

**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: Final rule.

**SUMMARY:** The Coast Guard is modifying 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. This rule will modify the operating schedules of the bridges by expanding winter hours, and also modifies the operating schedule of all City of Port Huron drawbridges.

**DATES:** This rule is effective April 11, 2018.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Type USCG–2017–1047 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 email Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216–902–6085, email [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 IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On December 11, 2017, we published a notice of proposed rulemaking entitled Drawbridge Operation Regulation; Black River, Port Huron, MI in the **Federal Register** (82 FR 58145). We did not receive any comments on this proposed rule.

**III. Legal Authority and Need for Rule**

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

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.

**IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard provided a comment period of 30 days and no comments

were received. 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 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 rule 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 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 will 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-hour 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 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-hour advance notice is provided between November 1 and April 30, matching the winter schedules of the highway bridges.

This rule was coordinated with the City of Port Huron, MI, local marine facilities, local emergency responders (including Coast Guard units), and local marine stakeholders. It 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.

## 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. Executive order 13771 directs agencies to control regulatory costs through a budgeting process. Accordingly, it 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 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 did not receive any comments from the Small Business Administration on this rule. 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 above this final rule would 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 (Pub. L. 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.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 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.

### 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. 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: February 23, 2018.

**J.M. Nunan**

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 2018–04914 Filed 3–9–18; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF EDUCATION

### 34 CFR Chapter VI

#### Federal Preemption and State Regulation of the Department of Education's Federal Student Loan Programs and Federal Student Loan Servicers

**AGENCY:** Office of the Secretary, Department of Education.

**ACTION:** Interpretation.

**SUMMARY:** Recently, several States have enacted regulatory regimes that impose new regulatory requirements on servicers of loans under the William D. Ford Federal Direct Loan Program (Direct Loan Program). States also impose disclosure requirements on loan servicers with respect to loans made under title IV of the Higher Education Act of 1965, as amended (HEA). Finally, State regulations impact Federal Family Education Loan (FFEL) Program servicing. The Department believes such regulation is preempted by Federal law. The Department issues this notice to clarify further the Federal interests in this area.

**DATES:** March 12, 2018.

**FOR FURTHER INFORMATION CONTACT:**

Kathleen Smith, Deputy Chief Operating Officer, U.S. Department of Education, Federal Student Aid, 830 First Street NE, Union Center Plaza, Washington, DC 20202–5453. Telephone: (202) 377–4533 or via email: [ED.NoticeResponse@ed.gov](mailto:ED.NoticeResponse@ed.gov).

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service, toll free, at 1–800–877–8339.

**SUPPLEMENTARY INFORMATION:** Congress created and expanded the Direct Loan Program with the goal of simplifying the delivery of student loans to borrowers, eliminating borrower confusion, avoiding unnecessary costs to taxpayers, and creating a more streamlined student loan program that could be managed more effectively at the Federal level.

Recently, several States have enacted regulatory regimes or applied existing State consumer protection statutes that undermine these goals by imposing new regulatory requirements on the Department's Direct Loan servicers, including State licensure to service Federal student loans. State servicing laws are purportedly aimed only at student loan servicers, but such regulation affects the “[o]bligations and rights of the United States under its contracts” with servicers and with student loan borrowers, the “relationship between a Federal agency and the entity it regulates,” and the

rights of the Federal government related to federally held debt. (*Boyle v. United Technologies Corp.*, 487 U.S. 500, 504–05 (1988); *Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 347 (2001); *United States v. Victory Highway Vill., Inc.*, 662 F.2d 488, 497 (8th Cir. 1981).) Accordingly, the servicing of Direct Loans is an area “involving uniquely Federal interests” that must be “governed exclusively by Federal law.” (*Boyle*, 487 U.S. at 504.)

#### A. Interest of the United States

Recently, the United States filed a Statement of Interest in a lawsuit brought by the Commonwealth of Massachusetts against a Department loan servicer alleging violations of Massachusetts State law for allegedly unfair or deceptive acts related to the servicing of Federal student loans and administration of programs under the HEA. (Statement of Interest by the United States, *Massachusetts v. Pennsylvania Higher Education Assistance Agency, d/b/a FedLoan Servicing*, No. 1784–CV–02682 (Mass. Super. Ct., filed Jan. 8, 2018).) The United States explained that Massachusetts is improperly seeking to impose requirements on the Department's servicers that conflict with the HEA, Federal regulations, and Federal contracts that govern the Federal loan programs. Accordingly, Massachusetts' claims are preempted because the State has sought to proscribe conduct Federal law requires and to require conduct Federal law prohibits. We believe that attempts by other States to impose similar requirements will create additional conflicts with Federal law.

This is not a new position. The United States has previously responded when State law has been utilized in a way that conflicts with the operation and purposes of loan programs the Department administers pursuant to the HEA. On October 1, 1990, the Department issued a notice of its interpretation of regulations governing the FFEL Program (then known as the Guaranteed Student Loan program) (55 FR 40120) that prescribe the actions lenders and guaranty agencies must take to collect loans. The Department explained its view that these regulations preempt State law regarding the conduct of these loan collection activities.

In 2009, the United States intervened in *Chae v. SLM Corporation*, 593 F.3d 936 (9th Cir. 2010), a case in which plaintiffs sought to apply State consumer protection laws to a FFEL Program loan servicer, to explain that the State laws on which the plaintiffs relied conflicted with Federal law.