



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0186]

RIN 1625-AA09

Drawbridge Operation Regulation; Portage River, Port Clinton, OH

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating regulations of the Monroe Street Highway Bridge, mile 0.4 and the Norfolk Southern Railroad Bridge, mile 1.5, over the Portage River at Port Clinton, Ohio. We invite your comments on this proposed rulemaking.

DATES: Comments and relate material must reach the Coast Guard on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2023-0186 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 temporary final rule, call or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; telephone 216-902-6085, e-mail Lee.D.Soule@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
IGLD	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

The Portage River is 41.5 miles long and empties into Lake Erie at Port Clinton, Ohio. The lower twelve miles of the Portage River, between Oak Harbor and the mouth at Port Clinton, is an estuary and is over 3,000 feet wide making it a prime location for recreational boating, canoeing, and kayaking.

Several inspected and uninspected passenger vessels operate in the river, sharing the waterway with approximately 12,000 (state registered) powered and unpowered recreational vessels.

The river is crossed by two movable bridges. The Monroe Street Highway Bridge, mile 0.4, is a double leaf bascule bridge that provides a horizontal clearance of 75-feet and a vertical clearance of 9-feet in the closed position and an unlimited clearance in the open position based on LWD. The Norfolk Southern Railroad Bridge, mile 1.5, is a single leaf bascule bridge with a horizontal clearance of 109-feet and a vertical clearance of 9-feet in the closed position and an unlimited clearance in the open position

based on LWD and is remotely operated by the Norfolk Southern Railroad Bridge, mile 5.76, over the Maumee River, Toledo, OH.

The current bridge regulation was written in 1986 (49 FR 17452); it has been amended four times. We intend to revise the regulation to make it easy to understand and to align this regulation with the regulations of the Maumee and Sandusky Rivers, for the ease of drawtenders and the mariners.

III. Discussion of Proposed Rule

Paragraph (a) of 33 CFR 117.851 speaks of emergency and public vessels crossing at the bridge. This requirement was included with the original regulation before the requirements of 33 CFR 117.31 were promulgated and to prevent any confusion with part a of 33 CFR 117. Accordingly, we propose removing this language.

We propose to remove the board gauge requirement in paragraph (b) since the water fluctuations in the river do not change rapidly and both bridges over the river will be required to open on signal. If a mariner is not certain of the clearance under the bridge, they can request a full opening. We look forward to public comments on the actual need and usefulness of the current board gauges.

Monroe Street Highway Bridge, mile 0.4, currently the bridge opens on the hour and half-hour in the summer; this schedule was intended to preserve the bridge until it could be replaced. However, since the publication of the original rule, the bridge has completed an extensive rehabilitation, with both leaves having been removed and new leaves fabricated for the bridge. New modern controls have been installed. The bridge has annual daily crossings of 3,227 vehicles in 2022, compared to 1994, when the bridge had an annual daily crossing of 5,800 vehicles. The trend has been a 2% to 17% drop in vehicles crossing this bridge year over year. Hourly and half-hour opening are tools used to extend the longevity of a failing drawbridge and balance the needs of vehicle crossings while still meeting the reasonable needs of navigation in the waterway. The Coast Guard

believes that the previous justifications for hourly and half-hour openings have diminished. Accordingly, the Coast Guard is proposing removal of the hourly and half-hour openings. Rather, the Coast Guard is proposing that the bridge open on signal (with notice requirements during certain winter months).

The Norfolk Southern Railroad Bridge, mile 1.5, will continue to operate remotely, maintain and operate a radiotelephone, and open on signal. At this time, we do not propose that the bridge should remain in the open position through the summer like the nearby Norfolk Southern Railroad Bridge, mile 5.76; however, we will propose the bridge operate and maintain a telephone the number, to be posted at the bridge, so mariners may call and request an opening.

When the winds exceed 40 mph there is a danger that lightweight railcars could be blown off the Norfolk Southern Railroad Bridge, mile 1.5. These half floating railcars are a potential hazard to motorists and marine traffic. During wind events, the railroad routinely sets upwind blocker, composed of heavy railcars on the parallel track to block the wind, which protects railcars from the wind. However, the railroad must coordinate with the local Coast Guard Sector office before posting wind blockers, as the wind blockers may disrupt a bridge's posted operating schedule. Often, there is confusion on how long the wind blocker can be posted and when it needs to be moved to allow vessels to pass through the bridge. The Coast Guard is proposing new language that will specify when a wind blocker is appropriate and stipulate how it will be used by the railroad.

The winter hours noted in paragraph 2 of the current regulation is an antiquated regulation from when the U.S. Army Corps of Engineers regulated bridges over navigable waters and allowed a 24-hour advance notice. We propose amending the winter hours to require a 12-hour advance notice, in line with current policies. Further, we propose moving the dates from December 1 to April 30 to November 1 to April 30. These dates will be in harmony with the inspected and uninspected passenger vessels

schedules and better meet the reasonable needs of navigation for both the Monroe Street Highway Bridge, mile 0.4, and the Norfolk Southern Railroad Bridge, mile 1.5.

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 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.

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 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 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, Table3-1 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 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- 2023-0186 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 webpage. 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; Department of Homeland Security Delegation No. 00170.1, Revision 01.3.

2. Revise § 117.851 Portage River to read as follows:

§ 117.851 Portage River.

(a) The draw of the Monroe Street Highway Bridge, mile 0.4, will open on signal, except from November 1 through April 30 the draw will open on signal if at least 12-hours' notice is given.

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.5, is remotely operated, is required to operate a radiotelephone and a telephone, and will open on signal, except from November 1 through April 30 the draw will open on signal if at least 12-hours' notice is given. If the winds are predicted to be over 40 MPH, a wind blocker is authorized, and the bridge will open with a 2-hour advance notice until the end of the wind event. The drawtender will request the cognizant USCG Sector to issue a broadcast notice to mariners to alert vessels of the wind blocker and the 2-hour advance notice requirement.

Dated: May 1, 2023.

E. J. Doucette,
Captain, U.S. Coast Guard,
Acting Commander, Ninth Coast Guard District.

