



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2023-0188]

RIN 1625-AA09

Drawbridge Operation Regulation; Cuyahoga River, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is creating a new operating schedule to govern all movable bridges over the Cuyahoga River. The Coast Guard is also establishing new rules that will assist mariners signal for and anticipate bridge openings. These changes are expected to ensure the safe and efficient flow of traffic on the Cuyahoga River.

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-2023-0188) 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
GBCA	Greater Cleveland Boating Association
IGLD85	International Great Lakes Datum of 1985
LWD	Low Water Datum based on IGLD85
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 22, 2023, the Coast Guard published a Notice of Proposed Rulemaking (NPRM), with a request for comments, entitled “Drawbridge Operation Regulation; Cuyahoga River, Cleveland, OH” in the Federal Register (88 FR 32709), to seek your comments on whether the Coast Guard should consider modifying the current operating schedule.

During the comment period that ended July 21, 2023, we received five comments. 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. The Coast Guard is establishing new rules that will help mariners signal for and anticipate bridge openings. The Cuyahoga River is considered one of the major industrial centers in the Great Lakes and handles several commodities for domestic and international commerce, including steel, heavy machinery, dry and liquid bulk products, and salt. Heavy recreational traffic is concentrated in the Old River and on the Cuyahoga River up to mile 2.42 during the summer. This mix of large commercial vessels and recreational vessels are a concern to the Coast Guard and mariners alike. Mariners have raised concerns to the Ninth Coast Guard District regarding the safety and consistency of moveable bridge operations on the Cuyahoga River, specifically the Norfolk Southern Railroad Bridge, at Mile 0.76.

The Norfolk Southern Railroad Bridge, at Mile 0.76, is locally known as NS1.

Mariners have complained for years that it is too slow to lift for cruise ships, freighters, and recreational boats transiting between the river and Lake Erie. The Coast Guard receives approximately two hundred written formal and informal reports of unreasonable bridge delays across the Great Lakes region each year; the vast majority concern the Norfolk Southern Railroad Bridge, mile 0.76.

Businesses in the Cleveland Flats neighborhood, a neighborhood adjacent to the Norfolk Southern Railroad Bridge, mile 0.76, have expressed that problems at the bridge are getting worse. The increase in problems appear to stem from increased recreational river traffic and as a result of Norfolk Southern's decision to move the bridge's dispatch center to Atlanta, Georgia. Local drawtenders maintain that their only duty is to open the bridge when the dispatcher in Atlanta, Georgia orders them to do so.

Emergency responders are also cautious when operating near Norfolk Southern Railroad Bridge, at Mile 0.76. Norfolk Local police and the Coast Guard patrol boats have expressed concern that their boats could be trapped behind the bridge, thus delaying emergency response to events on the other side.

Modern bridge regulations are needed to allow vessel operators the opportunity to pass through the Cuyahoga River without loitering at the bridges and causing a hazardous condition. These regulatory additions were proposed in response to those concerns.

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

The conditions of the NPRM were supported by the comments received from the Canadian Chamber of Marine Commerce.

The GBCA concurred with the requirements proposed in the NPRM, including a clock countdown to notify mariners of the next opening of the Norfolk Southern Railroad Bridge at Mile 0.76. The GBCA expressed its dissatisfaction with operations at Norfolk Southern Railroad Bridge at Mile 0.76. The GBCA noted that recreational vessels are often forced to wait for a commercial vessel opening, as the bridge operators are non-

responsive to recreational traffic opening requests.

The American Waterways Operators is the tugboat, towboat, and barge industry's advocate. They commented against requiring a countdown clock and would prefer mandated scheduled openings for non-commercial vessels to pass through the bridge. The Coast Guard weighed this option, but elected to move forward with a countdown clock, as the clock best met the needs of recreational boating community as it related to transparency and improved communications.

Norfolk Southern Corporation commented that the Coast Guard did not seek appropriate comment from Norfolk Southern prior to the release of the NPRM. However, the Coast Guard has invited Norfolk Southern to area and regional meetings, including monthly virtual meetings, and the public meeting where the contemplated NPRM was discussed in open forum.

Norfolk Southern commented that they believe the use of a countdown clock would cause an unsafe condition at the bridge because some vessels may race to the bridge to take advantage of the pending opening. To the extent that people may rush toward a bridge opening, this is already happening: Large numbers of recreational boaters that have been waiting at the bridge, often for over an hour and at times in poor weather conditions, crowd the area and rush behind the commercial traffic so they can return to their home docks. This problem is caused primarily by Norfolk Southern Railroad Bridge's failure to respond to requests for an opening. The Coast Guard believes that the communication enhancements contained in this final rule, to include a countdown clock, will overall improve safety by increasing Norfolk Southern's transparency, communications and responsiveness as it relates to the boating community.

Norfolk Southern has argued that rail dispatchers have no idea where their trains are or how fast their trains are traveling, and thus Norfolk Southern is unable to determine when a train will arrive at the bridge, which would render a countdown clock to openings

meaningless. This comment is not consistent with the Coast Guard's experience as to how railroad operators function.

Most public complaints concern communications between mariners and the drawtenders, specifically the perceived lack of responsiveness by the drawtenders when mariners request an opening or when they request an update for time of the next opening. While the precise cause of each individual public complaint is unclear, poor communications between the Cleveland drawtender and the dispatcher in Atlanta may also contribute to the problem.

This regulation, including a countdown clock, required posting of a phone number, mandatory use of a VHF-FM Marine Radio by the drawtender, and mandatory signage, are all efforts to improve safety and communications between the drawtender and mariners.

The Coast Guard made a typographical error in the NPRM that would require the new signage to indicate to the public that the bridge is remotely operated language. However, the bridge is not currently remotely operated, and the Coast Guard does not intend to require a statement that the bridge is remotely operated.

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 *or* that the additional communications requirements are a result in years of failure for the boating public to contact the drawtender either because of overcrowding on VHF-FM marine Channel 16 or other reasons not forthcoming from the bridge employees.

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 (Public Law 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; DHS Delegation No. 00170.1, Revision No. 01.3.

2. Add § 117.848 Cleveland Harbor to read as follows:

§ 117.848 Cleveland Harbor.

- (a) The Norfolk Southern Railroad Bridge, mile 0.76, will open on signal.

(1) The bridge owner will maintain and monitor a VHF-FM Marine Radio, and telephone.

(2) The bridge will display a clock that counts down the estimated time of the next bridge opening that is visible to vessels approaching from the upriver or downriver side of the bridge.

(3) The bridge will also display a sign readable from vessels approaching the bridge from upriver or downriver and readable for 500 feet that states:

(i) the name of the bridge;

(ii) the river mile;

(iii) the opening signal of the bridge is one prolonged blast followed by one short blast of the horn or VHF-FM Marine Radio Channel 16, or by calling the number posted by the owner.

(b) All remaining moveable vehicle and railroad bridges on the Cuyahoga River will open on signal, except from December 15 through March 31 when the bridges will open if a 12-hour advance notice is provided. Said bridges include: Willow Avenue Bridge at Mile 1.02; Center Street Bridge, mile 1.28; the Columbus Road Bridge, mile 1.93; the Flats Industrial Railroad Bridge, mile 2.24; the City of Cleveland Railroad Bridge, mile 2.42; the Carter Road Bridge, mile 2.43; the Norfolk Southern Railroad Bridge the West 3rd Street Bridge, mile 3.42; the CSX Railroad Bridge, mile 4.75; the Cleveland Cliffs Railroad Bridge #1, mile 5.42; and the Wheeling & Lake Erie Railroad Bridge.

(c) The Voinovich Pedestrian Bridge, at the mouth of North Coast Harbor, will open on signal except from December 15 through March 31 when the bridge will open if a 12-hour advance notice is provided.

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