



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2018-0987]**

**RIN 1625-AA09**

**Drawbridge Operation Regulations; Back Bay of Biloxi, Biloxi, MS**

**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 I-110 bascule bridge across the Back Bay of Biloxi, mile 3.0, Biloxi, Harrison County, Mississippi. This proposed action would require a 12 hour notification to open the bridge to vessels on Thanksgiving Day, Christmas Day and New Year's Day. The bridge has not opened for vessels on these holidays over a four year period. This proposed action is intended to allow the bridge owner to effectively manage bridge tender resources during these federal holidays.

**DATES:** Comments and related material must be received by 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-2018-0981 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the

SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed 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
E.O.	Executive Order
FR	<i>Federal Register</i>
MDOT	Mississippi Department of Transportation
OMB	Office of Management and Budget
Pub. L.	Public Law
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background, Purpose and Legal Basis**

MDOT has requested to change the operating requirements for the I-110 bascule bridge across the Back Bay of Biloxi, mile 3.0, Biloxi, Harrison County, Mississippi. This bridge currently opens according to 33 CFR part 117.675(a) and opens on signal if at least six hour notice is given. MDOT has requested that on Thanksgiving Day, Christmas Day and New Year's Day the bridge will open on signal if at least 12 hour notice is given.

At this bridge location the waterway is used by small commercial, recreational and fishing vessels. From 2014 through 2017 this bridge did not open for vessels on Thanksgiving Day, Christmas Day and New Year's Day. The bridge has a vertical clearance of 60' above mean high water in the closed to vessel position. Requiring a 12

hour notice to open provides a reasonable ability to use the waterway.

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

### **III. Discussion of Proposed Rule**

The Coast Guard's decision to promulgate a drawbridge regulation depends primarily upon the effect of the proposed rule on navigation to assure that the rule provides for the reasonable needs of navigation after consideration of the impact to the public. The Coast Guard must ensure that bridges across navigable waters do not unreasonably obstruct waterway traffic and at the same time provide for the reasonable needs of land traffic. Drawbridge operations must balance the needs of vessel, vehicle, rail, pedestrian, and recreational traffic in the overall public interest.

Since this bridge has not opened for vessel traffic over a four year period on these federal holidays the Coast Guard proposes that it is reasonable for vessels to provide a 12 hour notice to open the drawbridge. We have not identified any impacts on marine navigation with this proposed rule. Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

### **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 protestors.

#### **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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 can still open the draw and transit given advance notice. Those vessels with a vertical clearance requirement of less than 60 feet above mean high water may transit the bridge at any time. Additionally according to 33 CFR 117.31 (b) the drawtender shall take all reasonable measures to have the draw opened, regardless of the operating schedule of the draw, for passage of certain vessels during emergency situations. We believe this proposed change to the drawbridge operation regulations at 33 CFR 117.675(a) will meet the reasonable needs of navigation.

#### B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 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 would not have a significant economic impact on a substantial number of small entities.

The bridge provides a 60 foot vertical clearance at mean high water that should accommodate most present vessel traffic and the bridge will continue to open on signal for any vessel provided at least 12 hour notice is given. 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.

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. If the proposed 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 section. 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 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (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 preliminary 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 proposed rule promulgates the operating regulations or procedures for drawbridges. Normally 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.

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, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be 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; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.675 paragraph (a) to read as follows:

#### **§ 117.675 Back Bay of Biloxi**

- (a) The draw of the I-110 bridge, mile 3.0 at Biloxi, shall open on signal if at least six hour notice is given; except that on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given. The draw shall open anytime at the direction of the District Commander.
- (b) The draw of the Popp's Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in

distress.

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Dated: May 4, 2020.

**John P. Nadeau,**

*Rear Admiral, U.S. Coast Guard,*

*Commander, Eighth Coast Guard District.*

[FR Doc. 2020-09856 Filed: 5/12/2020 8:45 am; Publication Date: 5/13/2020]