



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2021-0332]

RIN 1625-AA09

Drawbridge Operation Regulation; Indiana Harbor Canal, East Chicago, IN

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal at East Chicago, IN. Indiana Department of Transportation, the owner and operator of the bridge, has requested to stop continual drawtender service to the bridge due to a lack of openings. We invite your comments on this proposed rulemaking.

DATES: Comments and related 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-2021-0332 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 If you have questions on this proposed rule, call or e-mail: Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone

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
INDOT	Indiana Department of Transportation
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
USACE	United States Army Corps of Engineers
U.S.C.	United States Code
USEPA	United States Environmental Protection Agency

II. Background, Purpose and Legal Basis

The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is a double leaf bascule bridge that provides a horizontal clearance of 68-feet and a vertical clearance of 12-feet in the closed position with an unlimited vertical clearance in the open position. The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is required to open on signal and there are no previous rulemakings for this bridge to discuss. The Indiana Harbor Canal is a 3-mile long commercial waterway that serves several industries near the city of East Chicago, Indiana including the largest integrated steelmaking facility in North America and the 1,400 acre Whiting Refinery that includes the former 1889 Standard Oil of Indiana refinery at the head of navigation. The Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal is the last drawbridge before the head of navigation; once the 1889 Standard Oil of Indiana refinery was torn down the bridge lost its purpose for regular openings and the waterway silted in around the bridge preventing vessels from approaching. Approximately thirty years after the removal of the refinery the USEPA and USACE partnered to remove polluted sediments from the waterway and established a contaminated dredge spoils area above the bridge. The EPA and USACE contracted dredging company is working a few weeks

each season and is the only commercial vessel requesting the bridge to open. There are no records of recreational vessels using the Indiana Harbor Canal.

III. Discussion of Proposed Rule

The only vessel that has requested an opening at the Indianapolis Boulevard Bridge, mile 2.59, over the Indiana Harbor Canal in thirty years has been the dredging contractor, and their work schedule is limited to a few weeks a year due to migratory wildlife concerns in the summer and ice formation in the winter. INDOT has agreed that a drawtender will be assigned to the bridge to accommodate vessel traffic if a 12-hour advance notice is provided.

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 given advanced notice.

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.

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 (Pub. L. 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 section. 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 Governments

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.

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, Rev.1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA)(42 U.S.C. 4321-4370f). The Coast Guard has determined 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 such actions are 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 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 <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 submissions in response to this document, see DHS's eRulemaking System of Records notice (85 FR 14226, March 11, 2020).

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; DHS Delegation No. 0170.1.

2. In § 117.400 add paragraph (c) to read as follows:

§117.400 Indiana Harbor Canal.

(c). The Indianapolis Boulevard Bridge, mile 2.59, at East Chicago, shall open on signal if at least twelve hours' notice is given.

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

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