

Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

#### Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### List of Subjects in 23 CFR Part 450

Grant programs—transportation, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

Issued on: January 15, 2003.

**Mary E. Peters,**

*Federal Highway Administrator.*

**Jennifer L. Dorn,**

*Federal Transit Administrator.*

In consideration of the foregoing, the Federal Highway Administration is amending title 23, Code of Federal Regulations, part 450, as set forth below:

#### PART 450—PLANNING ASSISTANCE AND STANDARDS

1. The authority citation for part 450 continues to read as follows:

**Authority:** 23 U.S.C. 134, 135, and 315; and 49 U.S.C. 5303–5306, 5323(l).

2. Amend § 450.104 to revise the definition of “consultation” and add, in alphabetical order, the definition for “non-metropolitan area” and “non-metropolitan local official” to read as follows:

##### § 450.104 Definitions.

\* \* \* \* \*

*Consultation* means that one party confers with another identified party in accordance with an established process and, prior to taking action(s), considers that party's views and periodically informs that party about action(s) taken.

\* \* \* \* \*

*Non-metropolitan area* means the geographic area outside designated metropolitan planning areas, as designated under 23 U.S.C. 134 and 49 U.S.C. 5303.

*Non-metropolitan local official* means the elected or appointed officials of general purpose local government, in non-metropolitan areas, with jurisdiction/responsibility for transportation.

\* \* \* \* \*

3. Amend § 450.206 to revise paragraph (b) and to add paragraph (c) as follows:

##### § 450.206 Statewide transportation planning process: General requirements.

\* \* \* \* \*

(b) The statewide transportation planning process shall be carried out in coordination with the metropolitan planning process required by subpart C of this part and shall consider coordination with planning activities in non-metropolitan areas.

(c) In carrying out statewide transportation planning, the State shall consider, with respect to non-metropolitan areas, the concerns of local elected officials representing units of general purpose local government.

4. Amend § 450.212 by adding new paragraphs (h) and (i) to read as follows:

##### § 450.212 Public involvement.

\* \* \* \* \*

(h) The State shall provide for non-metropolitan local official participation. The State shall have a documented process(es) that is separate and discrete from the public involvement process for consulting with non-metropolitan local officials representing units of general purpose local government and/or local officials with responsibility for transportation that provides an opportunity for their participation in the statewide transportation planning process and development of the statewide transportation improvement program.

(i) The State shall review and solicit comments from non-metropolitan local officials and other interested parties for a period of not less than 60 days regarding the effectiveness of the consultation process and proposed modifications within 2 years of process implementation, and thereafter at least once every 5 years. A specific request for comments shall be directed to the State association of counties, State municipal league, regional planning agencies, or directly to non-metropolitan local officials. The State, at its discretion, shall be responsible for determining whether to adopt any proposed modifications. If a proposed modification is not adopted, the State shall make publicly available its reasons for not accepting the proposed modification, including notification to non-metropolitan local officials or their associations.

5. Amend § 450.214 by adding a paragraph (f) to read as follows:

##### § 450.214 Statewide transportation plan.

\* \* \* \* \*

(f) In developing the statewide transportation plan, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the plan in non-metropolitan areas of the State.

6. Amend § 450.216 by adding a paragraph (e) to read as follows:

##### § 450.216 Statewide transportation improvement program (STIP).

\* \* \* \* \*

(e) In developing the statewide transportation improvement program, affected local officials with responsibility for transportation shall be involved on a consultation basis for the portions of the program in non-metropolitan areas of the State.

7. Amend § 450.224 by designating the existing text as paragraph (a) and by adding a new paragraph (b) to read as follows:

##### § 450.224 Phase-in of new requirements.

\* \* \* \* \*

(b) The State has a period of one year after February 24, 2003 to document and implement the consultation process discussed in § 450.212(h).

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#### DEPARTMENT OF TRANSPORTATION

##### Coast Guard

##### 33 CFR Part 117

[CGD08–02–022]

RIN 2115–AE47

##### Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Houma, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the existing drawbridge operation regulation for the draw of the Bayou Dularge bridge across the Gulf Intracoastal Waterway, mile 59.9 at Houma, Terrebonne Parish, Louisiana. The rule allows for the morning closure period to be increased by 15 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

**DATES:** This rule is effective February 24, 2003.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8–02–022 and are available

for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130-3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. Commander, Eighth District (obc), maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, at (504) 589-2965.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

On October 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Gulf Intracoastal Waterway, LA in the **Federal Register** (67 FR 64580). We received two responses commenting on the proposed rule. No public hearing was requested, and none was held.

**Background and Purpose**

Presently, the draw of the Bayou Dularge bridge, mile 59.9, at Houma shall open on signal; except that, the draw need not be open for the passage of vessels Monday through Friday except holidays from 6:45 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

The Louisiana Department of Transportation and Development has requested a modification to the morning bridge operation schedule to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 6:45 a.m. to 8:30 a.m. The bridge serves as an important link between the largest residential neighborhoods in Terrebonne Parish and the Central Business District. Approximately 21,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure times reflects a change to align the closure period with the times of the heaviest commuter traffic. The amount of commuter traffic continues to increase. The bridge averages 325 openings a month. The requested 15-minute closure increase will delay approximately 7 additional tows a month. The average length of a bridge opening is less than five minutes, delaying an average of 90 vehicles per opening.

**Discussion of Comments and Changes**

The Coast Guard received two letters in response to the Notice of Proposed Rulemaking. One letter was from a state senator representing the Terrebonne Parish area who strongly supported the proposed change. The second letter was received from the National Marine

Fisheries Service stating that the drawbridge was not in their area of responsibility and declined comment. Only one minor administrative change was made to the final rule. The word "Federal" was added to the phrase "except holidays" to clarify when the rule will be in effect. No other changes to the final rule were made based upon the comments received.

**Regulatory Evaluation**

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it 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 rule allows vessels ample opportunity to transit the Gulf Intracoastal Waterway with proper notification before and after the peak vehicular traffic periods. Commercial towboat operators can avoid being impacted by simply arriving 15 minutes earlier at the bridge.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. Small entities, including towboat operators and their waterway user groups, were given an opportunity to comment regarding the effects of this proposed rule. We received no letters of objection to the proposed modification.

**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 so that they can

better evaluate its effects on them and participate in the rulemaking process.

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).

**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).

**Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

**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 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 the preamble.

**Taking of Private Property**

This rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

**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.

**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 cause an environmental risk to health or risk to safety that may disproportionately affect children.

### 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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this rule and concluded that, under figure 2-1, paragraph 32(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. This final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

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. § 117.451(c) is revised to read as follows:

#### § 117.451 Gulf Intracoastal Waterway.

\* \* \* \* \*

(c) The draw of the Bayou Dularge bridge, mile 59.9, at Houma, shall open on signal; except that, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 6:30 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m.

\* \* \* \* \*

Dated: January 15, 2003.

**J.R. Whitehead,**

*Captain, Coast Guard, Acting Commander,  
8th Coast Guard District.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 117

[CGD08-02-023]

RIN 2115-AE47

#### Drawbridge Operation Regulation; Houma Navigation Canal, LA

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the existing drawbridge operation regulation for the draw of the SR661 bridge across the Houma Navigation Canal, mile 36.0, at Houma, Terrebonne Parish, Louisiana. The modification will allow for the morning closure period to be increased by 30 minutes to facilitate the movement of high volumes of vehicular traffic across the bridge during peak traffic hours.

**DATES:** This rule is effective February 24, 2003.

**ADDRESSES:** Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD8-02-0023 and are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 501 Magazine Street, New Orleans, Louisiana 70130-3396, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. Commander, Eighth District (obc), maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Frank, Bridge Administration Branch, at (504) 589-2965.

### SUPPLEMENTARY INFORMATION:

#### Regulatory Information

On October 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation, Houma Navigation Canal, LA in the **Federal Register** (67 FR 64578). We received two responses commenting on the proposed rule. No public hearing was requested, and none was held.

#### Background and Purpose

Presently, the draw of the SR 661 bridge, mile 36.0, at Houma shall open on signal, except that the draw need not be opened for the passage of vessels Monday through Friday except holidays from 7 a.m. to 8:30 a.m. and 4:30 p.m. to 6 p.m.

The Louisiana Department of Transportation and Development has requested a modification to the morning bridge operation schedule to allow the bridge to remain closed to navigation from 6:30 a.m. until 8:30 a.m. vice 7 a.m. to 8:30 a.m. The bridge serves as an important link between the largest residential neighborhoods in Terrebonne Parish and the Central Business District. Approximately 13,000 vehicles cross the bridge daily, 10% of which cross the bridge during the requested closure times. The adjustment to the morning closure period reflects a change to expand the closure period to align with the heaviest commuter traffic. The amount of commuter traffic continues to increase. The bridge averages 953 openings a month. It is estimated that 3 tows a month will be delayed by the additional 30-minute morning closure request. In a 17-day review period in July 2002, two tows requiring bridge openings were delayed during the requested additional time period. The average length of the bridge opening is less than ten minutes, delaying an average of 60 vehicles for each opening.

#### Discussion of Comments and Changes

The Coast Guard received two letters in response to the Notice of Proposed Rulemaking. One letter was from a state senator representing the Terrebonne Parish area who strongly supported the proposed change. The second letter was received from the National Marine Fisheries Service stating that the drawbridge was not in their area of responsibility and declined comment. Only one minor administrative change was made to the final rule. The word "Federal" was added to the phrase "except holidays" to clarify when the rule will be in effect. No other changes