

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD05-01-052]

RIN 2115-AE47

**Drawbridge Operation Regulations;
Darby Creek, Pennsylvania****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing to change the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge and the Reading Railroad Bridge, across Darby Creek both at mile 0.3, in Essington, Pennsylvania. The proposal for the CONRAIL Railroad Bridge would eliminate the need for a bridge tender by allowing the bridge to be operated by the bridge/train controller from a remote location. The Reading Railroad Bridge would be left in the open position. These changes will provide for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before December 10, 2001.

ADDRESSES: You may mail comments and related material to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398-6222. The Commander (Aowb), Fifth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CCGD5-01-052), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound

format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Commander, Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

CONRAIL, who owns and operates both drawbridges, has requested changes to the operating procedures for both their drawbridges across Darby Creek, mile 0.3, located in Essington, Pennsylvania. The proposed changes would allow the operation of the CONRAIL Railroad Bridge from a remote location. CONRAIL has requested that the bridge/train controller at the Delair Railroad Bridge, in Delair, New Jersey, operate the CONRAIL Railroad Bridge across Darby Creek. The Reading Railroad Bridge would be maintained in the open position for vessels at all times. The operating schedule for both drawbridges is set out in 33 CFR 117.903. The regulation states that from May 15 through October 15, from 11 p.m. to 7 a.m., the draws need not be opened for the passage of vessels. Between 7 a.m. and 11 p.m., the draws shall open on signal at 7:15 a.m., 10:30 a.m., 1 p.m., 3 p.m., 7:30 p.m. and 10:30 p.m. and at all other times during these hours, if an opening will not unduly delay railroad operations. From October 16 through May 14, the draws shall open on signal if at least 24 hours notice is given. However, in reality the CONRAIL Railroad Bridge currently is left in the open position and only closed by a bridge tender on site for passage of an approaching train.

Under the proposed rule, when a train approaches the CONRAIL Railroad Bridge, it will stop and a crewmember will be on-site to assist in observing the waterway for approaching craft, which will be allowed to pass. The crewmember will then communicate with the off-site bridge/train controller at the Delair Railroad Bridge either by radio or telephone, requesting the off-site bridge/train controller to lower the bridge. Before closing the CONRAIL

Railroad Bridge, the off-site bridge/controller would monitor waterway traffic on Darby Creek in the area of the drawbridge by maintaining constant surveillance of the navigation channel using infrared channel sensors to ensure no conflict with maritime traffic exists. Channel traffic lights located on top of the bridge would change from flashing green to flashing red any time the bridge is not in the full open position.

This change is being requested to make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance and to save operational costs by eliminating bridge tenders while still providing the same bridge capabilities.

Since 1980, the Reading Railroad Bridge has had the tracks removed on the north and south sides of the bridge and is secured in the full open position to allow marine traffic to pass. In accordance with 33 CFR 117.41, the lift-span had been placed in the full open position for vessels. This proposal formalizes the current operation of the Reading Railroad Bridge.

Discussion of Proposed Rule

The Coast Guard proposes to amend 33 CFR 117.903, which governs the CONRAIL railroad drawbridges across Darby Creek both at mile 0.3, in Essington, Pennsylvania, by allowing remote operation of the CONRAIL Railroad Bridge and maintenance of the Reading Railroad Bridge in the full open position for vessel traffic at all times.

The Coast Guard proposes to revise 33 CFR 117.903 by amending paragraph (a) for the remote operation of the CONRAIL Railroad Bridge and by removing the Reading Railroad Bridge from its requirements. The regulation would require the draw of the CONRAIL Railroad Bridge to be lowered and raised off-site by the bridge/train controller at the Delair Railroad Bridge, in Delair, New Jersey. From May 15 through October 15, the bridge would be left in the open position and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

From October 16 to May 15, the draw of the CONRAIL Railroad Bridge need only open on signal if at least 24 hours notice is given by calling (856) 231-7088 or (856) 662-8201.

Before the CONRAIL Railroad Bridge closes for any reason, a crewmember on-site will assist in observing the waterway for approaching craft, which will be allowed to pass. The crewmember will then communicate with the off-site bridge/train controller

at the Delair Railroad Bridge either by radio or telephone, requesting the off-site bridge/train controller to lower the bridge.

The CONRAIL Railroad Bridge would only be lowered if infrared channel sensors show there are no vessels in the area.

While the CONRAIL Railroad Bridge is moving from the full open position to the full closed position, the off-site bridge/train controller will maintain constant surveillance of the navigation channel using infrared channel sensors to ensure no conflict with maritime traffic exists. In the event of failure or obstruction of the infrared channel sensors, the bridge will automatically stop and return to the full open position. The off-site bridge/train controller, from the remote location, shall not operate the bridge in the event of loss of radio or telephone communication with the on-site crewmember.

The CONRAIL Railroad Bridge channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. During downward span movement, the channel traffic lights would change from flashing green to flashing red, horn will sound two times, followed by a pause, and then two repeat blasts until the bridge is seated and locked down.

When the rail traffic has cleared, the off-site bridge/train controller at the Delair Railroad Bridge will sound the horn five times that the draw of the CONRAIL Railroad Bridge is about to return to its full open position. The channel traffic lights would turn from flashing red to flashing green. After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw shall not exceed ten minutes except as provided in 33 CFR 117.31(b). Operational information will be provided 24 hours a day by telephone at (856) 231-7088 or (856) 662-8201.

The Coast Guard proposes to revise 33 CFR 117.903 by amending paragraphs (a) and (b). The provision for clearance gages would remain at paragraph (a); however, the language for clearance gage requirements would change to identify only the Conrail Railroad Bridge because the Reading Railroad Bridge is maintained in the open position for vessels at all times and no clearance gage is needed. Paragraph (b) would govern the Reading Railroad Bridge. The regulation would require the draw of the Reading Railroad Bridge to be left in the full open position at all times in accordance with 33 CFR 117.41.

The surplus language currently stated in 33 CFR 117.903(b)(3) and (4) would be removed to be consistent with the general operating regulations under 33 CFR 117.11 and 33 CFR 117.31. The provision delineated in 33 CFR 117.11(b) already requires that no vessel owner signal a drawbridge to open for any purpose other than to pass through the drawbridge opening. Also, 33 CFR 117.31(b)(2) and (3) states that the draw shall open as soon as possible for an emergency or vessel in distress and is no longer required to be published in each specific bridge regulation.

Elimination of surplus language is based on the fact that the Reading Railroad Bridge is secured in the full open position for vessel traffic and would be maintained in the full open position until removal of its lift span. Further, the CONRAIL Railroad Bridge proposal would allow for remote operation by maintaining the bridge in the open position, and would only close for the passage of trains and to perform maintenance.

Additional text modifications would be made as appropriate.

Regulatory Evaluation

This proposed 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 Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact that the proposed changes for the Conrail Railroad Bridge regulations will provide for greater flow of vessel traffic than the current regulations of the drawbridge.

Under the current regulations, the Conrail Railroad Bridge remains closed and opens after proper signal from May 15 through October 15. The proposed regulation will require the bridge to remain in the open position, permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This proposed regulation will provide for the reasonable needs of navigation.

For the Reading Railroad Bridge, the proposed regulation will provide for the reasonable needs of navigation since the

bridge is maintained in the open position for vessel passage at all times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would not have a significant economic impact on a substantial number of small entities because it will provide for the CONRAIL Railroad Bridge to operate remotely and remain in the open position, allowing the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

The Reading Railroad Bridge will have no impact since the bridge is maintained in the open position at all times for vessel passage.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398-6222.

Collection of Information

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

Federalism

A rule has implications for federalism under Executive Order 13132,

Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

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

Taking of Private Property

This proposed rule would not affect 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 proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR

36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

Energy Effects

We have analyzed this proposed 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 considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.IC, this rule is categorically excluded from further environmental documentation. The proposed rule only involves the operation of existing drawbridges and will not have any impact on the environment. A “Categorical Exclusion Determination” is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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; 49 CFR 1.46; 33 CFR 1.05–1(g); Section 117.255 also issued under authority of Pub.L. 102–587, 106 Stat. 5039.

2. Section 117.903 is revised to read as follows:

§ 117.903 Darby Creek.

(a) The draw of the CONRAIL Railroad Bridge, mile 0.3, at Essington, will operate as follows:

(1) The owner of this bridge on this waterway shall provide and keep in good legible condition two board gages painted white with black figures, nine inches high to indicate the vertical

clearance under the closed draw at all stages of the tide. The gages shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(2) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b). However, if a train moving toward the bridge has crossed the home signal for the bridge before the signal requesting opening of the bridge is given, the train may continue across the bridge and must clear the bridge interlocks before stopping.

(3) From May 15 through October 15, the draw shall be left in the open position at all times and will only be lowered for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(4) The bridge will be operated by the bridge/train controller at the Delair Railroad Bridge in Delair, New Jersey.

(5) Before the bridge closes for any reason, an on-site crewmember will observe the waterway for approaching craft, which will be allowed to pass. The on-site crewmember will then communicate with the off-site bridge/train controller at the Delair Railroad Bridge either by radio or telephone, requesting the off-site bridge/train controller to lower the bridge.

(6) The bridge shall only be lowered from the remote site if the on-site crewmember’s visual inspection shows there are no vessels in the area and the infrared channel sensors are not obstructed.

(7) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, the off-site bridge/train controller will maintain constant surveillance of the navigational channel using infrared sensors to ensure no conflict with maritime traffic exists. In the event of failure or obstruction of the infrared channel sensors, the bridge will automatically stop and return to the open position. In the event of loss of radio or telephone communications with the on-site crewmember, the bridge will automatically stop and return to the open position.

(8) When the draw cannot be operated from the remote site, a bridge tender must be called to operate the bridge in the traditional on-site manner.

(9) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(10) During downward span movement, the channel traffic lights will change from flashing green to

flashing red, the horn will sound two times, followed by a pause, and then two repeat blasts until the bridge is seated and locked down.

(11) When the rail traffic has cleared, the off-site bridge/train controller at the Delair Railroad Bridge will sound the horn five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(12) During upward span movement, the channel traffic lights will be flashing red, the horn will sound two times, followed by a pause, and then sound repeat blasts until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(13) From October 16 through May 14, the draw shall open on signal if at least 24 hours notice is given by telephone at (856) 231-7088 or (856) 662-8201.

Operational information will be provided 24 hours a day by telephone at (856) 231-7088 or (856) 662-8201.

(b) The Reading Railroad Bridge, mile 0.3, at Essington, will be left in the full open position at all times.

Dated: September 25, 2001.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 01-25425 Filed 10-9-01; 8:45 am]

BILLING CODE 4910-15-P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 260

[Docket No. 96-5 CARP DSTR]

Determination of Reasonable Rates and Terms for the Digital Performance of Sound Recordings

AGENCY: Copyright Office, Library of Congress.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Copyright Office is extending the period to file comments to proposed regulations that will govern the RIAA collective when it functions as the designated agent receiving royalty payments and statements of accounts from nonexempt, subscription digital transmission services which make digital transmissions of sound recordings under the provisions of section 114 of the Copyright Act.

DATES: Comments and Notices of Intent to Participate in a Copyright Arbitration Royalty Panel Proceeding are due October 17, 2001.

ADDRESSES: An original and five copies of any comment and Notice of Intent to Participate shall be delivered to: Office of the General Counsel, Copyright Office, James Madison Building, Room LM-403, First and Independence Avenue, SE Washington, DC; or mailed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024-0977.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, P.O. Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707-8380. Telefax: (202) 252-3423.

SUPPLEMENTARY INFORMATION: On July 23, 2001, the Copyright Office published a notice of proposed rulemaking seeking comments on proposed regulations that will govern the RIAA collective when it functions as the designated agent receiving royalty payments and statements of accounts from nonexempt, subscription digital transmission services which make digital transmissions of sound recordings under the provisions of section 114 of the Copyright Act. 66 FR 38226 (July 23, 2001). Comments on the proposed terms and Notices of Intent to Participate in a Copyright Arbitration Royalty Panel Proceeding, the purpose of which would be to adopt terms governing the RIAA collective in its handling of royalty fees collected from the subscription services, were due on August 22, 2001.

On August 22, 2001, The American Federation of Musicians of the United States and Canada ("AFM") and The American Federation of Television and Radio Artists ("AFTRA") filed a request for an extension of the filing date for comments until September 19, 2001. The Office granted this request and extended the deadline for filing comments to September 19, 2001. 66 FR 46250 (September 4, 2001). On September 14, 2001, AFM and AFTRA requested a further extension of the filing date for comments in light of the events of September 11, 2001, and stated that the RIAA joined in the request. The Office granted this request and extended the deadline for filing comments until September 28, 2001. 66 FR 48648 (September 21, 2001).

On September 26, 2001, AFM and AFTRA requested a further extension of the filing date for comments, and RIAA expressed its support for the request. The Office is granting this request and is extending the deadline for filing comments to October 17, 2001.

Dated: October 4, 2001.

David O. Carson,

General Counsel.

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BILLING CODE 1410-33-P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual Changes To Announce the Periodicals Accuracy, Grading, and Evaluation (PAGE) Program

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule changes certain sections applicable to Periodicals mail in the Domestic Mail Manual (DMM). It adds a new optional method a publisher may use to determine per-copy weights and to substantiate the advertising percentage in each edition of each issue of a periodical. The option requires Postal Service certification of the publisher's employees' ability to use PAGE-certified software accurately, and it requires the publisher to use one of the software programs that is PAGE-certified by the Postal Service. This option will eliminate the publisher's need to submit a manually marked copy showing the percentage of advertising for each edition of each issue at the time of mailing. It also eliminates to some degree the requirement for Postal Service acceptance employees to determine per-copy weights by weighing 10 copies of each edition at the time of mailing.

DATES: Comments must be received on or before November 9, 2001.

ADDRESSES: Send written comments to the Manager, Business Mail Acceptance, U.S. Postal Service, 1735 North Lynn Street, Room 3011, Arlington, VA 22209-6030. Written comments may be submitted via fax to 703-292-3738. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the above address.

FOR FURTHER INFORMATION CONTACT: Charles Tricamo, New York Rates and Classification Service Center, 212-613-8754.

SUPPLEMENTARY INFORMATION: New technology innovations have been made in the publishing industry. In response, the Postal Service developed an evaluation program to test the accuracy of publishing and print planning (PPP) software to calculate advertising