

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

[CGD07-02-091]

RIN 2115-AE47

**Drawbridge Operation Regulations;  
Miami River, Miami-Dade County, FL****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the operating regulations of all drawbridges on the Miami River from the mouth of the river to and including the N.W. 27th Avenue bridge, mile 3.7, Miami, Florida, by allowing tugs and tugs with tows to pass through these bridges, except the new Second Avenue bridge, upon proper signal to the bridge tender even during the normal rush hour traffic periods. This proposed rule would also allow the new Second Avenue bridge to only open a single-leaf of the bridge during certain times of the day for approximately seven months. This action is intended to facilitate commercial vessel traffic along the Miami River and facilitate construction of the new Second Avenue bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before September 5, 2002.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, FL 33131.

Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD07-02-091] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Barry Dragon, Bridge Branch, 909 SE 1st Ave, Miami, FL 33131, telephone number 305-415-6743.

**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 [CGD07-02-091], 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.

We believe a 30-day comment period for this rulemaking is sufficient based on the pre-rulemaking meetings that have taken place between the bridge owner, Florida Department of Transportation (FDOT), their contractor, Gilbert Southern, and both marine and land-based stakeholders that may be impacted by this rule who have been working together to develop an acceptable schedule. Additionally, this 30-day comment period will allow us to publish a final rule in the **Federal Register** before construction begins.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE 1st Ave, Room 432, Miami, FL 33131, 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**

On July 8, 2002, we received a request from Gilbert Southern, the bridge contractor, requesting permission to keep a single-leaf of the new Second Avenue bridge in the closed position for periods of time during the day to allow them to construct the spans. Gilbert Southern informed the Coast Guard that construction in the upright position was not feasible due to the length of each span. Construction is scheduled to begin in October, 2002, and will require single-span closures during certain periods of time until April, 2003. Gilbert Southern estimates that the horizontal clearance of the bridge with a single-span of the bridge in the closed position will be 70 feet. This proposed rule would allow the Second Avenue bridge to keep a single-span of the bridge in the closed position from 4 a.m. until 10 p.m. from October 15, 2002, until April 30, 2003. One span of the bridge will always open on signal and both spans of the bridge will be open from 10 p.m. until 4 a.m. During the initial construction from October through approximately December only one span of the bridge will exist. Once the first span is complete, it will be placed in the

open position while construction on the second leaf is completed.

Gilbert Southern held meetings during June, 2001 and July, 2002, with the Florida Department of Transportation (FDOT) project supervisor and industry representatives to attempt to reach an acceptable schedule for single leaf operations. The contractor has stated that they will attempt to accommodate commercial navigation that cannot clear the approximately 70 feet of horizontal clearance provided by a single-span opening by only working 6 days of the week and they will attempt to adjust their daily construction schedule to allow both spans to remain open during at least one high and low tidal period. Moreover, the contractor only anticipates single-span closures between 8 and 14 hours a day.

This proposed rule would also alleviate some of the burden on commercial vessels requiring a full double-leaf opening and certain tidal conditions to navigate the Miami River by allowing tugs and tugs with tows to pass through the other bridges on the Miami River during the morning and evening rush hour bridge closures from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. This proposed rule would allow tugs and tugs with tows to navigate the river during favorable tidal and construction conditions by excepting them from the current vehicle rush hour times where the bridges remain closed. Each bridge on the Miami River from the mouth of the River to N.W. 27th Avenue, excluding the new Second Avenue, need open only for public vessels of the United States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

**Discussion of Proposed Rule**

The Coast Guard proposes to allow the new Second Avenue bridge to keep a single-span of the bridge in the down position from 4 a.m. until 10 p.m. daily from October 15, 2002 until April 30, 2003. At all times, one span of the bridge will be open and both spans of the bridge will be open from 10 p.m. until 4 a.m. from October 15, 2002 until April 30, 2003.

Additionally, in order to meet the reasonable needs of commercial navigation while not unreasonably impacting vehicular traffic during the construction of the new Second Avenue bridge, the Coast Guard proposes to allow tugs and tugs with tows to pass

through the Miami River bridges from the mouth of the Miami River to N.W. 27th Avenue, excluding the new Second Avenue bridge, upon proper signal to the bridge tender, even during the normal rush hour closures from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. These bridges need not open for all other vessels, except public vessels of the United States and vessels in an emergency involving danger to life or property, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

### 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) because this proposed rule only makes a slight exception the existing bridge operation schedules during heavy vehicle traffic hours for tugs and tugs with tows and still provides for regular openings. Moreover, a single-leaf of the new Second Avenue bridge will remain open 24 hours a day and single-leaf closures will only impede a small segment of the vessel traffic on the Miami River and the contractor intends to work with the commercial vessels to try to have both spans of the bridge open during at least one high and low tide.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we 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.

This proposed rule may affect the following entities, some of which might be small entities: the owners or operators of vessels and vehicles intending to transit under and over the bridges on the Miami River during the hours of 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m. as well as some waterfront facility owners on the Miami River. 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 because this proposed rule only makes a slight exception to the existing bridge operation schedules during heavy vehicle traffic hours for tugs and tugs with tows and still provides for regular openings. Moreover, a single-leaf of the new Second Avenue bridge will remain open 24 hours a day and single-leaf closures will only impede a small segment of the vessel traffic on the Miami River and the contractor intends to work with the commercial vessels to try to have both spans of the bridge open during at least one high and low tide.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed 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 the person listed under **FOR FURTHER INFORMATION CONTACT**.

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).

### 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. Although this proposed rule will 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 effect 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 proposed rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e) of Commandant Instruction M16475.ID, this proposed rule is categorically excluded from further environmental documentation.

### Indian Tribal Governments

This proposed 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.

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 3361, 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.

### 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 the authority of Pub. L. 102–587, 106 Stat. 5039.

#### § 117.305 [Suspended]

2. From October 15, 2002 until April 30, 2003, temporarily suspend § 117.305.

3. From October 15, 2002, until April 30, 2003, add a new § 117.T306 to read as follows:

#### § 117.T306 Miami River, Florida.

(a) The draws of each bridge from the mouth of the Miami River to and including N.W. 27th Avenue bridge, mile 3.7 at Miami, but excluding the new Second Avenue bridge, mile 0.5, Miami, Florida, 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 draws need not open for the passage of vessels. Public vessels of the United

States, tugs and tugs with tows, and vessels in an emergency involving danger to life or property shall be passed at any time.

(b) The new Second Avenue bridge, mile 0.5, Miami, Florida, need open only a single-leaf of the bridge from 4 a.m. until 10 p.m. daily; and the bridge will remain in the fully open to navigation position from 10:01 p.m. to 3:59 a.m. daily.

Dated: July 29, 2002.

**John E. Crowley, Jr.,**

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

[FR Doc. 02–19847 Filed 8–5–02; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD05–02–020]

RIN 2115–AE47

#### Drawbridge Operation Regulations; Nanticoke River, Seaford, DE

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Norfolk Southern Railway Bridge across the Nanticoke River, mile 39.4, in Seaford, Delaware. The proposed rule would allow for increased bridge openings by extending the daytime hours of operation and reducing the required advance notice time for opening the draw. This proposed rule change would reduce delays for navigation by allowing more draw openings.

**DATES:** Comments and related material must reach the Coast Guard on or before September 5, 2002.

**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. 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 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**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 (CGD05–02–020), 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

The Nanticoke River Bridge is owned and operated by Norfolk Southern Railway. The regulation in 33 CFR 117.243 requires the railroad bridge over the Nanticoke River, mile 39.4, in Seaford, Delaware to open on signal from May 1 through September 30 from 8 a.m. to 8 p.m. but need not be opened from 8 p.m. to 8 a.m. At all times from October 1 through April 30, the draw shall open on signal if at least four hours notice is given.

The bridge connects The Towns of Blades and Seaford. This bridge is part of one of two railways supplying the southern Delmarva Peninsula. Mariners do not have an alternate route. The Town of Blades has requested permission to increase the number of hours the bridge will be open to marine traffic due to the increased navigation on the waterway. The Town of Blades asserts that the present regulation for this bridge is too restrictive for the increased number of mariners. Blades Economic Development Commission (BEDCO) is just completing an 87-slip marina in the Town of Blades, upstream from the bridge. Once the marina is complete, the drawbridge will need to