



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0178]

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, Green Bay,
WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, all over the Fox River at Green Bay, WI to allow them to operate remotely.

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-2019-0178 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
FR	Federal Register
HDCCTV	High Definition Closed Circuit Television
IGLD85	International Great Lakes Datum of 1985
IRCCTV	Infrared Closed Circuit Television
LWD	Low Water Datum based on IGLD 85
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
PLC	Programmable Logic Control
§	Section
U.S.C.	United States Code
WI-FI	Wireless Fidelity
WISDOT	Wisconsin Department of Transportation

II. Background Information and Regulatory History

On April 29, 2019, we published a notice of proposed rulemaking entitled: Drawbridge Operation Regulation;

Fox River, Green Bay, WI in the Federal Register (84 FR 17979). We received five comments on this rule.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

There are three bascule bridges operated by WISDOT and the City of Green Bay: Main Street Bridge, mile 1.58, provides 120 feet horizontal and 12 feet vertical clearance in the closed position; the Walnut Street Bridge, mile 1.81, provides 124 feet horizontal and 11 feet vertical clearance in the closed position; and the Tilleman Memorial Bridge, mile 2.27, provides 124 feet horizontal and 32 feet vertical clearance in the closed position.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a 180 day comment period and received five comments. During the comment period the bridges were managed by WISDOT with city of Green Bay personnel operating the three bridges. As of December 1, 2019 Brown County began operating the bridges with personnel from the snow plow division. This prevented snow plow drivers from being laid off in the summer and drawtenders from being laid off in the winter. The current drawtenders lost their jobs

unless they could obtain a commercial driver's license to operate a snow plow in the winter. We believe this may have influenced some of the comments we received; however, below we address each comment provided:

The first comment: "The Main Street Bridge was renamed the Ray Nitschke Memorial Bridge in 1998". We reached out to the State of Wisconsin and the City of Green Bay and asked them to send us a letter requesting the name change to be made and they have declined to do so.

The second comment addressed several factors: "As long as vehicles are still crashing through the gates there should be a live presence, i.e. a Bridge Tender, on every bridge that is being operated." We asked WISDOT for the last three years of vehicle incidents. There were zero incidents in 2017, two in 2018, and two in 2019. All three years indicated live drawtenders manning the bridges. We do not have any data from other remotely operated bridges to support the claim that remote bridges have a higher incidents of vehicles hitting barriers during the opening cycle of the bridge or that responses to vehicles hitting the barriers have been lessened. "Instead of the risk and cost of an experimental wireless remote operation,

just establish a call-in period. By making Tilleman bridge a 4 hour call-in, 24-7, and by making Walnut and Nitschke bridges a 4 hour call-in from 11 pm to 7 am, you could reduce the number of Bridge Tenders to 6 (half of what they have now). You would still have a live Bridge Tender on each bridge when they require an opening." This suggested schedule would place an additional burden on the mariners. The wireless equipment is not experimental. It is a commercial grade wireless system developed for city wide municipal use with a 20 mile range.

The third comment: " As a tour boat company we feel it is in the best interest of auto, pedestrian and boat traffic to keep bridgetenders at Main Street Bridge, Walnut Street Bridge and the Tilleman Memorial Bridge. We have seen firsthand the need for a bridgetender to keep a pedestrian from walking over the bridge as it was going up. In addition, a recent incident in Menasha with a bicyclist attempting to cross the open doors made national news (as it was videotaped). This may save money, but it won't offer the safety required at these drawbridges." The bridgetenders rely on physical barriers along with visual and audible alarms to keep pedestrians from

accessing the bridge span while in motion. These same devices will be employed during remote operations. The bicyclist incident occurred in Menasha, WI at a bridge with a drawtender in attendance and the bicyclist was arrested for intoxication. This was an isolated incident. The remotely operated bridges will have enough cameras to monitor every pedestrian, and vehicular approach.

The fourth comment provided copies of the Remote Bridge Study provided in 2009 with additional notes concerning upgrades made up until 2019. This study provided the basis on why remote operations were not authorized prior to 2019 by the U.S. Coast Guard. The older analog camera systems and basic bridge controls were not adequate to perform as if a drawtender was on the bridge. The equipment that has been installed on the bridges has been represented by WISDOT to be state of the art and ready to meet the challenges of these bridges. WISDOT does intend to have additional drawtenders available during special events and heavy pedestrian and vehicle attendance at the bridges. The wireless equipment has a 20 mile range and is a capable unit designed for city service and not a wireless service a person may have in their home.

Even with a large freighter between the wireless units the units continue to communicate to each other. We do not intend to diminish this comment but the materials provided have been vetted through various meetings and the equipment currently on the bridge meets the same benchmarks as defined by the Coast Guard on other successful remotely operated bridges in the Great Lakes.

The fifth comment: "Having operated the Green Bay bridges remotely through the summer, I believe the Ray Nitschke Memorial Bridge (Main Street) is not ready for Full Remote Operation (no Bridge Tender on the remotely operated bridge). The equipment and programming are still being troubleshot and the camera placements were influenced by convenience (existing poles) instead of desired results.

My major concern about going Full Remote is the recent decision by WISDOT to replace the current Green Bay City Bridge Tenders with Brown County Snow Plow Operators. The plan calls for no overlap. Therefore, 100 years of Bridge Tender experience will be replaced with 45 minutes if a lift needs to be done on any of the three bridges in Green Bay at midnight on December 1, 2019. Making such a drastic personnel change this

far into the process and on the tail end of the NPRM is irresponsible with respect to the public and maritime safety, and shows a certain disregard towards the Coast Guards approval process. The four senior City Bridge Tenders were moved to Walnut Street Bridge in March, 2019 to facilitate and prepare for future Full Remote Operations. The Tilleman Memorial and Ray Nitschke Memorial bridges have been operated remotely through the summer without major incidents. There were a couple of gate crashes but that is a normal, infrequent occurrence. Now, new operators, who have been trained in Sturgeon Bay and not Green Bay, will be responsible for all openings as of midnight on December 1, 2019. As a current City Bridge Tender and a retired Coast Guard Officer, I strongly recommend that Full Remote Operations be delayed at least one more summer so these new operators can gain some experience. Openings on a foggy morning, a dark rainy night, or a crowded Farmers Market evening are all situations the new operators should not be required or allowed to do alone for the first time." This was a serious concern and WISDOT requested we allow the bridges to operate remotely with tenders present to allow the drawtenders adequate time to learn how to

operate the new system. This delayed the remote operations until the end of 2019. WISDOT intends to continue training the new drawtenders through the winter of 2019-2020 and they remain confident the drawtenders will be ready for the 2020 navigation season. Because WISDOT has done an excellent job at the three remotely operated bridges in Sturgeon Bay, WI, we do not see any reasons to delay another year.

IV. Discussion of Final Rule

The bridges will continue to operate as they have been except this rule will allow them to be operated remotely.

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 13771 directs

agencies to control regulatory costs through a budgeting process. 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 (OMB) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This rule allows the drawtender to operate the bridge remotely and will not affect the schedule of the bridge and therefore is not a significant regulatory action.

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 will not have a significant

economic impact on a substantial number of small entities.

"While some owners or operators of vessels intending to transit the bridge may be small entities, for the reasons stated in section IV.A above this final 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 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.

We did not receive any comments from 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, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). We have made a determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges. This action is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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;
Department of Homeland Security Delegation No. 0170.1.

2. Amend § 117.1087 by adding paragraph (a)(4) to read as follows:

§117.1087 Fox River.

(a) * * *

(4) The Main Street Bridge, mile 1.58, the Walnut Street Bridge, mile 1.81, and the Tilleman Memorial Bridge, mile 2.27, are operated remotely.

* * * * *

Dated: January 24, 2020

D. L. COTTRELL
Rear Admiral, U.S. Coast Guard
Commander, Ninth Coast Guard District

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