

This deviation allows the bridge to remain closed to navigation for approximately 5 consecutive days, sometime within a nineteen day period.

**DATES:** This deviation is effective from 6 a.m. on April 25, 2011 through 5 p.m. on May 13, 2011.

**ADDRESSES:** Documents mentioned in this preamble as being available in the docket are part of docket USCG–2010–0203 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–0203 in the “Keyword” box and then clicking “Search”. They are 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 Jim Wetherington, Bridge Administration Branch, Coast Guard; telephone 504–671–2128, e-mail [james.r.wetherington@uscg.mil](mailto:james.r.wetherington@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** The Louisiana Department of Transportation and Development has requested a temporary deviation from the operating schedule of the swing span bridge across the Mermentau River at mile 7.1 in Grand Chenier, Cameron Parish, Louisiana. The closure is necessary in order to perform physical and mechanical repairs pertaining to the bridge’s main span and components. This maintenance is essential for the continued operation of the bridge.

The operating schedule for the bridge is in 33 CFR 117.480 and states the bridge opens on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given, for the passage of vessels. This deviation allows the bridge to remain closed to navigation for approximately 5 consecutive days, occurring sometime between April 25, 2011 and May 13, 2011. Exact times and dates for the closures will be published in the Local Notice to Mariners and broadcast via the Coast Guard Broad Notice to Mariners system.

The vertical clearance of the swing span bridge in the closed-to-navigation position is 13.15 feet above Mean High Water, elevation 3.1 feet Mean Sea Level. Vessels are able to transit under the bridge during operations. There is an alternate navigation route via Grand Lake for vessels unable to pass under

the bridge. Navigation on the waterway consists of tugs with tows, fishing vessels and recreational craft. Due to prior experience and coordination with waterway users, it has been determined that the closure will not have a significant effect on navigation.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 15, 2011.

**David M. Frank,**

*Bridge Administrator.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2010–1055]

RIN 1625–AA09

#### Drawbridge Operation Regulations; Rainy River, Ranier, MN

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a drawbridge regulation for the Canadian National Railway Bridge across the Rainy River at Mile 85.0 at Rainer, Minnesota. This rule addresses the request by the bridge owner to remotely operate the drawbridge and establishes seasonal dates of operation.

**DATES:** This rule is effective: April 29, 2011.

**DATES:** Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2010–1055 and are available online by going to <http://www.regulations.gov>, inserting USCG–2010–1055 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 Mr. Lee Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone (216) 902–

6085, e-mail [lee.d.soule@uscg.mil](mailto:lee.d.soule@uscg.mil). If you have questions on viewing material in the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On December 27, 2010, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Rainey River, Rainer, MN. in the **Federal Register** (75 FR 32381). We received 7 positive comments and 1 negative comment. No public meeting was requested, and none was held.

##### Basis and Purpose

Currently, there is no drawbridge regulation for this drawbridge or waterway. The drawbridge is required to open on signal at all times in accordance with the general opening requirements at 33 CFR 117.5. Rainy River and Rainy Lake serve as the border between the United States of America and Canada. This bridge is a single leaf bascule type railroad bridge that provides a horizontal clearance of 125 feet. The water level on Rainy Lake and under the bridge is controlled by a hydro-electric dam facility at International Falls, Minnesota, thus charted datum is based on the water level surface of Rainy Lake when the gauge at Fort Frances, Canada reads 1107.0 feet resulting in a variable vertical clearance of 6 to 10 feet in the closed position. Pursuant to 33 CFR 117.8, numerous local entities, including; local governments, federal entities, and private citizens requested improvement to the service provided at the drawbridge to allow greater reliability for bridge openings for vessel traffic. Vessel traffic on the waterway consists of federal, state, and local public vessels, small commercial vessels, and both power and sail recreational vessels. The railroad bridge carries significant train traffic across the international border. Rainer is a customs port-of-entry, with particular requirements for trains and vessels.

The drawbridge was remotely operated for several years without explicit approval by Commander, Ninth Coast Guard District. The bridge owner, Canadian National Railway (CN RR), requested approval to continue using remote operation equipment and operate the drawbridge with remotely located drawtenders in accordance with 33 CFR 117.42. In the last year, the Coast Guard was informed the drawbridge is routinely unresponsive to signals and communications from vessels for bridge openings. In addition, the presence of government and public

vessels operating between Rainy River and Rainy Lake has magnified the need for the drawbridge to be responsive and reliable for all vessel traffic.

This regulation does not authorize remote operations and requires the bridge owner to provide the necessary drawtender(s) for the safe and prompt opening of the drawbridge each year between May 1 and October 15, 24 hours a day, 7 days a week. From October 16 to April 30 each year the bridge would open for vessels if 12-hours advance notice is provided. Additionally, this regulation requires the bridge owner to post and maintain a clearance gauge to indicate to vessels the water levels and available clearance while the bridge is in the closed-to-navigation position.

#### **Discussion of Comments and Changes**

We received eight (8) comments in response to the NPRM. Seven (7) comments generally supported the proposed regulation, as written, including letters of support from the City of International Falls, the City of Rainer, and Koochiching County Board of Commissioners. Among the supporting comments, one commenter requested the Coast Guard require the bridge to be maintained in the open-to-navigation position, require radiotelephone operation, require additional visual signals to advise when the drawbridge would open for vessels, and to specify a maximum amount of time that the drawbridge could remain closed to vessel traffic. The Coast Guard did not include a specific time requirement in the NPRM due to the wide variation in times for train and border processes. The same time could not be applied for every instance. The Coast Guard passed the commenter's requests to leave the bridge in the open-to-navigation position when trains are not crossing, install and operate radiotelephone, and provide additional visual signals to improve communications with vessels and access through the crossing to the bridge owner. The Coast Guard may require radiotelephone installation and operation in the future.

One negative comment was submitted by the bridge owner, Canadian National Railway (CN RR). The comment from CN RR questions the justification to require drawtenders due to infrequent bridge openings for vessels in recent years. The commenter also requests that the Coast Guard alter the proposed dates and times that drawtenders would be required to be at the drawbridge. CN RR states that no bridge opening requests were received until June 20th last year, and that between Memorial Day and

Labor Day last year the bridge was required to be opened a total of 31 times, resulting in an average of 2.2 bridge openings per week. Based on the information provided by other comments received in response to the NPRM the Coast Guard is concerned about the drawbridge being responsive to requests for bridge openings and not being operated in accordance with federal drawbridge regulations. No other comments were received in response to the NPRM concerning the proposed dates and times that the bridge must open on signal.

We made two modifications to the rule from the NPRM that were not based on comments in response to the NPRM. The name "Rainey" will be changed to "Rainy" to conform to the spelling on U.S. nautical charts and publications. An editorial change was made to the language describing the requirement for clearance gauges, citing the applicable Code of Federal Regulations.

This rule is expected to provide for the reasonable balance of all modes of transportation and effectively accomplish the requested goal of improving bridge openings and communications between vessel operators and the CN RR drawtender(s).

#### **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. The Coast Guard believes that the drawbridge has not been operated in accordance with the drawbridge regulations in 33 CFR part 117. This rule is expected to bring the drawbridge into full compliance with the federal drawbridge regulations.

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

This 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, 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.

#### **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 would not have a significant economic impact on a substantial number of small entities. This rule will provide for on demand drawbridge openings from May 1 to October 16, thereby improving access for any small entities during warmer weather, when most transits typically occur, and provide for openings with 12 hour advance notice during the rest of the year.

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

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

#### **Collection of Information**

This rule would call 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 (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.

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

This 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.

### 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.ID, 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. Add § 117.664 to read as follows:

#### § 117.664 Rainy River, Rainy Lake and their tributaries.

The draw of the Canadian National Bridge, mile 85.0, at Rainer, shall open on signal; except that, from October 16 to April 30, the draw shall open on signal if at least 12-hours advance notice is provided. The commercial phone number to provide advance notice shall be posted on the bridge so that it is plainly visible to vessel operators approaching the up or downstream side of the bridge. The owners of the bridge shall maintain clearance gauges in accordance with 33 CFR 118.160 of this chapter.

Dated: March 21, 2011.

**M.N. Parks,**

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

[FR Doc. 2011-7466 Filed 3-29-11; 8:45 am]

**BILLING CODE 9110-04-P**

### DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Parts 19 and 20

RIN 2900-AN34

### Board of Veterans' Appeals: Remand or Referral for Further Action; Notification of Evidence Secured by the Board and Opportunity for Response

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is amending the Appeals Regulations of the Board of Veterans' Appeals (Board) to articulate the Board's practice of referring unadjudicated claims to the Agency of Original Jurisdiction (AOJ) for appropriate action, and to describe when it is appropriate for the Board to remand a claim to the AOJ for the limited purpose of issuing a Statement of the Case (SOC). We are also amending the Board's Rules of Practice to outline the procedures the Board must follow when supplementing the record with a recognized medical treatise, and to remove the notice procedures the Board must currently follow when considering law not considered by the AOJ. The purpose of these amendments is to codify existing practices derived from caselaw, enhance efficiency, and provide guidance and clarification.

**DATES:** *Effective Date:* The final rule is effective April 29, 2011.

**FOR FURTHER INFORMATION CONTACT:** Laura H. Eskenazi, Principal Deputy Vice Chairman, Board of Veterans' Appeals (012), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-8078. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** On December 18, 2009, VA published in the **Federal Register** (74 FR 67149) a Notice of Proposed Rulemaking (NPRM) that proposed to amend 38 CFR 19.9 to articulate the Board's practice of referring unadjudicated claims to the AOJ for appropriate action and to define when the Board can remand a claim to the AOJ for the limited purpose of issuing an SOC. The NPRM also proposed to amend 38 CFR 20.903 to codify the notice procedures the Board must follow when supplementing the record with a recognized medical treatise, and to eliminate the notice procedures the Board must currently follow when considering law not previously considered by the AOJ. Interested persons were invited to