

Dated: January 20, 1995.

**M.K. Cain,**

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

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### 33 CFR Part 117

[CGD05-94-117]

#### **Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Chesapeake, VA**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is proposing to change the regulations that govern the operation of the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, at Chesapeake, Virginia, by leaving the draw in the open position except for the passage of trains. The proposed changes to these regulations are, to the extent practical and feasible, intended to relieve the bridgeowners of the burden of having a person constantly available to open the draw while still providing for the reasonable needs of navigation.

**DATES:** Comments must be received on or before May 12, 1995.

**ADDRESSES:** Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398-6222. Comments will become part of this docket and will be available for inspection at room 109, Fifth Coast Guard District.

**FOR FURTHER INFORMATION CONTACT:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (804) 398-6222.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD05-94-117) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying

and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice.

**Drafting Information:** The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and LCDR C. A. Abel, Project Counsel, Fifth Coast Guard District Legal Office.

##### **Background and Purpose**

The Albemarle and Chesapeake Railroad Company has requested that the regulations for the drawbridge across the Albemarle and Chesapeake Canal, Atlantic Intracoastal Waterway, mile 13.9, in Chesapeake, Virginia, be changed to allow them to leave the bridge in the open position, except when a train is passing over the bridge. Since the bridge would be left in the open position, a bridge tender would only be available to close the bridge for a train crossing, and, after the train cleared, to reopen the bridge to navigation.

The current regulations require the bridge to open on demand. These regulations require a full-time bridge tender. Leaving the bridge open, except for the passage of trains, alleviates the need for a full-time bridge tender.

The Albemarle and Chesapeake Railroad Company originally requested that the Coast Guard change the current regulations by leaving the draw closed to navigation, Monday through Friday, from 12 noon to 2:30 p.m., with openings only for emergencies. At all other times, the bridge would remain in the open position except for the passage of trains. This request was denied because of the proposed hours of bridge closures were considered too restrictive to recreational and commercial navigation, since the bridge is located across the busy Atlantic Intracoastal Waterway.

As a result of the Coast Guard's denial, the Albemarle and Chesapeake Railroad Company requested a meeting

with the Coast Guard, Union Camp, the Mayor of Elizabeth City, and local Coast Guard Auxiliaries to discuss a new operating schedule for the railroad bridge. Since the railroad company was not receptive to employing a full-time bridge tender, all in attendance agreed that the most acceptable schedule would be to leave the bridge in the open position, except for the passage of trains. This would eliminate the need for a full-time bridge tender; however, this proposed schedule would require the railroad company to employ a part-time bridge tender to operate the drawspan.

In developing this proposed schedule, the Coast Guard considered all views, and believes this proposed rule will not unduly restrict commercial and recreational traffic, since the bridge will be left in the open position, except for the passage of trains.

##### **Regulatory Evaluation**

This proposed action is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

##### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

##### **Collection of Information**

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

## Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612, and it has been determined that this proposal will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

## Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist has been prepared and placed in the rulemaking docket.

## List of Subjects in 33 CFR Part 117

Bridges.

## Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations to read 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; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.997, paragraph (g) is redesignated as (h) and a new paragraph (g) is added to read as follows:

**§ 117.997 Atlantic Intracoastal Waterway, South Branch of the Elizabeth River to the Albemarle and Chesapeake Canal.**

\* \* \* \* \*

(g) The draw of the Albemarle & Chesapeake Railroad bridge, mile 13.9, in Chesapeake, Virginia, shall be maintained in the open position; the draw may close only for the crossing of trains and maintenance of the bridge. When the draw is closed, a bridgetender shall be present to reopen the draw after the train has cleared the bridge.

\* \* \* \* \*

Dated: January 20, 1995.

**M.K. Cain,**

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

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## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

[ET Docket No. 93-266; FCC 95-80]

### Pioneer's Preference Rules

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** By this *Further Notice of Proposed Rule Making*, the Commission proposes rules in response to the pioneer's preference directives contained in the legislation implementing domestically the General Agreement on Tariffs and Trade (GATT), as well as on its own motion. The objective of this proposal is to implement the GATT legislation's modifications to the Communications Act and to make additional changes to the pioneer's preference rules to increase their efficiency.

**DATES:** Comments are due March 29, 1995; reply comments are due April 12, 1995.

**FOR FURTHER INFORMATION CONTACT:** Rodney Small, Office of Engineering and Technology, (202) 776-1622.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's *Further Notice of Proposed Rule Making*, adopted February 28, 1995, and released March 1, 1995. The full text of this Commission decision is available for inspection and copying during regular business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, D.C. The complete text of this decision also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, D.C. 20037.

### Summary of Further Notice of Proposed Rule Making

1. In the *Notice of Proposed Rule Making (Notice)* in this proceeding, 58 FR 57578 (October 26, 1993), the Commission sought comment on whether and how the pioneer's preference rules could be amended to take into account competitive bidding and its experience administering them, or whether these rules should be repealed. In the *First Report and Order*, 59 FR 8413 (February 22, 1994), the Commission determined that it would not apply amendments to its rules to three proceedings in which tentative pioneer's preference decisions had been issued; and in the *Second Report and Order*, adopted simultaneously with the

*Further Notice of Proposed Rule Making*, modified certain rules to increase the efficiency of the pioneer's preference program.

2. The GATT legislation, enacted December 8, 1994, requires that the Commission complete by June 8, 1995, a rulemaking prescribing the procedures and criteria to be used in evaluating pioneer's preference requests accepted for filing after September 1, 1994. The legislation mandates that the Commission specify the procedures and criteria by which the significance of a pioneering contribution will be determined; that there be an opportunity for review and verification of the contribution by experts not employed by the Commission; and that the Commission use such other procedures as may be necessary to prevent unjust enrichment by ensuring that the value of a pioneering contribution justifies any reduction in the amounts paid for comparable licenses. The GATT legislation also requires pioneer's preference licensees whose preference requests were accepted for filing after September 1, 1994 to pay in a lump sum or in installment payments over a period of not more than five years 85 percent of the average price paid for comparable licenses. Finally, the GATT legislation sunsets the pioneer's preference program on September 30, 1998.

3. In the *Further Notice of Proposed Rule Making*, the Commission proposes to establish a peer review process on a permanent basis under the direction of the Chief of its Office of Engineering and Technology. The Chief, OET, would select a panel of experts consisting of persons who are knowledgeable about the specific technology set forth in a pioneer's preference request and who are not employed by either the Commission or any applicant seeking a pioneer's preference in the same or similar communications service. The Commission's staff would evaluate on a case-by-case basis how much outside assistance is required.

4. With respect to the unjust enrichment directive of the GATT legislation, the Commission stated that its concerns about unjust enrichment are lessened by the statutorily-mandated payment requirement for pioneer's preference grantees in auctionable services and the formula for calculating per capita bid amounts, but that it remains concerned about the effect of competitive bidding on the pioneer's preference program. It said that in services in which competitive bidding is used to assign licenses, the need to guarantee a license may not be as strong as in services in which another