



9110-04-P

**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**Docket No. USCG-2018-0956**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Tensaw River, Hurricane, AL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the CSX Railroad swing bridge across the Tensaw River mile 15.0, Hurricane, Baldwin County, AL. This bridge will open on signal if at least ten-hours-notice is given. This rule is being changed because there are infrequent requests to open the bridge. This change will remove the drawbridge tender during daylight hours.

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2018-0965 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or e-mail Mr. Doug Blakemore, Eighth Coast Guard District Bridge

Administration Branch Chief; telephone (504) 671-2128, email

Douglas.A.Blakemore@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations** [*Delete/add any abbreviations not used/used in this document*]

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On June 17, 2018, we published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Tensaw River, Hurricane, AL. in the Federal Register 2019-12720. We received 0 comments on this rule.

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

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

CSX requested to change the operating requirements for the CSX railroad bridge across the Tensaw River mile 15.0, Hurricane, Baldwin County, Alabama. This bridge currently opens according to 33 CFR part 117.113 and opens on signal; except that, from 5 p.m. to 9 a.m. the draw shall open on signal if at least eight-hours-notice is given. CSX requested that the bridge open on signal if at least ten-hours-notice is given at all times.

This bridge spans the Tensaw River and is used by small recreational boats, house boats, and a tour boat. The bridge has a vertical clearance of 11 feet

above mean high water in the closed to vessel position and unlimited vertical clearance in the open to vessel traffic position. There are few vessel movements through this bridge. From July 2017 through February 2018 the bridge opened 52 times for vessel passage. This equates to less than 7 times each month. Of these openings 38 were made for recreational vessels, 16 were made for a tour boat, 6 were made for house boats, and 2 were made for local law enforcement vessels.

This change allows CSX to align bridge tender operations with daylight and night time hours and provide for the reasonable needs of navigation.

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

There were no comments on this rule change. The Coast Guard provided a comment period of 30 days. Based on the infrequent times that this bridge has opened for vessel traffic over eight months this rule provides vessels with a reasonable ability to use the waterway. We did not identified any impacts on marine navigation with this proposed rule.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

##### **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. Executive Order 13771

directs agencies to control regulatory costs through a budgeting process. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that vessels can still open the draw and transit if advance notice is provided. Those vessels with a vertical clearance requirement of less than 11 feet above mean high water may transit the bridge at any time, and the bridge will open in case of an emergency at any time. This change to the drawbridge operation regulations at 33 CFR 117.113 meets the reasonable needs of navigation.

#### 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 0 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.

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 final rule

would 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 (Public Law 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 Executive Order 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, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying

with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). We have made a determination 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 rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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. Revise § 117.113 to read as follows:

**§ 117.113 Tensaw River.**

The draw of the CSX Transportation Railroad bridge, mile 15.0 at Hurricane, shall open on signal if at least ten-hours-notice is given. The draw shall open at the direction of the District Commander.

Dated: September 13, 2019

John P. Nadeau

Rear Admiral, U.S. Coast Guard,

Commander, Eighth Coast Guard District.

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