



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, DHS.

ACTION: Notice of proposed rulemaking.

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

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2019-0955 using Federal e-Rulemaking Portal at <https://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail LT Samuel Rodriguez-Gonzalez, U.S. Coast Guard, Sector Miami Waterways Management Division; telephone 305-535-4307, e-mail Samuel.Rodriguez-Gonzalez@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
FL	Florida
FECR	Florida East Coast Railway
FEC	Florida East Coast
VTUS-F	Virgin Trains USA-Florida, LLC
MIASF	Marine Industries Association of South Florida

**II. Background, Purpose and Legal Basis**

Virgin Train USA Florida (VTUS-F), with support from the bridge owner, Florida East Coast Railway (FECR), requested a change to the drawbridge operating schedule due to an increase in rail traffic in recent years. The operating schedule for the bridge set forth in 33 CFR 117.313(c) no longer balances the needs of vessel and rail traffic.

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. Traffic on the waterway includes both commercial and recreational vessels.

On January 23, 2020, the Coast Guard published a Test Deviation entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the **Federal**

**Register** (85 FR 3852). We received seven comments.

Five comments were against the proposed changes. Two comments stated that sufficient data was not presented to support a six-month test deviation. The Coast Guard published the Test Deviation based on data provided by the maritime community regarding the unpredictability of openings and the failure of the bridge owner to comply with the drawbridge operating regulation. The data, which was reported to Coast Guard Sector Miami and the Seventh District, provided sufficient information to indicate a clear need to publish a Test Deviation to address a need for predictability to facilitate reasonable maritime traffic. Three comments addressed a concern that vessel operators would have to wait up to 50 minutes for the bridge to open and stated there should be equal access to the waterway. This interpretation of the proposed rule does not accurately reflect the regulation or the Coast Guard's intent. The bridge will remain in the open position and available to mariners when trains are not crossing, except during inspections and minor repairs that should not interfere with the 10-minute opening or, at certain times, an additional 10-minute opening. The Coast Guard must ensure that the reasonable needs of navigation are met, not necessarily all the needs. The Test Deviation provided a predictable schedule for maritime traffic that ensured the reasonable needs of navigation could be met.

The bridge owner provided comments in support of implementing the test deviation as the permanent operating schedule for the FEC Railroad Bridge. They stated that predictable and sufficient openings, as well as sufficient closures to facilitate rail operations, appeared to be sufficient to satisfy both the marine community and railroads. Additionally, they provided an abbreviated vessel traffic study during the month of

March 2020 conducted by an independent company. Data was collected between March 3 and March 18, 2020, via recorded video from the Marine Industries Association of South Florida's (MIASF) New River Live Feed camera mounted west of the bridge and directed east toward the bridge. A two-day field survey was conducted to test the validity of the data collected during the video review. The contractor observed 1,786 boats over the entire study period, with an average queue time of 4 minutes. The majority of boaters did not queue due to FEC bridge closure: 73% to 80% of boats crossed through the open bridge immediately upon approach during the Video Review and Field Survey, respectively. For the 20% to 27% of boaters who queued, the average queue time ranged from 10 to 17 minutes. Over the study period, the average queue time for all observed boats ranged from 2 to 5 minutes.

MIASF provided comments in support of the test deviation; however, they stated that long overdue improvements in infrastructure are needed to overcome the unreasonable obstruction of the waterway and the fundamental conflict that an increase in train operations poses to marine operations. This comment is outside the scope of this NPRM. MIASF indicated measures instituted by the test deviation have done much to address the intermodal conflicts, but also suggested minor modifications. MIASF specifically addressed the lowering of the drawbridge after the published schedule when no rail traffic is passing and an additional requirement to promptly raise the drawbridge once rail traffic has cleared the drawbridge. The proposed rule does allow for the bridge to remain in the closed to navigation position for inspections and minor repairs that do not interfere with the published schedule. Additionally, 33 CFR 117.9 - Delaying opening of a draw, does note "Trains are usually controlled by the block method... Land and water

traffic should pass over or through the draw as soon as possible in order to prevent unnecessary delays in the opening and closure of the draw.” MIA SF also addressed drawbridge maintenance management, general communications and how to ensure the marine community is informed. The proposed rule requires the bridge owner to maintain a website and mobile application that displays required opening times, a 24-hour advance notice of the schedule and to the extent reasonably practicable, at least 60-minutes advance notice of schedule changes or delays. Additionally, the proposed rule requires the bridge owner receive Coast Guard approval prior to engaging in routine maintenance that may affect the operating schedule. Lastly, concerns regarding the bridge owner’s course of action in case of a vessel or facility fire, as well as other emergencies were raised. When an emergency situation is declared, the bridge owner is required to follow 33 CFR 117.31 which addresses drawbridge operations for emergency vehicles and emergency vessels.

FECR requested a modification to the proposed rule for overnight drawbridge operations. FECR stated that during overnight hours when vessel traffic is minimal, the 10-minute opening requirement every hour should be removed. This proposed rule removes the 10-minute opening requirement between midnight and 4:59 a.m., however the requirement stating the bridge shall not be closed to navigation for more than 60 consecutive minutes remains at all times.

### **III. Discussion of Proposed Rule**

The proposed rule will allow the drawbridge to operate on a more predictable schedule. Under this proposed regulation, the draw of the FEC Railroad Bridge would provide a pre-determined 10-minute opening between 5:00 a.m. and 11:59 p.m. An

additional 10-minute opening would be provided at various times throughout the day. A mobile application and website shall be maintained depicting the operational status of the drawbridge. These proposed changes are necessary to improve the flow of marine traffic on the New River by providing predictable, pre-determined openings and increased communications through various media sources.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time while taking into account the reasonable needs of other modes of transportation. 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.

#### **IV. Regulatory Analyses**

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

##### *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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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

continue to transit the bridge at designated times throughout the day and when trains are not crossing or when a vessel is in distress.

*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 proposed rule would 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 IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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 proposed 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. 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.

*C. 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.).

*D. Federalism and Indian Tribal Governments*

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 proposed 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 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. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

*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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 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. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

**V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <https://www.regulations.gov>. If your material cannot be submitted using <https://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <https://www.regulations.gov> and will include any personal information you have provided. <http://www.regulations.gov/privacynotice> For more about privacy and submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

## 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 §117.313 paragraph (c) to read as follows:

#### § 117.313 New River

\* \* \* \* \*

(c) The draw 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 minor repairs that do not interfere with the pre-determined opening times outlined in this part.

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

(3) 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:

- 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 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 part. This log shall be provided to the Coast Guard upon request.

(7) A website and mobile application shall be maintained to publish:

- (i) Drawbridge opening times required by this subsection;
- (ii) Timely updates to schedules;
- (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.

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Dated: June 29, 2020

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

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