



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0108]

RIN 1625-AA09

Drawbridge Operation Regulation; Tombigbee River, near Jackson, Alabama

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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**SUMMARY:** The Coast Guard proposes to change the operating schedule that governs the Norfolk Southern Railroad (NSRR) Vertical Lift Span Bridge across Tombigbee River, mile 44.90, near Jackson, between Washington and Clarke Counties, Alabama. This rule proposes to move the current on-site bridge tender control station to a geographically remote centralized control point located in Decatur, Alabama.

**DATES:** Comments and related material must reach the Coast Guard on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-0108 using Federal eRulemaking Portal at

<http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instruction on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Ms. Donna Gagliano; Bridge Administration Branch, Eighth Coast Guard District; telephone 504-671-2128, e-mail Donna.Gagliano@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
U.S.C.	United States Code
NSRR	Norfolk Southern Railroad
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

In accordance with 33 CFR 117.42, the District Commander may authorize a drawbridge to operate under an automated system or from a remote location. The purpose of this rule is to allow the draw of this bridge to operate from a remote location. The draw will continue to be maintained in the open to navigation position except during the passage of trains. Mariners should not experience any changes in the level of

service.

### III. Discussion of the Proposed Rule

The Coast Guard, at the request of NSRR, is changing the method of operation for the NSRR Vertical Lift Bridge across Tombigbee River, mile 44.90, near Jackson, Alabama. Due to the need for increased efficiency in railroad operations, NSRR requested a change to the method of operating the draw from on-site to a draw tender operating the bridge remotely.

Presently, the draw is maintained in the open-to-navigation position and closed only for the passage of trains or maintenance. The bridge owner would like to operate the draw remotely using a drawtender at a centralized railroad operation in Decatur, Alabama, rather than maintaining the current on-site operation and drawtender. The implementation of this rule, in effect, removes the requirement that a drawtender be present on site at all times.

Under the new remote operation procedure, the draw will continue to be maintained in the open-to-navigation position and lowered only for the passage of trains or for maintenance. There will be no modifications to the operation of the bridge as it relates to the passage of vessels. Instead, this change will allow the bridge owner to increase efficiency by coordinating bridge operations and vessel transits with train dispatch operations in Decatur, AL.

#### 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 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 NPRM has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, NPRM it has not been reviewed by the Office of Management and Budget.

This interim rule is not a significant regulatory action because the draw will be maintained in the open-to-navigation position. Therefore, mariners will experience no changes in transiting through the bridge site. No new restrictions on or actions from the mariner are required by this rule.

The intent of the proposed rule is to improve safety and efficiency of bridge operations as it relates to vessel and railroad traffic.

Centralizing the bridge tender would have no impact on the existing regulations regarding hours or methods of bridge operations.

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 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 IV.A above 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 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. 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 Government

A rule has implications for federalism under E.O. 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 E.O. 13132.

Also, this proposed rule does not have tribal implications under E.O. 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. 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 above.

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 rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 preliminary 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 proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under Table 3-2, (L49), of the Instruction.

Under Table 3-2, (L49), of the Instruction, a Memorandum for the Record (MFR) is not 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.

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.

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.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are in our online docket at

<http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, 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.

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 Department of Homeland Security Delegation No. 0170.1.

2. In §117.118, redesignate introductory text as paragraph (a) and revise paragraphs (a) through (d) as paragraph (a)(1) through (a)(4); and add new paragraph (b) Tombigbee River to read as follows:

**§117.118 Tombigbee River.**

\* \* \* \* \*

(b) The draw of the NSRR Vertical Lift Bridge across the Tombigbee River, mile 44.90, near Jackson, Washington and Clarke Counties, Alabama shall be maintained as follows:

(1) The draw shall be maintained in the fully open-to-

navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic or to perform periodic maintenance authorized in accordance with subpart A of this part.

(2) The draw shall be remotely operated by the draw tender at Norfolk Southern Railroad's drawbridge in Decatur, Alabama. The estimated duration that the bridge will remain closed for the passage of rail traffic is 10 to 15 minutes per operation.

(3) When a train approaches the bridge, the draw tender will initiate the bridge closing warning signal, consisting of radio calls via VHF-FM-channels 13 and 16 and activation of flashing red warning lights at each end of the span. The radio calls will be broadcast at five (5) minutes prior to bridge closing and at two (2) minutes prior to bridge closing. Photoelectric (infrared) boat detectors will monitor the waterway beneath the bridge for the presence of vessels.

(4) The drawtender will continuously monitor waterway traffic in the area using closed-circuit cameras mounted on the bridge. The draw will only be closed if the draw tender's visual inspection indicates that the channel is clear and there are no vessels transiting in the area. The draw tender will maintain constant surveillance of

the navigation channel to ensure that no conflict with maritime traffic exists. If two or more closed-circuit cameras are inoperable or if there is inclement weather, the draw will only be operated by a draw tender located on site at the bridge.

(5) At the end of the two-minute warning period, if no vessels have been detected by the draw tender, the draw closing sequence will automatically proceed.

(6) Upon passage of the train, the draw will be returned to the fully open-to-navigation position to allow marine traffic to pass. The warning lights will continue to flash red until the draw has returned to the fully open-to-navigation position at which time they will deactivate.

(7) After the passage of each train, the draw must be returned to its fully open-to-navigation position.

(8) To request openings of the draw when the vertical lift span is in the closed-to-navigation position, mariners may contact NSRR via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge.

(9) The draw will be operated locally if:

(i) Communication is lost between the drawbridge and the draw tender in Decatur, Alabama;

(ii) More than two closed-circuit cameras are not working;

(iii) The marine radio is inoperable;

(iv) Weather conditions warrant; or

(v) Ordered by the Coast Guard.

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Dated: June 22, 2017

D.R. Callahan  
Rear Admiral, U.S. Coast Guard  
Commander, Eighth Coast Guard District  
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