



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2017-1047

**RIN** 1625-AA09

Drawbridge Operation Regulation; Black River, Port  
Huron, MI.

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the Military Street Bridge, mile 0.33, the Seventh Street Bridge, mile 0.50, the Tenth Street Bridge, mile 0.94, and the Canadian National Railroad Bridge, mile 1.56, across the Black River at Port Huron, MI. The City of Port Huron requested the winter hours to be expanded for City-operated highway bridges. We have reviewed the regulation in its entirety because the current regulation is approximately 30 years old, use of the waterway has substantially changed, and the current language and conditions in the regulation are difficult to follow and understand.

**DATES:** Comments and related material must reach the Coast Guard on or before [INSERT DATE 30 DAYS AFTER

DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** You may submit comments identified by docket number USCG-2017-1047 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the "Public Participation and Request for Comments" portion of the SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed 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
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD 85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

**II. Background, Purpose and Legal Basis**

The Black River flows southwest through the City of Port Huron, MI and empties into the St. Clair River just below the south end of Lake Huron. Large commercial freighters once traveled up the Black River

to facilities past the Canadian National Railroad Bridge, but currently the river is mostly used by recreational vessels with a few small commercial vessels operating in the river. Large commercial vessels do not currently trade in the Black River.

The Military Street Bridge provides a horizontal clearance of 73 feet and a vertical clearance of 13 feet above LWD in the closed position.

The Seventh Street Bridge provides a horizontal clearance of 83 feet and a vertical clearance of 12 feet above LWD in the closed position.

The Tenth Street Bridge provides a horizontal clearance of 90 feet and a vertical clearance of 18 feet above LWD in the closed position.

The Canadian National Railroad Bridge provides a horizontal clearance of 80 feet and a vertical clearance of 14 feet above LWD in the closed position.

The CSX Railroad Bridge, mile 0.09, is out of service and locked in the fully open position.

All five drawbridges provide an unlimited vertical clearance in the open position.

The CSX Railroad Bridge and Canadian National Railroad Bridge are not included in the existing regulation.

The current regulation allows the Military Street

Bridge and the Seventh Street Bridge to operate on the hour and half-hour between May 1 and October 31, from 9 a.m. to 5:30 p.m., Monday through Saturday, except Federal Holidays. In April and November, between the hours of 4 p.m. and 8 a.m., both bridges require a 3-hour advance notice for openings.

The Tenth Street Bridge is currently required to open on signal from May 1 through October 31, except from 11 p.m. to 8 a.m. a 1-hour advance notice is required for openings. In April and November the bridge requires a 3-hour advance notice for openings at all times.

From December 1 through March 31 all three highway bridges requires at least 24 hours notice for openings.

As noted above, both the CSX Railroad and Canadian National Railroad bridges are not included in the existing regulation.

The City of Port Huron operates the three highway bridges and requested the winter operating dates to be expanded due to a lack of openings, use of the waterway has substantially changed, and early development of ice in the river that prevents most recreational vessels from transiting the waterway between November 1 and April 30. They requested the winter operating schedules (with 12-hours advance notice from vessels)

to apply November 1 through April 30 each year.

In addition to reviewing winter operating dates we have reviewed the current operating schedules for all drawbridges on the waterway. During our coordination with the City of Port Huron and stakeholders, concerns were also received regarding vehicle congestion and predictable bridge openings when the Military Street and Seventh Street Bridges are opened simultaneously for vessels. Both bridges currently open on the hour and half-hour. This proposed rule is expected to reflect the current usage of the waterway by marine entities during the navigation season and winter periods, improve both marine and vehicular traffic mobility by reducing congestion and delays, simplify the schedules and language in the existing regulation, and provide for the reasonable needs of navigation.

### **III. Discussion of Proposed Rule**

This proposed rule alternates, or staggers, openings of the three highway bridges with Military Street and Tenth Street opening on the hour and half-hour, and Seventh Street (the middle highway bridge), on the quarter and three-quarter-hour, thereby providing predictable bridge openings and avoiding all of the highway bridges opening simultaneously, and allowing continuous vessel movements through the

highway bridges. To prevent congestion at the bridges the drawbridges will open at any time five or more vessels are waiting for an opening. This change is expected to reduce vehicular traffic congestion and delays, and reduce the chance vessels will be stuck between the highway bridges and waiting for extended times for bridge openings.

The Tenth Street Bridge is the furthest upriver highway bridge and provides a higher vertical clearance than the Military Street or the Seventh Street drawbridges, allowing most vessels to pass under the bridge without an opening. The volume of marine traffic and upriver marine facilities that require Tenth Street Bridge openings is significantly lower than Military and Seventh Street Bridges but the vehicular traffic is considerably higher than the other highway bridges. Between May 1 and October 31 this proposed rule will allow the Tenth Street Bridge to open on the hour and half-hour from 8 a.m. to 11 p.m. From 11 p.m. to 8 a.m. the bridge will require a 1-hour advance notice for openings. This schedule is expected to provide predictable bridge openings for vehicles to cross the river at any time while still providing for the reasonable needs of navigation. Between November 1 and April 30 the bridge will require a 12-hours advance

notice to open.

The Canadian National Railroad Bridge normally remains in the open to navigation position and only closes to navigation to accommodate the passage of trains. This proposed rule will add the Canadian National Bridge to the current regulation. The bridge will open on signal at all times between May 1 and October 31, and will open if 12-hours advance notice is provided between November 1 and April 30, matching the winter schedules of the highway bridges.

#### **IV. Regulatory Analyses**

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

##### **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 NPRM has not been designated a

"significant regulatory action," under Executive Order 12866. Accordingly, the NPRM 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 drawbridges by giving advanced notice at all times of the year.

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 certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. While some owners or operators of vessels intending to transit the bridges may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator because we coordinated with

the marina operators and the local yacht clubs and incorporated their concerns into the proposed regulation.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

### C. Collection of Information

This proposed rule would call 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 proposed 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 proposed 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. If you believe this proposed rule has implications for

federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed 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 preliminary 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 proposed rule simply promulgates the operating regulations or

procedures for drawbridges. Normally such actions are 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 proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

#### **V. Public Participation and Request for Comments**

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or

recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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 §117.625 to read as follows:

§ 117.625 Black River (Port Huron).

(a) The draw of the Military Street Bridge, mile 0.33, shall open on signal; except that, from May 1 through October 31, from 8 a.m. to 11 p.m., seven days a week, the draw need open only on the hour and half-hour for recreational vessels, or at any time when there are more than five vessels waiting for an opening, and from November 1 through April 30 if at least 12-hours advance notice is given.

(b) The draw of the Seventh Street Bridge, mile 0.50, shall open on signal; except that, from May 1 through October 31, from 8 a.m. to 11 p.m., seven days a week, the draw need open only on the quarter-hour and three-quarter-hour for recreational vessels, or at any time when there are more than five vessels waiting for an opening, and from November 1 through April 30 if at least 12-hours advance notice is given.

(c) The draw of the Tenth Street Bridge, mile 0.94, shall open on signal; except that, from May 1

through October 31, from 8 a.m. to 11 p.m., seven days a week, the draw need open only on the hour and half-hour for recreational vessels, or at any time when there are more than five vessels waiting for an opening, and from 11 p.m. to 8 a.m. if at least 1-hour advance notice is provided, and from November 1 through April 30 if at least 12-hours notice is given.

(d) The draw of the Canadian National Railroad Bridge, mile 1.56, shall open on signal; except from November 1 through April 30 if at least 12-hours advance notice is given.

Dated: NOV 27 2017

J. M. Nunan  
Rear Admiral, U.S. Coast Guard,  
Commander, Ninth Coast Guard District