



## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[Docket Number USCG-2020-0137]

RIN 1625-AA09

### Drawbridge Operation Regulation; Middle River, near Discovery Bay, CA

**AGENCY:** Coast Guard, Department of Homeland Security (DHS).

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. The proposed operating schedule change will require the removable span to open for vessels engaged in emergency levee repairs.

**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 <https://www.regulations.gov>, type USCG-2020-0137 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Carl T. Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, email [Carl.T.Hausner@uscg.mil](mailto:Carl.T.Hausner@uscg.mil).

### SUPPLEMENTARY INFORMATION:

#### I. Table of Abbreviations

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
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

On September 20, 2017, the U.S. Coast Guard issued San Joaquin County a permit to construct the new removable span Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA. Construction was completed on January 23, 2020. The new bridge provides 30 feet of vertical clearance in the closed-to-navigation position, unlimited vertical clearance when the span is removed, and 83 feet of horizontal clearance, dolphin to dolphin, measured normal to the centerline of the channel. The opening requirement for the newly constructed Woodward Island Bridge over Middle River is currently governed by 33 CFR 117.5, which requires prompt and full opening for the passage of vessels when a request or signal to open is given.

A three-year navigational analysis of that portion of Middle River was conducted between 2000 and 2003. The results of the analysis indicated the newly constructed bridge would meet the reasonable needs of recreational vessels that normally use the waterway. Vessels which cannot transit the bridge in the closed position have an alternate route to reach the opposite side of the bridge.

The Woodward Island Bridge was designed with a removable span to allow emergency vessels engaged in levee repair to request an opening when necessary. Since most recreational vessels can transit the new Woodward Island Bridge and there is an alternate route around the bridge, there is no need for an “open on demand” regulation as prescribed in 33 CFR 117.5.

On July 23, 2020, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled “Drawbridge Operation Regulation; Middle River, near Discovery Bay, CA” (85 FR 44494). Further, on July 27, 2020, Commander (dpw), Eleventh Coast

Guard District mailed notification of the NPRM to 48 interested parties that have known to use Middle River and published a notification of the NPRM in the Local Notice to Mariners, No. 30/20. The Coast Guard received one comment which was unrelated to the proposed rule.

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

The Coast Guard is issuing this rule under the authority at 33 U.S.C. 499. The Woodward Island Bridge across Middle River, mile 11.8, near Discovery Bay, CA is a removable span bridge which provides 30 feet of vertical clearance in the closed-to-navigation position, unlimited vertical clearance when the span is removed, and 83 feet of horizontal clearance, dolphin to dolphin, measured normal to the centerline of the channel. Most recreational vessels can transit the bridge in the closed-to-navigation position. Vessels that cannot transit the bridge while closed can take an alternate route to reach either side of the bridge.

This final rule will ensure that if emergency levee repairs are needed downstream of the bridge, tug and crane barges will be able to request an opening to allow passage.

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

As noted above, we received one comment on our NPRM published on July 23, 2020 that was unrelated to the proposed rule. With the exception of a non-substantive correction of a typographical error in § 117.171(b), there are no changes in the regulatory text of this rule from the NPRM. The final rule would require the removable span to open for vessels engaged in emergency levee repairs. This final rule would meet the reasonable needs of navigation.

### **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 of the newly constructed bridge to meet the reasonable needs of recreational vessels that normally use the waterway. Vessels which cannot transit the bridge in the closed position have an alternate route to reach the opposite side of the bridge.

### *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 section.

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, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f). The Coast Guard has determined 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 and is categorically excluded from further review under paragraph L49 of Appendix A, Table 1 of DHS Instruction Manual 023-01-001-01, Rev. 1.

### *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. Amend § 117.171 by revising paragraphs (b) and (c) and adding paragraph (d) to read as follows:

**§ 117.171 Middle River.**

\* \* \* \* \*

(b) The draw of the Burlington Northern Santa Fe railroad bridge, mile 9.8 near Middle River Station, shall open on signal if at least 12 hours notice is given to the Burlington Northern Santa Fe Railway Manager of Structures at San Bernardino.

(c) The removable span of the Woodward Island Bridge, mile 11.8 near Discovery Bay, shall be removed as soon as possible upon notification by the District Commander that an emergency exists which requires its removal.

(d) The California Route 4 Bridge, mile 15.1, between Victoria Island and Drexler Tract need not open for the passage of vessels.

Dated: December 9, 2020.

Brian K. Penoyer,  
Rear Admiral, U.S. Coast Guard,  
Commander, Eleventh Coast Guard District.