



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2016-0058]

RIN 1625-AA09

Drawbridge Operation Regulation; Acushnet River, New Bedford and Fairhaven, MA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is making a correction to the operating schedule that governs the New Bedford-Fairhaven Rt-6 Bridge, mile 0.0, across the Acushnet River, between New Bedford and Fairhaven, MA. On July 1, 2013, a technical amendment was published that updated the name of the bridge, however, the requested correction was drafted incorrectly and three subparagraphs were inadvertently removed from the section.

DATES: This rule is effective [INSERT 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-2016-0058]. 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. Christopher J. Bisignano, Supervisory Bridge Management Specialist, First Coast Guard District, Coast Guard; telephone (212) 514-4331 or e-mail Christopher.J.Bisignano@uscg.mil

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

Each year on July 1, the printed edition of Title 33 of the Code of Federal Regulations (CFR) is recodified. On July 1, 2013, the Coast Guard published a Final Rule entitled, "Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments" in the Federal Register (78 FR 39163). This 2013 rule made technical and editorial corrections throughout Title 33 but did not create any substantive requirements. In this rule the

Coast Guard requested that the term "drawspan" be replaced with the actual name of the bridge (New Bedford-Fairhaven Rt-6 Bridge) in 33 CFR §117.585(a). However, misinterpretation of the asterisks in the regulatory text, which were used to denote that all paragraphs and subordinate paragraphs after paragraph (a) in §117.585 were to remain unchanged, caused the subparagraphs (1) through (3) to be removed.

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 publishing of the Final Rule entitled, "Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments," in the Federal Register (78 FR 39163) on July 1, 2013, inadvertently removed established regulatory language. The three subparagraphs under 33 CFR §117.585(a) were

inadvertently removed from the CFR. Therefore, it is unnecessary to issue a rule without prior notice and opportunity to comment.

We are issuing this rule 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 for the same reasons as stated above.

III. Legal Authority and Need for Rule

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

The purpose of this rule is to correct an error that occurred in the publication of the Final Rule on July 1, 2013, entitled, "Navigation and Navigable Waters; Technical, Organizational, and Conforming Amendments," in the Federal Register (78 FR 39163). The use of the asterisks in the regulatory text were misinterpreted causing subparagraphs (1) through (3) to be inadvertently removed from 33 CFR §117.585(a).

The New Bedford-Fairhaven Rt-6 Bridge remains an active bridge and subparagraph's (1) through (3) contain the actual operating schedule for the bridge. The bridge continues to operate under that schedule and the subparagraphs need to be reinserted into 33 CFR §117.585(a)

to inform the public of the legal operating schedule of the bridge.

IV. Discussion of Final Rule

This rule will correct 33 CFR §117.585(a) by restoring subparagraphs (1) through (3) which contain the actual operating schedule for the New Bedford-Fairhaven Rt-6 Bridge. As paragraph (a) is currently codified in the rule, there is only the introductory language. This language by itself does not explain to the public the operating schedule for the bridge. The intention of this rule is to restore the operating language to 33 CFR §117.585(a) as it appeared immediately prior to the July 1, 2013, codification of 33 CFR.

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 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

The Coast Guard does not consider this rule to be "significant" under that Order because it corrects inadvertently omitted language that is consistent with the current operation of the bridge. Therefore, this rule does not affect the way vessels operate on the waterway near and through the bridge.

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 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. While the operating schedule was inadvertently removed from the rule, the bridge continues to operate as it had prior to the removal of the operating schedule in the CFR.

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.

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 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 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 made a determination 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 action is categorically excluded from further review, 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.

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; Department of Homeland Security Delegation No. 0170.1.

2. Revise §117.585(a) to read as follows:

§ 117.585 Acushnet River.

(a) The New Bedford-Fairhaven RT-6 Bridge, mile 0.0 will be opened promptly, provided proper signal is given, on the following schedule:

- (1) On the hour between 6 a.m. and 10 a.m. inclusive.
- (2) At a quarter past the hour between 11:15 a.m. and 6:15 p.m. inclusive.
- (3) At all other times on call.

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Dated: February 8, 2016

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

