

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[USCG–2008–1141, formerly CGD11–03–005]

RIN 1625–AA09

#### Drawbridge Operation Regulations; Connection Slough, Bacon Island, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Supplemental notice of proposed rulemaking.

**SUMMARY:** The Coast Guard has revised its proposal to amend the regulations governing the operation of the Connection Slough Drawbridge, originally published at 68 FR 183 (Sept. 22, 2003). The revised proposal reopens the comment period. The proposal is being revised at the request of the bridge owner to include drawbridge operator contact information, for waterway users to schedule drawspan openings during advance notice periods. The proposal would ensure a drawbridge operator can be contacted, is present at the drawbridge during identified increased navigation periods, and reduces the hours a drawbridge operator is required to be at the drawbridge and not gainfully employed.

**DATES:** Comments and related material must either be submitted to our online docket via <http://www.regulations.gov> on or before March 2, 2009 or reach the Docket Management Facility by that date.

**ADDRESSES:** You may submit comments identified by Coast Guard docket number USCG–2008–1141 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(3) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

To avoid duplication, please use only one of these methods. For instructions on submitting comments, see the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call Mr. David H. Sulouff, Bridge Administrator, (510) 437–3516. If you have questions on viewing or submitting material to the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Public Participation and Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### **Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (USCG–2008–1141), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert “USCG–2008–1141” in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or delivery, submit them in an unbound format, no larger than 8.5 by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

##### **Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, select the Advanced Docket Search option on the right side of the screen, insert USCG–2008–1141 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in

Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays; or the Commander (dpw), Eleventh Coast Guard District, Bridge Section, Bldg. 50–2 Coast Guard Island, Alameda, CA, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

##### **Privacy Act**

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008 issue of the **Federal Register** (73 FR 3316); or you may visit <http://DocketsInfo.dot.gov>.

##### **Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one to the Docket Management Facility 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**

Tuscany Research Institute and CCRC Farms, LLC, owners of Mandeville Island and owner/operators of the drawbridge between Mandeville and Bacon Islands, mile 2.5, Connection Slough, near Stockton, CA, have requested Coast Guard review of the existing drawbridge operating regulation found in Title 33, Code of Federal Regulations, Part 117.150. The present request from the bridge owner included detailed drawbridge operating logs from January 2000 through June 2008, showing seasonal peak vessel operating times through the drawbridge, and documenting a significant decrease in calls for operation of the drawspan between September 16 and May 14, annually, or between the hours of 5 p.m. and 9 a.m. This supports their request to adjust the existing advance notice period to more closely match the reduced navigational activity.

The existing regulation, 33 CFR 117.150, requires the drawbridge, from May 1 through October 31, to open on signal between the hours of 6 a.m. and 10 p.m., and from November 1 through April 30, to open on signal between the hours of 9 a.m. and 5 p.m. All other

times the drawbridge must open on signal if notice is given at least 4 hours in advance. The drawbridge must open upon 1-hour notice for emergency vessel operation.

It is important to note that the existing regulation presently allows the drawbridge owner to operate the drawbridge with advance notice, during certain dates and times. It does not allow the drawbridge to remain closed or to obstruct navigation, when the proper signals to open have been given.

#### **Discussion of Proposed Rule**

The proposed changes to 33 CFR 117.150, will not relieve the bridge owner from opening the drawspan for waterway traffic. The existing and proposed regulations allow the drawbridge owner to operate the drawbridge with advance notice, during certain dates and times. The drawspan will not be allowed to remain closed or to obstruct navigation, when the proper signals to open have been given.

The proposed changes are as follows:

From May 15 through September 15 the drawbridge shall open on signal between the hours of 9 a.m. and 5 p.m., and it shall open upon 12 hours advance notice between the hours of 5 p.m. and 9 a.m.

From September 16 through May 14 the bridge shall open upon 12 hours advance notice between the hours of 9 a.m. and 5 p.m., and it shall open upon 24 hours advance notice between the hours of 5 p.m. and 9 a.m.

Advance notice shall be given to the drawbridge operator by telephone at (209) 464-2959 or (209) 464-7928 weekdays between 8 a.m. and 5 p.m., and at (209) 993-8878 all other times.

The proposed changes would lower the costs of operating the bridge for the bridge owner without significantly impacting navigation. As proposed, this change would not reduce the availability of the drawspan to open for vessels. It would require mariners to contact the drawbridge earlier, when planning a transit through the drawbridge during the advance notice periods. The proposed change would allow the drawbridge to be operated on an advance notice schedule, similar to other nearby drawbridges on adjacent channels in the Delta. It would allow the drawbridge owner to utilize the drawbridge operator more effectively during documented navigational inactivity at the drawbridge, and still have the operator available at the drawbridge to provide an opening when a vessel arrives.

Should the proposed change be implemented and fail to meet the reasonable needs of vessel traffic,

nothing in this proposal or the Final Rule would preclude review and adjustment of the regulation to ensure navigational needs are satisfied. In support of documenting the effectiveness of the proposed change, and potential future changes, the Coast Guard will require CCRC Farms' continued submission of drawbridge operating logs and land traffic counts at this drawbridge.

Mariners are encouraged to notify the Coast Guard Bridge Office promptly of any alleged violation of drawbridge operating regulations, to allow effective investigation and correction of bridge-related discrepancies.

Since all drawbridges are subject to emergency operation in compliance with 33 CFR 117.31, the individual emergency operation text will be removed from the regulation.

The Coast Guard requires the bridge owner to install signage on the upstream and downstream sides of the drawbridge, in compliance with 33 CFR 117.55, to post the advance notice schedules, with telephone numbers and point of contact to be notified for drawbridge operation.

#### **Regulatory Analyses**

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

#### **Regulatory Planning and Review**

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.

We expect the economic impact of this proposed rule on commercial traffic operating on the waterway to be so minimal that a full Regulatory Evaluation is unnecessary.

#### **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 is neutral to all business entities since it only clarifies how the bridge is operated and the bridge is still required to open on demand for vessels.

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. 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 Mr. David H. Sulouff, Bridge Administrator, Eleventh Coast Guard District, Bridge Section, at (510) 437-3516. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

#### **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 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 rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may 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 Department of Homeland Security Management Directive 5100.1 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination under the Instruction that this action is not likely to have a significant effect on the human environment. There are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

#### 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; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 33 CFR 117.150 to read as follows:

##### § 117.150 Connection Slough.

The draw of the Reclamation District No. 2027 bridge between Mandeville and Bacon Islands, mile 2.5 near Stockton, from May 15 through September 15, shall open on signal between the hours of 9 a.m. and 5 p.m., and it shall open upon 12 hours advance notice between the hours of 5 p.m. and 9 a.m.; and from September 16 through May 14 the draw shall open upon 12 hours advance notice between

the hours of 9 a.m. and 5 p.m., and it shall open upon 24 hours advance notice between the hours of 5 p.m. and 9 a.m.

Advance notice shall be given to the drawbridge operator by telephone at (209) 464–2959 or (209) 464–7928 weekdays between 8 a.m. and 5 p.m., and at (209) 993–8878 all other times.

Dated: November 12, 2008.

**P.F. Zukunft,**

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

[FR Doc. E8–28476 Filed 11–28–08; 8:45 am]

**BILLING CODE 4910–15–P**

## POSTAL REGULATORY COMMISSION

### 39 CFR Part 3001

[Docket No. RM2009–2; Order No. 139]

#### Periodic Reporting Rules

**AGENCY:** Postal Regulatory Commission.

**ACTION:** Proposed rule; availability of rulemaking petition.

**SUMMARY:** Under a new law, the Postal Service must file an annual compliance report on costs, revenues, rates, and quality of service associated with its products. It recently filed documents with the Commission to change some of the methods it uses to compile the fiscal year 2008 report. In the Commission's view, these documents constitute a rulemaking petition. Therefore, this document provides notice of the Service's filing and an opportunity for public comment.

**DATES:** 1. *Initial comments:* December 5, 2008.

2. *Reply comments:* December 12, 2008.

**ADDRESSES:** Submit comments electronically via the Commission's Filing Online system at <http://www.prc.gov>.

**FOR FURTHER INFORMATION CONTACT:** Stephen L. Sharfman, General Counsel, 202–789–6820 and [stephen.sharfman@prc.gov](mailto:stephen.sharfman@prc.gov).

**SUPPLEMENTARY INFORMATION:** Regulatory History. 73 FR 51983 (September 8, 2008); 73 FR 55464 (September 25, 2008); 73 FR 67455 (November 14, 2008).

On November 19, 2008, the Postal Service filed a petition to initiate an informal rulemaking proceeding to change accepted costing methods for purposes of periodic reporting.<sup>1</sup> The

<sup>1</sup> Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider Further Proposed Methodology Changes for the FY