



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

#### **33 CFR Part 117**

**[Docket No. USCG-2018-0968]**

**RIN 1625-AA09**

### **Drawbridge Operation Regulations; Old Fort Bayou, MS**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final Rule.

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**SUMMARY:** The Coast Guard is changing the operating schedule that governs the State Road 609 highway bascule bridge across the Old Fort Bayou mile 1.6, Ocean Springs, Harrison County, Mississippi. This change was requested to address increased vehicular congestion, and allows Mississippi Department of Transportation to operate the bridge to meet vessel and traffic needs.

**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-2018-0968 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 e-mail Mr. Doug Blakemore, Eighth Coast Guard District Bridge Administrator; telephone (504) 671-2128, email [Douglas.A.Blakemore@uscg.mil](mailto: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      | Federal Register                         |
| MDOT    | Mississippi Department of Transportation |
| OMB     | Office of Management and Budget          |
| Pub. L. | Public Law                               |
| NPRM    | Notice of proposed rulemaking            |
| §       | Section                                  |
| SR      | State Road                               |
| U.S.C.  | United States Code                       |

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

On July 20, 2020 the Coast Guard published a notice of proposed rulemaking entitled Drawbridge Operation Regulations; Old Fort Bayou, MS in the **Federal Register** (85 FR 43773), to seek public comments on whether the Coast Guard should consider modifying the current operating schedule to the Old Fort Bayou drawbridge. We received 0 comments.

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

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

The Mississippi Department of Transportation (MDOT) requested to change the operating requirements for the SR 609 drawbridge across Old Fort Bayou, mile 1.6, Ocean Springs, Harrison County, Mississippi. This bridge currently operates according to the schedule found in 33 CFR Part 117. MDOT requested to close the bridge to vessels during peak vehicle traffic periods, from 6:30 a.m. to 8:00 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays and to require a 12 hour notification to open the bridge during periods of very little vessel traffic activity on Thanksgiving Day, Christmas Day and New Year's Day.

This waterway is used by small tows and barges, commercial fisherman and recreational vessels. Closing the bridge to vessel traffic in the morning and evening commuting hours reduces vehicle queues and does not create vessel queues. The reduction in vehicle queues enhances safety by preventing vehicles from backing up on

U.S. 90 highway. This bridge opens infrequently to vessels on Thanksgiving Day, Christmas Day and New Year's Day, therefore requiring a 12 hour notification provides vessels with a reasonable ability to use Old Fort Bayou.

Additionally the bridge is required to open for emergencies according to 33 CFR 117.31.

#### **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 60 days. Based on the vessel data and bridge openings this rule provides vessels with a reasonable ability to use the waterway. We identified no impacts on marine navigation with this proposed rule.

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

The Coast Guard 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 26 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 26 foot vertical clearance at mean high water that should accommodate most present vessel traffic and the bridge will continue to open on signal during most daylight hours for any vessel during the above federal holidays 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 (Public Law 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.

**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 § 117.681 to read as follows:

**§ 117.681 Old Fort Bayou**

The draw of the bridge, mile 1.6 at Ocean Springs, shall open on signal; except that, from 9 p.m. to 5 a.m., the draw shall open on signal if at least eight hour notice is given; on Thanksgiving Day, Christmas Day and New Year's Day the draw shall open on signal if at least 12 hour notice is given; and the draw need not open to vessels from 6:30 a.m. to 8 a.m. and from 4 p.m. to 6 p.m. Monday through Friday, except federal holidays. The draw shall open anytime at the direction of the District Commander.

Dated: December 16, 2020

John P. Nadeau

Rear Admiral, U.S. Coast Guard,

Commander, Eighth Coast Guard District.

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