



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0212]

RIN 1625-AA09

Drawbridge Operation Regulation; St. Louis River (Duluth-Superior Harbor), between the towns of Duluth, MN and Superior, WI

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is modifying the regulations that govern the drawbridges over the St. Louis River at Duluth-Superior Harbor. This waterway borders Minnesota and Wisconsin and is listed under Minnesota as St. Louis River (Duluth-Superior Harbor) and under Wisconsin as Duluth-Superior Harbor (St. Louis River) in the CFR. This rule affects both regulations. The owner of the Burlington Northern Grassy Point Railroad Bridge at mile 5.44 requested the regulation be updated to include permanent winter operating schedule. This rule also aligns river mile numbers with the United States Coast Pilot and deletes bridges from the regulations that were removed from the waterway and makes the regulation easier to read and less confusing to the

mariner.

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-2017-0212]. 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](mailto:Lee.D.Soule@uscg.mil).

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
LWD	Low Water Datum
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 April 19, 2017, we published a notice of proposed rulemaking (NPRM) entitled, Drawbridge Operation Regulation; St. Louis River (Duluth-Superior Harbor), between the towns of Duluth, MN and Superior, WI, in the Federal Register (82 FR

18407). 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 the authority of 33 U.S.C. 499. The current regulations for St. Louis River drawbridges (33 CFR 117.669 and 33 CFR 117.1083) includes the operating schedules for the Burlington Northern Grassy Point Railroad Bridge at mile 5.44, the Grassy Point Bridge at mile 8.0, the Arrow Head Bridge at mile 8.7, and the Duluth, Missabe & Iron Range combined Railroad and Highway Bridge, also known as the Oliver Bridge, at mile 13.91.

### IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a 30 day comment period in the Federal Register and solicited comments through the Ninth Coast Guard Local Notice to Mariners for the same 30 days and we did not receive any comments.

Title 33 of the Code of Regulations part 117 lists drawbridge regulations by state. The St. Louis River is the border between Minnesota (listed under 33 CFR 117.669) and Wisconsin (listed under 33 CFR 117.1083). The St. Louis River is listed by state separately under both sections of the CFR. This rule will revise 33 CFR 117.1083 (under Wisconsin) to direct readers to 33 CFR 117.669 (under Minnesota) to simplify the rule and make it easier to reference by mariners.

The Coast Guard is modifying the operating schedule of the The Burlington Northern Grassy Point Railroad Bridge at mile 5.44 to include authorized permanent winter hours. Mariners will still be able to request bridge openings with 12-hours advance notice during times of light traffic volume on the river due to ice formation that typically prevents most vessel navigation in the channel from December 15 through March 15 each year.

The bridges listed in the regulations as the Grassy Point Bridge at mile 8.0 and the Arrow Head Bridge at mile 8.7, respectively, have been removed from the waterway and will be removed from the regulations.

The Duluth, Missabe & Iron Range combined Railroad and Highway Bridge, also known as the Oliver Bridge, at mile 13.91, will be renamed the Canadian National Combined Railroad and Highway Bridge to reflect the current owner and use. The authorization to remain in the closed position will continue as before, but the drawbridge must return to operable condition when notified by the District Commander to do so.

#### 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 regulatory action determination is based on the ability that vessels can still transit the bridge given advanced notice during the winter when ice typically prevents vessels from transiting the waterway and vessel traffic is at its lowest. This rule will also align river mile numbers with the United States Coast Pilot and delete bridges from the regulations that have been removed from the waterway and make the regulation easier to read and less confusing to the mariner.

#### 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 because the bridge will open with advance notice.

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.

#### 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. A preliminary Record of Environmental Consideration and a Memorandum for the Record

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; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.669 to read as follows:

§117.669 St. Louis River (Duluth-Superior Harbor).

(a) The draw of the Burlington Northern Grassy Point railroad Bridge, mile 5.44, shall open on signal except that, from December 15 through March 15 the draw shall open if at least 12-hour notice is given.

(b) The draw of the Canadian National Combined Railroad and Highway Bridge, mile 13.91, need not be opened for the

passage of vessels. The owner shall return the draw to operable condition within a reasonable time when notified by the District Commander to do so.

3. Revise §117.1083 to read as follows:

§117.1083 Duluth-Superior Harbor (St. Louis River).

See §117.669 St. Louis River (Duluth-Superior Harbor), listed under Minnesota.

Dated: June 15, 2017

N. A. Bartolotta  
Captain, U.S. Coast Guard,  
Commander, Ninth Coast Guard District  
Acting

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