



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0814]

RIN 1625-AA09

Drawbridge Operation Regulation; Lake Pontchartrain, Slidell, LA

AGENCY: Coast Guard, DHS.

ACTION: Interim rule with request for comments.

SUMMARY: The Coast Guard is modifying the method of operation for the Norfolk Southern Railroad (Norfolk Southern or NSRR) Bascule Bridge across Lake Pontchartrain, mile 4.80, near Slidell, St. Tammany Parish, Louisiana. The bridge owner, Norfolk Southern, requested in writing to operate the draw of the bridge remotely. This interim rule codifies the change in method of operation and increases the efficiency of railroad operations, allowing for the operation of the draw from another location, while allowing for comments regarding remote operations during the interim period.

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

Comments and related material must reach the Coast Guard on or before [Insert date **60** days after date of publication in the FEDERAL REGISTER]].

ADDRESSES: You may submit comments or view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type [USCG-2015-0814]. in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this interim rule, call or e-mail Ms. Geri Robinson; Bridge Administration Branch, Eighth Coast Guard District; telephone 504-671-2128, e-mail geri.a.robinson@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
U.S.C.	United States Code
NSRR	Norfolk Southern Railroad

II. Background Information and Regulatory History

The Coast Guard is issuing this 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 there will be no change to the operating schedule of the bridge. The modification for the bridge owner to open the draw by remote operation does not change the existing operating schedule. This rule will impose no new restrictions or requirements on the mariner. Thus, publishing an NPRM is impracticable as mariners are not expected to experience any changes in the operation of the draw for the purposes of vessel passage. Delaying this rule to provide for the notice and comment period would also unnecessarily delay the bridge owner in transitioning to the more efficient remote operation method. We are requesting comments to this interim rule to ensure participation in the rulemaking based on real-time experience while the draw operates under the new remote operation method.

We are issuing this rule and 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.

Delaying this rule to provide 30-day notice is unnecessary as mariners will experience no changes in transiting through the bridge site. Making this rule effective without providing 30-day notice imposes no impact on the mariner but allows for the bridge owner to transition to the more efficient remote operation method without unnecessary delay.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The Norfolk Southern Railroad Bascule Bridge across Lake Pontchartrain at mile 4.80, near Slidell, St. Tammany Parish, Louisiana, has a horizontal clearance of 151 feet between fenders and a vertical clearance of 4.0 feet above Mean High Water, elevation 2.0 feet Mean Sea Level in the closed-to-navigation position. The vertical clearance of the bascule bridge in the open-to-navigation position is 68 feet for the full 151-foot horizontal clearance and unlimited from the tip of the bascule to the north fender system, a distance of 106 feet. Currently, the bridge opens on signal under 33 C.F.R. 117.5.

In accordance with 33 C.F.R. 117.42, the District Commander may authorize a drawbridge to operate under an automated system or from a remote location. The purpose of this rule is to allow the draw of this bridge to operate from a remote location. The draw will continue to open on signal for the passage of vessels,

and mariners should not experience any changes in the level of service.

IV. Discussion of the Rule

The Coast Guard, at the request of Norfolk Southern, is changing the method of operation for the Norfolk Southern Railroad Bascule Bridge across Lake Pontchartrain, mile 4.80, near Slidell, St. Tammany Parish, Louisiana. Due to the need for increased efficiency in railroad operations, Norfolk Southern requested a change to the method of operating the draw from on-site to a drawtender operating the bridge remotely.

Presently, the draw is maintained in the open-to-navigation position and closed only for the passage of trains or maintenance. The bridge owner would like to operate the draw remotely using a drawtender at another drawbridge in Decatur, Alabama, rather than maintaining the current on-site operation and drawtender. The implementation of this rule, in effect, removes the requirement that a drawtender be present on site at all times.

Under the new remote operation procedure, the draw will continue to be maintained in the open-to-navigation position and lowered only for the passage of trains or for maintenance. There will be no modifications to the operation of the bridge as it relates to the passage of vessels. Instead, this change will allow the bridge owner to increase efficiency of bridge

operations and vessel transit by including this bridge in its current remote operation procedures located in Decatur, AL.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

E.O.s 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. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This interim rule is not a significant regulatory action because the draw will be maintained in the open-to-navigation position and when closed to pass trains it will continue to open on signal as scheduled. Therefore, mariners will experience no changes in transiting through the bridge site. No new restrictions on or actions from the mariner are required by this rule.

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, because the draw will be maintained in the open-to-navigation position and when closed to pass trains it will continue to open on signal as scheduled, no new restrictions or responsibilities are imposed on the mariner. Therefore, 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, 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.

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 E.O. 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 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 action is categorically excluded from further review, 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.

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.

VI. 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, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the Federal Register (70 FR 15086).

Documents mentioned in this notice, and all public comments, are 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 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. In §117.467, redesignate paragraph (b) as paragraph (c); and add new paragraph (b) to read as follows:

§117.467 Lake Pontchartrain.

* * * * *

(b) The draw of the Norfolk Southern Railroad Bridge across Lake Pontchartrain, mile 4.80 near Slidell, St. Tammany Parish, Louisiana shall be maintained as follows:

(1) The draw shall be maintained in the fully open-to-navigation position for vessels at all times, except during periods when it is closed for the passage of rail traffic or to perform periodic maintenance authorized in accordance with subpart A of this part.

(2) The draw shall be remotely operated by the drawtender at Norfolk Southern's drawbridge in Decatur, Alabama. The estimated duration that the bridge will remain closed for the passage of rail traffic is 10 to 15 minutes per operation.

(3) When a train approaches the bridge, the drawtender will initiate the bridge closing warning signal, consisting of radio calls via VHF-FM-channels 13 and 16 and activation of flashing red warning lights at each end of the span. The radio calls will be broadcast at five (5) minutes prior to bridge closing and at two (2) minutes prior to bridge

closing. Photoelectric (infrared) boat detectors will monitor the waterway beneath the bridge for the presence of vessels.

(4) The drawtender will continuously monitor waterway traffic in the area using closed-circuit cameras mounted on the bridge. The draw will only be closed if the drawtender's visual inspection indicates that the channel is clear and there are no vessels transiting in the area. The drawtender will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. Additionally, the draw will not be closed if the S11 bascule bridge that is located immediately west of the railroad bridge is in the open-to-navigation position. If two or more closed-circuit cameras are inoperable or if there is inclement weather, the draw will only be operated by a drawtender located on site at the bridge.

(5) At the end of the two-minute warning period, if no vessels have been detected by the drawtender, the draw closing sequence will automatically proceed.

(6) Upon passage of the train, the draw will be returned to the fully open-to-navigation position to allow marine traffic to pass. The warning lights will continue to flash red until the draw has returned to the fully open-to-

navigation position at which time they will deactivate.

(7) After the passage of each train, the draw must be returned to its fully open-to-navigation position.

(8) To request openings of the draw when the bascule span is in the closed-to-navigation position, mariners may contact Norfolk Southern Railway via VHF-FM channel 13 or by telephone at the number displayed on the signs posted at the bridge.

(9) The draw will be operated locally if:

(i) Communication is lost between the drawbridge and the drawtender in Decatur, Alabama;

(ii) More than two closed-circuit cameras are not working;

(iii) The marine radio is inoperable;

(iv) Weather conditions warrant; or

(v) Ordered by the Coast Guard.

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Dated: December 11, 2015

D.R. Callahan
Rear Admiral, U.S. Coast Guard
Commander, Eighth Coast Guard District

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