

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG–2023–0113]

RIN 1625–AA09

#### Drawbridge Operation Regulation; Cheboygan River at Cheboygan, MI

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to modify the operating schedule that governs the US 23 Highway Bridge, mile 0.92, across the Cheboygan River—Part of the Inland Route, at Cheboygan, Michigan. The Cheboygan County Road Commission requested we extend the winter advance notice for the bridge. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must reach the Coast Guard on or before June 5, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0113 using Federal Decision Making 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 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  
 MDNR Michigan Department of Natural Resources

MDOT Michigan Department of Transportation  
 OMB Office of Management and Budget  
 LWD Low Water Datum based on IGLD85  
 NPRM Notice of Proposed Rulemaking (Advance, Supplemental)  
 § Section  
 U.S.C. United States Code

##### II. Background, Purpose, and Legal Basis

The Cheboygan River is part of the Michigan Inland Route. The Michigan Inland Route is the longest chain of rivers and lakes in the state of Michigan and is almost forty miles long. The waterway runs through Pickerel Lake, Crooked Lake, the Crooked River, Burt Lake, the Indian River, Mullett Lake, into the Cheboygan River, and eventually flowing into Lake Huron. The waterway is controlled by two Michigan Department of Natural Resources (MDNR) locks, one is in the Cheboygan River and the other is in the Crooked River.

The Michigan Inland Route can handle vessels up to sixty-five feet long with an eighteen-foot beam and has been open to interstate commerce since 1869 when the Cheboygan lock opened.

The US 23 Highway Bridge, mile 0.92, across the Cheboygan River is a double leaf bascule bridge providing a horizontal clearance of 60 feet and a vertical clearance of 9 feet above LWD in the closed position and an unlimited clearance in the open position. The current regulation in 33 CFR 117.627 requires the State Street (U.S. Route 23) Bridge, mile 0.92, across the Cheboygan River to open on signal from April 1 through May 15 and from September 16 through December 14. From May 16 through September 15 between the hours of 6 a.m. and 6 p.m. the draw opens on the quarter and three-quarter hours. From December 15 through March 31 the bridge operates with a 12-hour advance notice.

##### III. Discussion of Proposed Rule

Because the recreational vessel traffic going through the US 23 Highway Bridge, mile 0.92, across the Cheboygan River is controlled by the lock immediately upriver, there have been limited requests for bridge openings between 11 p.m. and 8 a.m., when the lock is closed. In accordance with the current bridge regulation in 33 CFR 117.627, the bridge opens twice an hour in sequence with the lock operations at

the top and bottom of the hour allowing vessels fifteen minutes to arrive at the bridge from the lock or to travel from the bridge to the lock.

There is one ferry serving the islands in the Straights of Mackinac and one passenger vessel that provides tour service to local wreck sites for divers. Most of the fall and spring requests for bridge openings are from these two boats. Both the ferry and the passenger vessel operate on a schedule and are predictable.

The ferry is the only means to deliver first responders to the islands and when operating under this condition is considered an emergency vessel as defined in 33 CFR 117.31.

We requested annual averaged daily vehicle crossing at the US 23 Highway Bridge, mile 0.92, across the Cheboygan River and discovered the bridge carries less than 8,000 vehicles each day and normally would not require limiting opening twice a day; however, after we examined the drawtender’s logs we found that if the bridge opened on signal, the monthly average openings would increase from an average of 152 openings a month to well over 380 openings a month.

We do not intend to change the two openings an hour concept, but we would change the hours of operations to better meet the needs of navigation and to make the rule easier to understand.

Cheboygan County requested to start the winter 12-hour advance notice requirement on November 1 to provide more snowplow drivers during winter squalls. We reviewed three years of drawtender logs and spoke to local stakeholders. We concluded that starting a 12-hour advance notice on November 1 would be impracticable because the bridge opens five to six times each day and November is deer season in Michigan, so the island residents have concerns with tourism to the island and the availability of emergency services to the island on the ferry vessel.

After reviewing three years of drawtender logs and speaking to local stakeholders, we concluded that the winter 12-hour advance notice could be extended to December 1 through April 30 providing the County with an additional 46 days of 12-hour advance notice.

From the drawtender logs we learned that there have been limited requests for

openings from 11 p.m. to 7 a.m., and we are proposing to place the bridge on a 2-hour advance during the evenings. No drawtender will be in attendance at the bridge and the County will provide a point of contact for the public to request bridge openings.

MDNR officers requested clearance gauges be installed at the bridge to prevent recreational vessels from hitting the bridge after a lock opening. When the locks open, they cause a temporary rise in water levels at the bridge reducing the vertical clearance at the bridge. We propose to require clearance gauges to be maintained on the upriver and down river sides of the bridge as required by 33 CFR 117.47.

Stakeholders also voiced concerns that bridge may delay ferries from delivering public utility repair teams to the island in the event of a storm, power loss, or fallen power lines. We propose to include this as part of the regulation.

In accordance with 33 CFR 117.55, the bridge owner shall keep in good repair signage that explains the bridge schedule and contact information when the bridge requires an advance notice. Annually the owner shall provide updated contact information to the District Commander to be included in the Local Notice to Mariners.

#### 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.

##### 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 proposed 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 proposed 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 proposed 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, Table 3–1 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.

##### 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.

**Submitting comments.** We encourage you to submit comments through the Federal Decision-Making Portal at <https://www.regulations.gov>. To do so, go to <https://www.regulations.gov>, type USCG–2023–0113 in the search box and click “Search.” Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. 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.

Viewing material in docket. To view documents mentioned in this proposed rule as being available in the docket, find the docket as described in the previous paragraph, and then select “Supporting & Related Material” in the Document Type column. Public comments will also be placed in our online docket and can be viewed by following instructions on the <https://www.regulations.gov> Frequently Asked Questions web page. We review all comments received, but we will only post comments that address the topic of the proposed rule. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive. 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 of any posting or updates to the docket.

We accept anonymous comments. Comments we post to <https://www.regulations.gov> 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).

#### 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, Revision No. 01.3.

■ 2. Revise § 117.627 to read as follows:

#### § 117.627 Cheboygan River.

The draw of the US 23 highway bridge, mile 0.9 at Cheboygan shall operate as follows:

(a) From May 1 through November 31—

(1) Between the hours of 7 a.m. and 11 p.m. the draw need only open from three minutes before to three minutes after the quarter-hour and three-quarter hour.

(2) Between the hours of 11 p.m. and 7 a.m. no drawtender is required to be at the bridge and the bridge need not open unless a request to open the draw is given at least 2-hours in advance of a vessels intended time of passage through the draw.

(b) From December 1 through April 31, no drawtender is required to be at the bridge and the bridge need not open unless a request to open the draw is given at least 12-hours in advance of a vessels intended time of passage through the draw.

(c) At all times the draw shall open as soon as possible for the passage of vessels if carrying public safety or public utility vehicles and persons to or from the island.

(d) The owner of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all water levels. The gages shall be placed on the bridge so that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

**M.J. Johnston,**

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

[FR Doc. 2023–06925 Filed 4–4–23; 8:45 am]

**BILLING CODE 9110–04–P**

#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[Docket Number USCG–2023–0192]

RIN 1625–AA00

#### Safety Zone; Delaware Bay, Lower Township, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard is proposing to establish a temporary safety zone for certain navigable waters of the Delaware Bay, in Lower Township, NJ. The safety zone is needed to protect personnel,

vessels, and the marine environment from potential hazards created by a fireworks display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port (COTP), Sector Delaware Bay. We invite your comments on this proposed rulemaking.

**DATES:** Comments and related material must be received by the Coast Guard on or before May 5, 2023.

**ADDRESSES:** You may submit comments identified by docket number USCG–2023–0192 using the Federal Decision-Making Portal at <https://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section for further instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Dylan Caikowski, Sector Delaware Bay, Waterways Management Division, U.S. Coast Guard; telephone (215) 271–4814, email [SecDelBayWWM@uscg.mil](mailto:SecDelBayWWM@uscg.mil).

#### SUPPLEMENTARY INFORMATION:

##### I. Table of Abbreviations

CFR Code of Federal Regulations  
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FR Federal Register  
NPRM Notice of proposed rulemaking  
§ Section  
U.S.C. United States Code

##### II. Background, Purpose, and Legal Basis

On February 18, 2023, Lower Township, New Jersey notified the Coast Guard that it will be conducting a fireworks display from 9:30 to 9:50 p.m. on July 3, 2023, or a rain date of July 5, 2023, to celebrate Independence Day. The fireworks are to be launched from a barge in the Delaware Bay approximately 350 yards west of North Cape May Beach, in Lower Township, NJ. Hazards from fireworks displays include accidental discharge of fireworks, dangerous projectiles, and falling hot embers or other debris. The COTP has determined that potential hazards associated with the fireworks to be used in this display would be a safety concern for anyone within a 300-yard radius of the barge.

The purpose of this rulemaking is to ensure the safety of vessels and the navigable waters within a 300-yard radius of the fireworks barge before, during, and after the scheduled event. The Coast Guard is proposing this rulemaking under authority in 46 U.S.C. 70034.