

(b) The draw of the Tortoise Island bridge, mile 2.6, shall open on signal; except that during the evening hours from 10 p.m. to 6 a.m. the draw shall open if at least 2 hours notice is given.

Dated: August 12, 1998.

**R.C. Olsen, Jr.,**

*Captain, U.S. Coast Guard, Commander,  
Seventh Coast Guard District, Acting.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 177

[CCGD8-98-020]

RIN 2115-AE47

#### Drawbridge Operation Regulations for the Missouri River

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the regulations governing the operation of the drawbridges across the Missouri River in the States of Missouri, Iowa, Kansas, and Nebraska. The revisions would enable the Coast Guard to coordinate drawbridge operation schedules for these bridges during the winter season with the Army Corps of Engineers' support of commercial navigation on the Missouri River.

**DATES:** Comments must reach the Coast Guard on or before October 27, 1998.

**ADDRESSES:** You may mail comments to Director, Western Rivers Operations (ob) (DWRO ob), Eighth Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103, or deliver them to room 2.107F at the same address between 8 a.m. and 4 p.m. Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:**

Roger K. Wiebusch, Bridge Administrator, Eighth Coast Guard District, 314-539-3900, Ext. 378.

**SUPPLEMENTARY INFORMATION:**

#### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD8-98-020) and the specific section of this proposal to which the comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by

11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the DRWO (ob) at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

The Missouri River is a free flowing river traversing several states before it joins the Mississippi River 15.3 miles north of St. Louis, Missouri. The Army Corps of Engineers (ACOE), Missouri River Region manipulates the river's depth by releasing water from upstream reservoirs in accordance with an established plan that provides for a nine-foot channel between the head of navigation at Sioux City, Iowa and the mouth of the river.

Historically the ACOE planned for a commercial navigation season between late March to late November at Sioux City, Iowa and from April 1 to December 1 at the mouth of the river. This timeframe also coincided with the dates that the Coast Guard maintained floating aids to navigation. Additionally, as per 33 CFR 117, drawbridge owners were required to staff their bridges full time in order to open these bridges on demand. Once the commercial navigation season ended, the on-demand-opening requirement shifted to a 24-hour notice requirement for those vessels that required the opening of a drawbridge. In the last decade, the ACOE has adopted a more flexible approach to managing water levels on the Missouri River.

The ACOE's existing commercial-navigation support plan is derived from the water levels in the Missouri River drainage basin reservoir system, which, in turn, is linked to prevailing and anticipated weather conditions. If there is an unusually wet summer or fall, the ACOE may opt to extend the navigation season in order to release more water from the reservoirs. This allows the ACOE to better manage flood conditions that may threaten the Missouri River drainage basin during the spring. On the same token, the ACOE must not allow too much water in the river during the

winter so as to prevent flooding from ice jams. This flow manipulation has the effect of either extending or reducing the commercial navigation season.

The ACOE, Missouri River Region, advises the public of the changes to the navigation season in a variety of ways, including, but not limited to: publication of an Annual Operating Plan for the Missouri River; public meetings to discuss planned flow manipulations; several news releases throughout the year detailing reservoir-runoff statistics and forecasts; and an internet web site that continually updates Missouri River stage trends and other flow information. The ACOE also works closely with other federal and state agencies to coordinate the dissemination of information relating to the closing and opening of the full service flow. The extensive amount of information disseminated by the ACOE ensures that the public is apprised of the opening and closing of the commercial navigation season on the Missouri River.

In order to accommodate vessels during the winter season's low-water period, the Missouri River drawbridge operation regulations contained in 33 CFR 117.411(a) and 117.687(a) require that drawbridges on this waterway shall open on signal; except that, from December 16 through the last day of February, the draws shall open on signal if at least 24 hours notice is given. Additionally, 33 CFR 117.691 requires that the draw of the Illinois Central Gulf railroad bridge located on the Missouri River shall open on signal; except that, from December 1 through the last day of February, the draw shall open on signal if at least 24 hours notice is given. These regulations reflect the actual dates that the ACOE had manipulated the water level on the Missouri River; however, during the past ten years, the ACOE has adopted a more flexible water-management regime.

Although the ACOE has adopted a less rigid commercial navigation season that is no longer directly linked to a given date, drawbridge owners are still required by 33 CFR Part 117 to open their bridges on demand commencing 1 March—regardless of the water level on the Missouri River. This requires drawbridge owners to staff their bridges full time despite the fact that the commercial navigation season is not in effect. This has resulted in a situation where the current bridge regulations governing on-demand openings for the Missouri River spans are not aligned with the ACOE's existing commercial navigation season.

The purpose of this proposed rule is to bring the drawbridge operating

regulations back in synch with the commercial navigation season. This would be accomplished by tying the drawbridge on-demand-opening requirement to the ACOE's restoration of navigational flows to the Missouri River.

### Discussion of Proposed Rules

There are seven drawbridges that cross the Missouri River. These bridges span the Missouri River in the states of Missouri, Iowa, Kansas, and Nebraska. Under the existing rules in 33 CFR 117.411(a), 117.678(a) and 117.691, the draws are required to open on demand except that during the winter season—from December 1 through the last day of February for the Illinois Central Gulf railroad bridge in Omaha, Nebraska and from December 16 through the last day of February for all other bridges—draws need not open for vessel traffic except upon 24 hours advance notice. The proposed rule would abandon the use of these fixed dates for determining when the draws must open on demand. Instead, the requirement to open on demand would be tied to the opening and closure of the commercial navigation season as announced by the ACOE.

As discussed above, the ACOE manages the flow of the Missouri to maintain adequate water levels during the commercial navigation season and has adopted a flexible approach that considers numerous factors in determining when to begin and when to terminate the commercial navigation season in any given year. Although there is some vessel traffic outside of the ACOE commercial navigation season, that traffic is limited a bridge passage with 24-hour advance notice meets the reasonable needs of navigation. During the winter season, bridge owners can relax staffing requirements since vessels are required to give 24-hour notice before passage.

The original intent of the existing rules was to link the on-demand-opening requirement with the commercial navigation season. With the ACOE's flexible approach, the fixed dates in the existing rules no longer accurately reflect the opening and closure of the commercial navigation season. As a result, bridge owners must staff their bridges to open on demand on March 1 even if the ACOE has not yet opened the commercial navigation season. Similarly, bridge owners must continue to staff their bridges to open on demand until December 16 (December 1 for the Illinois Central Gulf railroad bridge in Omaha) even after the ACOE has closed the commercial navigation season. This disconnect between the

existing rules and the ACOE's commercial navigation season management practices creates confusion and inefficiency. The proposed rules will align the drawbridge regulations with the commercial navigation season and allow bridge owners to more efficiently manage their operations at the beginning and end of the commercial navigation season.

### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of the Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although for more than 25 years bridges on the Missouri river have operated on a 24-hour notice schedule during the winter season, the dates currently published in 33 CFR Part 117 no longer coincide with the winter season dates that the ACOE uses for flow-management purposes. The proposed rule will result in the requirement for bridge owners to open their spans on demand only during the commercial navigation season. The winter season is not being extended or shortened in any measurable manner and so the impact is simply a shift in time of its occurrence rather than an increase or decrease in the amount of burden. Vessels will still have the ability to navigate the Missouri River during the flow-reduction period and bridge owners will save money by not staffing their draws full time in order to open their spans on demand during this same time frame.

### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. *Small entities* include 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. Since the winter season generally corresponds with the existing dates listed in the regulation, there will be little, if any,

impact on small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant impact on your business or organization, please submit a comment (see ADDRESSES) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

### Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

### Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

### Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that under Figure 2–1, paragraph 32(e) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. This proposed rule merely alters the time frame when the drawbridges on the Missouri River are required to open on demand. A "Categorical Exclusion Determination" is available in the docket for inspection or copying 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; 49 CFR 1.46; CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.411(a) is revised to read as follows:

**§ 117.411 Missouri River.**

(a) The draws of the bridges across the Missouri River from the mouth to Sioux City, Iowa, shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

\* \* \* \* \*

3. Section 117.687(a) is revised to read as follows:

**§ 117.687 Missouri River.**

(a) The draws of the bridges across the Missouri River from the mouth to St. Joseph shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

\* \* \* \* \*

4. Section 117.691 is revised to read as follows:

**§ 117.691 Missouri River.**

The draw of the Illinois Central Gulf railroad bridge, mile 618.3, at Omaha, shall open on signal; except during the winter season between the date of closure and date of opening of the commercial navigation season as published by the Army Corps of Engineers, the draw need not open unless at least 24 hours advance notice is given.

Dated: August 20, 1998.

**Paul J. Pluta,**

*RADM, USCG, Commander, Eighth Coast Guard District.*

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**FEDERAL EMERGENCY  
MANAGEMENT AGENCY**
**44 CFR Part 5****RIN 3067-AC75****Production or Disclosure of  
Information**

**AGENCY:** Federal Emergency Management Agency (FEMA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would give the public access to government information and records maintained in an electronic format, provide for expedited processing of certain requests, establish an "electronic reading room,"

eliminate an agency backlog of work as a justification for delay in processing requests, require redacted material to be estimated or indicated in an agency's response, and require FEMA to make available an agency reference guide on the Freedom of Information Act (FOIA). This proposed rule would revise FEMA's existing regulations to reflect the provisions of the Electronic Freedom of Information Act Amendments of 1996.

**DATES:** We invite comments on this proposed rule on or before October 27, 1998.

**ADDRESSES:** Please submit your comments to the Rules Docket Clerk, Office of General Counsel, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202-646-4536, or by email to rules@fema.gov.

**FOR FURTHER INFORMATION CONTACT:** Sandra Jackson, FOIA/PA Specialist, Office of General Counsel, 500 C Street SW., room 840, Washington, DC 20472, (202) 646-3840.

**SUPPLEMENTARY INFORMATION:** This proposed rule would revise FEMA's existing regulations to reflect the provisions of the Electronic Freedom of Information Act Amendments of 1996, Public Law 104-231, affecting the areas of electronic records, physical and electronic reading rooms, time limits and backlogs, records denial specification, reference guide, and annual reporting requirements.

According to the amended Act, the term "record" encompasses information, when maintained in any format, including an electronic format. The category of "reading room" records (5 U.S.C. 552(a)(2)) is expanded to include records that the agency discloses in response to a FOIA request that has become, or is likely to become, the subject of future requests. An index of those records that are the subject of multiple requests must be prepared and made available to the public by electronic means by December 31, 1999. Agencies must create an "electronic reading room" to contain those records created after November 1, 1996 that fall within the "reading room" category as defined by 5 U.S.C. 552(a)(2).

Additionally, agencies must make reasonable efforts to search for records, even when information is maintained in an electronic database, unless such efforts would significantly interfere with the operation of the agency's automated information system. If information is requested in a particular format, agencies must attempt to provide the record in that format if readily reproducible.

The general period for responding to requests has been changed from 10 workdays to 20 workdays, and requests for expedited processing must be accommodated when the requester has demonstrated a compelling need as defined by the statute. Agencies and requesters must discuss alternative time frames to process requests, or modifications to the requests, when the general 20 workday time for responding cannot be met. Moreover, multi-track processing may be established as a way to provide more timely responses.

The amount of information deleted on a record must be indicated, unless doing so would harm an interest protected by an exemption; and, if technically feasible, the indication shall be at the place in the record where the deletion is made. If whole pages or documents are withheld, an estimate of the volume of material withheld must be provided to the requester, unless doing so would harm an interest protected by an exemption. Also, a guide for requesting records, which is to include an index and description of major record systems, must be developed and made available by computer telecommunications.

Section 5.3 would clarify the definition of "record" to include information stored in an electronic format, and of "search" as defined in section 552(a)(3)(D) to mean review manually or by automated means.

Section 5.4 would be revised to refer to the availability of records and information from the FEMA website, FEMA FAX, and the FEMA/FOIA Handbook.

Section 5.10 would add the annual reporting requirements of FOIA activity.

Section 5.25(d) would add a new category to reading room records that "the agency determines have become or are likely to become the subject of subsequent requests for substantially the same records." Section 5.25(e) refers to the indexing of the records under § 5.25(d).

Section 5.26 would refer to the "electronic reading room" pursuant to 5 U.S.C. 552(a)(2)(D). The statute envisions that each agency will ultimately have both a traditional reading room, and a new "electronic reading room" on the WorldWide Web. Section 5.26 would also update the mailing address of FEMA Regional Offices.

Section 5.28 would require FEMA to index records under the authority of 5 U.S.C. 552(a)(2)(E).

Section 5.43(a) would define the term "public interest" as interpreted by the U.S. Supreme Court in *Department of Justice v. Reporters Committee for*