

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2019–0955]

RIN 1625–AA09

Drawbridge Operation Regulation: New River, Fort Lauderdale, FL

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating schedule that governs the Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida. This change will allow the drawbridge to operate on a more predictable schedule. This action should better serve the reasonable needs of both vessel and rail traffic.

DATES: This rule is effective November 24, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG–2019–0955 in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District, telephone 305–415–6740, email Jennifer.N.Zercher@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
§	Section
FL	Florida
FRA	Federal Rail Administration
FECR	Florida East Coast Railway
FEC	Florida East Coast
MIASF	Marine Industries Association of South Florida
U.S.C.	United States Code

II. Background Information and Regulatory History

On January 23, 2020, the Coast Guard published a Test Deviation, with a request for comments, entitled “Drawbridge Operation Regulation; New River, Fort Lauderdale, FL” in the **Federal Register** (85 FR 3852), to test a

proposed operating schedule for the FEC New River Railroad Bridge. During the comment period that ended March 30, 2020, we received seven comments and those comments were addressed in the NPRM.

On July 13, 2020, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; New River, Fort Lauderdale, FL” in the **Federal Register** (85 FR 41932). During the comment period that ended August 12, 2020, we received two comments and those comments were addressed in the SNPRM.

On June 29, 2021, the Coast Guard published a supplemental notice of proposed rulemaking entitled “Drawbridge Operation Regulation; New River, Fort Lauderdale, FL” in the **Federal Register** (86 FR 34172). During the comment period that ended July 29, 2021, we received four comments and those comments are addressed in Section IV of this final rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

The Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, Florida, is a single-leaf bascule railroad bridge with a four-foot vertical clearance at mean high water in the closed position. The operating schedule for the bridge set forth in 33 CFR 117.313(c).

Traffic on the waterway includes both commercial and recreational vessels. Brightline, with support from the bridge owner, Florida East Coast Railway (FECR), requested a change to the drawbridge operating schedule. Due to the increase in rail traffic, the current operating schedule no longer balances the needs of vessel and rail traffic.

IV. Discussion of Comments, Changes and the Final Rule

Four comments were received. One commenter requested to know if the rulemaking on the operation of the bridge is tied to the train schedule for a fixed amount of crossings over the river. The rule does not consider the train schedules. The bridge is required to be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic, inspections and to perform periodic maintenance that has been authorized by the Coast Guard.

The second commenter is in support of the proposed rule but had recommendations regarding the technical language. The Coast Guard considered the recommendation to

change paragraph (c)(3)(ii) to read “. . . on a quarterly basis or as otherwise required by this paragraph.” because the commenter felt it conflicted with paragraph (c)(7). The Coast Guard feels there is no conflict and it is unnecessary to add the additional language to paragraph (c)(3)(ii). However, after reviewing paragraph (c)(7), we will change “subsection” to “paragraph” in paragraph (c)(7)(i). The second recommendation was to include “the performance of periodic maintenance” in paragraph (c)(5). This paragraph states when the bridge owner shall contact the Coast Guard Captain of the Port Miami in the event of an operational failure or other emergencies impacting drawbridge operations. The commenter stated that if the periodic maintenance lasted longer than 60 minutes a violation of paragraph (c)(2) would occur. The performance of periodic maintenance is authorized by the Coast Guard in accordance with subpart A of 33 CFR part 117. When periodic maintenance is authorized, it is considered a temporary change to the drawbridge operating schedule, therefore, a violation of paragraph (c)(2) would not occur.

The third and fourth commenters provided joint comments. Both commenters support the proposed rule with the exception of the addition of “periodic maintenance” and the removal of “minor repairs”. They believe the term “periodic maintenance” introduces new ambiguity and the Coast Guard should consider alternate language provided in their comments. The commenters feel this regulation has developed into a unique regulatory regime and does not allow for routine and necessary operations of a railroad bridge, including inspections and minor repairs. The language in paragraph (c)(1) is regulatory language used in other railroad bridge operating schedules throughout the United States, and requires drawbridges be maintained in the fully open position at all times, except for rail traffic, inspections, and maintenance. The Coast Guard authorizes temporary deviations to drawbridge operating schedules in accordance with subpart A of 33 CFR part 117. These authorizations include but are not limited to periodic maintenance, minor repairs, and events not affecting the operation of the drawbridge but may require it to remain closed to navigation outside of its published drawbridge operating schedule. The Coast Guard feels the language proposed in the SNPRM in paragraph (c)(1) is the proper regulatory

language for this drawbridge operating regulation. It follows other drawbridge operating regulations for railroad drawbridges throughout the United States.

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. 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).

This regulatory action determination is based on the ability that vessels can continue to transit the bridge when trains are not crossing, at designated times throughout the day and vessels that are capable of transiting under the bridge, without an opening, to do so at any time. Vessels in distress and public vessels of the United States must be allowed to pass at any time or as soon as the train has cleared the bridge.

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 zero 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** section.

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.

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.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined 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 and 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; and Department of Homeland Security Delegation No. 0170.1.

- 2. Amend § 117.313 by revising paragraph (c) to read as follows:

§ 117.313 New River.

* * * * *

(c) The draw of the Florida East Coast (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale shall operate as follows:

(1) The drawbridge shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is

closed for the passage of rail traffic, inspections, and to perform periodic maintenance authorized in accordance with subpart A of this part.

(2) The drawbridge shall not be closed to navigation for more than 60 consecutive minutes.

(3) Notwithstanding paragraph (c)(1) of this section, the drawbridge shall open and remain open to navigation for a fixed 10-minute period each hour from 5 a.m. to 11:59 p.m., except that the drawbridge shall be open at the following times which shall serve as the hourly fixed 10-minute period:

TABLE 1 TO PARAGRAPH (C)(3)

7:00 a.m. until 7:10 a.m.
9:00 a.m. until 9:10 a.m.
4:00 p.m. until 4:10 p.m.
6:00 p.m. until 6:10 p.m.
10:00 p.m. until 10:10 p.m.

(i) Additionally, in each hour from 12:00 p.m. to 2:59 p.m., the drawbridge shall open and remain open to navigation for an additional 10-minute period.

(ii) The 10-minute opening periods shall be published on a quarterly basis by the drawbridge owner and reflected on the drawbridge owner's website and mobile application.

(4) The drawbridge shall have a drawbridge tender onsite at all times who is capable of physically tending and operating the drawbridge by local control, if necessary, or when ordered by the Coast Guard.

(i) The drawbridge tender shall provide estimated times of drawbridge openings and closures, upon request.

(ii) Operational information will be provided 24 hours a day on VHF-FM channels 9 and 16 or by telephone at (305) 889-5572. Signs shall be posted visible to marine traffic and displaying VHF radio contact information, website and application information, and the telephone number for the bridge tender.

(5) In the event of a drawbridge operational failure, or other emergency circumstances impacting normal drawbridge operations, the drawbridge owner shall immediately notify the Coast Guard Captain of the Port Miami and provide an estimated time of repair and return to normal operations.

(6) A drawbridge log shall be maintained including drawbridge opening and closing times. The drawbridge log should include reasons for those drawbridge closings that interfere with scheduled openings in this section. This drawbridge log shall be maintained by the drawbridge owner and upon request, be provided to the Coast Guard.

(7) A website and mobile application shall be maintained by the drawbridge owner and publish:

(i) Drawbridge opening times required by this paragraph (c);

(ii) Timely updates to schedules; including but not limited to impacts due to emergency circumstances, repairs, and inspections;

(iii) At least 24-hour advance notice for each schedule in order to facilitate planning by maritime operators; and

(iv) To the extent reasonably practicable, at least 60-minutes advance notice of schedule changes or delays.

(8) The drawbridge shall display the following lights:

(i) When the drawbridge is in the fully open position, green lights shall be displayed to indicate that vessels may pass.

(ii) When rail traffic approaches the block signal, the lights shall go to flashing red, then the drawbridge lowers and locks, and the lights shall remain flashing red.

(iii) After the rail traffic has cleared the drawbridge, the drawbridge shall open and the lights return to green.

* * * * *

Dated: October 15, 2021.

Brendan C. McPherson,

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

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2021-0769]

RIN 1625-AA00

Safety Zone; San Diego Bay, San Diego, CA

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the navigable waters in the vicinity of the General Dynamics NASSCO shipyard in San Diego Bay, San Diego, CA, during the launch of the USNS Harvey Milk. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with the launching and subsequent berthing of the USNS Harvey Milk. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port San Diego.

DATES: This rule is effective from 9 a.m. through 10:30 a.m., on November 6, 2021.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0769 in the search box and click "Search." Next, in the Document Type column, select "Supporting & Related Material."

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander John Santorum, Waterways Management, U.S. Coast Guard Sector San Diego, CA; telephone 619-278-7656, email MarineEventsSD@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable to publish an NPRM because the Coast Guard must establish this safety zone by November 6, 2021. This urgent safety zone is required to protect the maritime public and the surrounding waterways from hazards associated with the launching of the USNS Harvey Milk. The Coast Guard lacks sufficient time to provide a reasonable comment period and then consider those comments before issuing the rule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because this rule is needed to protect mariners, commercial and recreational waterway users, and the USNS Harvey Milk from dangers associated with the