



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2021-0099]

RIN 1625-AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL

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

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Seaboard System Railroad Bridge, across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida. This proposed change would allow the swing bridge to be remotely operated, change the start and end times for advance notification for an opening during the overnight hours and update the name of the bridge. The Coast Guard is seeking comments from the public regarding the proposed changes.

DATES: Comments and related material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2021-0099 using the 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 proposed 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

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|--------|---|
| CFR | Code of Federal Regulations |
| DHS | Department of Homeland Security |
| FR | Federal Register |
| OMB | Office of Management and Budget |
| NPRM | Notice of proposed rulemaking (Advance, Supplemental) |
| § | Section |
| U.S.C. | United States Code |
| FL | Florida |

II. Background, Purpose and Legal Basis

The Seaboard System Railroad Bridge across the Okeechobee Waterway, mile 28.2, at Indiantown, Florida is a swing bridge with a seven foot vertical clearance at mean high water in the closed position. Navigation on the waterway is commercial and recreational. The operating schedule for the bridge is set forth in 33 CFR 117.317(e).

The bridge owner, CSX Transportation, requested the Coast Guard consider allowing the railroad swing bridge to be remotely operated, and modify the hours when the three hour advance notice is required for an opening. Additionally, the name of the swing bridge would be updated to reflect the current bridge owner.

On March 5, 2021, the Coast Guard published a Test Deviation entitled “Drawbridge Operation Regulation; Okeechobee Waterway, Indiantown, FL” in the **Federal Register** (86 FR 12821). The comment period for the Test Deviation expires on or before April 29, 2021. Zero comments have been received as of March 26, 2021.

III. Discussion of Proposed Rule

The proposed rule will allow the swing bridge to be remotely monitored and operated. The swing bridge will remain in the open to navigation position during daylight hours and close only for the passage of rail traffic. The start of the three hour advance notice for an opening will begin earlier each evening and end one hour later each

morning. The time changes for the three hour advance notice would align with the operating schedule of the U.S. Army Corps of Engineers (USACE) Locks along this portion of the Okeechobee Waterway. The proposed changes will allow for the swing bridge to operate more efficiently while taking into account the reasonable needs of navigation. Additionally, the name of the swing bridge would be updated to reflect the current bridge owner.

This proposed change would still allow vessels that are capable of transiting under the bridge, without an opening, to do so at any time and vessels can still transit the bridge when advanced notice is given. Vessels in distress and public vessels of the United States must be allowed to pass at any time.

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 still transit the bridge given advanced notice and vessels that can transit under the bridge without an opening may do so at anytime.

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, 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. 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. 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; and Department of Homeland Security Delegation No. 0170.1.

- 2 Amend §117.317 by revising paragraph (e) to read as follows:

§ 117.317 Okeechobee Waterway.

* * * * *

(e) *Seaboard System Railroad bridge, mile 28.2 at Indiantown.* The draw of the CSX Railroad Bridge, mile 28.2 at Indiantown, FL, shall operate as follows:

- (1) The swing bridge is not tendered locally, but will be monitored and operated by a remote operator.

- (2) Marine radio communication shall be maintained, by the remote operator, with

mariners near the bridge for the safety of navigation. Visual monitoring of the waterway shall be maintained with the use of cameras. Detection sensors shall be installed for the detection of vessels entering the radius of the swing span of the bridge while in operation.

(3) From 7 a.m. to 7 p.m., the bridge will be maintained in the open to navigation position and will display green lights to indicate that the span is fully open.

(4) When a train approaches, the remote operator shall monitor for vessels in the vicinity of the bridge. Provided the sensors do not detect a vessel entering the swing radius of the bridge, the operator shall initiate the closing sequence, which includes the sounding of a horn. The span will remain in the closed position for the entire time the track circuit is occupied displaying red lights.

(5) After the train has cleared the track circuit, the span shall open and green lights will be displayed.

(6) From 7 p.m. to 7 a.m., the bridge will be in the closed to navigation position and will open if at least a three hour advance notice is requested via marine radio channel 9 VHF or telephone (813) 677-3974.

(7) The bridge shall not be operated from the remote location in the following events: failure or obstruction of the detection sensors, remote actuation systems, cameras, or marine radio communications, or when directed by the Coast Guard. In these situations, a bridge operator must be on-site and locally operate the bridge.

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Dated: April 6, 2021.

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