

respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is substantially the same criterion PBGC uses in other regulations<sup>6</sup> and is consistent with certain requirements in title I of ERISA<sup>7</sup> and the Internal Revenue Code,<sup>8</sup> as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the Regulatory Flexibility Act.<sup>9</sup> Using this proposed definition, about 64 percent (16,700 of 26,100) of plans covered by title IV of ERISA in 2010 were small plans.<sup>10</sup>

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the final rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. PBGC therefore requested comments on the appropriateness of the size standard used in evaluating the impact of the

proposed rule on small entities. PBGC received no comments on this point.

PBGC certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that the amendments in this rule would not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), sections 603 and 604 do not apply. This certification is based on the fact that small plans generally pay small premiums and thus small penalties for late payment of premiums. The average late premium penalty paid by a small plan for the 2014 plan year was about \$160. This proposed rule would cut penalty payments in half, and thus create an average annual net economic benefit for each small plan of about \$80. This is not a significant impact.

#### List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC amends 29 CFR part 4007 as follows:

#### PART 4007—PAYMENT OF PREMIUMS

■ 1. The authority citation for part 4007 continues to read as follows:

**Authority:** 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

■ 2. In § 4007.8:

■ a. Paragraph (a) introductory text is amended by removing the words “paragraphs (b) through (g)” and adding in their place the words “paragraphs (b) through (h)”; and by removing the words “and is subject to a floor of \$25 (or, if less, the amount of the unpaid premium)”;

■ b. Paragraph (a)(1) is amended by removing the words “a written notice” and adding in their place the words “the first written notice”; by removing the words “1 percent” and adding in their place the words “½ percent”; and by removing the words “50 percent” and adding in their place the words “25 percent”.

■ c. Paragraph (a)(2) is amended by removing the words “5 percent” and adding in their place the words “2½ percent”; and by removing the words “100 percent” and adding in their place the words “50 percent”.

■ d. Paragraph (h) is added.

The addition reads as follows:

#### § 4007.8 Late payment penalty charges.

\* \* \* \* \*

(h) *Demonstrated compliance.* PBGC will waive 80 percent of the premium payment penalty assessed under

paragraph (a)(2) of this section if the criteria in paragraphs (h)(1) and (2) of this section are met.

(1) For each plan year within the last five plan years of coverage preceding the plan year for which the penalty rate is being determined,—

(i) Any required premium filing for the plan has been made; and

(ii) PBGC has not required payment of a penalty for the plan under this section.

(2) For the plan year for which the penalty rate is being determined, the total amount of premium is paid no later than 30 days after PBGC issues the first written notice as described in paragraph (a)(1) of this section.

Issued in Washington, DC, by

**W. Thomas Reeder,**

*Director, Pension Benefit Guaranty Corporation.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2015–0271]

RIN 1625–AA09

#### Drawbridge Operation Regulation; New River, Fort Lauderdale, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating schedule that governs the Florida East Coast Railway (FEC) Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL. This rule implements requirements for the operator to ensure that adequate notice of bridge closure times are available to the waterway traffic. It also changes the schedule from requiring openings “on demand” to an operating regulation requiring the bridge to be open no fewer than 60 minutes in every 2 hour period. Changing the bridge operating schedule will allow the bridge owner to operate the Bridge remotely with assistance from the onsite bridge tender.

**DATES:** This rule is effective October 24, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG–2015–0271 in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking.

<sup>6</sup> See *e.g.*, special rules for small plans under part 4007 (Payment of Premiums).

<sup>7</sup> See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

<sup>8</sup> See, *e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

<sup>9</sup> See, *e.g.*, DOL’s final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

<sup>10</sup> See PBGC 2010 pension insurance data table S–31, <http://www.pbpc.gov/Documents/pension-insurance-data-tables-2010.pdf>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Mr. Rod Elkins with the Coast Guard; telephone 305-415-6989, email *Rodney.J.Elkins@uscg.mil*.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR Code of Federal Regulations  
DHS Department of Homeland Security  
FR Federal Register  
NPRM Notice of proposed rulemaking  
Pub. L. Public Law  
§ Section  
U.S.C. United States Code

**II. Background Information and Regulatory History**

From May 18 through October 16, 2015, a test deviation assessing the viability of the schedule implemented in this rule was in effect for the New River Bridge (80 FR 28184). The comment period ended on August 17, 2015. There were eight comments received in response to the test deviation. The comments from the test deviation were addressed in the notice of proposed rulemaking (NPRM).

On November 3, 2015, we published a NPRM entitled Drawbridge Operation Regulation; New River, Fort Lauderdale, FL in the **Federal Register** (80 FR 67677). We received 234 submissions on the proposed rule.

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

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

The FEC Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL is a single leaf bascule bridge. It has a vertical clearance of 4 feet at mean high water in the closed position. Presently, in accordance with 33 CFR 117.5, the FEC Railroad Bridge is required to open on signal for the passage of vessels. Traffic on the waterway includes both commercial and recreational vessels.

Prior to implementing a test deviation on May 18, 2015, the Bridge operated without a tender or monitor. An automated system closed the Bridge when a train approached and reopened the Bridge when a train cleared. The Coast Guard received multiple complaints from mariners because there was no means of obtaining notice of bridge closure times or potential closure duration. The new regulation balances the reasonable needs of waterway traffic on the New River with train traffic moving through condensed population areas in Ft. Lauderdale.

This regulation was developed to accommodate the unique needs of rail transportation in South Florida while balancing the reasonable needs of

maritime transportation on the New River. Train schedules at the crossings cannot be precisely scheduled due to unpredictable delays caused by train car loading and vehicular traffic crossing the track. Also, train bridges must be in the down position well in advance of the train's arrival to ensure that it can safely cross the bridge or stop if there are problems with the Bridge.

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

Two hundred thirty-four submissions were received resulting in a total of 319 comments concerning the proposed rule. The total number of comments exceeds the number of submissions because some submissions expressed more than one point in their comment. Of these comments, 39 were in favor of the proposed rule. Forty-nine of the comments expressed opposition to a future rail project, which is not the focus of this regulation, and were not relevant.

Sixty-six comments expressed opposition to the regulation of Bridges other than the Florida East Coast Railway (FEC) Railroad Bridge. This regulation only pertains to the FEC Railroad Bridge over the New River in Fort Lauderdale.

Eleven comments opposed the proposed modification and recommended the Bridge owner provide a train schedule with specified opening times. In respect to a schedule the on-site bridge tender will provide a 12-hour forecast schedule to waterway users upon request. However, scheduling bridge openings is not viable because trains typically experience loading and traffic delays that interfere with the operator's ability to precisely identify an exact time when the train will cross the waterway.

Eighteen comments stated the modification would create unsafe vessel congestion near the Bridge. This regulation allows mariners to communicate with a bridge tender and receive updates on the Bridge's status; thereby relieving congestion that exists with the current schedule.

Sixty-four comments opposed the Bridge being closed 50 percent of the time or 60 minutes at a time. These comments also recommended various minimum time limits for bridge openings. This regulation does not require closing the Bridge 50 percent of the time or for 60 minutes at one time. It sets a maximum time for the Bridge's closure within a two hour period. This regulation authorizes a total combined closure time for any given 120 minute period that will not exceed 60 minutes. Moreover, if a train is not crossing or

approaching, the Bridge will remain open. Based on input from the bridge owner and input gathered at Coast Guard public meetings, the Coast Guard determined that it is not a viable option to require minimum time limits for the bridge to be open at one time because trains would have considerable difficulty coordinating passage across the bridge with this schedule. Therefore, this regulation does not adopt alternatives to set minimum time limits for Bridge openings. Vessels can transit at all times that trains are not crossing.

Thirteen comments expressed concern that the modification would hinder emergency vessels from responding. This regulation requires the Bridge to open immediately for emergency vessels to pass.

Twenty-six comments expressed safety concerns for vehicle traffic in the area and emergency vehicle response times being delayed. This regulation seeks to balance the needs of rail and maritime navigation by allowing the Bridge to close for the passage of trains. By doing so, it seeks to ensure passing trains are not delayed by the Bridge schedule, therefore, it should alleviate surrounding vehicular traffic.

There were 26 comments that addressed concern that the modification would decrease property values and hurt business in the area. The Coast Guard does not have evidence that this regulation will result in a decrease in property values or that it will adversely affect businesses in the area.

Five commenters requested bridge modifications that would replace and raise the vertical height of the bridge, and to require mooring stations for waiting vessels, which is outside of the scope of this rule because this rule only amends the opening schedule for the Bridge by creating protocols that will make it easier for vessel traffic to schedule transits during times the Bridge is open.

Two of the 234 commenters requested a public meeting. A public meeting was held on 12 November 2014 (USCG-2014-0937), and the proposed schedule modification was developed from the input received from the public meeting.

The Coast Guard also received complaints about the high noise levels of the horn blast prior to a bridge closure. The prescribed sound signal has typically been required on all unmanned automated rail road bridges. We are removing the requirement for the horn blast from the regulation since the bridge is no longer unmanned. Other than the removal of horn blasts, 33 CFR 117.313 is modified as was proposed in the NPRM.

## V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

### A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is made because vessels can still transit the waterway at times identified by the tender 12 hours in advance of the scheduled transit. Also, vessels can transit at all times that trains are not crossing or if they do not require a bridge opening to transit.

### 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 zero 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.

This rule may affect the following entities, some of which might be small entities: The owners or operators of vessels needing to transit the bridge when the Bridge is closed for train crossings. This change in operating schedule will still meet the reasonable needs of navigation while taking into account other modes of transportation. Vessels transiting the New River at mile 2.5 may do so at times scheduled up to 12 hours prior to transit. Also, vessels can transit at all times that trains are not crossing.

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 (Pub. L. 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**, above.

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 E.O. 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 and 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 made a determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under figure 2–1, paragraph (32)(e), of the Instruction.

Under figure 2–1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not 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; Department of Homeland Security Delegation No. 0170.1.

■ 2. In § 117.313, revise paragraph (c), add reserved paragraph (d), and add paragraph (e) to read as follows:

**§ 117.313 New River.**

\* \* \* \* \*

(c) The following requirements apply to the Florida East Coast Railway Railroad Bridge across the New River, mile 2.5, at Fort Lauderdale, FL:

(1) The bridge shall be constantly tended.

(2) The bridge tender will utilize a VHF-FM radio to communicate on channels 9 and 16 and may be contacted by telephone at 305-889-5572.

(3) Signs will be posted displaying VHF radio contact information and telephone numbers for the bridge tender and dispatch. A countdown clock giving notice of time remaining before bridge closure shall remain at the bridge site and must be visible for maritime traffic.

(4) A bridge log will be maintained including, at a minimum, bridge opening and closing times.

(5) When the draw is in the fully open position, green lights will be displayed to indicate that vessels may pass.

(6) When a train approaches, the lights go to flashing red then the draw lowers and locks.

(7) After the train has cleared the bridge, the draw opens and the lights return to green.

(8) The bridge shall not be closed more than 60 minutes combined for any 120 minute time period beginning at 12:01 a.m. each day.

(9) The bridge shall remain open to maritime traffic when trains are not crossing.

(d) [Reserved]

(e) The draw of the Marshal (Seventh Avenue) bridge, mile 2.7 at Fort Lauderdale shall open on signal; except that, from 7:30 a.m. to 9 a.m. and 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the draw need not open. Public vessels of the United States, tugs with tows, and vessels in distress shall be passed at any time.

Dated: August 22, 2016.

**S.A. Buschman,**

*Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.*

[FR Doc. 2016-22915 Filed 9-22-16; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[Docket No. USCG-2016-0181]

### Drawbridge Operation Regulation; North Landing River, Chesapeake, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from drawbridge regulation; modification.

**SUMMARY:** The Coast Guard has modified a temporary deviation from the operating schedule that governs the S165 (North Landing Road) Bridge across the North Landing River, mile 20.2, at Chesapeake, VA. This modified deviation is necessary to perform emergency bridge repairs and provide for safe navigation. This modified deviation allows the bridge to remain in the closed-to-navigation position.

**DATES:** This deviation is effective from 6 p.m. on September 30, 2016, through 4 p.m. on October 14, 2016.

**ADDRESSES:** The docket for this deviation, [USCG-2016-0181] is available at <http://www.regulations.gov>. Type the docket number in the "SEARCH" box and click "SEARCH". Click on Open Docket Folder on the line associated with this deviation.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary deviation, call or email Mr. Hal R. Pitts, Bridge Administration Branch Fifth District, Coast Guard, telephone 757-398-6222, email [Hal.R.Pitts@uscg.mil](mailto:Hal.R.Pitts@uscg.mil).

**SUPPLEMENTARY INFORMATION:** On March 11, 2016, the Coast Guard published a temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 12824); on April 8, 2016, the Coast Guard published a modified temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 20529); and on June 29, 2016, the Coast Guard published a modified temporary deviation entitled "Drawbridge Operation Regulation; North Landing River, Chesapeake, VA" in the **Federal Register** (81 FR 42248). These documents were necessary to authorize a temporary deviation from the operating regulations to perform repairs to the south swing span of the bridge due to damage sustained as a result of a vessel allision with the bridge that occurred on March 1, 2016. The United States Army Corps of Engineers, Norfolk District Office, who owns and operates the S165 (North Landing Road) Bridge, has requested a modified temporary deviation from the current operating regulations to perform repairs to the south swing span of the bridge, following receipt of replacement parts scheduled to arrive in the first week of October 2016. The modified temporary deviation request is necessary to receive the replacement parts in the first week

of October 2016 and allow for sufficient time to complete repairs to the bridge.

The current operating scheduled is set out in 33 CFR 117.1021. Under this modified temporary deviation, the north span of the bridge will open-to-navigation on the hour and half hour, upon request, from 6 a.m. to 7 p.m., and on demand from 7 p.m. to 6 a.m. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast, (2) 10:30 a.m. for vessels transiting northwest, and (3) at noon and 2 p.m. for two-way vessel traffic through the bridge, Monday through Friday, from Friday, September 30, 2016, through Monday, October 10, 2016. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, upon request, for: (1) Scheduled openings at 9:30 a.m. for vessels transiting southeast and (2) 10:30 a.m. for vessels transiting northwest, Saturday and Sunday, from Saturday, October 1, 2016, through Sunday, October 9, 2016. The north and south spans of the bridge will open to navigation concurrently, with the south span only opening partially due to damage, for additional on demand openings from October 4, 2016, through October 10, 2016, if 48 hours notice is given. The south span of the bridge will be closed-to-navigation during bridge repair from 9 a.m., October 11, 2016, through 4 p.m., October 14, 2016. The horizontal clearance of the bridge with the south span closed-to-navigation is 38 feet and the horizontal clearance of the bridge with the south span partially open-to-navigation is 70 feet. The modified temporary deviation is necessary to relieve vessel congestion and provide for safe navigation on the waterway. The bridge is a double swing draw bridge and has a vertical clearance in the closed position of 6 feet above mean high water.

The North Landing River is used by a variety of vessels including small U. S. government and public vessels, small commercial vessels, tug and barge, and recreational vessels. The Coast Guard has carefully considered the nature and volume of vessel traffic on the waterway in publishing this temporary deviation.

During the closure times there will be limited opportunity for vessels which are able to safely pass through the bridge in the closed position to do so. Vessels able to safely pass through the bridge in the closed position may do so, after receiving confirmation from the bridge tender that it is safe to transit