



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2012-0918]

RIN 1625-AA09

Drawbridge Operation Regulation; Lake Champlain, Swanton, VT

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the New England Central Railroad Bridge across Missisquoi Bay, mile 105.6, at Swanton Vermont. The owner of the bridge has requested to operate the bridge from a remote location, at St. Albans, Vermont. It is expected that this change to the regulations would provide relief to the bridge owner from crewing the bridge while continuing to meet the reasonable needs of navigation.

DATES: Comments and related material must be received by the Coast Guard on or before [*INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER*].

ADDRESSES: You may submit comments identified by docket number USCG-2012-0918 using any one of the following methods:

- (1) Federal Rulemaking Portal:

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

(2) Fax: 202-493-2251.

(3) Mail or Delivery: 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. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. John W. McDonald, Project Officer, First Coast Guard District Bridge Program, telephone (617) 223-8364, e-mail john.w.mcdonald@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:

Tables of Acronyms

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<u>Federal Register</u>
NPRM	Notice of Proposed Rulemaking

§ Section Symbol
U.S.C. United States Code

A. 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.

1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2012-0918), 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-2012-0918" 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.

2. 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-2012-0918" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit either 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.

3. 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).

4. 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.

c. Basis and Purpose

The New England Central Railroad Bridge, formerly the Central Vermont Railway Bridge, at mile 105.6, across Missisquoi Bay, at Swanton, Vermont, has a vertical clearance in the closed position that ranges between 9.5 feet and zero feet depending on the time of year and other

conditions. The waterway users are predominantly seasonal recreational vessels.

The existing drawbridge operation regulations are listed at 33 CFR 117.993(c), which require the draw to operate as follows: from June 15 through September 15, the draw shall open on signal, Monday through Friday between 9 a.m. and 5 p.m. and on Saturday, Sunday, Independence Day, and Labor Day, between 7 a.m. and 11 p.m. At all other times, after at least a two hour notice is given. From September 16 through June 14, on signal after at least a twenty four hour notice is given.

The Coast Guard received a request from the owner of the bridge, New England Central Railroad Inc., to change the drawbridge operation regulations to allow the bridge to be operated remotely from the New England Central Railroad Dispatcher's Office located at St. Albans, Vermont.

The bridge had been operated manually by hand crank since it was constructed in 1912. An operator would be dispatched to the bridge to manually close the draw to facilitate the passage of a train and then crank the draw back into the open position.

The Federal Railroad Administration funded the motorization of the bridge to allow remote operation of the bridge by New England Central Railroad. As a result, in 2012, the operating system was modified by adding electric

bridge opening motors to swing the draw open and closed, a standby electric generator to be used in the event of a power outage, local bridge operation controls installed at the tenders building on the bridge to be used to locally operate the draw, LED navigation lights, and electric illuminated signs both up and down stream to warn mariners that the bridge will be closing for the passage of an approaching train.

Presently, rail traffic crosses the bridge seven days a week. There are normally two train passages daily crossing the bridge in the morning and returning later in the same day.

Under this notice of proposed rulemaking the bridge would be opened and closed remotely, from the New England Central Railroad Dispatchers Office at St. Albans, Vermont.

During the boating season, June 15 through September 15, the bridge would remain in the open position at all times, except for the passage of rail traffic. Once rail traffic crosses the bridge the bridge would be returned to the full open position.

In the off season, September 16 through June 14, the bridge would remain in the closed position at all times.

The bridge would be opened for the passage of vessel traffic September 16 through June 14, upon receipt of a twenty-four hour advance notice to open the bridge.

The bridge opens on average two to three times a week during the period 16 September through 14 June when the bridge owner proposes to open the draw upon receipt of a twenty-four hour advance notice.

In addition, the waterway is normally frozen December through April each winter when the recreational vessels that normally transit this bridge are in winter storage.

As a result of the above information the Coast Guard believes it is reasonable for the bridge owner to operate the bridge from a remote location and that the reasonable needs of navigation will continue to be addressed.

D. Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.993(c), to allow remote operation of the New England Central Railroad Bridge, and also eliminate paragraph (d) under the same section which governs the operation of the SR78 highway bridge.

The SR78 highway bridge has been replaced with a new fixed span highway bridge; therefore, the drawbridge operations for that bridge will be deleted because they are now obsolete and unnecessary.

For the of the New England Central Railroad Bridge, the Coast Guard received a request from the owner, New England Central Railroad Inc., to operate the bridge from a remote

location at the New England Central railroad Dispatcher's Office at St. Albans, Vermont.

The existing drawbridge operations incorporated an operating schedule that listed the days and times the bridge would open for the passage of vessel traffic. That operation schedule was established many years ago when the bridge was crewed.

In recent years the bridge was not crewed and didn't operate according to the operating schedule but rather it was left in the open position during the boating season June through September, except when a train was scheduled to cross the bridge. Rail personnel would be dispatched to the bridge two hours in advance of a train crossing to manually crank the draw closed to facilitate the passage of the rail traffic and then return the bridge to the full open position once the train cleared the bridge.

The bridge was motorized in 2012, to facilitate remote operation, and thereby eliminate the dispatching of personnel back and forth daily to operate the bridge.

Under this notice of proposed rulemaking, as a result of operating the draw remotely, the bridge will simply remain in the open position at all times from June 15 through September 15, except for the passage of rail traffic. From September 16 through June 14, the draw would remain in the closed position at all times, except for the

passage of vessel traffic, that provides at least a twenty four hour notice to open the draw.

The New England Central Railroad Bridge is listed in the existing regulations as the Central Vermont Railway Bridge. We are changing the name of the bridge under this proposed rule to update the present name and ownership of the bridge.

E. 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.

1. 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 Order 12866, or under section 1 of Executive Order 13563 because the bridge will continue to operate under the same operation schedule, except that, it will be opened and closed from a remote location.. The Office of Management and Budget has not reviewed it under those Orders.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered the impact of this proposed rule on small entities. 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.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels needing to transit through the bridge.

This action will not have a significant economic impact on a substantial number of small entities for the following reasons:

The bridge will continue to operate under the same opening schedule, except that it will be opened and closed from a remote location.

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. 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.

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.

3. 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.).

4. 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 proposed rule under that Order and have determined that it does not have implications for federalism.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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.

11. Energy Effects

This proposed rule is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use 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 Offices 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.

12. Technical Standards

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

13. 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. This proposed rule simply promulgates the operating regulations or procedures for drawbridges. 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. We seek any comments or information that may lead to the discovery of significant environmental impact from the proposed rule.

F. List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 § 117.993 paragraph (c) and remove paragraph (d) to read as follows:

§ 117.993 Lake Champlain.

* * * * *

(c) The draw of the New England Central Railroad Bridge across Missiquoi Bay, mile 105.6, at Swanton, Vermont, shall operate as follows:

(1) From June 15 through September 15, the draw shall remain in the full open position at all times and shall only be closed for the passage of rail traffic or the performance of maintenance authorized in accordance with subpart A of this part.

(2) From September 16 through June 14, the draw may remain in the closed position and shall be opened on signal for the passage of vessel traffic after at least a twenty four hour notice is given by calling the number posted at the bridge.

(3) The draw may be operated either remotely by the New England Central Railroad train dispatcher located at St. Albans, Vermont or manually by a draw tender located at the bridge.

(4) A sufficient number of infrared cameras shall be maintained in good working order at all times with a clear unobstructed view of the channel under the bridge, and the up and down stream approaches to the bridge. A signal horn and message boards located both up and down stream, necessary to warn marine traffic that the bridge will be closing, shall also be maintained in good working order at all times. In the event that any of the cameras, navigation lights, horn, or message board become disabled, personnel shall be deployed to the bridge to be on scene within two hours from the known time of the equipment failure.

(5) The draw may operate remotely as follows: Once it is determined that the draw must be opened or closed, the train dispatcher shall observe the waterway both up and down stream via the infrared cameras to verify that the channel is clear of all approaching vessel traffic. All approaching vessel traffic shall be allowed to pass before the bridge may closed. Once it is determined that no vessel traffic is approaching the dispatcher shall sound the warning horn and activate the up and down stream message boards indicating that the bridge will be closing. After at least a one

minute delay the draw may then be closed and the swing span navigation lights shall display as red to indicate the bridge is in the closed position. Once the train clears the bridge the draw shall be returned to the full open position and the swing span lights shall display as green to indicate the draw is in the full open position.

(6) In the event that the dispatcher cannot verify that the channel is clear of all vessel traffic and the bridge cannot be safely closed, an on-scene train crewmember shall observe the waterway for any vessel traffic and then communicate with the train dispatch office either by radio or telephone to request the bridge be safely closed. Personnel shall then be deployed to the bridge to arrive within two hours to inspect and repair the bridge remote operation equipment. The bridge shall be operated manually from the tender's house located at the bridge until all necessary repairs are completed to the remote operation equipment.

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Dated: October 16, 2012

Daniel B. Abel
Rear Admiral, U.S. Coast Guard
Commander, First Coast Guard District

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