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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[Docket No. USCG-2023-0184]**

**RIN 1625-AA09**

**Drawbridge Operation Regulation; Maumee River, Toledo, OH**

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

**ACTION:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the CSX Railroad Bridge, mile 1.07, the Wheeling and Lake Erie Railroad Bridge, mile 1.80, the Craig Memorial Bridge, mile 3.30, the Martin Luther King Jr. Memorial Bridge, mile 4.30, and the Norfolk Southern Railroad Bridge, mile 5.76, all over the Maumee River at Toledo, Ohio. The original regulation was published in 1986 and was amended over the years. The new operating schedule simplifies and clarifies operations and will reduce confusion for recreational vessels and drawtenders.

**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 the docket number (USCG-2023-0184) in the “SEARCH” box and click “SEARCH”. In the Document Type column, select “Supporting & Related Material.”

**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
CRSTF	Cuyahoga River Safety Task Force
DHS	Department of Homeland Security
FR	<i>Federal Register</i>
IGLD	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
OMB	Office of Management and Budget
ODOT	Ohio Department of Transportation
PAWSA	Ports and Waterway Safety Assessment
TMMS	Traffic Monitoring Management System
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On April 27, 2023, the Coast Guard published a NPRM, with a request for comments, entitled “Drawbridge Operation Regulation; Maumee River, Toledo, OH,” in the *Federal Register* (88 FR 25572), to seek public comments on whether the Coast Guard should consider modifying the current operating schedules of the bridges.

The Maumee River from the head of navigation to the mouth of the river is crossed

by ten bridges, four of which are movable. The vertical clearance of all bridges on the Maumee River are based on LWD.

The CSX Railroad Bridge, mile 1.07, is a swing bridge with a horizontal clearance of 143-feet in both left and right draws and a vertical clearance of 22-feet in the closed position and an unlimited clearance in the open position.

The Wheeling and Lake Erie Railroad Bridge, mile 1.80, is a swing bridge with a horizontal clearance of 134-feet in both left and right draws and a vertical clearance of 20-feet in the closed position and an unlimited clearance in the open position.

The Craig Memorial Bridge, mile 3.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet available in the center 31-feet while in the closed position and an unlimited clearance in the open position.

The Martin Luther King Jr. Memorial Bridge (prior to 1989, the Cherry Street Bridge), mile 4.30, is a double leaf bascule bridge, that provides a horizontal clearance of 200-feet with a minimum vertical clearance of 34-feet with a vertical clearance of 44-feet available in the center 31-feet while in the closed position and an unlimited clearance in the open position.

The Norfolk Southern Railroad Bridge, mile 5.76, is a swing bridge with a horizontal clearance of 115-feet in both left and right draws and a vertical clearance of 17-feet in the closed position and an unlimited clearance in the open position.

The CSX Railroad Bridge, mile 11.38, was a swing bridge with a horizontal clearance of 110-feet in both left and right draws and a vertical clearance of 53-feet in the closed position and an unlimited clearance in the open position. The bridge was allowed to

remain closed by regulation when the upriver ship building facility closed. The bridge was removed in its entirety and at the District Commander's satisfaction in 2019.

On November 3, 1986, we published in the *Federal Register* (51 FR 39858) regulations for the Maumee River's movable bridges under 33 CFR 117.855 (Maumee River) that included several schedules for the bridges. The schedules were intended to ease the travel of motorists across the bridges while still allowing recreational and commercial commerce to travel the river.

During the comment period that ended June 26, 2023, we received two comments, and those comments are addressed in section IV.

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority 33 U.S.C. 499.

We will require a 12-hour advance notice from December 15 through March 31. Each bridge owner will be responsible to provide to the District Commander an appropriate phone number to be advertised to the mariners in the Local Notice to Mariners and would be required to be included in the requirements of 33 CFR 117.55.

In 2004, a new multilane fixed bridge was built at mile 3.25 that alleviated vehicle traffic congesting at the two double leaf highway bridges, significantly reducing the annual average vehicle counts at each bridge. The hourly restrictions imposed on recreational vessels will be eliminated due to the reduction in vehicle crossing numbers reported by the ODOT's Transportation Information Management System. Additionally, the reduction in recreational vessels with air drafts requiring bridge openings at either bridge crossing similarly renders the existing rush hour regulatory unnecessary.

In the past three years, we have received sixty-six complaints of delays at three of the

drawbridges over the Maumee River. These complaints include: three written complaints against the Craig memorial Bridge, mile 3.30; thirty-one written complaints against the CSX Railroad Bridge, mile 1.07; and thirty-two written complaints against the Norfolk Southern Railroad Bridge, mile 5.76. Most of the complaints against the two railroad bridges have been about a lack of communications between the vessels and the drawtender. Often the miscommunications have been between the drawtender and the railroad dispatchers. To improve communications, we will require all drawbridges over the Maumee River to maintain and operate a VHF-FM Marine Radio and in addition to the Marine Radio the Railroad Bridges at mile 1.07 and mile 5.76 will maintain and operate a telephone with a correct number to be placed on signage at the bridge.

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

We received two comments on this regulation that supported the proposed changes as improving communications and the flow of vessels transiting the river. We did not make any changes in response to these supportive comments.

#### 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.

#### 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 § 117.855 to read as follows:

#### **§ 117.855 Maumee River.**

(a) The draw of the CSX Railroad Bridge, mile 1.07, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

(b) The draw of the Wheeling and Lake Erie Railroad Bridge, mile 1.80, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(c) The draw of the Craig Memorial Bridge, mile 3.30, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(d) The draw of the Martin Luther King Jr Memorial Bridge, mile 4.30, will open on signal, except that from December 15 through March 31 the bridge will require at least

12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio.

(e) The draw of the Norfolk Southern Railroad Bridge, mile 5.76, will open on signal, except that from December 15 through March 31 the bridge will require at least 12-hours advance notice. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

**Jonathan Hickey,**

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*Commander, Ninth Coast Guard District.*

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