



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, Department of Homeland Security (DHS).

ACTION: Final rule.

SUMMARY: The Coast Guard is altering 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.

DATES: This rule is effective [INSERT DATE 30 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 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
MPH	Miles Per Hour
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
OMB	Office of Management and Budget
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 5, 2023, the Coast Guard published an NPRM, with a request for comments, entitled “Drawbridge Operation Regulation; Portage River, Port Clinton, OH” in the Federal Register (88 FR 29007), to seek your comments on whether the Coast Guard should consider modifying the current operating schedule to 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. 208 comments were received during the NPRM period. The relevant comments are addressed in Section IV of this Final Rule.

The current regulation for the Portage River reads as follows:

§ 117.851 Portage River.

(a) Public vessels of the United States, State or local government vessels used for public safety, vessels in distress and vessels seeking shelter from rough weather shall be passed through the draws listed in this section as soon as possible. Except as provided in paragraph (c)(1)(ii) with respect to the Monroe Street bridge, commercial vessels shall be passed through the draws of this section as soon as possible.

(b) The owners of the bridges listed in this section shall provide and keep in good legible condition two board gages painted white with black figures to indicate the vertical clearance under the closed draw at all stages of the tide. The gages shall be so placed on

the bridge that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

(c) The draw of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From May 1 through November 30—

(i) Between the hours of 12 midnight and 6 a.m., the draw shall open on signal.

(ii) Between the hours of 6 a.m. and 12 midnight, the draw shall open on signal.

However, the draw need not open on signal during this time for recreational craft and commercial vessels licensed to carry fifteen or less passengers, or less than ten gross tons, unless in distress or seeking shelter from rough weather. For these vessels, the draw need open only from three minutes before to three minutes after the hour and half-hour.

(2) From December 1 through April 30, the draw shall open on signal if at least 24 hours' notice is given.

(d) The draw of the Norfolk Southern Bridge, Mile 1.5 at Port Clinton, is remotely operated, is required to operate a radio telephone, and shall open on signal.

However, from December 1 through April 30, the draw shall open on signal if at least 24 hours' notice is given.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499. The Portage 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, a vertical clearance of 9-feet in the closed position, and an unlimited clearance in the open position based on Low Water Datum (LWD). The Norfolk Southern Railroad Bridge, mile 1.5, is a single leaf bascule bridge with a horizontal clearance of 109-feet, a vertical clearance of 9-feet in the closed position, and an unlimited clearance in the open position based on LWD. Norfolk Southern Railroad's bridge over the Portage River is remotely operated

by the Toledo Norfolk Southern Railroad Bridge.

Numerous informal complaints and concerns from local mariners concerning the operations of the Norfolk Southern Railroad Bridge, mile 1.5 triggered a review of the operating regulations governing the bridges across Portage River.

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

During the rulemaking process we discovered that the Monroe Street Highway Bridge, mile 0.4, sees an average of 15,000 vessels passing through the bridge annually. In addition, an average of 3,500 vehicles transit over the bridge daily. The current regulation allows the bridge to open on signal if a 24-hour advance notice of arrival is provided by vessels during the period from November 30th through April 30th. A review of the past three years of drawtender logs indicates the bridge opens more than three times a day in April for vessels. After analyzing this data and discussing vessel and vehicle traffic levels with Ohio Department of Transportation (ODOT) and to better conform to existing use patterns, the end date for the advance notice of arrival period for the Monroe Street Highway Bridge, mile 0.4, and the Norfolk Southern Railroad Bridge, mile 1.5, will be pushed back to March 31 and changed to a 12-hour advance notice to meet the current needs of navigation and to conform to current guidance.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 116 concerns were raised that vessels should not have the right of way or preference to vehicular traffic. The Coast Guard is required by law to ensure that bridges across navigable waters of the United States do not unreasonably obstruct waterway traffic while providing for the reasonable needs of land traffic. The Coast Guard must also ensure actions are taken that allow the 15,000 vessels that pass through the bridge annually do so in a safe and orderly manner. To ensure vessel safety, any schedule causing vessels to wait for a bridge opening must also provide for safe waiting areas for the number of vessels passing through the bridge. Because of this, changes to a

drawbridge regulation are bound by law to minimize exceptions or provisions which may restrict waterway traffic. As a result of our review of the bridge drawtender logs, the Coast Guard discovered, on average, less than four openings occurred between 6 p.m. to 6 a.m. each day. Accordingly, the Coast Guard intends to maintain hourly and half hour openings from 6 a.m. to 6 p.m. to ease the movement of vehicles. In advance of a special event, the City or State may in request to modify the drawbridge operations temporally to accommodate high vehicle or vessel flow associated with these events. Great Lakes ports commonly make these requests in the spring for modifications to be effective during special summer events.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 27 expressed concerns that emergency vehicles would not be able to cross the bridge if it was open. 33 CFR 117.31 requires the drawtender to make all reasonable provisions for emergency response whether waterborne or vehicular. Informal comments from residents regarding emergency operations were responded to directly and personally by email or phone depending on how the comment was received. We also corresponded with ODOT and the Port Clinton Fire Department for their respective input on each informal inquiry.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 8 comments were focused on a pedestrian crossing. Pedestrian crossing was established to allow pedestrians to cross from an adjacent parking lot to the boarding area for the Jet-Express Ferry. Commenters reported the crossing of pedestrians at the foot of the bridge causes vehicular traffic back-ups at the bridge and blocks emergency vehicles. The Coast Guard intends to provide these comments to ODOT for their evaluation of the crossing and the effect it has on highway transportation issues.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, only one commenter thought that the existing clearance gauges should remain. The Coast Guard

does not believe the bridge needs to maintain these gauges at the bridge to alert the mariners to changes to the bridge clearance due to fluctuations in water level. Clearance gauges are required on bridges where the waterway is subject to the ebb and flow of tides, or where water levels are altered artificially by humans through dams, locks, or other artificial works. The bridge provides a vertical clearance of nine feet in the closed position. The short-term natural fluctuations in water levels are not significant enough to require these gauges be maintained at the bridge. When recreational mariners inquired about the clearance gauges during the comment period, we responded by asking for the air draft of each commenter's vessel and for an explanation of how each commenter utilized the gauges to determine if they needed a bridge opening. Each commenter operating a power-driven recreational vessel responded that they did not know the height (air draft) of their vessel. Although 33 CFR 117.11 states that no vessel owner or operator shall signal a drawbridge to open after all lowerable appurtenances that are not essential to navigation have been lowered to safely pass under the bridge (stepping the mast), every sailing vessel stated the height of their vessel required an opening regardless of the water level.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 3 comments stated crime would increase if the bridge changed to an on-demand signal from scheduled openings. No additional information or documentation was provided to support these assertions.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 25 comments stated the bridge has always been operated in the existing manner and should not be changed. No documentation to support this alleged historical factor other justification was provided by any commenter.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 15 commentors cited public convenience as justification not to change the schedule. These comments did not provide any supporting documentation for their views.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 2 comments were received concerning the potential for remote operation of the bridge. The potential authorization of remote operation of the Monroe Street Highway Bridge is not part of this rulemaking.

Of the comments received for the Monroe Street Highway Bridge, mile 0.4, 3 commentors thought winter hours ended on April 1 because ODOT has manned the bridge starting on April 1 instead of May 1 due to the increase in requests for bridge openings during that period. As a result, we are moving the end date of the regulation from May 1 to April 1. We also received comments from Ottawa County and the State of Ohio that the regulation should be left as-is. No data to support this was provided by either office. The City of Port Clinton Legal office also questioned the legality of the federal government's jurisdiction over a federal waterway of the United States. The city did not reply to numerous phone calls and emails from the Coast Guard in response to this comment. Several informal questions were also received by telephone from citizens regarding this regulation. We took the opportunity to answer any questions they may have had and invited each caller to leave a formal comment on the docket's web site.

One comment was left by Norfolk Southern Railroad addressed of Norfolk Southern's practice of parking a train on the bridge at mile 3.5 to act as a wind blocker. The wind blocker action proposed in the NPRM was intended to reflect current practices of the railroad by creating a permanent deviation to the regulations which would allow Norfolk Southern to use a wind blocker without advanced authorization permission from the District Commander. Norfolk Southern's comments requested that the wind blocker provision not become part of the regulation. Because it will not be included in part B of

33 CFR 117, in advance of a significant weather event, the railroad will need to request a deviation in writing, to place a wind blocker on the bridge as required in 33 CFR 117.35. While the Coast Guard does not dispute Norfolk Southern's comment that high winds can present safety issues regarding railroad operations, expedient notification to the Coast Guard in accordance with 33 CFR 117.35 of the potential employment of a wind blocker ensures safe operations while avoiding unreasonable delays to marine traffic.

Lastly, Norfolk Southern claims the Coast Guard's regulation of bridges under the Rivers and Harbors Appropriations Act, of 1899 and subsequent laws presents a safety hazard to rail traffic. Congress' mandate to ensure the safety and efficiency of interstate commerce on the waterways is clear and is not mutually exclusive to the safe operation and efficiency of rail traffic.

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 proposed 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). This rule has not been designated a "significant regulatory action," under Executive Order 12866. 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 or that the bridge will open on a schedule.

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 § 117.851 to read as follows:

§ 117.851 Portage River.

(a) The draw of the Monroe Street bridge, mile 0.4 at Port Clinton, shall open as follows:

(1) From April 1 through November 30—

(i) Between the hours of 6 p.m. and 6 a.m., the draw shall open on signal.

(ii) Between the hours of 6 a.m. and 6 p.m., the draw shall open on signal.

However, the draw need not open on signal during this time for recreational craft and commercial vessels licensed to carry six or less passengers. For these vessels,

the draw need open only from five minutes before to five minutes after the hour and half-hour.

(2) From December 1 through March 31, the draw shall open on signal if at least 12 hours' notice is given.

(b) The draw of the Norfolk Southern Bridge, Mile 1.5 at Port Clinton, is remotely operated, is required to operate a radio telephone, and operate and answer a telephone, and shall open on signal. Except, from December 1 through March 31, the draw shall open on signal if at least 12-hours' notice is given.

Dated: Mar 4, 2024.

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

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