



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0821]

RIN 1625-AA09

Drawbridge Operation Regulation; Kissimmee River, Fort Basinger, FL

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the DSX Railroad Bridge (CSX Railroad Bridge) across the Kissimmee River, mile 37 near Fort Basinger, Florida. The drawbridge was converted to a fixed bridge in 2016 and the operating regulation is no longer applicable or necessary.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2019-0821. 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 e-mail Mr. Eddie Lawrence, Bridge Administration Branch, United

States Coast Guard District Seven: telephone 305-415-6946, email  
Eddie.H.Lawrence@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

|        |                                 |
|--------|---------------------------------|
| CFR    | Code of Federal Regulations     |
| DHS    | Department of Homeland Security |
| FR     | <b>Federal Register</b>         |
| FL     | Florida                         |
| §      | Section                         |
| U.S.C. | United States Code              |

**II. Background Information and Regulatory History**

The Coast Guard is issuing this final 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because DSX Railroad Bridge that once required draw operations in 33 CFR 117.295, was converted to a fixed bridge in 2016. Therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

We are issuing this 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. The bridge has been a fixed bridge for three years and this rule merely requires an administrative change to the federal register in order to omit a regulatory requirement that is no longer applicable or necessary. The modification has already taken place and the removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

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

The Coast Guard is issuing this rule under authority of The Bridge Act of 1894, 33 U.S.C. 499.

The DSX Railroad Bridge was converted to a fixed bridge in 2016. The regulation for the previously existing drawbridge was not removed subsequent to the bridge's conversion to a fixed bridge. The conversion of this bridge necessitates the removal of the drawbridge operation regulation, 33 CFR §117.295, because this drawbridge regulation governs a bridge that is no longer able to be opened.

### **IV. Discussion of Final Rule**

The Coast Guard is changing the regulation in 33 CFR §117.295 by removing restrictions and the regulatory burden related to the draw operations for this bridge, which is no longer a drawbridge. The change removes 33 CFR §117.295 in its entirety since the bridge has been converted to a fixed bridge. This Final Rule seeks to update the Code of Federal Regulations by removing

language that governs the operation of the DSX Railroad Bridge, which in fact is no longer a drawbridge. This change does not affect waterway or land traffic.

## **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 fact that the bridge was converted to a fixed bridge and no longer operates as a drawbridge. The removal of the operating schedule from 33 CFR §117 Subpart B will have no effect on the movement of waterway or land traffic.

### **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 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.

For the reasons stated in section V.A above this final rule would 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 (Public Law 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.

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, 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, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

A preliminary Record of Environmental Consideration and a Memorandum for the Record are not 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.

§ 117.295 [Removed]

2. Remove § 117.295.

Dated: November 5, 2019.

Eric C. Jones,  
Rear Admiral, U.S. Coast Guard,  
Commander, Seventh Coast Guard District.

[FR Doc. 2019-24467 Filed: 11/8/2019 8:45 am; Publication Date: 11/12/2019]