

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD05-04-120]

RIN 1625-AA09

Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, NC**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) Hilton Railroad Bridge across the Northeast Cape Fear River, at mile 1.5, in Wilmington, NC. 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 October 4, 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: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398-6587.

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 CGD05-04-120, 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 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 and place announced by a later notice in the **Federal Register**.

Background and Purpose

CSX, who owns and operates this movable (basculer type) bridge, requested changes to the operating procedures for the drawbridge located at mile 1.5 across the Northeast Cape Fear River, in Wilmington, NC. The vertical clearance under CSX Hilton Railroad Bridge in the closed position to vessels is 9 feet at mean low water and 6 feet at mean high water. The existing regulation listed at 33 CFR 117.5 requires the bridge to open on signal.

CSX will remotely operate the opening and closing of the CSX Hilton Railroad Bridge across Northeast Cape Fear River in Wilmington, NC, from the nearby CSX Navassa Railroad Bridge located on the Cape Fear River. 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 CSX Navassa Railroad Bridge 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. This rule proposes to allow the bridge to be untended and operated from a remote location at the CSX Navassa Railroad Bridge. The CSX Hilton Railroad Bridge will normally be left in the fully open position displaying flashing green channel lights indicating that vessels may pass through.

This change is being requested to make the closure process of the Hilton Railroad Bridge more efficient. It will save operational costs by eliminating bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position

most of the time will provide for greater flow of vessel traffic than the current regulation.

Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.829 by redesignating paragraph (b) and inserting a new paragraph (c).

Paragraph (b) would contain the proposed rule for the CSX Hilton Railroad Bridge, mile 1.5, in Wilmington, NC. The rule would allow the draw of the bridge to be operated by the controller at the CSX Navassa Railroad Bridge.

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

The draw shall remain in the open position for navigation and shall only be closed for train crossings or periodic maintenance. When rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate that the CSX Hilton 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. After the train has cleared the bridge by leaving the track circuit, the opening of the draw to vessels shall not exceed ten minutes except as provided in 33 CFR 117.31(b).

During closing span movement, the channel traffic lights will flash red, the horn will sound five short blasts, 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.

Paragraph (c) would contain the existing regulations for the Seaboard System Railroad Bridge across the Northeast Cape Fear River, mile 27.0 at Castle Hayne, North Carolina.

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 Homeland Security (DHS).

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 Hilton Railroad Bridge will be untended and operated from a remote location, mariners can continue their transits because the bridge will remain open to mariners, only to be closed for train crossing or periodic maintenance.

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 Hilton Railroad Bridge to operate remotely and requires the bridge to remain in open position to vessels the majority of the time, only closing for train crossing or periodic maintenance.

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 (Pub. L. 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

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 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.

Regulations

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; 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. In § 117.829, redesignate paragraph (b) as paragraph (c) and add a new paragraph (b) to read as follows:

§ 117.829 Northeast Cape Fear River.

(a) * * *

(b) The CSX Hilton Railroad Bridge, mile 1.5 in Wilmington, NC shall operate as follows:

(1) The draw of the bridge to be remotely operated by the controller at the Navassa Railroad Bridge mile 34.0 across the Cape Fear River.

(2) The draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with Subpart A of this part.

(3) 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).

(4) The CSX Hilton Railroad Bridge shall not be operated by the controller at the CSX Navassa Railroad 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.

(5) When rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate that the CSX Hilton 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, allowing vessels to pass safely.

(6) 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 in the locked down position to vessels, the channel traffic lights will continue to flash red.

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Dated: July 12, 2004.

Sally Brice-O'Hara,

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

[FR Doc. 04-17685 Filed 8-3-04; 8:45 am]

BILLING CODE 4910-15-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD09-04-020]

RIN 2115-AA87

Security Zone; Captain of the Port Chicago Zone, Lake Michigan

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove the security zone around the Byron Nuclear Power Plant and add a security zone around the Hammond Intake Crib on Lake Michigan. It has been determined that the removal of the security zone for the Byron Nuclear Power Plant would not increase the plant's vulnerability. The Hammond Intake Crib Security Zone is necessary to protect the fresh water supply from possible sabotage or other subversive acts, accidents, or possible acts of terrorism. The new zone is intended to restrict vessel traffic from a portion of Lake Michigan.

DATES: Comments and related material must reach the Coast Guard on or before October 4, 2004.

ADDRESSES: You may mail comments and related material to U.S. Coast Guard Marine Safety Office (MSO) Chicago, 215 West 83rd Street, Suite D, Burr Ridge, IL 60527. MSO Chicago 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 MSO Chicago between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: ENS Christopher Brunclik, MSO Chicago, at (630) 986-2155.

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 (CGD09-04-020), 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 U.S. Coast Guard Marine Safety Office Chicago 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

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in catastrophic loss of life, the destruction of the World Trade Center, and significant damage to the Pentagon. Current events indicate that significant threats still exist for this type of attack. In fact, National security and intelligence officials warn that future terrorists attacks are likely. The Coast Guard is responding by, amongst many other things, establishing security zones around critical infrastructure.

We propose to remove the Byron Nuclear Power Plant security zone and add a security zone around the Hammond Intake Crib. It has been determined the removal of the security zone for the Byron Nuclear Power Plant would not increase its vulnerability. The proposed Hammond Intake Crib security zone is necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Chicago, or his on-scene representative, are prohibited from entering or moving within the zone. The Captain of the Port Chicago may be contacted via phone at the above contact number.