



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2017-0161]

RIN 1625-AA09

Drawbridge Operation Regulation; Canaveral Barge Canal, Canaveral, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to modify the operating schedule that governs the SR 401 Drawbridge, mile 5.5 at Port Canaveral, Florida. This modified regulation is necessary to reduce vehicular traffic congestion and to ensure the safety of the roadways while passengers are transiting to and from Cruise Terminal 10, which is used by Norwegian Cruise Line at Port Canaveral. Since the homeporting of the cruise ship Norwegian Epic in the Port of Canaveral, traffic back-ups have been caused by the drawbridge openings. This modified regulation allows the bridge not to open to navigation during typical cruise-ship passenger loading and unloading times on Saturdays and Sundays.

DATES: Comments and related material must reach the Coast Guard on or before [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2017-0161 using Federal eRulemaking Portal at <http://www.regulations.gov>.

See the “Public Participation and Request for Comments” portion of the

SUPPLEMENTARY INFORMATION section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this proposed rule, call or e-mail Mr. Eddie Lawrence of the Coast Guard Bridge Branch; telephone 305-415-6946, e-mail Eddie.H.Lawrence@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
OMB	Office of Management and Budget
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

II. Background, Purpose and Legal Basis

On April 25, 2017, the Coast Guard published a notice of deviation from drawbridge regulation with request for comments in the Federal Register (82 FR 18989). One comment was received.

The existing regulation as published at 33 CFR §117.273 states: (b) The drawspan of the SR401 Drawbridge, mile 5.5 at Port Canaveral, must open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawspan need not be opened for the passage of vessels. From 10 p.m. to 6 a.m. the drawspan must open on signal if at least three hours notice is given. The drawspan must open as soon as possible for the passage of public vessels of the United States and tugs with tows.

Under the current temporary deviation, the bridge remains in the closed-to-navigation position from 11 a.m. to 2 p.m. on Saturdays and Sundays. The Canaveral Port Authority has requested this deviation. The bridge logs from November 2016 indicate that, at most, an average of nine vessels per month may be affected by establishing this three hour bridge closure on Saturdays and Sundays. The majority of the opening requests were either at the beginning or end of this closure period; therefore, if these mariners adjust their transits slightly there should be a negligible overall effect.

The comment that was received stated that allowing this bridge to be closed for three hours during the weekends is unreasonable to vessel traffic as it limits the times the bridge will be available for use by the maritime community. The commenter also stated that the bridge should be allowed to open at least once an hour and that there was very little vehicle traffic during the third hour. The Coast Guard agrees. For this reason, the Coast Guard will continue to evaluate the impact to mariners navigating this area during the closure periods and has published this NPRM to allow for additional comments.

III. Discussion of Proposed Rule

This modified regulation is necessary to reduce vehicular traffic congestion and to ensure the safety of the roadways while passengers are transiting to and from Cruise Terminal 10, which is used by Norwegian Cruise Line at Port Canaveral. Since the arrival of the cruise ship Norwegian Epic to the Port of Canaveral, massive traffic back-ups have been caused by the drawbridge openings.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive Orders related to rulemaking. Below we summarize our analyses based on these statutes and

Executive Orders and we discuss First Amendment rights of protestors.

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 NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM 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 ability that vessels can still transit the bridge before and after the proposed periods. Vessels that can pass under the bridge in the closed position may continue to do so.

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 proposed rule would 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 IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

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.

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 proposed 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. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. 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.).

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

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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, 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 preliminary 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 proposed rule simply promulgates the operating regulations or procedures for drawbridges. Normally such actions are categorically excluded from further review, under figure 2-1, paragraph (32)(e), of the Instruction.

A preliminary Record of Environmental Consideration and a Memorandum for the Record not required for this proposed rule. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed 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.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, visit <http://www.regulations.gov/privacynotice>.

Documents mentioned in this NPRM as being available in this docket and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed 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; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. In §117.273, revise paragraph (b) to read as follows:

§ 117.273 Canaveral Barge Canal, Canaveral, FL

* * * * *

(b) The drawspan of the SR401 Drawbridge, mile 5.5 at Port Canaveral, must open on signal; except that, from 6:30 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the drawspan need not be opened for the passage of vessels. On Saturday and Sunday, this bridge will be allowed to remain closed to navigation from 11

a.m. to 2 p.m. each day. From 10 p.m. to 6 a.m the drawspan must open on signal if at least three hours notice is given. The drawspan must open as soon as possible for the passage of public vessels of the United States and tugs with tows.

Dated: 17 October 2017

Peter J. Brown

Rear Admiral, U.S. Coast Guard

Commander, Seventh Coast Guard District

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