



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0189]

RIN 1625-AA09

Drawbridge Operation Regulation; Ashtabula River, Ashtabula, OH

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the Fifth Street Bridge, mile 0.15, and the Norfolk Southern Railroad Bridge, mile 1.5, both over the Ashtabula River. The Coast Guard is also changing signaling and signage requirements for the Norfolk Southern Railroad Bridge, mile 1.5. The Coast Guard is modifying these rules in response to complaints received concerning the operations of one or more bridges over the waterway and a desire to improve safety, remove barriers to interstate commerce, improve communications, and standardize winter operations associated with these bridges.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>. Type USCG-2023-0189 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this 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
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
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 8, 2023, the Coast Guard published an NPRM, with a request for comments, entitled “Drawbridge Operation Regulation; Ashtabula River, Ashtabula, OH” in the Federal Register (88 FR 29591) to seek your comments on whether the Coast Guard should consider modifying the current operating schedule. During the comment period that ended July 7, 2023, we did not receive any comments.

The Ashtabula River flows into Lake Erie at the City of Ashtabula, Ohio. The Ashtabula River is 40 miles in length but only the first 2 miles of the river is navigable. Large commercial vessels, passenger vessels, and recreational vessels use the waterway. There are three bridges crossing the Ashtabula River. The Norfolk Southern Railroad, mile 0.5, is a fixed overhead conveyor with a horizontal clearance of over 50 feet and a vertical clearance of 100 feet above LWD. The Fifth Street Bridge, mile 1.4, is a single leaf bascule bridge with a reported horizontal clearance of 50 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. The Norfolk Southern Railroad Bridge, mile 1.5, is a single leaf bascule bridge with a horizontal clearance of 112 feet and a vertical clearance of 11 feet above LWD in the closed position and an unlimited clearance in the open position. There is no alternative route for vessels traveling the Ashtabula River beyond mile 0.5 to prevent

them from passing under or through one or all these bridges. Commercial vessels over 600 feet utilize moorings just outside of the river's mouth. Several of the vessels in the Ashtabula River are small passenger vessels and other small craft over 21-feet.

The two bascule bridges across the Ashtabula River are regulated by 33 CFR 117.847. The draw of the Fifth Street Bridge, mile 1.4, is required to open on signal for the passage of commercial and emergency vessels and on the hour and half for all other vessels. The Norfolk Southern Railroad Bridge, mile 1.5, is authorized to operate remotely, and is required to open on signal from April 1 through November 30 from 7 a.m. to 11 p.m. and requires a 24-hour advance notice outside of this time.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Coast Guard is also issuing new rules that will help mariners signal for and anticipate bridge openings.

On a typical summer weekend over thirty vessels can be seen waiting at the bridge for an opening while there is no train crossing the bridge. Mariners repeatedly expressed uncertainty regarding how to request an opening citing poor radio communications with the bridge and vague signage at the bridge which does not explain how to request a bridge opening. This new regulation will require the remote drawtender to monitor and answer a telephone in addition to the other signals required by regulation to help improve communications at the bridge, reducing unnecessary delays and the risks posed by poor communications.

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

The Coast Guard did not receive any comments from the NPRM.

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.

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 section 3(f) of Executive Order 12866, as amended by Executive Order 14094 (Modernizing Regulatory Review). Accordingly, it 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 and the requirement for signage has been in effect since April 24, 1984 (49 FR 17452), without any complaint to the burden of cost to the bridge owner.

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 V. A above, this rule will 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** section.

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, 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 rule promulgates the operating regulations or procedures for drawbridges and is 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.

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; and DHS Delegation No. 00170.1,
Revision No. 01.3.

2. Revise § 117.847 to read as follows:

§ 117.847 Ashtabula River.

(a) The draw of the Fifth Street Bridge, mile 1.4, over the Ashtabula River shall open on signal for the passage of vessels on the hour and half hour, except from October 10 through May 1 when no drawtender is required to be in attendance and the bridge will open on signal with a 12-hour advance notice from vessels.

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.5, over the Ashtabula River shall open on signal and may be remotely operated. The bridge owner shall maintain and monitor a 2-way public address system, VHF-FM Marine Radio, and telephone. From October 10 through May 1 the bridge will open on signal with a 12-hour advance notice from vessels. The bridge shall display a sign readable from vessels approaching the bridge from upriver or down river and readable for 500 feet that states: the name of the bridge; the river mile; that the bridge is remotely operated; and that mariners may signal the bridge to open by sounding one prolonged blast followed by one short blast of the horn, calling via VHF-FM Marine Radio Channel 16, or by calling the number posted by the owner. The sign shall also include language notifying mariners that from October 10 through May 1 the bridge requires a 12-hour advance notice for openings by calling the number posted by the owner.

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