, other bridges on this section of the Intracoastal Waterway and Miami Channel open two times per hour. The scheduled openings will align the 79th Street bridge openings with other bridges on the Intracoastal, namely, the Broad Causeway Bridge to the North (33 CFR 117.261(mm)) and The Venetian Causeway Bridge to the South (33 CFR 117.261(nn)), thereby allowing vessels to plan voyages during opening times and vehicles to schedule commutes around these openings.

The East 79th Street Bridge across Miami Beach Channel, Miami, FL has a vertical clearance of 25 feet at mean high water (MHW) in the closed to navigation position and a horizontal clearance of 60 feet between fenders.

The West 79th Street Bridge across the Atlantic Intracoastal Waterway mile 1084.6, Miami, FL has a vertical clearance of 25 feet at MHW in the closed to navigation position and a horizontal clearance of 90 feet between fenders.

#### IV. Discussion of Comments, Changes and the Final Rule

As noted above, the Coast Guard received 12 comments to the NPRM published on May 10, 2016. All 12 of the comments were in favor of changing the existing on-demand schedule to a twice an hour opening schedule from 7 a.m. to 7 p.m. One comment requested that this bridge only open when vessels are waiting or when there is a request to open. This stipulation is covered by other regulations in 33 CFR part 117 and will only open at the

designated times if requested by vessel operators.

This rule will allow the draw of the West 79th Street Bridges, across the AICW and Indian Creek at Miami, Florida to open twice an hour, once on the hour and once on the half-hour, Monday through Friday between the hours of 7 a.m. and 7 p.m. During nights and weekends and on Federal holidays, the Bridge would open on signal. This is a significant change from the on-demand schedule both bridges were previously operating on.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protesters.

### 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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge during the scheduled opening times.

### 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 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. 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 rule would not have a significant economic impact on any vessel owner or operator.

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, 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.

### C. 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).

### 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 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 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. If you believe this 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 rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and 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 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 rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, 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.

#### 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.

#### 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; Department of Homeland Security  
Delegation No. 0170.1.

2. In §117.261, add paragraph (mm-1) to read as follows:

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

\* \* \* \* \*

(mm-1) West 79th Street Bridge. The draw of the West 79th Street Bridge, at Miami, Florida will open on signal, except that from 7 a.m. to 7 p.m. Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour.

\* \* \* \* \*

3. Add §117.304 to read as follows:

**§117.304 Miami Beach Channel.**

The draw of the East 79th Street Bridge, at Miami, Florida will open on signal, except that from 7 a.m. to 7 p.m. Monday through Friday, except Federal holidays, the draw need only open on the hour and half hour.

Dated: April 19, 2017

S. A. Buschman,  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District  
[FR Doc. 2017-08257 Filed: 4/24/2017 8:45 am; Publication Date: 4/25/2017]