



**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:** Final rule.

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**SUMMARY:** The Coast Guard is modifying the operating schedule that governs the SR 401 Drawbridges across the Canaveral Barge Canal, mile 5.5, at Port Canaveral, Florida. This modification is necessary to reduce vehicular traffic congestion and to ensure the safety of roadways while passengers are transiting to and from the cruise ship terminals. Since the arrival of additional cruise ships to the Port of Canaveral, traffic back-ups have been caused by the on demand drawbridge openings. This modification allows the bridges to not open to navigation during prime cruise ship passenger loading and unloading times on Saturdays and Sundays.

**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-2017-0161. 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 LT Allan Storm, Sector Jacksonville, Waterways Management Division, U.S. Coast Guard; telephone 904-714-7616, e-mail Allan.H.Storm@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
FL	Florida
SR	State Route
MHW	Mean High Water
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On October 23, 2017, we published a notice of proposed rulemaking from drawbridge regulation with request for comments entitled Drawbridge Operation Regulations: Canaveral Barge Canal, Canaveral, FL in the Federal Register (82 FR 48940). We received three comments on this rule.

**III. Legal Authority and Need for Rule**

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

The SR 401 Drawbridges across the Canaveral Barge Canal, mile 5.5, at Port Canaveral, FL are three parallel double leaf bascule bridges that have a vertical clearance of 25 feet at MHW in the closed to navigation position and a horizontal clearance of 90 feet between the fender system. Presently, in accordance with 33 CFR 117.273(b), the bridges

shall open on signal, except that from 6:15 a.m. to 8 a.m. and 3:30 p.m. to 5:15 p.m. Monday through Friday except Federal holidays, the bridges need not open and from 10 p.m. to 6 a.m. the bridges must open on signal if at least three hours notice is given. The bridges must open as soon as possible for the passage of public vessels of the United States and tugs with tows.

The Canaveral Port Authority, with concurrence from the bridge owner, Florida Department of Transportation requested the operating schedule be changed to allow the bridges to not open to navigation from 11 a.m. to 2 p.m. on Saturdays and Sundays. This will provide relief to the increase in vehicle traffic congestion on the weekends while meeting the reasonable needs of navigation.

#### **IV. Discussion of Comments, Changes and the Final Rule**

The Coast Guard received three comments to this rule stating that this regulation is unnecessarily restrictive to recreational boaters. All comments also recommended that if the Coast Guard moves forward with changing the operating schedule, they should consider allowing the bridge to open on the hour during the 11 a.m. to 2 p.m. closure. The Coast Guard has considered this recommendation, however, after analyzing vessel traffic data versus vehicular traffic data, the Coast Guard has determined that the benefit of reducing vehicle traffic to enhance the safety on the roadways, without compromising the safety of mariners, outweighs an inconvenience to vessels transiting the waterway.

#### **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 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 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.

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.

#### 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 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 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. A Record of Environmental Consideration and a Memorandum for the Record 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. Amend § 117.273 by revising paragraph (b) to read as follows:

§ 117.273 Canaveral Barge Canal.

\* \* \* \* \*

(b) The drawspans of the SR401 Drawbridges, 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 and from 11 a.m. to 2 p.m. on Saturdays and Sundays, the

drawspans need not be opened for the passage of vessels. From 10 p.m. to 6 a.m., the drawspans must open on signal if at least three hours notice is given. The drawspans must open as soon as possible for the passage of public vessels of the United States and tugs with tows.

Dated: January 22, 2018

Peter J. Brown

Rear Admiral, U.S. Coast Guard

Commander, Seventh Coast Guard District

[FR Doc. 2018-01913 Filed: 1/30/2018 8:45 am; Publication Date: 1/31/2018]