



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2015-0271

RIN 1625-AA09

Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the Florida East Coast Railway (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL. This rule implements requirements for the operator to ensure that adequate notice of bridge closure times are available to the waterway traffic. It also changes the schedule from requiring openings “on demand” to an operating regulation requiring the bridge to be open no fewer than 60 minutes in every 2 hour period. Changing the bridge operating schedule will allow the bridge owner to operate the Bridge remotely with assistance from the onsite bridge tender.

**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-2015-0271 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. Rod Elkins with the Coast Guard; telephone 305-415-6989, e-mail

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#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

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

##### II. Background Information and Regulatory History

From May 18 through October 16, 2015, a test deviation assessing the viability of the schedule implemented in this rule was in effect for the New River Bridge (80 FR 28184).

The comment period ended on August 17, 2015. There were eight comments received in response to the test deviation. The comments from the test deviation were addressed in the notice of proposed rulemaking (NPRM).

On November 3, 2015, we published a NPRM entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the Federal Register (80 FR 67677). We received 234 submissions on the proposed rule.

##### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499.

The FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL is a single leaf bascule bridge. It has a vertical clearance of 4 feet at mean high water in the closed position. Presently, in accordance with 33 CFR 117.5, the FEC Railroad Bridge is

required to open on signal for the passage of vessels. Traffic on the waterway includes both commercial and recreational vessels.

Prior to implementing a test deviation on May 18, 2015, the Bridge operated without a tender or monitor. An automated system closed the Bridge when a train approached and reopened the Bridge when a train cleared. The Coast Guard received multiple complaints from mariners because there was no means of obtaining notice of bridge closure times or potential closure duration. The new regulation balances the reasonable needs of waterway traffic on the New River with train traffic moving through condensed population areas in Ft. Lauderdale.

This regulation was developed to accommodate the unique needs of rail transportation in South Florida while balancing the reasonable needs of maritime transportation on the New River. Train schedules at the crossings cannot be precisely scheduled due to unpredictable delays caused by train car loading and vehicular traffic crossing the track. Also, train bridges must be in the down position well in advance of the train's arrival to ensure that it can safely cross the bridge or stop if there are problems with the Bridge.

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

Two hundred thirty-four submissions were received resulting in a total of 319 comments concerning the proposed rule. The total number of comments exceeds the number of submissions because some submissions expressed more than one point in their comment. Of these comments, 39 were in favor of the proposed rule. Forty-nine of the comments expressed opposition to a future rail project, which is not the focus of this regulation, and were not relevant.

Sixty-six comments expressed opposition to the regulation of Bridges other than the Florida East Coast Railway (FEC) Railroad Bridge. This regulation only pertains to the FEC Railroad Bridge over the New River in Fort Lauderdale.

Eleven comments opposed the proposed modification and recommended the Bridge owner provide a train schedule with specified opening times. In respect to a schedule the on-site bridge tender will provide a 12-hour forecast schedule to waterway users upon request. However, scheduling bridge openings is not viable because trains typically experience loading and traffic delays that interfere with the operator's ability to precisely identify an exact time when the train will cross the waterway.

Eighteen comments stated the modification would create unsafe vessel congestion near the Bridge. This regulation allows mariners to communicate with a bridge tender and receive updates on the Bridge's status; thereby relieving congestion that exists with the current schedule.

Sixty-four comments opposed the Bridge being closed 50 percent of the time or 60 minutes at a time. These comments also recommended various minimum time limits for bridge openings. This regulation does not require closing the Bridge 50 percent of the time or for 60 minutes at one time. It sets a maximum time for the Bridge's closure within a two hour period. This regulation authorizes a total combined closure time for any given 120 minute period that will not exceed 60 minutes. Moreover, if a train is not crossing or approaching, the Bridge will remain open. Based on input from the bridge owner and input gathered at Coast Guard public meetings, the Coast Guard determined that it is not a viable option to require minimum time limits for the bridge to be open at one time because trains would have considerable difficulty coordinating passage across the bridge with this schedule. Therefore,

this regulation does not adopt alternatives to set minimum time limits for Bridge openings. Vessels can transit at all times that trains are not crossing.

Thirteen comments expressed concern that the modification would hinder emergency vessels from responding. This regulation requires the Bridge to open immediately for emergency vessels to pass.

Twenty six comments expressed safety concerns for vehicle traffic in the area and emergency vehicle response times being delayed. This regulation seeks to balance the needs of rail and maritime navigation by allowing the Bridge to close for the passage of trains. By doing so, it seeks to ensure passing trains are not delayed by the Bridge schedule, therefore, it should alleviate surrounding vehicular traffic.

There were 26 comments that addressed concern that the modification would decrease property values and hurt business in the area. The Coast Guard does not have evidence that this regulation will result in a decrease in property values or that it will adversely affect businesses in the area.

Five commenters requested bridge modifications that would replace and raise the vertical height of the bridge, and to require mooring stations for waiting vessels, which is outside of the scope of this rule because this rule only amends the opening schedule for the Bridge by creating protocols that will make it easier for vessel traffic to schedule transits during times the Bridge is open.

Two of the 234 commenters requested a public meeting. A public meeting was held on 12 November 2014 (USCG-2014-0937), and the proposed schedule modification was developed from the input received from the public meeting.

The Coast Guard also received complaints about the high noise levels of the horn

blast prior to a bridge closure. The prescribed sound signal has typically been required on all unmanned automated rail road bridges. We are removing the requirement for the horn blast from the regulation since the bridge is no longer unmanned. Other than the removal of horn blasts, 33 CFR section 117.313 is modified as was proposed in the NPRM.

## V. Regulatory Analyses

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

### A. Regulatory Planning and Review

E.O.s 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. E.O. 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 E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is made because vessels can still transit the waterway at times identified by the tender 12 hours in advance of the scheduled transit. Also, vessels can transit at all times that trains are not crossing or if they do not require a bridge opening to transit.

### 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 zero 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.

This rule may affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit the bridge when the Bridge is closed for train crossings. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation. Vessels transiting the New River at mile 2.5 may do so at times scheduled up to 12 hours prior to transit. Also, vessels can transit at all times that trains are not crossing.

While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will 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 E.O. 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.

#### 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 made a determination 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 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 §117.313, revise paragraph (c), add reserved paragraph (d), and add paragraph (e) to read as follows:

§ 117.313 New River.

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(c) The following requirements apply to the Florida East Coast Railway Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL:

(1) The bridge shall be constantly tended.

(2) The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.

(3) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.

(4) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(5) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(6) When a train approaches, the lights go to flashing red then the draw lowers and locks.

(7) After the train has cleared the bridge, the draw opens and the lights return to green.

(8) The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m. each day.

(9) The bridge shall remain open to maritime traffic when trains are not crossing.

(d) [Reserved]

(e) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

Dated: August 22, 2016

S. A. Buschman,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District.

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