



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

Docket No. USCG-2019-0366

RIN 1625-AA09

Drawbridge Operation Regulation; Emergency Bridge Replacement, Chicago River. Chicago, IL

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily modifying the operating schedule that governs the Chicago Avenue Bridge, mile 2.40, over the North Branch of the Chicago River. This action is necessary because The City of Chicago applied for and was awarded an emergency bridge replacement permit to temporarily replace the Chicago Avenue double leaf bascule bridge with a temporary fixed structure.

DATES: [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] through 11:59 p.m. on November 13, 2023.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG-2019-0366 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
FHWA	Federal Highway Administration
FR	Federal Register
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
NEPA	National Environmental Policy Act
NPRM	Notice of proposed rulemaking
SNPRM	Supplemental notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary 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), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because on July 16, 2018, we published PUBLIC NOTICE 09-02-18 and mailed out an availability of public notice addressed to 783 adjacent address and interested parties as part of the bridge permit public notice and comment process. The comment process was open until October 1, 2018. We did not receive any comments on this rule.

We are issuing this rule and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective in less than 30 days after publication in the Federal Register. PUBLIC NOTICE 09-02-18 was made available for public comment and no comments were received and the City of Chicago has already installed the temporary emergency bridge.

III. Legal Authority and Need for Rule

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

The Chicago Avenue Bridge, mile 2.40, over the North Branch of the Chicago River, provides a horizontal clearance of 148 feet and a vertical clearance of 18 feet above LWD. The original bridge when opened

provided an unlimited clearance in the open position and the same clearances in the closed position available with the temporary fixed bridge. The City of Chicago applied for and was awarded an emergency bridge replacement permit number 3-18-9 to temporarily replace the Chicago Avenue double leaf bascule bridge with a temporary fixed structure. In accordance with condition 8 of the permit the City of Chicago must replace the fixed structure with a permanent movable structure no later than November 14, 2023.

The North Branch of the Chicago River is used by large commercial tug and barge traffic, passenger vessels, powered and unpowered recreational vessels. Currently all regular users of the waterway can pass under the bridge without an opening.

IV. Discussion of the Rule

This rule is to temporally relieve the City of Chicago from the operational requirements of opening the Chicago Avenue Bridge until the permanent bridge can be built.

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. 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.

This regulatory action determination is based on the ability that vessels can still transit the bridge without openings and that the public was engaged in this decision through the Coast Guard Bridge Permit process and public notice procedures.

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 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 proposed rule would not have a significant economic impact on any vessel owner or operator.

Through the public notice sent out by mail, posted in the local post office, and on the internet, the Coast Guard did not receive any comments that this temporary regulation would have a significant impact.

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

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 Record of Environmental Consideration and a Memorandum for the Record are not required for this rule. Federal Highway Administration (FHWA) had been identified as the lead federal agency for purposes of the National Environmental Policy Act (NEPA). FHWA prepared a NEPA document for the project as proposed for the final

bridge permit. FHWA classified the project as a Categorical Exclusion.

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. In § 117.391 effective from date of publication, through 11:59 p.m. on November 13, 2023 temporarily add paragraph (d) to read as follows:

§ 117.391 Chicago River

* * * * *

(d) The draw of the Chicago Avenue Bridge, mile 2.40, over the North Branch of the Chicago River, need not open for the passage of vessels.

Dated: June 13, 2019

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