



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**Docket No. USCG-2016-0523**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Rice Creek, Putnam County, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the CSX Railroad Bridge across the Rice Creek, mile 0.8, in Palatka, Putnam County, FL. This rule will change the existing open on demand during the day and 24 hour advance notice for a bridge opening during the night, to 24 hour advance notice for an opening at all times.

**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-2016-0523. 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. Eddie Lawrence, Coast Guard; telephone 305-415-6946, e-mail [Eddie.H.Lawrence@uscg.mil](mailto:Eddie.H.Lawrence@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 November 11, 2016 we published a notice of proposed rulemaking (NPRM) entitled Operation Regulation; Rice Creek, Putnam County, FL in the Federal Register (81 FR 78952). We received 2 comments on this rule.

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

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

The CSX Railroad Bridge across the Rice Creek, mile 0.8, in Palatka, Putnam County, FL is a swing bridge. It has a vertical clearance of 2 feet at mean high water in the closed position and a horizontal clearance of 30 feet. Presently, in accordance with 33 CFR 117.324, the Rice Creek CSX Railroad Swing Bridge is required to open on signal for the passage of vessels from 8 a.m. to 4 p.m., daily. From 4:01 p.m. to 7:59 a.m., daily, the bridge shall open with a 24-hour advance notice to CSX.

On May 18th, 2015, CSX Transportation, the bridge owner, requested the Coast Guard consider allowing the CSX Railroad Bridge across Rice Creek to be converted from a movable bridge to a fixed bridge. Their request was made due to the minimal drawbridge openings requested over the past several years. The Coast Guard determined that converting the bridge to a fixed structure was not reasonable to navigation, because it would restrict

most vessels from using the waterway at all. CSX then requested modifying the bridge operations to 24 hour advance notice at all times. CSX provided the Coast Guard a summary of bridge opening logs that show eight openings in 2015, three openings in 2014, and three openings in 2013.

This change will still allow vessels to pass through the bridge while taking into account the reasonable needs of other modes of transportation. This rule would implement a 24 hour advance notice to CSX for any openings. This regulatory change is justified based on the limited impact that it will have on vessel traffic as shown by the small number of openings requested over recent years. Emergency vessels and tugs with tows can still request openings at any time.

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

There were two comments received during the comment period. One comment from the Sheriff's Department concerned not being able to respond to possible emergencies up-river from the bridge. This is mitigated by protocols established between the Sheriff's Department and CSX for emergency openings. The second comment was via letter from the Brotherhood of Maintenance of Way Employees Division (BMWED). The concerns were multifold concerning; security and maintenance. These were all submitted to CSX and answered to the satisfaction of BMWED.

#### **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 13771 directs agencies to control regulatory costs through a budgeting process. 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 (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the continued ability for vessels to transit the bridge given advanced notice and the small amount of vessel traffic transiting the bridge in general.

#### 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 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 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.

#### 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.

A preliminary Record of Environmental Consideration and a Memorandum for the Record 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. Revise §117.324 to read as follows :

**§ 117.324 Rice Creek.**

The CSX Railroad Swing Bridge, mile 0.8, in Putnam County, FL. shall open with a 24-hour advance notice to CSX at 1-800-232-0142.

P. J. Brown,

Rear Admiral, U.S. Coast Guard,

Commander, Seventh Coast Guard District

[FR Doc. 2017-18708 Filed: 9/1/2017 8:45 am; Publication Date: 9/5/2017]