



## Coast Guard

### 33 CFR Part 117

[Docket No. USCG-2023-0185]

RIN 1625-AA09

### Drawbridge Operation Regulation; Sandusky Bay, Sandusky, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is altering the operating regulations and signaling requirements that govern the Norfolk Southern Railroad Bridge, mile 3.5, over the Sandusky Bay.

**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-2023-0185) 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 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](mailto: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

MOU	Memorandum of Understanding
MPH	Miles Per Hour
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking
§	Section
U.S.C.	United States Code

## II. Background Information and Regulatory History

The Coast Guard published an NPRM on May 8, 2023, entitled Drawbridge Operation Regulation; Sandusky Bay, Sandusky, OH in the *Federal Register*, to seek comments on a proposed modification to the current operating schedule to the Norfolk Southern Railroad Bridge, mile 3.5, Sandusky Bay. 88 FR 29584. During the comment period, that ended on July 7, 2023, we received two comments.

In addition to modernizing the regulation, this final rule will address two specific concerns of the Coast Guard as they relate to the operation of the Norfolk Southern Railroad Bridge, mile 3.5, and the responsiveness of drawtenders to marine traffic. The Coast Guard has received several complaints on the operations of the bridge, including, specifically, that the remote drawtender ignores telephone and radio calls from mariners. Sandusky Bay hosts over 12,000 registered recreational vessels a year and is home to the busiest amusement park in America. Federal, State, Local, and commercial search and rescue departments require dependable access to the Norfolk Southern Railroad Bridge, mile 3.5, to reach emergencies on both sides of Sandusky Bay. Emergency responders and the greater public need a simple, reliable, and consistent method for requesting bridge openings.

## III. Legal Authority and Need for Rule

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

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

Of the two comments received from bridge owner, Norfolk Southern, one comment requested an extension to the comment period and the other comment was in

opposition to many aspects of the proposed rule.

Norfolk Southern's position outlined in their comment makes train operations paramount to all other considerations. The intent of this regulation, as well as the Coast Guard's broader congressionally mandated duty to regulate the operation of bridges, is simple: to provide for the reasonable needs of navigation at the bridge. *See* 33 CFR 114.10. However, bridges cannot unreasonably obstruct the free navigation of the waters over which they are constructed. 33 U.S.C. 494. A bridge is a permitted obstruction to navigation, but it is only allowed to remain across the waterway if it provides for the reasonable need of navigation. *See* 33 CFR 114.10.

Norfolk Southern alleges that we have failed to engage them on this issue before starting a rulemaking. On the contrary, we have engaged Norfolk Southern each time a mariner reports an unreasonable delay to a bridge opening and have reiterated the need for prompt openings and improved communication with the public. We have also conveyed this need at regularly scheduled monthly meetings with Norfolk Southern where we have continually asserted the long-standing legal requirement to provide timely bridge openings to satisfy the reasonable needs of navigation. We have also provided Norfolk Southern notice and reasonable opportunity to be heard through the present NPRM. *See* 88 FR 29584.

Norfolk Southern asserted that the Coast Guard's bridge regulations and requirements will jeopardize the safety of train crews and equipment. The Coast Guard disagrees. Railroads across the country operate trains over movable bridges every day without loss of life or equipment. There is no evidence that Norfolk Southern is at a disadvantage to any competitor in the region or that Norfolk Southern will suffer any decreased ability to cross bridges safely while following the bridge statutes of the United States.

Norfolk Southern also asserts that the Coast Guard's regulatory actions improperly violate or pre-empt bridge regulations of other federal agencies. However, the Coast Guard's authority to regulate bridges has been well established since at least 1894 and those authorities have been recognized by Congress in 33 U.S.C. 499. This regulation is squarely within long-standing Coast Guard authority and does not conflict with the authorities of any other federal agency.

A reasonable balance between modes of transportation must be maintained. The mechanism for balancing respective need is found within federal statutes. Consistent with their delegated authority in 33 CFR 1.05-1(e), in 33 CFR part 117 subpart B, the Coast Guard District Commander has created permanent specific requirements for operation of individual drawbridges that are in addition to or vary from existing general bridge regulations found in 33 CFR part 117, subpart A. *See* 33 CFR 114.10; 117.8. For example, in 2009, the Coast Guard Ninth District Commander authorized the Norfolk Southern Railroad Bridge, mile 3.5, to operate remotely, and, in the winter, to operate with an advance notice. 74 FR 63610.

Norfolk Southern alleges that this rule impermissibly regulates employment of "wind blocker" rail cars, which are rails cars which are occasionally parked on bridges to block high winds in an effort to provide protection to moving trains running on parallel tracks. However, the Coast Guard implements this rule to prevent unreasonable obstructions to maritime navigation. All trains, including trains utilized as wind blockers, can present unreasonable delays to maritime navigation when they are not removed in a timely fashion. Therefore, if Norfolk Southern maintains the capacity for timely removal when a vessel signals for a bridge opening, then Norfolk Southern may place a wind blocker on the bridge anytime they wish. In the alternative, if Norfolk Southern wants to remove the train crew and operate the bridge with a deviation to open with advance

notice, that deviation must be listed in 33 CFR part 117 subpart B, or they must first receive a temporary letter of authorization from the Coast Guard District Commander.

The most readily apparent problem at mechanical bridges is communication breakdowns. Whether the breakdowns are between the mariners and the drawtenders, or between the drawtenders and the train dispatchers, communications require improvement to ensure timely bridge openings. The placement of appropriate signage advising the public of means of communication with drawtenders at bridges where there are high volumes of recreational boaters, the required use of telephones by drawtenders at bridges, and the continuous review of remote bridge operations are all positive steps towards enhanced bridge operations, which both ensure the right of navigation on waterways while providing for efficient land transportation.

At Norfolk Southern's request, we will rescind the permanent deviation allowing them to use a wind blocker that was included in the NPRM. This will require Norfolk Southern to provide the Ninth District Commander's staff a request, in writing and in accordance with 33 CFR 117.35, for any temporary deviation to the bridge regulations. These requests may be made electronically to the Ninth District Bridge Manager: Mr. W. Blair Stanifer, email [William.B.Stanifer@uscg.mil](mailto:William.B.Stanifer@uscg.mil) or e-mail Mr. Lee D. Soule, Bridge Management Specialist, Ninth Coast Guard District; email [Lee.D.Soule@uscg.mil](mailto:Lee.D.Soule@uscg.mil). Requests should be made with at least seventy-hours advance notice to allow adequate time to process their request and to advertise the temporary deviation to the mariners.

The bridge is remotely operated by the drawtender at the Toledo bridge, that is already required to maintain and answer a telephone. That number will be made available to the boaters of Sandusky Bay to call to request a bridge opening. Additionally, because the remote drawtender in Toledo operates three bridges, the new signage at the bridge will state the name of the bridge to improve boaters' ability to identify the bridge from which they are requesting an opening.

The drawtender will still be responsible for receiving visual and sound signals from vessels as required in 33 CFR 117, and by radio telephone as required in the original remote operations authorization, but the addition of a telephone as an approved means of communications will make requesting bridge openings easier because the ease of use in mobile telephone devices is more popular than marine band radios.

## 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. 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 advance 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 (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.

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. We did not receive any comments from State, local, or Tribal governments.

#### 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 Department of Homeland Security Management Directive 023-01, Rev.1, Table 1, and

Chapter 3, Table 3-1 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 § 117.853 to read as follows:

#### **§ 117.853 Sandusky Bay.**

The draw of the Norfolk Southern Railroad Bridge, mile 3.5, is remotely operated, and is required, in addition to the other signals, to operate a radiotelephone and telephone and shall open on signal; except from October 31 through March 31 when it will open on signal if provided a 12-hours advance notice of arrival.

**Dated:** February 13, 2025.

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