



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0582]

RIN 1625-AA09

Drawbridge Operation Regulation; Keweenaw Waterway, Houghton and Hancock, MI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule for the US41 bridge, mile 16.0 over the Keweenaw Waterway, between the towns of Houghton and Hancock, Michigan. The use of the waterway has changed and this rule will modify the schedule that has been in place for approximately 31 years.

DATES: This rule is effective [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0582. In the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone **216-902-**

6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive Order
FR	Federal Register
MDOT	Michigan Department of Transportation
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of proposed rulemaking
RFA	Regulatory Flexibility Act of 1980
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On July 25, 2016, we published a notice of proposed rulemaking (NPRM) entitled, Drawbridge Operation Regulation; Keweenaw Waterway, Houghton and Hancock, MI, in the Federal Register (81 FR 48369). We did not receive any comments on this proposed rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. MDOT requested to change the operating schedule of the US41 (Houghton-Hancock) bridge (33 CFR 117.635). The US41 bridge is the only crossing over the Keweenaw Waterway and connects the towns of Houghton and Hancock, Michigan. The current operating schedule has been in place for approximately 31 years and the use of the waterway has changed significantly, prompting the request to modify the current regulation to reflect current needs of navigation.

Keweenaw Peninsula is the northernmost part of Michigan's Upper Peninsula projecting into Lake Superior. The Keweenaw Waterway runs northwesterly to southeasterly and separates the peninsula from the mainland making the US41 bridge the only bridge crossing for residents and visitors to the peninsula.

The Keweenaw Waterway is used by recreational, commercial, inspected and uninspected passenger, and towing vessels. The US41 bridge is a vertical lift type drawbridge and provides a horizontal clearance of 250 feet, a vertical clearance of 103 feet in the fully open position, a vertical clearance of 7 feet in the closed position, and a vertical clearance of 35 feet in the intermediate position. The US41 bridge is a bi-level bridge originally designed with the upper level providing access for automobiles and the lower level providing access for rail, oversized vehicles, and snowmobiles.

The rail service to the peninsula has been discontinued and oversized vehicles must provide advance notice to the state before traveling over the road to the peninsula. Most recreational and commercial vessel traffic, including passenger vessel services, end prior to November 15 each year and do not resume services until after May 7 due to the formation of ice in the waterway. Large commercial freighter vessels do not routinely pass through the Keweenaw Waterway.

MDOT requested to remove bridgetenders between the hours of midnight and 4:00 a.m. each day and operate the bridge if

at least 2-hours advance notice is provided between those hours during the navigation season. The table below shows total bridge opening data provided by MDOT, from April 16 to December 14, between the hours of midnight and 4 a.m., for the past 6 years.

YEAR	OPENINGS
2010	4
2011	6
2012	6
2013	10
2014	7
2015	6

The current regulation also requires the bridge to operate with a 24-hour advance notice for openings from January 1 through March 15 each year. The table below shows the total bridge opening data provided by MDOT, between December 15 and April 15, for the past 5 years.

YEAR	OPENINGS
2011	0
2012	1
2013	5
2014	0
2015	0

IV. Discussion of Comments, Changes and the Final Rule

Based on the bridge opening data provided by MDOT, only one year (2013) resulted in more than 7 openings, or an average of one opening per month, between the hours of midnight and 4:00 a.m. between mid-April and mid-December, during the past 6 years. This rule will allow the bridge to operate with at least a 2-hour advance notice for openings from April 15 through December 15 between the hours of midnight and 4 a.m. During these hours no bridgetender will be required at the bridge. The bridge will be placed in the intermediate position during this 4-hour time period providing a vertical clearance of 35 feet. Vessels requiring a full bridge opening will still be able to obtain an opening with a 2-hour advance notice. Vessels may also go around the peninsula to avoid passing through the bridge.

Based on the bridge opening data provided by MDOT, only one year (2013) resulted in more than one bridge opening for the entire period between mid-December and mid-April during the past 6 years. The standard advance notice time applied to most drawbridges in the Great Lakes during the non-navigation season is 12-hours advance notice. This rule will allow the bridge to operate with at least 12-hour advance notice for openings from December 15 through April 15. During these dates no bridgetender will be required at the bridge. Vessels may also go around the peninsula to avoid passing under the

bridge.

The Coast Guard provided a comment period of 30 days and did not receive any comments.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive Orders, and we discuss First Amendment rights of protesters.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a "significant regulatory action," under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice during times when vessel traffic is at its lowest.

B. 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 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 would not have a significant economic impact on a substantial number of small entities. This rule would not have a significant economic impact on any vessel owner or operator because the bridges will open with advance notice during low traffic times on the waterway or when ice conditions hinder normal navigation.

While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section V.A above, this rule would not have a significant economic impact on any vessel owner or operator.

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.

C. 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).

D. Federalism and Indian Tribal Government

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 is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this 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.

E. 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.

F. 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 made a 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 rule simply promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, 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.

G. 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.

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; and Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.635 to read as follows:

§ 117.635 Keweenaw Waterway.

The draw of the US41 bridge, mile 16.0 between Houghton and Hancock, shall open on signal; except that from April 15 through December 14, between midnight and 4 a.m., the draw shall be placed in the intermediate position and open on signal if at least 2 hours notice is given. From December 15 through April 14 the draw shall open on signal if at least 12 hours notice is given.

Dated: September 15, 2016.

J. E. Ryan,
Rear Admiral, U. S. Coast Guard,
Commander, Ninth Coast Guard District.

[FR Doc. 2016-23576 Filed: 9/28/2016 8:45 am; Publication Date: 9/29/2016]