



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0386]

RIN 1625-AA09

Drawbridge Operation Regulation; Taylor Bayou Outfall Canal
(Joint Outfall Canal), TX

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

SUMMARY: The Coast Guard is implementing an operating schedule that governs the Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)), mile 2.44, West Port Arthur, Jefferson County, Texas. This bridge provides for Valero's maintenance vehicles and contractors to cross the waterway. The regulation will allow the bridge to remain in the open-to-navigation position except during two scheduled daily closures. This regulation increases the efficiency of operations allowing for the safe navigation of vessels through the bridge while recognizing the bridge's importance to the facility that it serves.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2014-0386]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. James Wetherington; Bridge Administration Branch, Eighth Coast Guard District; telephone 504-671-2128, e-mail james.r.wetherington@uscg.mil If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
USCG	United States Coast Guard
NEPA	National Environmental Policy Act

NPRM Notice of Proposed Rule Making
§ Section Symbol
U.S.C. United States Code
JOC Joint Outfall Canal

A. Regulatory History and Information

On September 23, 2014, we published an Interim Rule with request for comments entitled, "Drawbridge Operation Regulation; Taylor Bayou Outfall Canal (Joint Outfall Canal), TX" in the Federal Register (79 FR 56651). We received 1 comment on the interim rule. No public meeting was requested, and none was held.

B. Basis and Purpose

The Premcor Refining Group, Inc. - A Valero Company owns the new Valero pontoon-supported swing bridge across Taylor Bayou Outfall Canal (JOC), mile 2.44, West Port Arthur, Jefferson County, Texas.

The bridge has unlimited vertical clearance in the open-to-navigation position and a vertical clearance of 11.11 feet in the closed-to-navigation position. The new bridge also has a horizontal clearance of 75.0 feet from fender to fender in the open-to-navigation position and 52 feet from pontoon to fender in the closed-to-navigation position. Traffic on this waterway is primarily recreational craft and commercial barges. Valero

engaged the owners of these vessels through multiple discussions leading to the design and operating schedule of this bridge.

The owner requested to change the operating schedule, per 33 CFR 117.41(b), to allow the bridge to remain open except for two scheduled daily closures.

This change allows the bridge owner to leave the bridge in the open-to-navigation position, except for two daily maintenance cycles, while removing the requirement that a bridge tender be on the bridge at all times. All notifications and signals will remain as noted in the Interim Rule.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 45 days and only one comment was received. This comment was from Valero stating that they are in agreement with the rule as stated in the interim rule; however, they wish to have a little bit more flexibility due to contractor staff and general maintenance that require access to the other side of the property. After discussions with Valero, they agreed that any operation of the bridge outside of the prescribed times will require a tender on the bridge until the operations are finished and the normal open-to-navigation position can be resumed. Everything else will remain as published in the interim rule.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This rule allows the bridge to remain in the open-to-navigation position at all times with the exception of two scheduled closures each day to allow for vehicular traffic. Because the bridge will be left in the open position and only closed to vessel traffic for two hours per day, one hour in the morning and one hour in the early evening, this regulation will have a minimal affect on the waterway users and vessels transiting the area. Additionally, the bridge can be opened in 30 minutes should there be emergency need during one of the scheduled closures. Through the course of the comment period of the interim rule, it was noted that if the bridge needs to be closed at any other time than those times that are scheduled,

the bridge will be tended and be able to be opened in approximately 15 minutes.

2. 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.

This rule will affect the following entities, some of which may be small entities: the property owners, vessel operators and waterway users who wish to transit on Taylor Bayou Outfall Canal (JOC) past mile 2.44 from 6:30 a.m. to 7:30 a.m. and from 5:30 p.m. to 6:30 p.m. daily. This rule will not have a significant impact on a substantial number of small entities for the following reasons because, through pre-coordination and consultation with property owners, vessel operators and waterway users, this operating schedule will accommodate all waterway users with minimal impact.

3. Assistance for Small Entities

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.

4. 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).

5. Federalism

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 does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630,

Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, 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 rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32) (e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

Accordingly, the interim rule amending 33 CFR part 117 which was published at 79 FR 56651 on September 23, 2014, is adopted as a final rule with the following change:

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. Amend § 117.988 by adding paragraph (g) to read as follows:

§117.988 Taylor Bayou Outfall Canal (Joint Outfall Canal (JOC)).

* * * * *

(g) If the bridge is required to operate outside of the specified times, the bridge will be tended until it is returned to the open-to-navigation position.

Dated: March 20, 2015

KEVIN S. COOK

Rear Admiral, U.S. Coast Guard

Commander, Eighth Coast Guard District

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