

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117****[CGD05-99-004]****Drawbridge Operation Regulations;
Atlantic Intracoastal Waterway,
Morehead City, NC****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of temporary deviation from regulations.

SUMMARY: The Commander, Fifth Coast Guard District has issued a temporary deviation from the regulations governing the operation of the Beaufort & Morehead Railroad Bridge across the Atlantic Intracoastal Waterway (ICW), mile 203.8, in Morehead City, North Carolina. Beginning February 22, 1999, through February 28, 1999, this deviation allows the bridge to remain closed to navigation between the hours of 7 a.m. to 12 noon; and 1 p.m. to 5 p.m. The closure is necessary to facilitate the rehabilitation of the bridge's bascule span.

DATES: This deviation is effective from 7 a.m. on February 22, 1999 until 5 p.m. on February 28, 1999.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION: The Beaufort & Morehead Railroad Bridge is owned and operated by the North Carolina Department of Transportation (NCDOT). The current regulations in Title 33 Code of Federal Regulations, Section 117.5 require the draw to open promptly and fully upon signal for the passage of vessels.

In May 1998, the Coast Guard approved the rehabilitation work of the bridge for structural repairs. On December 16, 1998, the Coast Guard received a request from McLean Contracting Company, contractors for NCDOT, to schedule daytime closures of the bridge to facilitate the ongoing rehabilitation of the railroad bridge.

The Coast Guard has advised the local Coast Guard units, including MSO Wilmington and Group Fort Macon, of the bridge's closure on the requested times and dates, and they did not object. The Coast Guard will inform the commercial/recreational users of the waterway of the bridge closure in the weekly Notice to Mariners so that these vessels can arrange their transits to avoid being temporarily impacted by this deviation.

Beginning February 22, 1999, through February 28, 1999, this deviation allows

the bridge to remain closed to navigation between the hours of 7 a.m. to 12 noon; and 1 p.m. to 5 p.m.

Dated: February 1, 1999.

Roger T. Rufe, Jr.,

*Vice Admiral, U.S. Coast Guard Commander,
Fifth Coast Guard District.*

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DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117****[CGD8-96-049]****RIN 2115-AE47****Drawbridge Operation Regulation;
Back Bay of Biloxi, MS****AGENCY:** Coast Guard, DOT.**ACTION:** Interim rule with request for comments.

SUMMARY: The Coast Guard is changing the regulation governing the operation of the Popp's Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. This final rule permits the draw to remain closed to navigation from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Presently, the draw opens on signal at all times.

DATES: This rule becomes effective on March 11, 1999. Comments must be received by May 10, 1999.

ADDRESSES: You may mail comments to Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130-3396, or deliver them to room 1313 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble will become part of this docket and will be available for inspection or copying at the address given above, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Philip R. Johnson, Bridge Administration Branch, (504) 589-2965.

SUPPLEMENTARY INFORMATION:**Requests for Comments**

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data,

views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 08-96-049) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period and may revise this rule before making it final.

Background and Purpose

The Coast Guard is changing the operation of the Popp's Ferry Road bascule span bridge across the Back Bay of Biloxi, mile 8.0, at Biloxi, Harrison County, Mississippi. Navigation on the waterway consists of tugs with tows, commercial fishing vessels and occasional recreational craft. Vehicular traffic crossing the bridge during peak rush hour traffic periods has increased significantly during recent years. Additionally, since the City of Biloxi is bisected by the Popp's Ferry Road Bridge, openings of the draw span, during rush hour traffic periods, paralyze vehicular traffic movement. This is the only route available to mid-city commuters without taking a 15-mile detour. This change will allow for the free flow of vehicular traffic while still meeting the reasonable needs of navigation.

The Coast Guard published a notice of proposed rulemaking on November 20, 1996 (61 FR 59047). The proposed rule would have permitted the draw to remain closed to navigation from 7:30 a.m. to 9 a.m., 11:30 a.m. to 1:30 p.m. and from 4:30 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Comments prompted the Coast Guard to reevaluate the proposal. Objections to the proposal were primarily based on the previous poor condition of the bridge which had resulted in only one bascule leaf being operable, thereby restricting navigation to daytime transits only. After the bridge had been restored to its fully operable condition, the Coast Guard published a supplemental notice of proposed rulemaking on September 23, 1998 (63 FR 50821). The supplemental notice of proposed rulemaking proposed the same schedule, but was published so that interested parties could have another opportunity to comment on the proposed change before a final decision was made.

Four letters were received in response to the supplemental notice of proposed rulemaking. One letter from the Mayor of the City of Biloxi, expressed support for the proposed rule. Two letters from towing companies expressed opposition to the proposal, stating that the times during which the bridge would be closed to navigation would severely hamper coal deliveries to the Mississippi Power Company electric power plant, during peak load periods. A letter from the Mississippi Power Company also stated that the restricted openings of the bridge would hinder deliveries of coal to the electric power plant during peak load periods. Also in that letter, Mississippi Power Company requested a meeting for all interested parties to discuss alternatives to the proposal and to seek a compromise. In response to this request, the Harrison County Board of Supervisors contacted each party who responded to the supplementary notice of proposed rulemaking and arranged a meeting on December 10, 1998 at the Harrison County Board of Supervisors Building in Biloxi, Mississippi. The towing companies and the Mississippi Power Company agreed that deleting the proposed mid-day closure of 11:30 a.m. to 1:30 p.m. Mondays through Fridays except Federal holidays would cause fewer concerns about coal deliveries.

The Coast Guard agrees that the change to the proposed rule will be less disruptive to coal deliveries to the power plant and that the two remaining closure periods in the morning and afternoon will provide relief for vehicular traffic during rush hours. This change is being published as an interim rule to make the changed schedule effective and to allow the public to comment on the schedule before the Coast Guard issues its final rule. The Coast Guard will consider all comments received and may revise this rule before making it final.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This is because the

number of vessels impaired during the proposed closed-to-navigation periods is minimal. Commercial fishing vessels and tugs with tows still have ample opportunity to transit this waterway before and after the peak vehicular traffic periods as is their customary practice.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule, will have a significant economic impact on a substantial number of small entities. "Small entities" may include 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.

This rule considers the needs of local commercial fishing vessels, as the study of vessels passing the bridge included such commercial vessels. These local commercial fishing vessels will still have the ability to pass the bridge in the early morning, early afternoon and evening hours. Thus, the economic impact is expected to be minimal. Additionally, there is no indication that other waterway users would suffer and type of economic hardship if they are precluded from transiting the waterway during the hours that the draw is scheduled to remain in the closed-to-navigation position. Therefore, 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. If, however, you think that your business or organization qualifies as a small entity and that this final rule will have a significant impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this final rule will economically affect it.

Collection of Information

This rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and

concluded that under Figure 2-1, paragraph 32(e) of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard is amending Part 117 of Title 33, Code of Federal Regulations, 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; 49 CFR 1.46; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Add § 117.675(c) to read as follows:

§ 117.675 Back Bay of Biloxi.

* * * * *

(c) The draw of the Popp's Ferry Road bridge, mile 8.0, at Biloxi, shall open on signal; except that, from 7:30 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw need not be opened for passage of vessels. The draw shall open at any time for a vessel in distress.

Dated: January 26, 1999.

A.L. Gerfin, Jr.,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

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LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 255

[Docket No. 96-4 CARP DPRA]

Mechanical and Digital Phonorecord Delivery Rate Adjustment Proceeding

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office of the Library of Congress is announcing final regulations setting the rate for the delivery of digital phonorecords in general and deferring until the next scheduled rate adjustment proceeding further consideration of the royalty rate for the delivery of a digital phonorecord where the reproduction or distribution