

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.

### 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 analyzed this proposed rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation. Allowing the draw to remain closed for vessels at the times indicated on July 4, of every year would have no individually or cumulatively significant impact on the environment.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

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, Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Amend § 117.571 by redesignating paragraph (c) as paragraph (c)(1) and adding a new paragraph (c)(2) to read as follows:

#### § 117.571 Spa Creek.

\* \* \* \* \*

(c) \* \* \*

(2) From 8:30 p.m. to 11 p.m. on July 4 of every year, the draw need not open for vessels. In the event of inclement weather, the alternate date is July 5.

\* \* \* \* \*

Dated: May 5, 2004.

**Ben R. Thomason, III,**

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

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**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05–04–028]

RIN 1625–AA09

#### Drawbridge Operation Regulations: Anacostia River, Washington, DC

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the CSX Transportation (CSX) Railroad Bridge across Anacostia River, at mile 3.4, in Washington, DC. The proposed rule would eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. This proposed change would maintain the bridge's current level of operational capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before July 16, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), 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 Commander (obr), 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:

Waverly W. Gregory, Jr., 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 CGD05–04–028, 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 confirmation to know if they were received, 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 those comments.

##### 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 at a place announced by a later notice in the **Federal Register**.

##### Background and Purpose

This rule proposes to allow the CSX Railroad Bridge, which crosses the Anacostia River at mile 3.4, in Washington, DC, to be operated from a remote location at the Benning Yard office. CSX, who owns and operates this movable (vertical lift-type) bridge, requested changes to the operating procedures for the drawbridge. The bridge has a vertical clearance in the closed position to vessels of eight feet at mean low water and five feet at mean high water. Currently, 33 CFR 117.253 (b) requires the bridge to open on signal: at all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property; between 9 a.m. and 12 noon and between 1 p.m. and 6 p.m. from May 15 through September 30; between 6 p.m. and 7 p.m. from May 15 through September 30 if notice is given to the bridge tender not later than 6 p.m. on the day for which the opening is requested; and at all other times, if at least eight hours notice is given.

CSX proposes to remotely operate the opening and closing of the CSX Railroad Bridge across Anacostia River in Washington, DC, from the Benning Yard office, one mile away. CSX has installed motion sensors, laser scanners and high-resolution video cameras on the bridge to enhance the remote operator's ability to monitor and control the equipment. The Benning Yard office is also equipped with an amplified open-mike from the bridge to enable the remote operator to hear boat horns that may signal for an opening. CSX has also installed additional safety warning lights to the bridge for the remote operation. All aspects of the current drawbridge operating regulations will remain the same.

This change is being requested to save operational costs by eliminating the bridge tenders, maintain the bridge's current level of operating capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

#### Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.253 by amending paragraph (b), which governs the CSX Railroad Bridge, at mile 3.4, across Anacostia River in Washington, DC.

Paragraph (b) would contain the proposed rule for CSX Railroad Bridge, mile 3.4, at Washington DC. The rule would allow the draw of the bridge to be operated by the controller at the Benning Yard office.

In the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications, the CSX Railroad Bridge would not be operated from the remote location. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

When rail traffic has cleared, a horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position to vessels. During open span movement, the channel traffic lights will flash red, until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green. Except as provided in 33 CFR 117.31(b), the opening of the draw to vessels will not exceed ten minutes after rail traffic has cleared the bridge.

During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, and an audio voice-warning device will announce bridge movement. Five short blasts of the horn will continue until the bridge is seated and locked down. When

the bridge is seated and locked down to vessels, the channel traffic lights will continue to flash red.

The provision requiring signs containing a 24-hour emergency number under 33 CFR 117.253(b)(3) would be removed to be consistent with the general operating regulations under 33 CFR 117.55. This provision delineated in 33 CFR 117.55 requires owners of each drawbridge to display informational signs. Prior to approval, these signs are reviewed by the Coast Guard to insure all pertinent information is included.

The proposed rule would also change the name of the bridge from "CONRAIL" to "CSX Railroad". The name change will accurately reflect the name of this bridge.

#### Regulatory Evaluation

This 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 Homeland Security.

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Although the CSX Railroad Bridge will be operated from a remote location, mariners can continue their transits because all aspects of the current operating regulations remain essentially the same.

#### 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 for

the following reasons. The rule allows the CSX Railroad Bridge to operate remotely and mariners will continue to plan their transits in accordance with the existing bridge operating regulations.

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 process. 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 Waverly W. Gregory, Jr., 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 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 security 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.

#### 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 analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under

figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

#### 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; 33 CFR 1.05-1(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Revise paragraph (b) of § 117.253 to read as follows:

#### § 117.253 Anacostia River.

\* \* \* \* \*

(b) The CSX Railroad Bridge, mile 3.4.

(1) The draw of the bridge to be operated by the controller at the Benning Yard office shall open on signal:

(i) At all times for public vessels of the United States, state and local government vessels, commercial vessels, and any vessels in an emergency involving danger to life or property.

(ii) Between 9 a.m. and 12 p.m., and between 1 p.m. and 6 p.m., from May 15 through September 30.

(iii) Between 6 p.m. and 7 p.m., from May 15 through September 30 if notice is given to the controller at the Benning Yard office not later than 6 p.m. on the day for which the opening is requested.

(iv) At all other times, if at least eight hours notice is given to the controller at the Benning Yard office.

(2) The CSX Railroad Bridge shall not be operated by the controller at the Benning Yard office in the event of failure or obstruction of the motion sensors, laser scanners, video cameras or marine-radio communications. In these situations, a bridge tender must be called to operate the bridge on-site.

(3) Except as provided in § 117.31(b), opening of the draw shall not exceed ten minutes after clearance of rail traffic.

(4) A horn will sound one prolonged blast followed by one short blast to indicate that the CSX Railroad Bridge is moving to the full open position for vessel traffic. During open span movement, the channel traffic lights will flash red until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green.

(5) A horn will sound five short blasts, the channel traffic lights will flash red, and an audio voice-warning device will announce bridge movement during closing span movement. Five short blasts of the horn will continue until the bridge is seated in and locked down. When the bridge is seated and in locked down position to vessels, the channel traffic lights will continue to flash red.

(6) The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all stages of the tide. The gauges shall be placed on the bridge so that they are plainly visible to the operator of any vessel approaching the bridge from either upstream or downstream.

Dated: May 6, 2004.

**Ben R. Thomason, III,**

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

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#### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Parts 2, 73, and 74

[MM Docket No. 99-325; FCC 04-99]

#### Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** In this document, the Commission seeks comment on policies it may adopt to encourage broadcasters to convert from an analog-only radio service to a hybrid analog/digital radio service, and eventually, to an all-digital radio service. The Commission seeks comment on what changes and amendments to its technical rules are necessary to further the introduction of digital audio broadcasting ("DAB"). The Commission seeks specific comment on proposals to allow AM nighttime digital service. The Commission asks whether a radio station should be allowed to offer a high definition service, a multiplexed service, a datacasting service, or a combination of all of these possibilities. The Commission also seeks comment on which of its existing programming and operational rules should be applied to DAB.

**DATES:** Comments due June 16, 2004; reply comments are due July 16, 2004.