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**Mark E. Matthews,**

*Deputy Commissioner for Services and Enforcement.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-05-041]

RIN 1625-AA09

#### **Drawbridge Operation Regulation; Tennessee River, Chattanooga, TN**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulation governing the Chief John Ross Drawbridge, mile 464.1, across the Tennessee River at Chattanooga, Tennessee. Under the proposed rule, the drawbridge need not open for river traffic and may remain in the closed-to-navigation position from 8 a.m., December 1, 2005 until 8 a.m., July 1, 2006. This proposed rule would allow the drawbridge to be maintained in the closed-to-navigation position to allow major repair work to be performed on the bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before September 26, 2005.

**ADDRESSES:** You may mail comments and related material to Commander, Eighth Coast Guard District, Bridge Branch, Robert A. Young Federal Building, 1222 Spruce Street, St. Louis, MO 63103-2832. Commander (obr) maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 2.107f in the Robert A. Young Federal Building, Eighth Coast Guard District, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

**SUPPLEMENTARY INFORMATION:**

### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08-05-041), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

### Background and Purpose

On February 11, 2005, the State of Tennessee Department of Transportation requested a temporary change to the operation of the Chief John Ross Drawbridge, across the Tennessee River, mile 464.1, at Chattanooga, Tennessee to allow the drawbridge to remain in the closed-to-navigation position for seven months to perform major repairs to the bridge. The drawbridge has a vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position. Navigation on the waterway consists primarily of commercial tows and recreational watercraft that will be minimally impacted by the closure period. Presently, the draw opens on signal for the passage of river traffic when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. The Tennessee Department of Transportation requested the drawbridge be permitted to remain in the closed-to-navigation position from 8 a.m., December 1, 2005 until 8 a.m. July 1, 2006. This temporary change to the drawbridge's operation has been coordinated with the commercial waterway operators.

### 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.

The Coast Guard expects that this temporary change to operation of the Chief John Ross Drawbridge will have minimal economic impact on commercial traffic operating on the Tennessee River. This temporary change has been written in such a manner as to allow for minimal interruption of the drawbridges regular operation.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule will be in effect for seven months and the Coast Guard expects the impact of this action to be minimal because the existing vertical clearance of 58.7 feet above normal pool in the closed-to-navigation position will still allow vessels to transit beneath the bridge.

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.

### 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 proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539-3900, extension 2378.

#### 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).

#### 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

This proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### Indian Tribal Governments

This proposed 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 proposed 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### 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.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

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; 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. From 8 a.m., December 1, 2005 until 8 a.m., July 1, 2006, suspend section 117.949 and add a new section 117.T948 to read as follows:

#### § 117.T948 Tennessee River.

(a) The Chief John Ross Drawbridge, Mile 464.1, at Chattanooga, Tennessee need not open for river traffic and may be maintained in the closed-to-navigation position from 8 a.m., December 1, 2005 until 8 a.m., July 1, 2006.

(b) The draw of the Southern Railway Bridge over the Tennessee River, mile 470.7, at Hixon, Tennessee, shall open on signal when the vertical clearance beneath the draw is 50 feet or less. When the vertical clearance beneath the draw is more than 50 feet, at least eight hours notice is required. When the operator of a vessel returning through the draw within four hours informs the drawtender of the probable time of return, the drawtender shall return one half hour before the time specified and promptly open the draw on signal for the vessel without further notice. If the vessel giving notice fails to arrive within one hour after the arrival time specified, whether upbound or downbound, a second eight hours notice is required. Clearance gages of a type acceptable to the Coast Guard shall be installed on both sides of each bridge.

Dated: August 5, 2005.

**Kevin L. Marshall,**

*Captain, U.S. Coast Guard, Commander, 8th Coast Guard Dist. Acting.*

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