



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2020-0056]

RIN 1625-AA09

Drawbridge Operation Regulation; Fox River, Oshkosh, WI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to authorize the Canadian National Railroad Bridge, mile 55.72, across the Fox River to operate remotely. The request was made by the bridge owner. This proposed rule will re-establish remote operations of the bridge and will not change the operating schedule of the bridge.

DATES: Comments and relate material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2020-0056 using Federal e-Rulemaking Portal at <https://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.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security

FR	Federal Register
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 Fox River is approximately 182 miles long and flows south then easterly through the town of Oshkosh, WI, then into Lake Winnebago before it turns north and flows to the Bay of Green Bay. The water levels on the Fox River, above De Pere, WI, are controlled by the Fox River Navigation Authority through a series of locks. The Canadian National Railroad Bridge is a single leaf bascule bridge that provides a horizontal clearance of 125 feet and a vertical clearance in the closed position of 6 feet and in the open position an unlimited clearance for a 62-foot width of the channel and 45 feet at the North Channel edge. The bridge is located near the west side of Lake Winnebago and because of the low clearance most vessels require it to open. During the summer, on average 100 recreational vessels request openings daily. The railroad bridge carries significant train traffic between the international border at Rainer, MN, and Chicago, IL.

III. Discussion of Proposed Rule

In 2010 we published a NPRM to solicit comments concerning allowing the Canadian National Railroad Bridge, mile 55.72 to operate remotely (75 FR 76322, December 8, 2010; USCG-2010-1029). The public requested the bridge owner to install and maintain additional warning lights. The NPRM was withdrawn because the railroad refused to install and maintain the additional warning lights the public requested (76 FR 13312, March 11, 2011). Recently, the Railroad has agreed that from April 27 through October 7 additional warning lights, specifically those alternating flashing red lights that mimic a Grade Crossing Signal commonly found at highway railroad crossing would be installed and maintained to warn mariners that the bridge was about to close. The remote operator shall also announce that the bridge is opening or closing on VHF-FM Marine Radiotelephone. The owners of the bridge shall maintain 2 board gauges in

accordance with 33 CFR 118.160. The remote drawtender may be contacted by mariners at any time by radiotelephone or commercial phone number; this information shall be so posted on the bridge so that they are plainly visible to vessel operators approaching the up or downstream side of the bridge.

The current winter operating schedule requiring vessels to provide at least 12-hours advance notice for a bridge opening during the winter will remain in effect. Additionally, the clearance gauges would still be required to indicate to vessels the water levels and clearance while the bridge is in the closed position. During the comment period, a tender will be at the bridge to allow the public to observe the proposed bridge operations. On September 2, 2020, in Federal Register at 85 FR 54496, we solicited comments from the summer's test schedule that ran from April 26, 2020 through September 2, 2020. No comments were received.

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. 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).

This regulatory action determination is based on the ability that vessels can still transit the bridge as if a tender was in attendance at the bridge.

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 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. The bridge will operate as it has for the past several years.

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 rule under Department of Homeland Security Management Directive 023-01, U.S. Coast Guard Environmental Planning Policy COMDTINST 5090.1 (series) and U.S. Coast Guard Environmental Planning Implementation Procedures (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f). We have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule promulgates the operating regulations or procedures for drawbridges. Normally this action is categorically excluded from further review, under

paragraph L49, of Chapter 3, Table3-1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

Neither a Record of Environmental Consideration nor a Memorandum for the Record are 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.

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 <https://www.regulations.gov>. If your material cannot be submitted using <https://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 <https://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <https://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <https://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; and Department of Homeland Security

Delegation No. 0170.1.

2. Amend § 117.1087 by revising paragraph (c) to read as follows:

§ 117.1087 Fox River.

* * * * *

(c) The draw of the Canadian National Railroad Bridge at mile 55.72 shall open on signal, except from October 8 through April 26; the draw shall open if at least 12-hours advance notice is given. The bridge is authorized to be operated remotely. The owners of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures to indicate the vertical clearance under the closed draw at all water levels. The gauges shall be so placed on the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream. The bridge shall operate and maintain a VHF-FM Marine Radio. In addition to the required bridge lights, the owner's shall install and maintain alternating red lights in a horizontal line that mimic grade crossing lights and bell to warn mariners that the bridge is lowering.

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Dated: April 5, 2021.

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

