

rule change is not a significant regulatory action.

**H. Executive Order 13045 (Protection of Children From Environmental Health Risk and Safety Risks)**

The Department of the Army has determined that according to the criteria defined in Executive Order 13045 that Executive Order does not apply.

**I. Executive Order 13132 (Federalism)**

The Department of the Army has determined that according to the criteria defined in Executive Order 13132 that Executive Order does not apply because the rule change will not have a substantial 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.

**Carl W.S. Chun,**

*Director, Army Board for Correction of Military Records.*

**List of Subjects in 32 CFR Part 581**

Administrative practice and procedure, Archives and Records, Military Personnel.

■ For reasons stated in the preamble the Department of the Army amends part 581 to read as follows:

**PART 581—PERSONNEL REVIEW BOARD**

■ 1. The authority citation for part 581 continues to read as follows:

**Authority:** 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

■ 2. Amend § 581.3 by revising paragraphs (g)(4)(i) and (ii) to read as follows:

**§ 581.3 Army Board for Correction of Military Records.**

\* \* \* \* \*

(g) \* \* \*

(4) \* \* \*

(i) If the ABCMR receives the request for reconsideration within 1 year of the ABCMR's original decision and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found,

the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives a request for reconsideration more than 1 year after the ABCMR's original decision or after the ABCMR has already considered one request for reconsideration, then the case will be returned without action and the applicant will be advised the next remedy is appeal to a court of appropriate jurisdiction.

\* \* \* \* \*

[FR Doc. 05-22094 Filed 11-4-05; 8:45 am]

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

**[USCG-2005-22853]**

**RIN 1625-AA09**

**Drawbridge Operation Regulations; Upper Mississippi River, Ft. Madison, Burlington, and Dubuque, IA, and Rock Island Arsenal, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final rule.

**SUMMARY:** The Coast Guard is temporarily revising the operating regulations for the Ft. Madison Drawbridge, mile 383.9, the Burlington RR Drawbridge, mile 403.1, the Illinois Central Railroad Drawbridge, mile 579.9, and the Rock Island Arsenal Drawbridge, mile 482.9, all located along the Upper Mississippi River. The temporary revision established the winter operating schedules for these four drawbridges while still providing for the reasonable needs of navigation.

**DATES:** This rule is effective from December 15, 2005 through March 15, 2006.

**ADDRESSES:** Documents indicated in this preamble as being available in the docket are part of docket [USCG-2005-22853] and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL-401, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call Mr. Roger K. Wiebusch, Bridge Administrator, (314) 539-3900, extension 2378. If you have questions

on viewing the docket, call Andrea M. Jenkins, Program Manager, Docket Operations, telephone 202-366-0271.

**SUPPLEMENTARY INFORMATION:**

**Regulatory Information**

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM, which would incorporate a comment period before a final rule could be issued, is unnecessary. The closure of lock 19 (mile 364) by the Army Corps of Engineers will reduce the level of navigation on the waterway, making the opening of these drawbridges largely unnecessary.

**Background and Purpose**

The Rock Island Drawbridge is owned by the U.S. Government (U.S. Army, Rock Island Arsenal); the Ft. Madison and Burlington Railroad Drawbridges are owned by Burlington Northern Santa Fe Railway; the Illinois Central Railroad Drawbridge is owned by the Chicago, Central and Pacific Railroad. Each bridge owner wrote to the Coast Guard and requested the proposed revisions in order to conduct necessary maintenance work. These are typical requests that occur each winter. During the winter months, the Army Corps of Engineers will usually close one or more locks for repair and when the locks are closed, navigation ceases. The lock closures go from mid-Dec until early to mid-March. This lock closure presents bridge owners with an opportunity for conducting bridge repairs that would render the bridges inoperable. The Coast Guard generally requires the bridges to return to operation by the date when the Corps' locks reopen.

**Discussion of Rule**

This rule temporarily amends section 117.671, allowing the Ft. Madison Drawbridge, mile 383.9, the Burlington RR Drawbridge, mile 403.1, and the Illinois Central Railroad Drawbridge, mile 579.9, to change from an open on demand schedule to one requiring at least 2 hours advance notice. It also allows the Rock Island Arsenal Drawbridge, mile 482.9, to remain in the closed-to-navigation position. It also adds temporary cross-references to section 117.671 under the listings for drawbridge regulations for Iowa and Illinois.

**Regulatory Evaluation**

This 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 section 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).

This rule will not have a significant effect due to the fact that these drawbridge closures are coordinated with the closure of lock 19 (mile 364) by the Army Corps of Engineers. Historically, the Coast Guard authorizes drawbridges to close during the winter season due to the reduced traffic caused by ice and lock closures. The closure of lock 19 prevents most towboat activity; the activity that remains can be accommodated with the advance notice provisions included in the temporary rule.

#### **Small Entities**

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

It is unlikely that this rule will affect small entities due to the fact that these drawbridge closures are coordinated with the closure of lock 19 (mile 364) by the Army Corps of Engineers. Historically, the Coast Guard authorizes drawbridges to close during the winter season due to the reduced traffic caused by ice and lock closures. The closure of lock 19 prevents most towboat activity; the activity that remains can be accommodated with the advance notice provisions included in the temporary rule.

#### **Assistance for Small Entities**

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. 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 Mr. Roger K. Wiebusch, Bridge Administrator, Eighth

Coast Guard District, Bridge Branch, at (314) 539–3900, extension 2378. 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.

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).

#### **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).

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

#### **Taking of Private Property**

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

#### **Indian Tribal Governments**

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.

#### **Energy Effects**

We have analyzed this 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### **Environment**

We have analyzed this rule under 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 concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation.

#### 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; 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. From December 15, 2005 until March 15, 2006, add temporary § 117.T398 to read as follows:

##### 117.T398 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

■ 3. From December 15, 2005 until March 15, 2006, add temporary § 117.T408 to read as follows:

##### 117.T408 Upper Mississippi River.

See § 117.671, Upper Mississippi River, listed under Minnesota.

■ 4. From December 15, 2005 until March 15, 2006, amend § 117.671 by adding paragraphs (c) and (d) to read as follows:

##### 117.671 Upper Mississippi River.

\* \* \* \* \*

(c) From December 15, 2005 until March 15, 2006, the draws of the Ft. Madison Drawbridge, mile 383.9, the Burlington Railroad Drawbridge, mile 403.1, and the Illinois Central Railroad Drawbridge, mile 579.9, need not open unless at least 24 hours advance notice is given.

(d) From December 15, 2005 until March 15, 2006, the draw of the Rock Island Arsenal Drawbridge, mile 482.9, need not open for the passage of vessels.

Dated: November 1, 2005.

**Steve Venckus,**

Chief, Office of Regulations & Administrative Law, Office of the Judge Advocate General, United States Coast Guard.

[FR Doc. 05-22101 Filed 11-4-05; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

#### 33 CFR Part 334

#### Restricted Areas at Multiple Military Sites Within the State of Florida

**AGENCY:** U.S. Army Corps of Engineers, DoD.

**ACTION:** Final rule.

**SUMMARY:** The U.S. Army Corps of Engineers (Corps) is amending seven existing regulations to incorporate changes to the types of restriction, the area affected by the restriction, and/or the administration of six restricted areas and one danger zone. Additionally, the Corps is establishing two new restricted areas. The restricted areas and danger zone are located within the State of Florida. The amended regulations will enable the affected units of the U.S. Military to enhance safety and security around active military establishments. These regulations are necessary to safeguard military vessels and United States government facilities from sabotage and other subversive acts, accidents, or incidents of similar nature. These regulations are also necessary to protect the public from potentially hazardous conditions that may exist as a result of military use of the area.

**EFFECTIVE DATE:** December 7, 2005.

**ADDRESSES:** U.S. Army Corps of Engineers, ATTN: CECW-CO, 441 G Street, NW., Washington, DC 20314-1000.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Olson, U.S. Army Corps of Engineers, Headquarters, Washington, DC at 202-761-4922, or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904-232-1680.

**SUPPLEMENTARY INFORMATION:** Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is amending the regulations in 33 CFR part 334 by modifying the area or restrictions at sections 334.560, 334.580, 334.610, 334.760, 334.775, 334.778, and 334.780. Additionally, the Corps is establishing two new restricted areas at § 334.635 and § 334.515. The modification to each existing restricted area and danger zone is described in the body of this notice along with a description of the two newly established restricted areas. The proposed rule was published in the March 25, 2005, issue of the **Federal Register** (70 FR 15247).

These amendments to the regulations will allow the Commanding Office at each of the affected military units to restrict passage of persons, watercraft, and vessels at his or her discretion in the interest of National Security until such time he or she determines such restrictions may be terminated.

In response to the proposed rule, two commenters raised concerns about the amendment of § 334.540, specifically the potential loss of public access to areas presently open to public recreational fishing. These issues are still being considered and the proposed changes to § 334.540 are not included in this final rule. Therefore, the restricted area at § 334.550 will not be disestablished, because we proposed to remove that section only if the proposed changes to § 334.540 were adopted.

#### Procedural Requirements

a. *Review Under Executive Order 12866.* These rules are issued with respect to a military function of the United States and the provisions of Executive Order 12866 do not apply.

b. *Review Under the Regulatory Flexibility Act.* These rules have been reviewed under the Regulatory Flexibility Act (Public Law 96-354; 5 U.S.C. 601) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (*i.e.*, small businesses and small Governments). We have concluded that the proposed modifications to the existing restricted areas and danger zone and the establishment of two new restricted areas would have practically no economic impact on the public, and would create no anticipated navigational hazard or interference with existing waterway traffic. Accordingly, we certify that these rules will not have a significant economic impact on a substantial number of small entities.

c. *Review Under the National Environmental Policy Act.* We have concluded, based on the minor nature of the changes, that these amendments to the danger zone and restricted areas will not be a major Federal action having a significant impact on the quality of the human environment, and preparation of an environmental impact statement is not required.

d. *Unfunded Mandates Act.* These rules do not impose an enforceable duty among the private sector and, therefore, is not a Federal private sector mandate and is not subject to the requirements of Section 202 or 205 of the Unfunded Mandates Reform Act (Pub. L. 104-4, 109 Stat. 48, 2 U.S.C. 1501 *et seq.*). We have also found under Section 203 of