

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD01-05-006]

RIN 1625-AA09

#### Drawbridge Operation Regulations; Mitchell River, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the drawbridge operating regulations governing the operation of the Chatham Highway Bridge, mile 0.2, across the Mitchell River at Chatham, Massachusetts. This proposed change to the drawbridge operation regulations would require from 4 p.m. to 5 p.m. that only one hour notice be given for a bridge opening instead of the currently required 12 hours notice from May 1 through October 31. This rulemaking would also change the on-call contact information. This action is expected to better meet the reasonable needs of navigation.

**DATES:** Comments must reach the Coast Guard on or before April 25, 2005.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, 408 Atlantic Avenue, Boston, Massachusetts 02110, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (617) 223-8364. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** John McDonald, Project Officer, First Coast Guard District, (617) 223-8364.

#### SUPPLEMENTARY INFORMATION:

##### Request for Comments

We encourage you to participate in this rulemaking by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01-05-006), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 1/2 by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

##### Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the First Coast Guard District, Bridge Branch, at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### Background

The Chatham Highway Bridge has a vertical clearance in the closed position of 8 feet at mean high water and 12 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.607.

The Town of Chatham, the owner of the bridge, asked the Coast Guard to change the drawbridge operation regulations for the Chatham Highway Bridge to extend the one-hour advance notice requirement to include the 4 p.m. to 5 p.m. hour, May 1 through October 31. The existing regulations require the bridge to open on signal after a one-hour advance notice is given between 8 a.m. and 4 p.m. This proposed rule would extend that one-hour advance notice requirement to include the 4 p.m. to 5 p.m. time during May through October.

Also, the on-call contact person would be changed from the duty officer at the Chatham Police Department to the

Chatham Harbormaster at the Chatham Harbormasters Department.

#### Discussion of Proposal

This proposed change would revise 33 CFR 117.607, which lists the operating regulations for the Chatham Highway Bridge. This proposed change would require the bridge to open on signal after a one-hour advance notice is given, May 1 through October 31, between 8 a.m. and 5 p.m., by calling the Chatham Harbormasters Department.

The draw would continue to open from 5 p.m. to 8 a.m., May 1 through October 31, after a 12-hour advance notice is given and all day from November 1 through April 30, after a 24-hour advance notice is given.

#### Regulatory Evaluation

This proposed 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 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation, under paragraph 10e of the regulatory policies and procedures of DHS, is unnecessary.

This conclusion is based on the fact that the bridge will open after a one-hour advance notice from 8 a.m. to 5 p.m. for vessel traffic from May 1 through October 31.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. 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 section 5 U.S.C. 605(b), that this proposed rule would not have a

significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the bridge will open an additional hour each day for vessel traffic from May 1 through October 31.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132. Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

#### 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 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### Taking of Private Property

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

#### Civil Justice Reform

This proposed 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.

#### Protection of Children

We have analyzed this proposed 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 may disproportionately affect children.

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a “tribal implication” under the Order.

#### Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

#### Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or

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

#### Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (32)(e), of Commandant Instruction M16475.1d, this proposed rule is categorically excluded from further environmental documentation because promulgation of drawbridge regulations have been found not to have a significant effect on the environment. A written “Categorical Exclusion Determination” is not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Section 117.607 is revised to read as follows:

#### § 117.607 Mitchell River.

The Chatham Highway Bridge, at mile 0.2, at Chatham, Massachusetts, shall operate as follows:

(a) From May 1 through October 31, the draw shall open on signal from 8 a.m. to 5 p.m., if at least one hour notice is given and from 5 p.m. to 8 a.m. the draw shall open on signal if at least 12 hours notice is given by calling the Chatham Harbormasters Department.

(b) From November 1 through April 30, the draw shall open on signal if at least a 24-hour advance notice is given by calling the Chatham Harbormasters Department.

Dated: February 2, 2005.

**John L. Grenier,**

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

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