



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2023-0934

RIN 1625-AA09

Drawbridge Operation Regulation; Turner Cut, near Stockton, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary interim rule and request for comments

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the draw of the Zuckerman Brothers (McDonald Island) bridge, mile 2.3, across Turner Cut, near Stockton, CA. This action is necessary to allow the bridge owner, Reclamation District 2030 (RD2030), to complete design plans and conduct repairs to the bridge to bring it back to its normal operating status.

DATES: This temporary interim rule is effective from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 5 p.m. on September 30, 2024.

Comments and related material must reach the Coast Guard on or before [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 the docket number (USCG-2023-0934) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material”.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary interim rule, call or e-mail Carl Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510-437-3516, e-mail Carl.T.Hausner@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
NOTD	Notice of Temporary Deviation
PG&E	Pacific Gas and Electric
Pub. L.	Public Law
RD2030	Reclamation District 2030
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This bridge is secured closed and will be secured closed until design plans are finalized, coordination of construction schedule can be made with landowners and PG&E, contractor hired, and repairs completed.

On June 21, 2023, RD2030 notified the Coast Guard that the Zuckerman Brothers (McDonald Island) retractable span bridge should not open for the passage of vessels. The cause was the gradual movement which squeezed the abutments towards the center movable steel section. The span cannot be opened without the risk of it being stuck in the open-to-navigation position. The Zuckerman Brothers (McDonald Island) bridge is the only road in and out of McDonald Island, which includes farms and a PG&E station and wells. The Coast Guard granted a Notice of Temporary Deviation (NOTD) from the operating schedule of the bridge, allowing the span to be secured in the closed position until repairs can be made. The NOTD will expire at 7 a.m. on December 18, 2023. The design, coordination of work with affected parties,

and repair is delayed. The retractable span will not be operational at the expiration of the NOTD. The Coast Guard received the report of these delays on November 17, 2023. Therefore, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the **Federal Register**. For reasons presented above, delaying the effective date of this rule would be impracticable and contrary to the public interest because the retractable span of the bridge is currently secured closed and cannot be operated until repairs are completed.

We are soliciting comments on this rulemaking. If the Coast Guard determines that changes to the temporary interim rule are necessary, we will publish a temporary final rule or other appropriate document.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the Zuckerman Brothers (McDonald Island) bridge, mile 2.3, across Turner Cut, near Stockton, CA. The Zuckerman Brothers (McDonald Island) bridge has a vertical clearance, in the closed position, of 16 feet at mean high water and unlimited vertical clearance when opened.

The existing drawbridge regulation, 33 CFR 117.5, states that the draw of the Zuckerman Brothers (McDonald Island) bridge must open for vessels if a signal is given to do so. RD2030, the bridge owner, has requested this modification as additional time is required to complete bridge repairs.

Drawtender logs from January 2022 through June 2023 indicate the span opened on average, 2 times in January; 1 time in February; 1 time in March; 3 times in April; 11 times in May; 8 times in June; 18 times in July; 6 times in August; 7 times in September; 4 times in October; 2 times in November; and 3 times in December. No complaints have been received

from mariners since the retractable span was secured closed on June 21, 2023.

IV. Discussion of the Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the Zuckerman Brothers (McDonald Island) bridge, mile 2.3, across Turner Cut, near Stockton, CA. This rule allows the bridge to be secured in the closed-to-navigation position through 5 p.m. on September 30, 2024.

RD2030 hired an engineering firm as part of the design, planning and repairs of the bridge. RD2030 and the engineers are working to finalize the plans for the repairs. RD2030 is also coordinating construction time windows with landowners on McDonald Island. PG&E is currently conducting major well rehabilitation on the island and have limited windows where their access to McDonald Island across the bridge can be interrupted. These elements contributed to the delay in the repairs to the retractable span. Currently, the retractable span is secured closed until repairs are complete. The anticipated completion of the repairs is September 30, 2024.

V. Regulatory Analyses

We developed this temporary interim 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.

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. This rule has not been designated a “significant regulatory action,” under Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, it has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that little or no commercial or

recreational vessel traffic will be impacted by this rule. Furthermore, the retractable span of the bridge, as of date of the publication of this rule, should not be operated for fear of becoming non-operational in the partially open position until repairs can be made.

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 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 (NEPA)(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 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.

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. 00170.1, Revision No. 01.3.

2. Add §177.T200 to read as follows:

§ 117.T200 Turner Cut.

The draw of the Zuckerman Brothers (McDonald Island) bridge, mile 2.3, near Stockton need not open for the passage of vessels.

Dated: December 15, 2023.

Andrew M. Sugimoto,
Rear Admiral, U.S. Coast Guard
Commander, Eleventh Coast Guard District.

