



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0187]

RIN 1625-AA09

Drawbridge Operation Regulation; Black River, Lorain, OH

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

ACTION: Final rule.

SUMMARY: The Coast Guard is altering the operating schedule that governs the Charles Berry Bridge, mile 0.6, and the Norfolk Southern Railroad Bridge, mile 1.2, both over the Black River. The regulation has remained primarily unchanged since 1986 and needs to be updated to ensure the needs of all modes of transportation are being met.

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-2023-0187) 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	Federal Register
IGLD	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
ODOT	Ohio Department of Transportation
OMB	Office of Management and Budget
PAWSA	Ports And Waterway Safety Assessment
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On May 4, 2023, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; Black River, Lorain, OH,” in the Federal Register (88 FR 28442). There we stated why we issued the NPRM and invited comments on our proposed regulatory action related to this regulatory change. During the comment period that ended on July 3, 2023, we received 4 comments, and those comments are addressed in section IV of this final rule.

III. Legal Authority and Need for Rule

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

Three bridges cross the river at Lorain. The Charles Berry Bridge, mile 0.6, is a double leaf bascule bridge that provides a horizontal clearance of 148-feet and a vertical clearance of 33-feet at center above LWD in the closed position and an unlimited clearance in the open position.

The Norfolk Southern Railroad Bridge, mile 1.2, is a vertical lift bridge that provides a horizontal clearance of 205-feet and a vertical clearance of 35-feet in the closed position above LWD and 123-feet in the open position above LWD.

The Lofton Henderson Memorial Bridge, mile 2, is a fixed bridge that provides a

horizontal clearance of 256-feet and a vertical clearance of 97-feet based on LWD.

The drawtender logs provided quarterly summaries of bridge lifts and provided a rough picture of the type of vessels passing through the bridge. Currently, the bridge opens frequently for commercial vessels and very infrequently for recreational vessels. The logs also indicated seasonal surges of recreational vessels transiting from the marina in the outer harbor to the boat yard upriver of the bridge. These surges occurred during the winter haul out, which occurs each fall, and again each spring as vessels return from the boat yard to the outer marina.

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

The City of Lorain commented they were concerned with bridge openings between 3 p.m. and 5 p.m. and did not provide any data to support that request. We did ask for traffic data from ODOT to clarify the city's concerns, and we only received very general data that showed there was a small 300 vehicle increase in traffic during those hours, but, without detailed drawtender logs showing the actual problem is with recreational vessels it is difficult to adjust the schedule to address the concerns. The Charles Berry Bridge, mile 0.6, has a vertical clearance of 33 feet in the closed positions that allows most recreational vessels to pass under the bridge safely without an opening. Even under the prior regulations, commercial traffic was provided an opening on signal without restrictions. As such, there was no guarantee that the bridge would be open between 3 p.m. and 5 p.m., and despite the recent dredging activity and break wall repair activity along the Black River over the past three years, the Coast Guard has not received any complaints arising from increased unrestricted vessel traffic requiring on demand bridge openings.

Terminal Ready Mix provided comments concerned with delays to vessels delivering materials to the docks in the winter and that their trucks crossing the Charles

Berry Bridge, mile 0.6, would have to stop frequently for recreational vessels. However, the winter regulations have been in effect since 1986, and the Coast Guard has not received any complaints from commercial docks or the freighters that visit Lorain regarding the winter hours. Additionally, almost all the bridge openings were for the passage of freighters or tugs performing harbor maintenance. The Coast Guard has no record of delay from commercial vessels related to bridge openings, and there have been very limited recreational vessel requests for bridge openings. Concerns that road surface maintenance may delay cement trucks crossing the Lofton Henderson Memorial Bridge, mile 2, a fixed bridge, should be addressed to the Federal Highway Administration for consideration.

The ODOT submitted two comments and did not object to removal of opening restrictions for recreational vessels at various hours of the day, but expressed a desire to maintain the hourly and half hour openings for recreational vessels, even though the quarterly drawtender logs show very limited openings for any recreational vessels, except for the spring and fall migration of recreational vessels heading to and from the local boat storage yard. Additional drawtender logs submitted by ODOT listed several openings for commercial vessels, and only sporadic openings for recreational vessels.

Bridges across the navigable waters of the United State are considered obstructions to vessel navigation and are permitted only when they serve the needs of land transportation. While the public right of navigation is paramount to land transportation, it is not absolute. This right may be diminished to benefit land transportation, provided that the reasonable needs of navigation are not impaired. The documentation available indicates there is very little recreational traffic that requires the Charles Berry Bridge, mile 0.6, to open, and most of the openings that occur are for commercial vessels that are not subject to opening restrictions, therefore there is little disparity between the modes of transportation.

Special events, like July 4th Fireworks and local homecoming parades, could temporarily increase vehicle traffic. In those circumstances the city may request the Coast Guard District Commander to grant a special deviation to the regulations to allow the bridge to remain closed while traffic clears from such events.

During our review, we discovered a clause allowing for the bridge to operate with a 1-hour advance notice. Because the clause has not been utilized since 1995, all commenters that addressed the provision agreed it was unnecessary to remain. As such, we have deleted it from the final rule.

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). 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.

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.

We did not receive any comments from 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 § 117.850 to read as follows:

§ 117.850 Black River.

(a) The Charles Berry Bridge, mile 0.6, will open on signal, except from January 1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

(b) The Norfolk Southern Railroad Bridge, mile 1.2, will open on signal, except from January 1 through March 31 when the bridge will open if a 12-hour advance notice is given. The bridge will operate and maintain a VHF-FM Marine Radio and a telephone number.

Jonathan Hickey

*Rear Admiral, U.S. Coast Guard,
Commander, Ninth Coast Guard District.*

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