

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

[Docket No. USCG–2018–0091]

RIN 1625–AA09

**Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA**

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is changing the operating schedule that governs the Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA. The change is necessary to help coordinate vessel passage with commuter rail traffic. The schedule change would require vessels to provide a 30-minute advance notification for drawspan openings.

**DATES:** This rule is effective November 22, 2019.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG–2018–0091 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516; email [Carl.T.Hausner@uscg.mil](mailto:Carl.T.Hausner@uscg.mil).

**SUPPLEMENTARY INFORMATION:****I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IAW	In Accordance With
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
SMART	Sonoma-Marín Area Rail Transit
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On March 27, 2019, the Coast Guard published a notice of proposed rule making (NPRM) entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (84 FR 10745). Further, on March 22, 2019, Commander (dpw), Eleventh Coast Guard District mailed notification of the NPRM to 33 interested parties that

regularly use the Petaluma River and published a notification of the NPRM in the Local Notice to Mariners, No. 13/19. The Coast Guard received no comments on this proposed rule.

On March 2, 2018, the Coast Guard published a temporary deviation from the operating schedule entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (83 FR 8936). The March 2, 2018 proposed change to the bridge operating schedule was tested to determine whether a permanent change was warranted to allow the draw to open as follows:

The draw shall open on signal from 6 a.m. to 11 p.m. if at least 2-hours notice is given to the drawtender. At all other times, the draw shall be maintained in the fully opened position, except for the passage of trains or maintenance.

Five comments were received in response to the first test deviation. Four of the five comments submitted addressed the 2-hour advance notification. The commenters stated that the lengthy advance notification would be a burden on waterway users.

On August 13, 2018, the Coast Guard published a second temporary deviation from the operating schedule entitled “Drawbridge Operation Regulation; Petaluma River, Haystack Landing (Petaluma), CA” in the **Federal Register** (83 FR 39879). The August 13, 2018 proposed change to the bridge operating schedule was tested to determine whether an alternative permanent change, from the March 2, 2018 test deviation, was warranted to allow the draw to open as follows:

The draw shall open on signal from 6 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully opened position, except for the passage of trains or maintenance.

Two comments were received in response to the second test deviation. The first comment was directed at future navigation on the Petaluma River and did not address the efficiency of the 30-minute notice and the second comment was unrelated to the test deviation.

**III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Northwestern Pacific (SMART) railroad bridge across the Petaluma River, mile 12.4, at Haystack Landing (Petaluma), CA is a single leaf bascule bridge which provides 3.6 feet of vertical navigational clearance at Mean High Water in the closed-to-navigation position and

unlimited vertical clearance in the fully opened position. IAW 33 CFR 117.187(a); The draw of the Northwestern Pacific (SMART) railroad bridge, mile 12.4, at Haystack Landing (Petaluma), shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility is from the drawtender’s station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

On October 22, 2015, SMART requested the Coast Guard consider changing the operating schedule due to the commencement of commuter rail service on a previously rarely used rail line. Due to an increase in commuter rail traffic, SMART requested the drawspan remain in the closed-to-navigation position during commute hours to avoid unnecessary bridge openings and that vessels provide an advance notification to the bridge tender for an opening during these hours. Two test deviations were conducted to determine if the proposed operation regulation change would meet the reasonable needs of navigation while benefiting land traffic. It was determined that a 30-minute advance notification would meet the reasonable needs of navigation while benefiting commuter rail traffic. The Petaluma River supports commercial and recreational traffic. Currently 32 commuter trains cross the bridge each day. Commercial waterway traffic on the river has decreased in the last year due to an upstream tug and barge company moving their base of operation down river, east of the bridge.

**IV. Discussion of Comments, Changes and the Final Rule**

The preceding NPRM the Coast Guard issued provided a comment period of 90 days and no comments were received. The Final Rule would require the bridge to open on signal for vessels from 3 a.m. to 11 p.m. when a 30-minute notification is given to the drawtender. At all other times the bridge would be maintained in the open-to-navigation position except for the crossing of trains or for maintenance. This Final Rule would meet the reasonable needs of navigation while benefiting commuter rail transportation and would reduce wear and tear on the drawspan. In a related matter, SMART also owns the

Blackpoint railroad bridge, mile 0.8, over the Petaluma River. This Final Rule would change the names of both the Northwestern Pacific railroad bridge, mile 0.8, at Blackpoint and the Northwestern Pacific railroad bridge, mile 12.4, at Haystack Landing (Petaluma) in the regulations to reflect that ownership.

#### V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice.

##### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. 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 received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

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 rule. 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 in the **FOR FURTHER INFORMATION CONTACT**, above.

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). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

##### C. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

##### D. Federalism and Indian Tribal Government

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this 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. The Coast Guard received no comments on this section. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT**, above.

##### E. 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 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble. The Coast Guard received no comments on this section.

##### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). We have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are required for this rule.

##### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the “For Further Information Contact” section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

##### List of Subjects in 33 CFR Part 117

Bridges.

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; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 117.187 to read as follows:

**§ 117.187 Petaluma River.**

(a) The draw of the SMART Blackpoint railroad bridge, mile 0.8 at Blackpoint, shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(b) The draw of the SMART Haystack Landing railroad bridge, mile 12.4 at Petaluma, shall open on signal from 3 a.m. to 11 p.m. if at least 30 minutes notice is given to the drawtender. At all other times, the draw shall be maintained in the fully open position, except for the crossing of trains or for maintenance. When the draw is closed and visibility from the drawtender's station is less than one mile up or down the channel, the drawtender shall sound two long blasts every minute. When the draw is reopened, the drawtender shall sound three short blasts.

(c) The draw of the Petaluma highway bridge at "D" Street, mile 13.7, at Petaluma, shall open on signal if at least four hours notice is given for openings from 6 a.m. to 6 p.m., and if at least 24 hours notice is given for openings from 6 p.m. to 6 a.m.

Dated: October 15, 2019.

**Peter W. Gautier,**

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

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. USCG-2019-0714]

**Drawbridge Operation Regulation; New River, Fort Lauderdale, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from drawbridge regulation; modification.

**SUMMARY:** The Coast Guard has modified a temporary deviation from the operating schedule that governs the Florida East Coast Railway (FECR) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida. This modified deviation extends the period the bridge may operate under the

test deviation to the drawbridge operation schedule. This modification will allow for ongoing negotiations between the railroad and maritime stakeholders as the parties discuss a final rule that reasonably meets the needs of both modes of transportation.

**DATES:** This deviation is effective without actual notice from October 23, 2019 through 11:59 p.m. on December 31, 2019. For the purposes of enforcement, actual notice will be used from 12:01 a.m. on October 19, 2019, through October 23, 2019.

**ADDRESSES:** The docket for this deviation, USCG-2019-0714, is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this modified test deviation, call or email LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305-535-4307, email [Samuel.Rodriguez-Gonzalez@uscg.mil](mailto:Samuel.Rodriguez-Gonzalez@uscg.mil).

**SUPPLEMENTARY INFORMATION:** The Florida East Coast Railway (FECR) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida is a single-leaf bascule railroad bridge with a 4 foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.313(c). Navigation on the waterway is commercial and recreational.

On August 21, 2019, the Coast Guard published a temporary test deviation entitled "Drawbridge Operation Regulation; New River, Fort Lauderdale, FL" in the **Federal Register** (84 FR 43501). That temporary deviation, effective from 12:01 a.m. on August 20, 2019, to 11:59 p.m. on October 18, 2019, allowed for testing a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The bridge owner, FECR, has requested the currently published deviation be extended through 11:59 p.m. on December 31, 2019.

This extension of time is necessary to accommodate ongoing negotiations between interested parties to discuss a Final Rule that reasonably meets the needs of both the railroad and maritime industries.

The draw shall operate as follows from 12:01 a.m. on October 19, 2019, to 11:59 p.m. on December 31, 2019:

(1) The bridge shall be constantly tended.

(2) The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.

(3) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.

(4) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(5) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(6) When a train approaches, the lights go to flashing red then the draw lowers and locks.

(7) After the train has cleared the bridge, the draw opens and the lights return to green.

(8) The bridge shall not be closed more than 60 minutes combined in each consecutive 120-minute block of time beginning at 12:01 a.m. each day. At no time will the bridge be closed to navigation for more than 60 consecutive minutes of time.

(9) The bridge shall remain open to maritime traffic when trains are not crossing.

Vessels able to pass through the bridge in the closed position may do so at anytime. The bridge will be able to open for emergencies and there is no immediate alternate route for vessels to pass. The Coast Guard will also inform the users of the waterways through Local and Broadcast Notices to Mariners of the change in operating schedule for the bridge so that vessel operators can arrange their transits to minimize any impact caused by the temporary deviation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: October 17, 2019.

**Barry Dragon,**

*Director, Bridge Branch, Seventh Coast Guard District.*

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