



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2014-0358]

RIN 1625-AA09

Drawbridge Operation Regulation; Missouri River, Atchison, KS

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

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SUMMARY: The Coast Guard is proposing to change the operating schedule that governs the Atchison Railroad Drawbridge, Mile 422.5, across the Missouri River at Atchison, KS. Under the proposed rule, the drawbridge will open on signal if at least a two-hour notification is given. This proposed rule allows the bridge to operate under the customary schedule that has been adopted by the waterway users.

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-2014-0358 using any one of the following methods:

(1) Federal eRulemaking 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 three methods.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Eric Washburn, Bridge Administrator, Western Rivers, Bridge Branch, the Coast Guard; telephone 314-269-2378, e-mail Eric.Washburn@uscg.mil. If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

Table 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 proposed 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 proposed rulemaking (USCG-2014-0358), 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>, type the docket number [USCG-2014-0358] in the "SEARCH" box and click "SEARCH." Click on "Submit a Comment" on the line associated with this rulemaking. 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>, type the docket number (USCG-2014-0358) in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. 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.

## 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 three 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.

#### B. Regulatory History and Information

The Missouri River drawbridge operation regulations contained in 33 CFR 117.411 and 117.687 state that the draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and the date of opening of the commercial navigation season as published by the Army Corp of Engineers, the draw need not open unless at least 24 hours advance notice is given.

The Union Pacific Railroad on April 29, 2009 requested the current operation regulations be changed from the open on signal requirement to a three-hour advance notice for drawspan openings for the Atchison Railroad Drawbridge, mile 422.5, in Atchison, KS. The request was denied by the Coast Guard

because inconsistencies would be created with other drawbridges on the Missouri River resulting in an adverse effect to the waterway users.

On April 29, 2014 the Union Pacific Railroad requested to change the operation regulations on the Atchison Railroad Drawbridge, mile 422.5, across the Missouri River to a two-hour advance notice to open the drawspan. The Coast Guard was still concerned that a two-hour advance notice may still create an inconsistency with the other drawbridge openings on the Missouri River.

The Coast Guard and the Union Pacific Railroad further reviewed the request, along with the opening schedules for the other drawbridges on the Missouri River and concluded that a two-hour advance notice on drawspan openings of the Atchison Railroad Drawbridge would not create a consistency issue or not adversely affect navigation.

### C. Basis and Purpose

The Atchison Railroad Drawbridge crosses the Missouri River at mile 422.5 in Atchison, Kansas. Due to very limited drawspan openings and to codify the operating schedule that has been adopted by the waterway users, the Union Pacific Railroad requested a two-hour advance notice of opening the bridge's drawspan during the commercial navigation season.

The Union Pacific Railroad has documented the limited number of vessel openings per year at this bridge. This information

is available at the Coast Guard Western Rivers, Bridge Branch; see the aforementioned contact information.

#### D. Discussion of Proposed Rule

This rule proposes to add special operating requirements codifying the customary advance notice for openings of the Atchison Railroad Bridge under 33 CFR 117, Subpart B as required under 33 CFR § 117.8. The proposed change will add a paragraph (b) to 33 CFR § 117.411, a reference to this paragraph in 33 CFR § 117.687, and allow for bridge drawspan openings to take place provided at least a two-hour advance notice is given. This change is based on the very limited requests for openings during the commercial navigation season.

#### 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 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. The Office of Management and Budget

has not reviewed it under those Orders.

This proposed rule is not a significant regulatory action and does not require a full assessment. As a matter of custom in the area, commercial mariners already provide advance notice; therefore this rule proposes little, if any, impact on current navigation. Additionally, all vessels will be able to transit the bridge with advance notification.

## 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 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.

This proposed rule is neutral to all business entities operating on the waterway. As proposed, the rule simply requires a two-hour advance notice to open the bridge. As stated above, it is custom in the area to provide advance notice for a requested opening. This rule simply proposed to codify such notice already given as a customary practice. Therefore, this action will not have a significant impact on

small entities.

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.

### 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 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.

### 4. 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.).

### 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### 8. 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.

9. 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.

10. 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.

11. 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.

## 12. 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.

## 13. Technical Standards

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

## 14. 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 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 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 § 117.411 to read as follows:

§ 117.411 Missouri River

(a) The draws of the bridges across the Missouri River shall open on signal; except during the winter season between the date of closure and the date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

(b) The draw of the Atchison Railroad Bridge, Mile 422.5, Missouri River need not open unless a two-hour advance notice is given during the commercial navigation season.

3. Revise § 117.687 to read as follows:

§ 117.687 Missouri River

The draws of the bridges, except for the Atchison Railroad Bridge, Mile 422.5, see § 117.411(b) for further details, across the Missouri River shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draws need not open unless at least 24-hours advance notice is given.

Dated: March 17, 2015.

Kevin S. Cook, Rear Admiral,  
Commander, U.S. Coast Guard,  
Eighth Coast Guard District.

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