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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2022-0222]

RIN 1625-AA09

Drawbridge Operation Regulation; Okeechobee Waterway, Stuart, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Florida East Coast (FEC) Railroad Bridge, across the Okeechobee Waterway (OWW), mile 7.41, at Stuart, FL. This proposed rule will allow the drawbridge to operate on a more predictable and reliable schedule to meet the needs of competing modes of transportation. This action is necessary due to a significant increase in railway activity. We invite your comments on this proposed rulemaking.

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-2022-0222 using Federal Decision Making 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. This notice of proposed rulemaking with its plain-language, 100-word-or-less proposed rule summary will be available in this same docket.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or email Ms. Jennifer Zercher, Bridge Management Specialist, Seventh Coast Guard District; telephone 571-607-5951, email Jennifer.N.Zercher@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code
TD	Temporary Deviation
OWW	Okeechobee Waterway
FL	Florida
TIR	Temporary Interim Rule
NOI	Notice of Inquiry
SNOI	Supplemental Notice of Inquiry
FECR	Florida East Coast Railway
FEC	Florida East Coast

II. Background, Purpose and Legal Basis

The Florida East Coast (FEC) Railroad Bridge across the Okeechobee Waterway (OWW), mile 7.4, at Stuart, FL, is a single-leaf bascule bridge with a six-foot vertical clearance at mean high water in the closed position. The normal operating schedule for the bridge is found in 33 CFR 117.317(c).

Railway activity significantly increased across the FEC Railroad Bridge. The Coast Guard is proposing to change the operating regulation for the railroad bridge to allow the drawbridge to operate a more predictable and reliable schedule to meet the needs of competing modes of transportation.

On May 3, 2022, the Coast Guard published a Notification of Inquiry (NOI); request for comments in the *Federal Register* (87 FR 26145). This NOI sought information from waterway users in response to provided questions. Those questions focused on waterway

usage and navigation in the vicinity of the railroad and highway bridges. On June 10, 2022, a Supplemental Notification of Inquiry (SNOI); request for comments was published in the *Federal Register* (87 FR 35472). The SNOI provided clarification on the Coast Guard's intent in gathering information. The Coast Guard was seeking information regarding usage and equitable access to the waterway. We received a total 2358 comments on those publications. Those comments were taken into consideration when developing the temporary test deviation published on June 8, 2023.

On June 8, 2023, the Coast Guard published a notice titled “Temporary deviation from regulations; request for comments” in the *Federal Register* (88 FR 37470) (Temporary Deviation 1). The deviation was effective from 12:01 a.m. on June 21, 2023, through 11:59 p.m. on December 17, 2023. Under Temporary Deviation 1, the railroad bridge opened twice an hour upon request and was required to remain in the open position if trains were not crossing the bridge. Additional operating requirements were specified by the Coast Guard. The comment period ended on August 4, 2023, with 371 comments received. Those comments were taken into consideration when developing Temporary Deviation 2, which was published on August 11, 2023.

On August 11, 2023, the Coast Guard published a notice titled “Temporary deviation from regulations; cancellation” in the *Federal Register* (88 FR 54488). This action cancelled Temporary Deviation 1, as it was determined FEC Railway (FEER) was experiencing extreme difficulty meeting the requirements of the temporary deviation.

On August 11, 2023, the Coast Guard also published a notice titled “Temporary deviation from regulations; request for comments” in the *Federal Register* (88 FR 54487) (Temporary Deviation 2). The deviation was effective from 12:01 a.m. on August 15, 2023, through 11:59 p.m. on December 17, 2023. Under Temporary Deviation 2, the railroad bridge was maintained in the fully open-to-navigation position, except during periods when it closed

for the passage of train traffic. Additional operating requirements were specified by the Coast Guard, one of which was a fixed 15-minute opening period each hour. The comment period ended October 15, 2023, with 211 comments received. Those comments were addressed in Temporary Deviation 3, which was published on February 6, 2024.

On November 7, 2023, the Coast Guard published a notice titled “Temporary deviation from regulations; reopening the comment period” in the *Federal Register* (88 FR 76666). This action was necessary due to a delay in the start of passenger rail service. Due to the delay, the public was not afforded adequate opportunity to provide comments on Temporary Deviation 2 during actual passenger rail service operations. The comment period ended November 30, 2023, with 4 comments received. Those comments were addressed in Temporary Deviation 3, which was published on February 6, 2024.

On December 7, 2023, the Coast Guard published a notice titled “Temporary deviation from regulations; modification” in the *Federal Register* (88 FR 85111). The deviation was effective from 12:01 a.m. on December 18, 2023, through 11:59 p.m. on February 11, 2024. This action extended Temporary Deviation 2 to allow for the review of public comments, while providing continuity in the operation of the drawbridge. An additional comment period was not provided for the extension of Temporary Deviation 2 since multiple comment periods had already been provided.

On February 6, 2024, the Coast Guard published a notice titled “Temporary deviation from regulations; request for comments” in the *Federal Register* (89 FR 8074) (Temporary Deviation 3). The deviation was effective from 12:01 a.m. on February 12, 2024, through 11:59 p.m. on August 9, 2024. Under Temporary Deviation 3, the railroad bridge was maintained in the fully open-to-navigation position, except during periods when it closed for the passage of train traffic. Additional operating requirements were specified by the Coast Guard one of which was a fixed 10-minute opening period each hour. The comment period

ended May 6, 2024, with one comment received. That comment is addressed below.

On August 7, 2024, the Coast Guard published a Temporary Interim Rule (TIR) with request for comments in the *Federal Register* (89 FR 64367). The temporary interim rule is effective from August 9, 2024, through 11:59 p.m. on December 31, 2024. This action was necessary to allow for continuity of drawbridge operations while the Coast Guard reviewed comments and the Coast Guard Commissioned Marine Traffic Study of the Okeechobee Waterway (St. Lucie) (study) associated with the temporary test deviation. The comment period for the TIR ended September 23, 2024, with one comment received. That comment is addressed below.

On February 7, 2025, the Coast Guard published a TIR with request for comments in the *Federal Register* (90 FR 9126). The temporary interim rule is effective from February 7, 2025, through 11:59 p.m. on May 31, 2025. The comment period ends on March 10, 2025. This action allows for continuity for drawbridge operations while the Coast Guard evaluates documentation received for a request to permanently change the operating regulation.

The comment received from Temporary Deviation 3 expressed concern for the perceived overall negative impact of trains moving through the City of Stuart. This comment is outside of scope of the temporary deviation and will not be taken into consideration.

The comment received from the TIR published on August 7, 2024, was in support of the active temporary deviation. However, the commenter expressed concern, believing the adjacent moveable highway bridge would be required to remain open to navigation during the overnight hours when the railroad bridge is required to be open except for the passage of railway traffic. The commentor misunderstood the temporary drawbridge operating schedule, as the highway bridge is allowed to remain in the down position until a vessel requests an opening.

The Coast Guard commissioned an independent contractor to perform a study of the

marine traffic on the Okeechobee Waterway (St. Lucie River), between the Roosevelt Bridge and the NW Dixie Hwy Bridge and analyze the type, size, time of day and number of vessels that transit through the FEC Railroad Bridge while in the open and closed to navigation positions. The data was collected from November 1, 2023, through April 7, 2024. After data compilation, cleaning, and extraction, a total of 110 days were used for analysis. The study showed vessel traffic is greater on Friday, Saturday and Sunday with waterway activity greatest between the hours of 9 a.m. and 4 p.m. The total number of vessels observed transiting through the FEC Railroad Bridge between the hours of 6 a.m. and 8 p.m. was 16,406 with 99% of the vessel size between 6 feet and 16 feet. Vessels of this size are typically recreational vessels. The total number of vessels waiting for the FEC Railroad Bridge to open was 5,325 with an average wait time of 20.2 minutes. The average wait time for vessels prior to the TIR is unknown, as previous studies conducted by Martin County, FL in 2016 and Brightline, formerly known as All Aboard Florida, in 2014, did not provide this data. However, several comments received in response to a Notice of Inquiry published on May 3, 2022 and a Supplemental Notice of Inquiry published on June 10, 2022, noted recreational vessels were waiting 45 to 60 mins for the FEC Railroad Bridge to open after trains cleared the bridge. Therefore, this operating schedule has decreased the average wait time for vessels. Based on the data provided, the Coast Guard has determined the proposed rule would provide for reasonable access to the waterway and would meet the reasonable needs of competing modes of transportation. The final report of the study will be made available at <https://www.regulations.gov>, under the docket number.

This NPRM will run simultaneously with a TIR, under the same name and docket number. Both documents can be found at <https://www.regulations.gov> and comments can be made to either document.

III. Discussion of Proposed Rule

The published drawbridge operation regulation in 33 CFR 117.317(c) that controls the operating schedule when the TIR is not in effect, allows the railroad bridge to remain open to navigation except when it closes for the passage of railway traffic. There is no predictability for when or how long the railroad bridge will remain in the down or closed to navigation position. Under this proposed rule, the railroad bridge would be required to be maintained in the fully open-to-navigation position, except during periods when it closed for the passage of train traffic. Additional operating requirements would be specified by the Coast Guard, one of which is a fixed 10-minute opening period each hour. This regulatory action determination is based on the ability that vessels can still transit the bridge during the designated 10-minute opening. Vessels will have the ability to utilize the mobile application for trip planning and transit based on the provide information. Vessels that can safely pass when the bridge is down or closed to navigation may do so at any time.

This would provide the maritime community with a predictable and reliable opening during each hour and limits the amount of time the railroad bridge can remain down or closed to navigation. The proposed rule would also provide the maritime community with a mobile application that will show the projected opening and closing times of the railroad bridge each day.

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.

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 proposed rule has not been designated a

“significant regulatory action,” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, the NPRM has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the ability that vessels can still transit the bridge during the designated 10-minute opening. Vessels will have the ability to utilize the mobile application for trip planning and transit based on the provided information. Vessels that can safely pass when the bridge is down or closed to navigation may do so at any time.

During the NOI/SNOI and the June/August 2023 Temporary Deviations, comments were made that local businesses may be negatively impacted with the increased rail traffic and unpredictable opening schedule. However, as modifications were made to the operating requirements in the subsequent Temporary Deviations and the Temporary Interim Rule, those concerns were mitigated.

Also, the results of the Marine Traffic Study do not indicate a need to change the current agreed upon operation of the bridge as published in the current Temporary Interim Rule (TIR) and proposed in this NPRM.

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 and independent study of marine traffic, 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 proposed 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 Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.

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.

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.

Submitting comments. We encourage you to submit comments through the Federal Decision Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG- 2022-0222 in the search box and click "Search." Next, look for this document in the **Search Results** column, and click on it. Then click on the **Comment** option. 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.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select "Supporting & Related Material" in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions webpage. Also, 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 of any posting or updates to the docket.

We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

Personal information. We accept anonymous comments. Comments we post to <https://www.regulations.gov> 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).

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 DHS Delegation No. 00170.1.

Revision No. 01.3

2. Amend § 117.317 by revising paragraph (c) to read as follows:

§ 117.317 Okeechobee Waterway

(c) Florida East Coast Railroad (FEC) Bridge, mile 7.41, at Stuart. The draw shall operate as follows:

(1) The drawbridge will be maintained in the fully open-to-navigation position, except during periods when it is closed for the passage of train traffic, to conduct inspections, and to perform maintenance and repairs authorized by the Coast Guard.

(2) The drawbridge will not be closed for more than 50 consecutive minutes in any given hour during daytime operations (6 a.m. to 8 p.m.) and for more than 7 total hours during daytime operations (6 a.m. to 8 p.m.).

(3) Notwithstanding paragraph (c)(1), the drawbridge will open and remain open to navigation for a fixed 10-minute period at the top of each hour from 6 a.m. to 8 p.m.

(4) From 8:01 p.m. until 5:59 a.m. daily, the drawbridge will remain in the fully open-to-navigation position, except during periods when it is closed for the passage of train traffic, to conduct inspections, and to perform maintenance and repairs authorized by the Coast Guard. The drawbridge will not be closed more than 60 consecutive minutes.

(5) If a train is in the track circuit at the start of a fixed opening period, the opening may be delayed up to, but not more than, five minutes. Once the train has cleared the circuit, the bridge must open immediately for navigation to begin the fixed opening period.

(6) The drawbridge will be tended from 6 a.m. to 8 p.m., daily. The bridge tender will monitor VHF-FM channels 9 and 16 and will provide estimated times of drawbridge openings and closures, or any operational information requested. Operational information will be provided 24 hours a day by telephone at (772) 403-1005.

(7) The drawbridge owner will maintain a mobile application. The drawbridge owner will publish drawbridge opening times, and the drawbridge owner will provide timely updates to schedules, including but not limited to, impacts due to emergency circumstances, inspections, maintenance, and repairs authorized by the Coast Guard.

(8) Signs will be posted and visible to marine traffic, displaying VHF radio contact information, application information, and the telephone number for the bridge tender.

Dated: March 5, 2025.

Douglas M. Schofield,

Rear Admiral, U.S. Coast Guard,

Commander, Coast Guard Seventh District.

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