



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2019-0545]

RIN 1625-AA09

Drawbridge Operation Regulation; Niantic River, Niantic, CT

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is modifying the operating schedule that governs the S156 Bridge across the Niantic River, mile 0.1 at Niantic, CT. The bridge owner, the Connecticut Department of Transportation, submitted a request to allow six hours notice for night time transits during the months of November and April due to infrequent bridge openings. This final rule will approve the request and align the regulations for the S156 Bridge with other Connecticut Department of Transportation Bridges.

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 <http://www.regulations.gov>. Type USCG-2019-0545 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. Jeffrey Stieb, First Coast Guard District Bridge Management Specialist;

telephone 617-223-8364, email Jeffrey.D.Stieb @uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
CT DOT	Connecticut Department of Transportation
DHS	Department of Homeland Security
FR	Federal Register
OMB	Office of Management and Budget
NPRM	Notice of Proposed Rulemaking (Advance, Supplemental)
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On August 20, 2019, the Coast Guard published a notice of proposed rulemaking entitled “Drawbridge Operation Regulation; Niantic River, Niantic, CT” in the Federal Register (84 FR 43093). In the NPRM, incorrect clearances for the bridge were provided. The correct clearances are provided below in Section III. No comments were received in response to the NPRM and no comments were made concerning the more constrictive clearances in the NPRM.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under the authority of 33 U.S.C. 499. The S156 Bridge at mile 0.1 over the Niantic River at Niantic, Connecticut, has a vertical clearance of 32 feet at mean high water and 34 feet at mean low water. Vertical clearance is unlimited when the draw is open. Horizontal clearance is approximately 100 feet. Waterway users include recreational and small commercial vessels.

The existing regulation, 33 CFR 117.215(b), requires that from December 1 through March 31, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six

hours notice is given. CT DOT requested that the start of the winter schedule begin one month sooner and end one month later than presently allowed by the regulation. This rule change will align the winter operation and staffing of the three CT DOT drawbridges located in the same operational area by extending the range of months during which six hours notice is required to include November and April. This rule change will allow for more efficient and economic operation of the bridge while meeting the reasonable needs of navigation.

The bridge logs show that during the last three years only three requests to open occurred between 8 p.m. and 4 a.m. in November and no request to open were received between 8 p.m. and 4 a.m. in April. None of the requests were from commercial vessels. CT DOT and the Coast Guard conducted outreach to stakeholders with no objections received.

IV. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided 60 days for comment and no comments were received. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

The final rule provides that from November 1 through April 30, between the hours of 8:00 p.m. and 4:00 a.m., the draw shall open on signal if at least six hours notice is given. It is our opinion that the proposed rule meets the reasonable needs of marine traffic.

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, and we discuss First Amendment rights of protesters.

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. Executive Order 13771 directs agencies to control regulatory costs through a budgeting process. 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) and pursuant to OMB guidance it is exempt from the requirements of Executive Order 13771.

This regulatory action determination is based on the fact that only three vessel transits would have been affected over the past three years. We believe that this change to the drawbridge operation regulation at 33 CFR 117.215(b) will meet the reasonable needs of navigation.

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 received no comment 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.

The bridge will continue to open on signal with six hours notice between the

hours of 8 p.m. and 4 a.m. during the months of November and April. Based on the last three years of records, an average of one vessel annually will be affected by the change. 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, 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.

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. If you believe this rule has implications for federalism or Indian tribes, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section.

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 and Environmental Planning 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). We have made a determination 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. This action is categorically excluded from further review, under paragraph L49, of 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.

G. 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.

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 Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.215(b) to read as follows:

§ 117.215 Niantic River.

(b) The draw of the S156 Bridge, mile 0.1, at Niantic, shall open on signal; except that, from 7 a.m. to 8 a.m., and 4 p.m. to 5 p.m., Monday through Friday, except holidays, the draw shall open only for the passage of commercial vessels. From November 1 through April 30, from 8 p.m. to 4 a.m., the draw shall open on signal if at least six hours notice is given by calling the number posted at the bridge.

Dated: December 4, 2019.

R.W. Warren,
Captain, U.S. Coast Guard,
Acting Commander, First Coast Guard District.
[FR Doc. 2019-27272 Filed: 12/20/2019 8:45 am; Publication Date: 12/23/2019]