



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2015-0218]

RIN 1625-AA09

Drawbridge Operation Regulation; Niantic River, Niantic, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

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SUMMARY: The Coast Guard is changing the operating schedule that governs the Amtrak Bridge, mile 0.0, at Niantic, Connecticut. The bridge owner, National Railroad Passenger Company (Amtrak), submitted a request to remove the special drawbridge operation regulation because the bridge now opens on signal at all times. It is expected that this change to the regulations will create efficiency in drawbridge operations while continuing to meet the reasonable needs of navigation.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Documents mentioned in this preamble are part of docket USCG-2015-0218. To view documents mentioned in this

preamble as being available in the docket, go to <http://www.regulations.gov>, type in the docket number in the "Search." box and click "SEARCH." Click Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Ms. Judy Leung-Yee, Project Officer, First Coast Guard District Bridge Branch, 212-514-4330, [judy.k.leung-yee@uscg.mil](mailto:judy.k.leung-yee@uscg.mil). If you have questions on viewing the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." Under 5 U.S.C. 553(b), the Coast

Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the Amtrak Bridge, that once required draw operations in 33 CFR 117.215(a), now opens on signal at all times; therefore, the regulation is no longer applicable and shall be removed from publication. It is unnecessary to publish an NPRM because this regulatory action does not purport to place any restrictions on mariners but rather removes a restriction that has no further use or value.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the Federal Register. The bridge has been opening on signal at all times for many years and this rule merely requires an administrative change to the Federal Register, in order to omit a regulatory requirement that is no longer applicable or necessary. The removal of the regulation will not affect mariners currently operating on this waterway. Therefore, a delayed effective date is unnecessary.

#### A. Basis and Purpose

The Amtrak Bridge at mile 0.0, across the Niantic River, at Niantic, Connecticut, has a vertical clearance of 16 feet at mean high water and 19 feet at mean low water. The drawbridge operation regulations are listed at 33 CFR 117.215(a).

The waterway users are commercial and seasonal recreational vessels of various sizes.

The owner of the bridge, Amtrak, submitted a request to the Coast Guard to change the drawbridge operating regulations that presently allows the bridge to open on signal; except that, from April 1 through October 31, from 8 p.m. to 4 a.m. and from November 1 through March 31 from 6 p.m. to 6 a.m., the draw shall open on signal if at least one hour notice is given.

When a train is scheduled cross the bridge without stopping has entered the drawbridge block, a delay in opening the draw may occur until the train has cleared the block.

Under this final rule the Amtrak Bridge will open on signal at all times; however, the paragraph that refers to any delay in opening the draw should a train be within the drawbridge block shall remain in effect.

#### B. Discussion of final rule

The Amtrak Bridge has been opening on signal at all times for many years despite the requirement in the drawbridge operation regulation listed at 33 CFR 117.215(a) to provide a one hour advance notice at certain times of year.

The owner of the bridge requested the regulation for the Amtrak Bridge be changed to reflect the present operation of the bridge, to open on signal at all times.

### C. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes or executive orders.

#### 1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We believe that this rule is not a significant regulatory action because the changes to the regulation will remove the advanced notice burden for mariners at all times.

#### 2. 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 Coast Guard received no 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.

This rule will have no effect on small entities for the following reason: The Amtrak Bridge will open on signal at all times.

### 3. Assistance for Small Entities

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, above.

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.

#### 4. 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).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on 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 does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. 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.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### 9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### 10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

#### 11. Indian Tribal Governments

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.

12. Energy Effects

This action is not a "significant energy action" under Executive order 13211, Actions Concerns Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule simply promulgates the operating regulations or procedures for drawbridges. This rule is categorically excluded, under figure 2-1, paragraph (32) (e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not 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; Department of Homeland Security Delegation No. 0170.1.

2. In § 33 CFR 117.215, revise paragraph (a) to read as follows:

§ 117.215 Niantic River.

(a) The draw of the Amtrak Bridge, mile 0.0, at Niantic, shall open on signal at all times. When a train scheduled to cross the bridge without stopping has entered the drawbridge block, a delay in opening the draw may occur until the train has cleared the block. The delay should not exceed 10 minutes.

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Dated: June 9, 2015

L.L. Fagan  
Rear Admiral, U.S. Coast Guard  
Commander, First Coast Guard District

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Date: 6/19/2015]