



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-1109]

RIN 1625-AA09

Drawbridge Operation Regulation; Sturgeon Bay Ship Canal,
Sturgeon Bay, WI.

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a drawbridge operating schedule for the Maple-Oregon and Michigan Street Bridges across the Sturgeon Bay Ship Canal, at miles 4.17 and 4.3, in Sturgeon Bay, Wisconsin. The establishment of this schedule is necessary due to the construction of the Maple-Oregon Street Bridge and the completed rehabilitation of the Michigan Street Bridge. The proposed regulation also confirms the winter drawbridge schedules for all three drawbridges over Sturgeon Bay Ship Canal, including the two bridges above and the Bayview Bridge at mile 3.0.

DATES: Comments and related material must reach the Coast Guard on or before: [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number **USCG-2011-1109** using any one of the following

methods:

(1) Federal eRulemaking Portal:

<http://www.regulations.gov>.

(2) Fax: 202-493-2251.

(3) Mail: Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC, 20590-0001.

(4) Hand delivery: Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these four methods. 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 proposed rule, call or e-mail Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902-6085, e-mail Lee.D.Soule@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by

submitting comments and related materials. All comments received will be posted, without change to <http://www.regulations.gov> and will include any personal information you have provided.

Submitting comments

If you submit a comment, please include the docket number for this rulemaking (**USCG-2011-1109**), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the

"Document Type" drop down menu select "Proposed Rules" and insert "USCG-2011-1109" in the "Keyword" box. Click "Search" then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2011-1109" and click "Search." Click the "Open Docket Folder" in the "Actions" column. 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. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the Federal Register (73 FR 3316).

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under ADDRESSES. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the Federal Register.

Basis and Purpose

The proposed rule establishes drawbridge schedules following the construction of the new Maple-Oregon Street Bridge and the extensive rehabilitation of the existing Michigan Street Bridge. The proposed rule is expected to provide for the safe and efficient passage of vessels requiring drawbridge openings, as well as the efficient movement of vehicular traffic in Sturgeon Bay.

The Sturgeon Bay Ship Canal is approximately 8.6 miles long and provides a navigable connection between Lake

Michigan and Green Bay. The area experiences a significant increase in vehicular and vessel traffic during the peak tourist and navigation season between approximately Memorial Day and Labor Day each year. There are a total of three highway drawbridges across the waterway. The Michigan Street Bridge provides unlimited vertical clearance in the open position and 14 feet in the closed position. Maple-Oregon Bridge, provides unlimited vertical clearance in the open position and 25 feet in the closed position. Bayview Bridge provides unlimited vertical clearance in the open position and 42 feet in the closed position. Both Michigan Street and Maple-Oregon Bridges serve the downtown Sturgeon Bay area and are located approximately 750-feet apart on the canal.

A final rule was published on October 24, 2005 in the Federal Register (70 FR 61380) to allow for one opening per hour at the Michigan Street Bridge for recreational vessels while the Maple-Oregon Bridge was constructed and the Michigan Street Bridge was rehabilitated. The final rule also included a requirement to open at any time if 20 or more vessels gathered waiting for bridge openings. A temporary final rule was published on June 5, 2009 in the Federal Register (74 FR 26954), effective from June 1, 2009 to November 15, 2010 that essentially shifted the one bridge opening per hour at Michigan Street Bridge to the Maple-

Oregon Bridge while the rehabilitation of Michigan Street was completed and the bridge was kept in the open-to-navigation position. With both Michigan Street and Maple-Oregon Bridges operational, the one opening per hour schedule for Michigan Street is considered restrictive for vessels and could create an unsafe condition for vessel traffic that may be between the two closely located drawbridges while waiting for bridge openings. The Coast Guard issued a notice of temporary deviation from regulations that was published on May 17, 2011 in the Federal Register (76 FR 28309) with request for comments to implement a test drawbridge schedule for Michigan Street and Maple-Oregon Street Bridges between May 27, 2011 and September 16, 2011. The test schedule required the Michigan Street Bridge to open for recreational vessels twice an hour, on the hour and half-hour, 24-hours a day, 7 days a week, and required the Maple-Oregon Bridge to open for recreational vessels twice an hour, on the quarter hour and three-quarter hour, during the same times. The test schedule also included a change to the requirement that the bridge to open if 20 or more vessels gathered at the bridge waiting for a scheduled opening. Local opinion was that an opening if at least 10 vessels were gathered would be a safer maximum number of vessels.

The Coast Guard coordinated with all local

stakeholders before, during, and after the test drawbridge schedule and did not receive any adverse comments to the test schedule.

Discussion of Proposed Rule

The Wisconsin Department of Transportation (WDOT) requested scheduled drawbridge openings for both Michigan Street and Maple-Oregon Bridges so vehicular traffic congestion would not develop on downtown Sturgeon Bay streets due to unscheduled bridge openings. This proposed rule provides at least two bridge openings per hour for both Michigan Street and Maple-Oregon Street bridges, compared to the one bridge opening per hour that was in place during the construction and rehabilitation of the two highway bridges. It also retains the test schedule requirement to open the bridge if at least 10 vessels have accumulated at either bridge waiting for an opening. The proposed rule also establishes the winter operating date for Maple-Oregon Bridge (January 1 through March 14) and rearranges the order of the three drawbridges to be presented geographically in the regulatory language. The proposed rule was developed with all known stakeholders to provide for the safe and efficient movement of both vessel and vehicular traffic, including keeping the bridge openings on a scheduled basis to reduce potential vehicular traffic congestion in Sturgeon Bay. The Coast Guard did not receive any adverse comments

during the test schedule and is therefore proposing to implement the test schedule as a permanent schedule for Sturgeon Bay drawbridges.

Regulatory Analyses

We developed this proposed rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This proposed 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 Executive Order 12866. The Office of Management and Budget has not reviewed it under that Order. This determination is expected to improve traffic congestion and safety in the vicinity of the drawbridge and does not exclude bridge openings for vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed rule continues to provide at least two drawbridge openings per hour each day for recreational vessels during peak hours compared to one opening per hour under the current regulation. Additionally, all vessels that do not require bridge openings may transit the drawbridges at any time. All known small entities were consulted and included in the development of the test drawbridge schedule in 2011, and have not provided any adverse comments.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed

rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Mr. Lee D. Soule, Bridge Management Specialist, U.S. Coast Guard, telephone 216-902-6085, e-mail lee.d.soule@uscg.mil, or fax 216-902-6088. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

This proposed rule would call 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 proposed 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 (adjusted for inflation) or more in any one year. Though this proposed 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 proposed rule would 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.

Civil Justice Reform

This proposed 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 proposed 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 proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this proposed 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 preliminary 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 because it simply promulgates the operating regulations or procedures for drawbridges. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to revise 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. Revise §117.1101 to read as follows:

§117.1101 Sturgeon Bay.

(a) The Bayview (SR 42/57) Bridge, mile 3.0 at Sturgeon Bay, shall open on signal, except from December 1 through March 14, the draw shall open on signal if notice is given at least 12 hours in advance of intended passage.

(b) The draw of the Maple-Oregon Bridge, mile 4.17 at Sturgeon Bay, shall open on signal, except as follows:

(1) From March 15 through December 31, need open on signal for recreational vessels only on the quarter hour and three-quarter hour, 24 hours a day, if needed. However, if more than 10 vessels have accumulated at the bridge, or vessels are seeking shelter from severe weather, the bridge shall open on signal. This drawbridge, along with the Michigan Street drawbridge, shall open simultaneously for larger commercial vessels, as needed.

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

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

(1) From March 15 through December 31, need open on signal for recreational vessels only on the hour and half-hour, 24 hours a day, if needed. However if more than 10 vessels have accumulated at the bridge, or vessels are seeking shelter from severe weather, the bridge shall open on signal. This drawbridge, along with the Maple-Oregon Street drawbridge, shall open simultaneously for larger commercial vessels, as needed.

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

Dated: March 11, 2012

M. N. PARKS

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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