

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD09-05-080]

RIN 1625-AA09

Drawbridge Operation Regulations; Sturgeon Bay Ship Canal; Sturgeon Bay, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the operating regulations for the Michigan Street and Bayview drawbridges, both in Sturgeon Bay, WI, by establishing a permanent winter operating schedule while still providing for the reasonable needs of navigation.

DATES: This rule is effective November 23, 2005.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD09-05-080] and are available for inspection or copying at Commander (dpw-3), Ninth Coast Guard District, 1240 E. Ninth Street, Room 2025, Cleveland, Ohio 44199-2060, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Scot M. Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902-6087.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On August 17, 2005, we published a notice of proposed rulemaking (NPRM) entitled, "Drawbridge Operation Regulations; Sturgeon Bay Ship Canal, Sturgeon Bay, WI," in the **Federal Register** (70 FR 48354). We received one letter commenting on the proposed rule. The letter was from the Lake Carriers Association, representing certain American shipping companies on the Great Lakes, which confirmed its position of no objection to the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the Wisconsin Department of Transportation (WI-DOT), is modifying the existing operating schedule of the Michigan Street and Bayview Bridges, miles 4.3 and 3.0, respectively, over the Sturgeon Bay Ship Canal. The modified regulation primarily establishes

permanent winter operating schedules for each drawbridge in lieu of the annual winter authorization granted by Commander, Ninth Coast Guard District, under the authority of 33 CFR 117.45.

The Michigan Street Bridge at mile 4.3 over Sturgeon Bay Ship Canal is a single-leaf bascule bridge that provides a vertical clearance of 14 feet in the lowered position. The current operating regulation for Michigan Street Bridge requires the drawbridge to open for recreational vessels only on the hour, 24 hours a day, between March 15 and December 31 each year, and as soon as possible if more than 20 vessels have accumulated at the bridge. Commercial and public vessels are passed at all times. From January 1 through March 14 each year, the bridge opens for vessels if 12-hours advance notice is provided.

This final rule makes that operating schedule permanent for Michigan Street Bridge.

There is no current specific drawbridge regulation for the Bayview (State Route 42/57) Bridge, mile 3.0 over Sturgeon Bay Ship Canal. The Bayview Bridge is a twin-leaf bascule drawbridge that provides a vertical clearance of 42 feet when in the lowered position. The drawbridge is currently required to open on signal at all times all year long. The Coast Guard has granted a seasonal yearly winter operating schedule under the provisions of 33 CFR 117.45 from January 1 to March 14 since approximately 1992. W-DOT requested that the Coast Guard implement a permanent winter operating schedule for this drawbridge. W-DOT requested that the Bayview Bridge open for vessels when 12-hours advance notice is provided between December 1 and March 14 each year. The Coast Guard requested copies of bridge opening logs from W-DOT for the Bayview Bridge. The bridge logs revealed that very few openings of the Bayview Bridge had been requested in the month of December during the past three years. The Coast Guard determined that the small number of requested openings at Bayview bridge during the month of December in the three previous years signifies that the request to require 12-hour advance notice between December 1 and March 14 each year would be reasonable. This final rule makes the winter operating schedule permanent.

Discussion of Comments and Changes

One letter was received in response to the NPRM. The letter, from Lake Carriers Association, confirmed the organizations previous statement of no objection to the proposed schedule. No changes to the proposed regulation were made.

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 Homeland Security (DHS).

The Coast Guard expects minimal public impact from this rule. The operating hours for recreational vessels do not effectively change since the substantive changes occur during winter months when recreational vessel activity has ceased. Commercial vessels have been required to provide 12-hours advance notice prior to passing drawbridges since approximately 1992 with no reported problems.

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.

This conclusion is based on the fact that the drawbridge schedule for small entities remains the same. Only the winter drawbridge schedule has been modified. All vessels may continue to pass the drawbridge once the advance notice is provided during winter months.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule so that they could 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 this preamble.

Taking of Private Property

This rule will 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 would not create an environmental risk to health or risk to safety that might 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e) of the Instruction, from further environmental documentation. This rule involves modifying or establishing drawbridge operation regulations to reflect standard

practices for drawbridge operating schedules during winter months on the Great Lakes, and will not have any impact on the environment.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. Revise § 117.1101 to read as follows:

§ 117.1101 Sturgeon Bay.

(a) The draw of the Michigan Street Bridge, mile 4.3 at Sturgeon Bay, shall open as follows:

(1) From March 15 through December 31, the draw need open on signal for recreational vessels only on the hour, 24 hours a day. However, if more than 20 vessels have accumulated at the bridge, or vessels are seeking shelter from severe weather, the bridge shall open on signal.

(2) From January 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage.

(b) The draw of the Bayview (SR 42/57) Bridge, mile 3.0 at Sturgeon Bay, shall open as follows:

(1) From March 15 through November 30, the draw shall open on signal.

(2) From December 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of a vessel's time of intended passage.

Dated: October 6, 2005.

R.J. Papp, Jr.,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

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