



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: Final rule.

SUMMARY: The Coast Guard is changing the 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. This final rule also confirms the winter drawbridge schedules for all three drawbridges over Sturgeon Bay Ship Canal, including the two previously mentioned bridges as well as the Bayview Bridge at mile 3.0.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the

public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2011-1109 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-1109 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail 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. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On April 12, 2012, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI, in the Federal Register (77 FR 21890). We did not receive any comments on the proposed rule. No public meeting was requested, and none

was held.

B. Basis and Purpose

This rule establishes drawbridge schedules following the construction of the new Maple-Oregon Street Bridge and the extensive rehabilitation of the existing Michigan Street Bridge. This final 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 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 also 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 too 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 current regulation that required 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.

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 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 requirement during the test schedule to open if at least 10 vessels have accumulated at either

bridge waiting for an opening. This 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.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a 30 day comment period in conjunction with the NPRM and no comments were received. The regulatory text published in the NPRM has not changed in this final rule.

D. Regulatory Analyses

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

1. Regulatory Planning and Review

This 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 Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order. This rule is expected to improve traffic congestion and safety in the

vicinity of the drawbridge and does not exclude bridge openings for vessel traffic.

2. 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 Coast Guard did not receive any comments from the Small Business Administration on this rule. 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.

3. 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. 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.

4. 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).

5. Federalism

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 does not have implications for federalism.

6. 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.

7. 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.

8. Taking of Private Property

This rule will 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.

9. 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.

10. 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 create an environmental risk to health or risk to safety that might disproportionately affect children.

11. 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.

12. 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.

13. Technical Standards

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

14. 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 concluded 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 is categorically excluded, 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.

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. Revise §117.1101 to read as follows:

§117.1101 Sturgeon Bay.

(a) The Bayview (State Route 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: July 18, 2012

M. N. PARKS

Rear Admiral, U. S. Coast Guard

Commander, Ninth Coast Guard District

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