

Signed at Washington, DC, on February 24, 2004.

**Cari M. Dominguez,**

*Chair, Equal Employment Opportunity Commission.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD09-04-003]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Sturgeon Bay Ship Canal, Sturgeon Bay, WI

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is temporarily changing the regulation governing the operation of the Bayview bridge, mile 0.3 over Sturgeon Bay Ship Canal, in Sturgeon Bay, WI. This action was requested by the Wisconsin Department of Transportation (DOT) to facilitate deck repairs on the drawbridge.

**DATES:** This temporary rule is effective 6 a.m. on April 1, 2004, until 6 p.m. on July 1, 2004.

**ADDRESSES:** Documents indicated in this preamble as being in the docket are part of docket CGD09-04-003 and are available for inspection or copying at Commander (obr), Ninth Coast Guard District, 1240 E. 9th St., Room 2019, Cleveland, OH, 44199, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902-6084.

**FOR FURTHER INFORMATION CONTACT:** Scot Striffler, Bridge Management Specialist, Ninth Coast Guard District, at (216) 902-6087.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. The

request to revise the operating schedule for this temporary final rule required extensive coordination with known affected marine entities, Wisconsin DOT, and the City of Sturgeon Bay, WI. The final temporary schedule was not finalized in time to publish a NPRM and still have the work start at the best possible time for all affected parties.

##### Background and Purpose

Wisconsin DOT requested a temporary change to the operating regulations for the Bayview bridge, mile 0.3 over Sturgeon Bay Ship Canal in Sturgeon Bay, WI, to perform deck maintenance work. The Bayview bridge navigation span provides a vertical clearance of 42 feet above Mean Low Water in the closed to navigation position. The waterway carries commercial, recreational, and public vessel traffic. The bridge is normally required to open on signal for vessels year-round under the general provisions of 33 CFR 117.5. In order to perform the necessary deck replacement work, Wisconsin DOT requested that the drawbridge open on the hour, every three hours, Monday through Friday, between the hours of 6 a.m. and 6 p.m. to minimize disruptions to the contractor. This schedule was not considered reasonable by the Coast Guard and was revised so the bridge would open every hour, on the hour, between 6 a.m. and 6 p.m., Monday through Friday, for recreational vessels. Commercial and public vessels will be requested to provide at least 2-hours advance notice prior to passing during these work hours, and should be passed without delay. The request from Wisconsin DOT also included two separate 3-day periods between April 15 and June 15, 2004, where the bridge would not be required to open for any vessels for concrete pouring and curing. The dates of these closure periods can not, and have not, been identified due to the nature of the work, but Wisconsin DOT is required to provide those dates to the Coast Guard 10-14 days in advance of anticipated closure periods. The Coast Guard will publish a temporary deviation covering those dates when they have been finalized.

##### Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of

the Department of Homeland Security (DHS). The temporary drawbridge schedule still provides for the passage of vessels during work hours. The unspecified closure periods, which are necessary for some of the repair work, will be published as early as possible in the Ninth Coast Guard District Local and/or Broadcast Notice to Mariners and prior to the work beginning. These conditions and schedules have been approved by known affected marine entities.

##### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. 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. Passage through the drawbridge will still be available except during the closure periods that have not been scheduled. During the closure periods all entities will be equally affected.

##### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. None were identified because passage will still be provided for except during the required closure periods.

##### 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).

##### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

### 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 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

### Indian Tribal Governments

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.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it

does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation.

### List of Subjects in 33 CFR Part 117

Bridges.

### Regulations

■ 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(g); Department of Homeland Security Delegation No. 0170.1; section 117.255 also issued under the authority of P. L. 102–587, 106 Stat. 5039.

■ 2. From 6 a.m. on April 1 to 6 p.m. on July 1, 2004, add temporary § 117.T1102 to read as follows:

#### § 117.T1102 Sturgeon Bay Ship Canal.

The draw of the Bayview bridge, mile 0.3 at Sturgeon Bay, shall operate as follows:

(a) Between the hours of 6 a.m. and 6 p.m., Monday through Friday, the bridge shall open once an hour, on the hour, for recreational vessels. (b) Commercial vessels shall provide at least 2-hours advance notice prior to passage. (c) Public vessels shall be passed at all times.

Dated: February 25, 2004.

**R. F. Silva,**

*Rear Admiral, Coast Guard Commander,  
Ninth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08–04–011]

#### Drawbridge Operation Regulations; Ocean Springs, MS

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. This deviation allows the bridge to remain closed to navigation from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004. The deviation is necessary to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the drawbridge. **DATES:** This deviation is effective from 6 a.m. on Monday, March 8, 2004 through 6 p.m. on Friday, March 12, 2004.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Hale Boggs Federal Building, room 1313, 500 Poydras Street, New Orleans, Louisiana 70130–3310 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Phil Johnson, Bridge Administration Branch, telephone (504) 589–2965.

**SUPPLEMENTARY INFORMATION:** The Mississippi Department of Transportation has requested a temporary deviation in order to align the speed reducer and to replace some of the old welded flooring plates with new steel channel sections on the U.S. 90 Bascule Span Highway Bridge across Back Bay of Biloxi, mile 0.0 at Ocean Springs, Harrison County, Mississippi. The replacement of the old flooring plates and alignment of the speed reducer is necessary for the continued safe operation of the draw span of the bridge. This temporary deviation will allow the bridge to remain in the closed-to-navigation position continuously