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(1) American Association of State Highway and Transportation Officials (AASHTO), Suite 249, 444 North Capitol Street, NW., Washington, DC 20001.

(2) [Reserved].

[FR Doc. 03-22807 Filed 9-8-03; 8:45 am]

BILLING CODE 4910-22-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08-02-035]

RIN 1626-AA09

Drawbridge Operation Regulation Change, St. Croix River, Minnesota and Wisconsin

AGENCY: Coast Guard, DHS.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard has revised its proposal to amend the regulations governing the operation of the Burlington Northern Santa Fe Railroad Bridge, mile 0.2, Prescott, Wisconsin; the U.S. 16-61 Bridge, mile 0.3, Prescott, Wisconsin, the Union Pacific Railroad Bridge, mile 17.3, Hudson, Wisconsin across the St. Croix River, and the S36 Highway Bridge at Stillwater, mile 23.4. The revised proposal would modify the dates and hours requiring advanced notice for openings on each of the bridges. This proposed change is intended to reduce the number of hours that a drawtender is required to be on site at each of the bridges while maintaining satisfactory service to vessels navigating the area.

DATES: Comments and related materials must be received by November 10, 2003.

ADDRESSES: Comments and related materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD08-02-035 and are available for inspection or copying at room 2.107f in the Robert A. Young Federal Building at Eighth Coast Guard District, Bridge Branch, 1222 Spruce Street, St. Louis, MO 63103-2832, between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (314)

539-3900, extension 2378. Commander (obr) maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD08-02-035), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if it reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the Eighth Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Regulatory History

On April 16, 2002, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation Change, St. Croix River, MN in the **Federal Register** (67 FR 18521). On March 25, 2003, we clarified a statement in the NPRM and reopened the comment period to receive additional comments (68 FR 14364). We received six letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

In accordance with 33 CFR 117.667, the draws of the Burlington Northern Santa Fe Railroad Bridge, Mile 0.2 at Prescott, Wisconsin, the U.S. 16-61 Bridge, Mile 0.3, at Prescott Wisconsin and the Union Pacific Railroad Bridge, Mile 17.3, at Hudson, Wisconsin, currently open on signal; except that, from December 15 through March 31, the draws open on signal if at least 24-hours notice is given. Currently, the S36 Stillwater Highway Bridge, Mile 23.4,

opens on signal at various times throughout the day from May 15 through October 15, and on signal from October 16 through May 14. The NPRM proposed to amend the regulations governing drawbridges across the St. Croix River by adding a notice requirement for bridge openings during the summer season. Specifically, the NPRM proposed requiring that advance notice be given prior to 11 p.m. for openings between midnight and 7 a.m. from April 1 to October 15 for three of the four bridges.

The Burlington Northern Santa Fe Railroad, Mile 0.2 at Prescott initially requested a change to the regulation for the Burlington Northern Santa Fe Railroad, to open on signal from 7 a.m. to midnight and to open between midnight and 7 a.m., if the bridge was notified prior to 11 p.m. during the summer tourism months. Although the request was submitted by only one bridge owner, the approval would also impact the U.S. 16-61 Bridge and the Union Pacific Railroad Bridge. Therefore, the proposal was expanded to include these two bridges. The S36 Bridge at Stillwater is more remotely located than the other three bridges, and we have proposed a separate opening requirement for the S36 Bridge rather than including it with the other three bridges.

Discussion of Comments and Changes

The rule proposed by the NPRM included two separate changes to the existing regulation that affect the Burlington Northern Santa Fe Bridge, the U.S. 16-61 bridge, and the Union Pacific railroad bridge. The first change would restrict drawbridge openings between midnight and 7 a.m. by requiring that advance notice be made by 11 p.m. the night before. The second change would move up the date when the drawbridges require 24-hour notification for an opening from December 15 to October 16 each year. The Coast Guard received six letters commenting on one or both of the proposed changes.

One letter opposed the proposed requirement allowing the drawbridges to remain in the closed to navigation position between midnight and 7 a.m. except when a request for an opening was received prior to 11 p.m. The letter cited impacts on weekend boaters who may want late night openings, additional openings required by increases in the river level, and the difficulty in amending the bridge operating regulations once they have become effective. A review of the bridge opening data for the period of April 1 to December 14 for the years 1998—

2002 revealed that bridge openings between midnight and 7 a.m. decreased by 87% during that time period. For 2001, there were two openings in this time period, and in 2002 there was one opening. Due to the drastic reduction in requests for openings during the midnight to 7 a.m. time period, including weekends and high river stages, the Coast Guard has determined that impact on vessel traffic in the affected area will be minimal and may be avoided by making a request for an opening prior to 11 p.m. Accordingly, the requirement to give advanced notice for openings between midnight and 7 a.m. will remain in the proposed rule. With regard to the burden of modifying or removing a regulation once in effect, nothing in this proposed rule would create an unusual burden to future amendment in accordance with Administrative Procedures Act.

Three letters proposed changing the time period that requires an advance notice from midnight to 7 a.m. to midnight to 8 a.m. This would allow the drawbridge owners to provide two standard eight-hour work shifts instead of one eight-hour shift and one nine-hour shift during 8 a.m. to midnight time period when the bridges would be required to open on signal. A review of the historical bridge opening data for the affected bridges revealed that the bridges opened on average less than two times per month between the hours of 7 a.m. and 8 a.m. for the period April 1 through October 31. The Coast Guard agrees that changing the end of the time period from 7 a.m. to 8 a.m. would have minimal impact on vessel traffic and facilitate more manageable work shifts for the bridge owner. Additionally, vessels that might be impacted by the change can avoid delays by requesting a bridge opening prior to 11 p.m. the day before. Therefore, we have amended the proposed rule to reflect the time change.

Two letters opposed moving the start of the winter 24-hour notification time period from December 15 to October 16. One of the letters cited that the boating season on the St. Croix River does not traditionally end until late October. The other letter cited a deterrent effect on vacationers wanting to view the fall colors on the river. After reviewing the bridge opening data for October 16 through November 1, the Coast Guard has determined that the amount of vessel traffic on the St. Croix River is sufficient to amend the beginning date for the 24-hour notification period from October 16 to November 1.

In summary, this SNPRM proposes modifying the rule as it was originally proposed in the NPRM by extending the

time period requiring advanced notification before 11 p.m. during the summer tourism season by one hour from midnight to 8 a.m. instead of midnight to 7 a.m. This SNPRM also proposes moving the ending date of the summer operating hours from October 15, as it was originally proposed in the NPRM, to October 31.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of the 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).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

Implementing the proposed regulation would allow the owners of drawbridges to reduce the number of hours drawtenders are required to be on site due a reduction in requests to open the drawbridges between midnight and 8 a.m. from 1 April to 31 October. Previously, these advanced notification requirements were temporarily instated to facilitate maintenance on the bridges. During these maintenance periods, the bridge owners received no complaints from commercial or recreational vessel operators. Additionally, this has become the widely accepted method of voluntarily requesting bridge openings from local vessel operators during non-maintenance periods without complaint.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed 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 proposed rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard identified local marinas as small entities that might be affected by this rule due to

restricted access to the marinas during periods when drawtenders are not on site. These entities were consulted prior to initiating this rulemaking process to minimize the economic impact that might result from this proposed rule.

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.

Assistance for Small Entities

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 the proposed rule so that they could better evaluate its effects on them and participate in the rulemaking process. Any individual that qualifies or, believes he or she qualifies as a small entity and requires assistance with the provisions of this proposed rule may contact Mr. Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378.

Collection of Information

This proposed 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect 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 proposed 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 proposed 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 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.

Energy Effects

We have analyzed this proposed 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 M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have 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. Promulgation of changes to drawbridge regulations have been found to not have significant effect on the human environment. A final "Environmental Analysis Check List" and a final "Categorical Exclusion Determination" are available in the docket where indicated under ADDRESSES.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. In § 117.667, paragraph (a) and paragraph (b), introductory text, are revised and a new paragraph (b)(3) is added to read as follows:

§ 117.667 St. Croix River

(a) The draws of the Burlington Northern Railroad Drawbridge, mile 0.2, Prescott Highway Drawbridge, mile 0.3, and the Hudson Railroad Drawbridge, mile 17.3, shall operate as follows:

(1) From April 1 to October 31:

(i) 8 a.m. to midnight, the draws shall open on signal;

(ii) midnight to 8 a.m., the draws shall open on signal if notification is made prior to 11 p.m.,

(2) From November 1 through March 31, the draw shall open on signal if at least 24 hours notice is given.

(b) The draw of the Stillwater Highway Bridge, mile 23.4, shall open on signal as follows:

* * * * *

(3) From October 16 through May 14, if at least 24 hours notice is given.

* * * * *

Dated: August 25, 2003.

J.W. Stark,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 03-22793 Filed 9-8-03; 8:45 am]

BILLING CODE 4910-15-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL-7555-3]

Revisions to the Regional Haze Rule To Correct Mobile Source Provisions in Optional Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Notice of Public Hearing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: Due to a request from a commenter, EPA is holding a public hearing on a notice of proposed rulemaking that was published in the *Federal Register* on July 3, 2003 (68 FR 39888) related to the mobile source provisions in 40 CFR 51.309 of EPA's regional haze rule. The EPA published both a direct final rule and a concurrent notice of proposed rulemaking to amend and revise certain provisions of the regional haze rule in order to address an emissions projection scenario for mobile sources which was not addressed when EPA published the regional haze rule in 1999.

DATES: The public hearing will be held from 9 a.m. to 12 p.m. (MST) on Wednesday, October 8, 2003, at the U.S. EPA—Region 8, 999 18th Street, 2nd Floor Conference Center—Columbine Room, Denver, CO 80202.

ADDRESSES: *Docket.* Materials relevant to this rulemaking are contained in Public Docket Number OAR-2002-0076 at the following address: EPA Docket Center (EPA/DC), Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue, NW., Washington DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, except on government holidays. You can reach the Reading Room by telephone at (202) 566-1744, and by facsimile at (202) 566-1741. The telephone number for the Air Docket is (202) 566-1742. You may be charged a reasonable fee for photocopying docket materials, as provided in 40 CFR part 2.

Electronic Access. You may access this *Federal Register* document electronically through the EPA Internet under the "Federal Register" listings at <http://www.epa.gov/fedrgstr/>. An electronic version of the public docket is available through EPA's electronic public docket and comment system, EPA Dockets. You may use EPA Dockets at <http://www.epa.gov/edocket/> to view