

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 117****[CGD08-03-007]****RIN 1625-AA09****Drawbridge Operation Regulation; Apalachicola River, River Junction, FL****AGENCY:** Coast Guard, DHS.**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the existing drawbridge operation regulation for the draw of the CSX Railroad swing bridge across the Apalachicola River, mile 105.9, at River Junction (near Chattahoochee), Florida. The regulation will allow the bridge to be unmanned and remain closed during hours of infrequent traffic with an advance notification requirement to open the bridge.

**DATES:** This rule is effective August 21, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of the docket and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130-3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. The Bridge Administration Branch maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, at (504) 589-2965.

**SUPPLEMENTARY INFORMATION:****Regulatory History**

On April 10, 2003, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Apalachicola River, River Junction, Florida in the **Federal Register** (68 FR 17571). We received no letters commenting on the proposed rule. No public meeting was requested, and none was held.

**Background and Purpose**

The CSX swing bridge across the Apalachicola River, mile 105.9, presently opens on signal for the passage of vessels. The bridge owner has requested to change the operation regulations to reflect usage of the bridge by mariners. The request was made based upon a documented decrease in

the number of requests for openings in the last three years. In 2000, the bridge opened 63 times for the passage of vessels. In 2001, the bridge opened 38 times for the passage of vessels. In the first five months of 2002, the bridge opened 15 times for the passage of vessels. Information gathered regarding the decrease in vessel movements indicates that the closure of a sand and gravel facility above the bridge and a prolonged drought are the main contributing factors. While water elevations may return to their pre-drought levels, there is presently no evidence that the number of requests for bridge openings will increase in the future due to limited industrial development along the waterway. Accordingly, the bridge owner requested to change the operation regulations so that the bridge be allowed to open on signal from 8 a.m. until 4 p.m. Monday through Friday. At all other times, the bridge will open on signal if at least four hours advanced notification is given.

**Discussion of Comments and Changes**

No comments were received to the NPRM and no changes were made to the proposed regulation.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

This rule allows vessels ample opportunity to transit this waterway during normal weekdays and with minimal notification at all other times.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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.

**Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

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).

**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).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**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 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 the preamble.

**Taking of Private Property**

This rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**Civil Justice Reform**

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to

minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. Paragraph 32(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of the National Environmental Policy Act (NEPA). Since this final rule will alter the normal operating conditions of the drawbridge, it falls within this

exclusion. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ For the reasons set out in the preamble, the Coast Guard is amending part 117 of title 33, Code of Federal Regulations 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

■ 2. § 117.258 is added to read as follows:

#### § 117.258 Apalachicola River.

The draw of the CSX Railroad bridge, mile 105.9, at River Junction shall open on signal Monday through Friday from 8 a.m. until 4 p.m. At all other times the bridge will open on signal if at least 4 hours notice is given.

Dated: July 10, 2003.

**R.F. Duncan,**

*Rear Admiral, Coast Guard Commander,  
Eighth Coast Guard District.*

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### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[CGD01–03–039]

**RIN 1625–AA09 (Formerly 2115–AE47)**

#### Drawbridge Operation Regulations; Long Island, New York Inland Waterway From East Rockaway Inlet to Shinnecock Canal, NY

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary final rule governing the operation of the Long Beach Bridge, at mile 4.7, across Reynolds Channel, New York. This temporary final rule will allow the bridge to operate only one lift span for openings, on the even hour, 8 a.m. to 4

p.m., daily. Additionally, two five-day bridge closures will also be allowed to occur during this temporary final rule at dates to be announced after September 2003. This action is necessary to facilitate structural repairs at the bridge.

**DATES:** This temporary final rule is effective from July 1, 2003 through April 30, 2004.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket (CGD01–03–039) and are available for inspection or copying at the First Coast Guard District, Bridge Administration Office, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Schmied, Project Officer, First Coast Guard District, (212) 668–7165.

#### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM and 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 Coast Guard believes making this rule effective in less than thirty days after publication is reasonable because we coordinated this revised temporary operating schedule in advance with the mariners that use this waterway, and the continuation of the bridge repair work is vital in order to assure the continued safe operation of the bridge.

Historically, there are few requests to open this bridge and the bridge will be available to provide single span openings for all but approximately ten days during the effective period of this temporary rule.

#### Background and Purpose

The Long Beach Bridge has a vertical clearance of 20 feet at mean high water and 24 feet at mean low water. The existing regulations are listed at 33 CFR 117.799(g).

The bridge owner, Nassau County Department of Public Works, asked the Coast Guard to temporarily change the drawbridge operation regulations to facilitate structural repairs at the bridge.

On September 5, 2002, we published a temporary final rule in the **Federal Register** (67 FR 56754). That rule allowed the bridge to open only a single lift span for bridge openings on the even hours 8 a.m. to 4 p.m. after a one-hour notice was given and from 11 p.m. to 4