



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

Docket No. USCG-2020-0513

RIN 1625-AA09

### Drawbridge Operation Regulation; River Rouge, Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, over the River Rouge. Delray Connecting Railroad Company, the owner and operator of these three bridges, has requested to stop continual drawtender service and to operate the two bridges only while trains are crossing the bridge, leaving them in the open position at all other times, while the third bridge would open upon signal if a 4-hour advance notice is received.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2020-0513 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District;

telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

## **SUPPLEMENTARY INFORMATION:**

### **I. Table of Abbreviations *[Delete/add any abbreviations not used/used in this document]***

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

### **II. Background Information and Regulatory History**

On October 27, 2020 we published in the Federal Register (85 FR 68019) a Notice of Proposed Rule Making. There we stated why we issued the NPRM, and invited comments on our proposed regulatory action. During the 60-day comment period, we received no comments.

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

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

The National Steel Corporation Railroad Bridge, mile 0.40, the Delray Connecting Railroad Bridge, mile 0.34, and the Delray Connecting Railroad Bridge, mile 0.80, over the River Rouge, currently open on signal pursuant to 33 CFR 117 and are required to be manned by a drawtender at each bridge. The reason for the request to stop continual drawtender service is that the primary customer, a still mill on Zug Island, has been placed into caretaker status, significantly decreasing the rail traffic across these bridges.

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

We did not receive any comments from the waterway users.

### **V. Discussion of Final Rule**

The proposed rule will establish the procedures to move the bridge to allow rail traffic

to cross the bridge while giving notice to the vessels transiting the waterway that the bridge will be lowering. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF-FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF-FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, one last SECURITE call will be made that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge will be raised and locked in the fully open to navigation position.

The Delray Connecting Railroad Bridge, mile 0.34, has had limited requests for openings and provides access to Zug Island for vehicles and rail traffic. The owner of the railroad states the bridge has been operating with advance notice illegally without complaints for several years.

## **VI. Regulatory Analyses**

The Coast Guard has 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 because the bridge will only be lowered for train traffic or the bridge will open with advance 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 (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 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, 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.

### *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; DHS Delegation No. 0170.1.

2. Revise § 117.645 to read as follows:

**§ 117.645 River Rouge.**

(a) The Delray Connecting Railroad Bridge, mile 0.34, need not have a drawtender in continued attendance at the bridge and shall open on signal if a 4-hour advance notice is provided.

(b) The Delray Connecting Railroad Bridge, mile 0.80, over the Old Channel need not have a drawtender in continued attendance at the bridge. The bridge will remain open ten minutes before the bridge is lowered for train traffic. A crewmember from the train will initiate a SECURITE call on VHF-FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF-FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF-FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes before lowering. Once the drawtender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(c) The National Steel Corporation Railroad Bridge, mile 0.40, need not have a drawtender in continual attendance at the bridge. Ten minutes before the bridge is lowered for train traffic a crewmember from the train will initiate a SECURITE call on VHF-FM Marine Channel 16 that the bridge will be lowering for train traffic and invite any concerned mariners to contact the drawtender on VHF-FM Marine Channel 12. The drawtender will also visually monitor for vessel traffic and listen for the standard bridge opening signal of one prolonged blast and one short blast from vessels already transiting the waterway. After the ten minute warning, another SECURITE call shall be made on VHF-FM Marine Channel 16 that the bridge will be lowering for rail traffic five minutes

before lowering. Once the drawtender is satisfied that it is safe, the bridge will be lowered for rail traffic. Once the rail traffic has cleared the bridge, the bridge shall be raised and locked in the fully open to navigation position.

(d) The draw of the Conrail Bridge, mile 1.48, is remotely operated, is required to operate a radiotelephone, and shall open on signal.

Dated: April 2, 2021

D. L. COTTRELL  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District

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