



**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:** Final rule.

---

**SUMMARY:** The Coast Guard is changing the operating schedule that governs the Norfolk Southern Railroad (NSRR) vertical lift bridge across the Tombigbee River, mile 89.9, near Jackson, between Washington and Clarke Counties, Alabama. This rule moves the current onsite bridge tender control station to a geographically remote centralized control point located in Decatur, AL.

**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-2017-0108 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 about this rulemaking, call or e-mail Mr. Doug Blakemore, Eighth Coast Guard District

Bridge Administrator; telephone (504) 671-2128, email

Douglas.A.Blakemore@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

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

**II. Background Information and Regulatory History**

The NSRR vertical lift bridge is maintained in the open to vessel position except when trains need to pass or when maintenance is performed. This bridge has a 44.09' above normal pool elevation vertical clearance in the closed to vessel position and a vertical clearance of 73' above normal pool elevation when raised to its maximum height. The bridge has a 300' horizontal clearance. This bridge is located on a major commercial waterway used primarily by tugs, tows and barges. The drawbridge is regulated under 33 CFR 117.5 and opens on signal.

NSRR has developed a system of closed circuit cameras (CCTV), infrared sensors, VHF and landline communications, positive train control dispatch, programmable logic control, display monitors, vessel identification systems and procedures that allow a remote operator to perform all assignments of an onsite drawtender.

In December 2016 NSRR requested to operate the Tombigbee River bridge from a remote NSRR location in Decatur, AL. NSRR informed the Coast Guard that the bridge would operate under the following conditions.

(1) The draw would be maintained in the fully open to navigation position for vessels at all times, except during periods when it would be closed for the passage of rail traffic or to perform periodic maintenance authorized in accordance with the regulations.

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

(3) When a train approached the bridge, the drawtender would 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 would be broadcast at five (5) minutes prior to bridge closing and at two (2) minutes prior to bridge closing. Photoelectric (infrared) boat detectors would monitor the waterway beneath the bridge for the presence of vessels.

(4) The drawtender would continuously monitor waterway traffic in the area using closed-circuit cameras mounted on the bridge. The draw would only be closed if the drawtender's visual inspection indicated that the channel was clear and there were no vessels transiting in the area. The drawtender would maintain constant surveillance of the navigation channel to ensure that no conflict with maritime

traffic existed. Additionally, the draw would not be closed if the S11 bascule bridge that is located immediately west of the railroad bridge was in the open-to-navigation position. If two or more closed-circuit cameras were to become inoperable or if there was inclement weather, the draw would only be operated by a drawtender located on site at the bridge.

(5) At the end of the two-minute warning period, if no vessels were detected by the drawtender, the draw closing sequence would automatically proceed.

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

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

(8) To request openings of the draw when the bascule span was in the closed-to-navigation position, mariners would be required to contact Norfolk Southern Railway via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge.

(9) The draw would be operated locally if:

(i) Communication became lost between the drawbridge and the drawtender in Decatur, Alabama;

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

(iii) The marine radio became inoperable;

(iv) Weather conditions warrant; or

(v) Ordered by the Coast Guard.

On July 12, 2017, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled “Drawbridge Operation Regulation; Tombigbee River, near Jackson, Alabama” in the Federal Register at 82 FR 32157. In that NPRM we stated that the District Commander could authorize a drawbridge to operate under an automated system or from a remote location. This NPRM proposed changing the drawbridge regulation on this bridge to allow the bridge to be remotely operated at a NSRR location in Decatur, AL. There was little discussion of the proposed rule.

During the comment period that ended September 11, 2017 the Coast Guard received three comments. Two were from vessel operators and one was from a union representing maintenance employees. All three entities opposed the rule change.

The Coast Guard considered these comments and on March 14, 2018 informed NSRR that the Coast Guard did not have sufficient information to address the above public concerns and thus could not finalize the proposed rule. This letter is in the docket.

On December 18, 2018 the Coast Guard visited the NSRR bridge control center in Decatur, Alabama to view their camera displays, communications systems and automated information systems (AIS) associated with their bridge remote operations.

In February 2019 NSRR provided the Coast Guard with documentation that addressed the following: bridge demographics, Tombigbee River

demographics, waterway safety, emergency response, vessel navigation assessments, remote operation system capabilities, maintenance capabilities, bridge casualty information, operational requirements and operating procedures.

After reviewing all NSRR information and public comments the Coast Guard has verified, to the extent of its authority and jurisdiction that NSRR has the capabilities to operate the bridge remotely.

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

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Eighth Coast Guard District Commander has determined that this change to the operating schedule of the NSRR vertical lift bridge across the Tombigbee River, mile 89.9 to allow the bridge to be operated from the remote location is reasonable. The purpose of this rule is to allow NSRR to operate the bridge from a NSRR location in Decatur, AL and meet the reasonable needs of vessels that use the Tombigbee River.

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

There were 3 comments submitted on our NPRM published on July 12, 2017. Two comments came from vessel operators on the Tombigbee River. One comment was provided by a labor union representing maintenance employees. There were a total of 14 concerns addressed in the three comments. All three commenters were against relocating the bridge tender to a remote location.

To address these concerns the Coast Guard separated the above comments into three general concerns: removing the bridge tender would create significant

delays to opening the bridge to vessel traffic, removing the bridge tender would create unsafe navigation conditions, and other general concerns. Below is the Coast Guard's evaluation for each of these areas.

Removing the bridge tender will not create unreasonable delays to opening the bridge to vessel traffic. Since the current onsite bridge tender does not perform routine maintenance or make bridge repairs, there will be no added time to maintain the bridge or respond to an outage or emergency. Emergency repairs and routine maintenance are conducted by NSRR bridge and building personnel who are located at the site of the bridge. NSRR procedures require that emergency response personnel arrive at the bridge within 1-2 hours of notification. If there is a failure to the bridge, NSRR will secure the bridge in the open to vessel position until the bridge is repaired.

Additionally locating the bridge tender in a remote location should not create added delays because of simultaneous bridge operations. The NSRR bridge tender, located in Decatur, AL will control three bridges located on Lake Pontchartrain, LA, the Tombigbee River, AL and the Tennessee River, AL. The Tombigbee River bridge closes to vessel traffic 8 times each day. The Tennessee River bridge is maintained in the closed to vessel position and opens to vessel traffic 7 times each day. The Lake Pontchartrain bridge is maintained in the open to vessel position and closes to vessel traffic 12 times each day. This equates to 27 bridge openings or closings (movements) per day which can be reasonably controlled by one bridge tender.

Processing simultaneous requests for bridge openings should also not create

unreasonable delays. NSRR simultaneous operations procedures state that the bridge tender open and close one bridge at a time. The cycle time to open and close each NSRR bridge is about 8 minutes. Vessels, if 3rd in the queue to open, could be delayed by 24 minutes. The Coast Guard does not consider this to be unreasonable.

Dispatching a bridge tender to the Tombigbee River bridge because of a remote operation system failure or inclement weather will also not delay vessels. NSRR procedures require the bridge to be secured in the open to vessel traffic position if inclement weather prevents the remote bridge tender from operating the bridge or if there are failures to remote sensors at the Tombigbee River bridge. In this scenario NSRR will dispatch a bridge tender to the bridge; however, since the bridge is secured in the open to vessel traffic position, there will be no added vessel delays.

This rule will not create unsafe navigation conditions.

As stated above there are on average 27 bridge movements for the three bridges controlled by the bridge tender in Decatur, AL. These bridge movements can be safely processed by a single bridge tender.

NSRR has installed sensors that monitor the channel for vessels or other obstructions. These channel sensors are interlocked with the bridge control system to prevent or halt bridge operations while a vessel is in the channel.

Communication failures are addressed in NSRR procedures. If there are failures to both channel 13 and 16 radios, then NSRR will secure the bridge in the open to vessel traffic position until both radios are repaired. NSRR procedures

require that a bridge tender be dispatched to the bridge if communications become severed with vessels.

NSRR has additionally installed an automatic identification system (AIS) that tracks and identifies vessels equipped with AIS equipment. This provides the bridge tender with a tool to identify vessels on the Tombigbee River before they arrive at the bridge.

There were other general concerns brought by the commenters that have been addressed by the Coast Guard or did not fall under Coast Guard authority.

One commenter stated that they could not address the NSRR request because it was not included in the docket. As stated in the Background Information and Regulatory History section of this final rule, the Coast Guard notified NSRR on March 14, 2018 that there was insufficient information to address public concerns and thus the Coast Guard could not finalize the proposed rule. This letter is in the docket. NSRR addressed this Coast Guard letter and provided the Coast Guard with a formal proposal that included information on bridge demographics, waterway demographics, emergency response, maintenance, navigation assessments, bridge structural history, rail safety, control system compatibility, remote system components and requirements, operations requirements, waterway safety and bridge tender procedures. This information is not included in the docket because it contains NSRR company confidential information. The Coast Guard has reviewed these documents and has determined that they sufficiently address the concerns brought by the commenters.

One commenter stated that NSRR would prioritize rail traffic over vessel

traffic. There is no data to support this statement. There have been no reports that this bridge has not or did not operate according to Coast Guard regulations.

One commenter stated concern that there would be no on site presence to keep trespassers off the bridge or remove debris from the bridge. These concerns have been sent to NSRR. The Coast Guard did not address this because it does not fall under Coast Guard jurisdiction.

One commenter stated that this rule change would terminate jobs and had no correlation to railroad efficiency. These concerns have been sent to NSRR. The Coast Guard did not address this because it does not fall under Coast Guard jurisdiction.

After considering all of the comments we received, the Coast Guard believes that changing the operating schedule that governs the Norfolk Southern Railroad (NSRR) vertical lift bridge across the Tombigbee River, mile 89.9, near Jackson, between Washington and Clarke Counties, AL by moving the current onsite bridge tender control station to a geographically remote bridge control center located in Decatur, AL will provide for the reasonable needs of navigation and can be performed safely.

## **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 ability that vessels will be able to transit under the bridge given advance notice and the bridge will open in case of an emergency. We believe this change to the drawbridge operation regulations at 33 CFR 117.5 will meet 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 no 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 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 (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 and Commandant Instruction M16475.ID, 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.

A Record of Environmental Consideration and a Memorandum for the Record 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; and Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.118 to read as follows:

§ 117.118 Tombigbee River.

(a) The draw of the Meridian and Bigbee Railroad (MNBR) vertical lift span bridge across the Tombigbee River, mile 128.6 (Black Warrior Tombigbee (BWT) Waterway mile 173.6), at Naheola, shall operate 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.

(2) When a train approaches the bridge, it will stop and a crewmember from the train will observe the waterway for approaching vessels. If vessels are observed approaching the bridge, they will be allowed to pass prior to lowering the bridge. The crewmember will then announce via radiotelephone on VHF-FM

channel 16 that the bridge is preparing to be lowered. If, after two minutes, no response has been received, the crewmember will initiate the lowering sequence.

(3) After the train has completely passed over the bridge, the crewmember will initiate the raising sequence. When the bridge is in the fully open-to-navigation position, the crewmember will announce via radiotelephone on VHF-FM channel 16 that the bridge is in the fully open-to-navigation position.

(4) To request openings of the bridge when the lift span is in the closed-to-navigation position, mariners may contact the MNBR via VHF-FM channel 16 or by telephone at 205-654-4364

(b) The draw of the Norfolk Southern Railroad (NSRR) Vertical Lift Bridge across the Tombigbee River, mile 89.9, near Jackson, Washington and Clarke Counties, Alabama shall be operated as follows:

(1) The draw shall be kept in the open-to-vessel position, except during periods when it will close for the passage of rail traffic or to perform periodic maintenance authorized in accordance with subpart A of this part.

(2) 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. At the end of the two-minute warning period, if there are no vessels passing beneath the bridge or there have been no requests to pass beneath the bridge then the draw will automatically close. Upon passage of the train, the draw will return to the open-to-vessel position. The warning lights

will continue to flash red until the draw is completely opened.

(3) The draw shall be remotely operated by the draw tender at Norfolk Southern Railroad's bridge control center in Decatur, Alabama. Closed Circuit TVs, infrared detectors and an Automatic Identification System have been installed at the bridge. Vessels can contact the NSRR draw tender via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge to request an opening of the draw when the vertical lift span is in the closed-to-vessel position.

(4) NSRR will immediately provide an on-site bridge tender if:

(i) Any component of the remote operations system fails and prevents the remote operator from being able to visually identify vessels, communicate with vessels, detect vessels immediately underneath the bridge or visually identify trains approaching the bridge.

(ii) Anytime NSRR cannot meet Federal Railway Administration (FRA) or any other government agency safety requirements.

(iii) Anytime that the NSRR procedures or equipment to close or open the bridge listed in paragraph (b)(2) of this section fail.

(iv) When weather reaches a point where the remote draw tender cannot visually identify a vessel from the remote location.

(v) At the direction of the District Commander.

Dated: May 4, 2020.

John P. Nadeau,

Rear Admiral, U.S. Coast Guard,

Commander, Eighth Coast Guard District.

[FR Doc. 2020-09853 Filed: 6/1/2020 8:45 am; Publication Date: 6/2/2020]