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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[Docket No. USCG–2009–0968]

RIN 1625-AA09

### Drawbridge Operation Regulation; Automated and Remotely Operated Bridges

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

**SUMMARY:** The Commander, Ninth Coast Guard District, is identifying all remotely operated or automated drawbridges in his area of responsibility in subpart B of this part. This rule identifies all the remotely operated or automated drawbridges in this district that currently open on signal to navigation. This rule does not revise the operating schedule or conditions for any of the identified drawbridges.

**DATES:** This rule is effective December 15, 2009.

**ADDRESSES:** Comments and material received from the public as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0968 and are available online by going to <http://www.regulations.gov>, inserting USCG–2009–0968 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 Lee Soule, Bridge Management Specialist, Coast Guard Ninth District; telephone 216-902-6085, e-mail: [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b)(3) the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because these identified drawbridges have been previously authorized to operate under an automated on-signal schedule, and this rule does not change how these drawbridges currently operate, or their current operating schedule.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because these identified drawbridges have been previously authorized to operate under an automated on-signal schedule, and this rule does not change how these drawbridges currently operate, or their current operating schedule.

##### **Background and Purpose**

In the past nine years, various bridge owners have requested that the Coast Guard allow select drawbridges to operate utilizing an automated or remotely operated system. The District Commander determined that these requests to remove on-site drawtender and automate (or allow these drawbridges to be remotely operated) met with the reasonable needs of navigation for each of the respective

waterways over which these drawbridges reside. There were no changes to the operating schedule or signaling requirements for any of the bridges affected. This rule is necessary to comply with 33 CFR part 117.42.

##### **Discussion of Rule**

On 4 December 2006 the Coast Guard published a final rule in the **Federal Register** [71 FR 70305] that amended the regulatory language in 33 CFR part 117.42. This new language requires that "\* \* \* a description of the full operation of the remotely operated or automated drawbridges will be added to Subpart B of this part". In order to comply with our own regulations, the Coast Guard is amending the appropriate sections in Subpart B that will identify and describe the operation of all automated and remotely operated drawbridges under the jurisdiction of the Ninth Coast Guard District.

##### **Regulatory Analyses**

We developed this 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.

##### **Regulatory Planning and Review**

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order.

This rule is not a significant regulatory action because the affected drawbridges have been operating under automation or from a remote location for a number of years and continue to open on signal for vessel traffic.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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 rule will not have a significant economic impact on a substantial number of small entities.

This action will not have a significant economic impact on a substantial

number of small entities for the following reason; this rule does not change the current operation or operating schedule of the drawbridges. It merely identifies these drawbridges as operated automatically or remotely in Subpart B of 33 CFR part 117.

##### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process.

##### **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).

##### **Federalism**

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

##### **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 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.

##### **Taking of Private Property**

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

##### **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.

##### **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 would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### 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.

### 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.

### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

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

### 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 § 117.847(b) to read as follows:

#### § 117.847 Ashtabula River

\* \* \* \* \*

(b) The draw of the Norfolk Southern Bridge, mile 1.5 at Ashtabula, is remotely operated, is required to operate a radiotelephone, and shall open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. At all other times the draw shall open on signal if at least 24 hours notice is given.

■ 3. Revise § 117.851(d) to read as follows:

#### § 117.851 Portage River.

\* \* \* \* \*

(d) The draw of the Norfolk Southern Bridge, Mile 1.5 at Port Clinton, is remotely operated, is required to operate a radio telephone, and shall open on signal. However, from December 1 through April 30, the draw shall open on signal if at least 24 hours notice is given.

■ 4. Revise § 117.853 to read as follows:

#### § 117.853 Sandusky Bay

The draw of the Norfolk Southern Bridge, Mile 3.5 at Sandusky, is remotely operated, is required to operate a radiotelephone, and shall open on signal from April 1 through October 31 and from November 1 through November 30 from 8 a.m. to 4 p.m. At all other times, the draw shall open on signal if at least 24 hours notice is given.

■ 5. Amend § 117.1093 to add paragraphs (c)(4) and (d)(4), and to

revise paragraph (e)(3) to read as follows:

#### § 117.1093 Milwaukee, Menomonee, and Kinnickinnick Rivers and South Menomonee and Burnham Canals.

\* \* \* \* \*

(c) \* \* \*

(4) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; St. Paul Avenue, mile 1.21, Clybourn Street, mile 1.28, Highland Avenue, mile 1.97, and Knapp Street, mile 2.14.

(d) \* \* \*

(4) The following bridges are remotely operated, are required to operate a radiotelephone, and shall open as noted in this section; North Plankinton Avenue, mile 1.08, North Sixth Street, mile 1.37, and North Emmber Lane, mile 1.95, all over Menomonee River, and South Sixth Street, mile 1.51 over South Menomonee Canal.

(e) \* \* \*

(3)(i) The draws of all other bridges across the Kinnickinnick River shall open on signal; except that, from 7:30 a.m. to 8:30 a.m. and 4:30 p.m. to 5:30 p.m. Monday through Saturday except Federal holidays, the draws need not be opened and, from 11 p.m. to 7 a.m., the draws shall open on signal if at least two hours notice is given.

(ii) The South First Street Bridge, mile 1.78, is remotely operated, is required to operate a radiotelephone, and shall open as noted in this section.

\* \* \* \* \*

Dated: November, 9, 2009.

**Peter V. Neffenger,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2009-0829]

#### Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Bradenton Beach, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Cortez bridge across the Gulf Intracoastal