

(6) All persons in the area shall comply with the orders of the Coast Guard Patrol Commander.

(d) *Effective Date:* This section is effective from 9 p.m. through 11 p.m. on August 20, 1995, unless extended or terminated sooner by the Coast Guard Group Commander, Buffalo, NY.

Dated: July 12, 1995.

**G.F. Woolever,**

*Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.*

[FR Doc. 95-19347 Filed 8-4-95; 8:45 am]

BILLING CODE 4910-14-M

### 33 CFR Part 117

[CGD05-94-118]

RIN 2115-AE47

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, NC

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** At the request of the Albemarle and Chesapeake Railroad Company, the Coast Guard is changing the regulations that govern the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, to allow leaving the draw in the open position except for the passage of trains. This change to these regulations is, 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.

**EFFECTIVE DATE:** This rule is effective on September 6, 1995.

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

#### SUPPLEMENTARY INFORMATION:

##### Drafting Information

The principal persons involved in drafting this document are Linda L. Gilliam, Project Manager, Bridge Section, and CAPT R.A. Knee, Project Counsel, Fifth Coast Guard District Legal Office.

##### Regulatory History

On March 13, 1995, the Coast Guard published a Notice of Proposed Rulemaking entitled Atlantic Intracoastal Waterway—Alternate Route, Elizabeth City, North Carolina, in the **Federal Register** (60 FR 13393). The comment period ended May 12, 1995.

The Coast Guard received one comment on the Notice of Proposed Rulemaking objecting to the Coast Guard's proposed change to the regulations. The one objector stated that the proposed change at first glance sounded reasonable, but after further review, felt the city and the boating community should pay for the privilege of increased waterway accessibility just as the Albemarle and Chesapeake Railroad Company must pay for the usage of the tracks and the services of a bridgetender. The Coast Guard is without authority to assess such fees and the suggestion is inconsistent with burden placed on owners and operators of drawbridges by 33 U.S.C. 499. On April 5, 1995, the Coast Guard issued Public Notice 5-851 requesting comments on the Notice of Proposed Rulemaking. The comment period ended May 12, 1995. One comment was received on the Public Notice in favor of the Coast Guard's proposed change to the regulations. A public hearing was not requested and one was not held.

##### Background and Purpose

The Albemarle and Chesapeake Railroad Company has requested that the regulations governing the operation of the drawbridge across the Pasquotank River, Atlantic Intracoastal Waterway—Alternate Route, mile 47.7, at Elizabeth City, North Carolina, be changed to allow leaving the bridge in the open position, except when a train is passing over it and for maintenance. A bridgetender would be available only during the times of train crossings to close the bridge and, after the train had cleared or completion of any maintenance work, to reopen the bridge to navigation. There would not be a full-time bridgetender employed at the bridge.

Currently, the bridge remains in the open position from 3:30 p.m. to 11:30 p.m. At all other times, the draw opens on signal. This final rule will require the bridge to be maintained in the open position except for passage of trains and, when necessary, during maintenance work. A bridgetender will be available to reopen the bridge after trains have cleared the bridge and after completion of any maintenance work.

In developing this schedule, the Coast Guard considered all views, and believes this final 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 rule 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 rule 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 final rule 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 rule to be minimal, 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.

##### Collection of Information

This rule 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 rule under the principals and criteria contained in Executive Order 12612, and it has determined that this rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

##### Environment

The Coast Guard considered the environmental impact of this rule and concluded that under section 2.B.2.e.(32)(e) of Commandant Instruction M16475.1B (as amended, 59 FR 38654, 29 July 1994), this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement and checklist have been prepared and placed in the rulemaking docket.

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

Bridges.

## Final Regulations

In consideration of the foregoing, the Coast Guard is amending 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); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. Section 117.833 is revised to read as follows:

#### § 117.833 Pasquotank River.

The draw of the Albemarle & Chesapeake railroad bridge, mile 47.7, at Elizabeth City, North Carolina, 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: July 12, 1995.

**N.V. Scurria, Jr.,**

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

[FR Doc. 95-19346 Filed 8-4-95; 8:45 am]

BILLING CODE 4910-14-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Parts 51 and 93

[FRL-5273-8]

#### Transportation Conformity Rule Amendments: Transition to the Control Strategy Period

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action permanently aligns the timing of certain consequences of state air quality planning failures under EPA's transportation conformity rule with the imposition of Clean Air Act highway sanctions. For ozone nonattainment areas with an incomplete 15% emissions-reduction state implementation plan with a protective finding; incomplete ozone attainment/3% rate-of-progress plan; or finding of failure to submit an ozone attainment/3% rate-of-progress plan; and areas whose control strategy implementation plan for ozone, carbon monoxide, particulate matter, or nitrogen dioxide is disapproved with a protective finding,

the conformity status of the transportation plan and program will not lapse as a result of such failure until highway sanctions for such failure are effective under other Clean Air Act sections.

This action makes permanent the interim final rule issued on February 8, 1995 (60 FR 7449), which was effective for only six months. The lapse in conformity status which this action delays for some areas would otherwise prevent approval of new highway and transit projects.

**EFFECTIVE DATE:** This final rule is effective August 8, 1995.

**ADDRESSES:** Materials relevant to this rulemaking are contained in Docket No. A-95-02. The docket is located in room M-1500 Waterside Mall (ground floor) at the Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460. The docket may be inspected from 8 a.m. to 4 p.m., Monday through Friday, including all non-government holidays.

**FOR FURTHER INFORMATION CONTACT:** Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 668-4441.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

On February 8, 1995, EPA issued an interim final rule entitled, "Transportation Conformity Rule Amendments: Transition to the Control Strategy Period," which was effective from February 8, 1995, until August 8, 1995 (60 FR 7449). Because the interim final rule took effect without prior notice and comment, EPA limited its effectiveness to a six-month period, during which full notice and comment was to occur.

EPA also issued on February 8, 1995, a proposed rule to apply the provisions of the interim final rule permanently (60 FR 7508). The public comment period on the proposed rule lasted until March 10, 1995, and a public hearing was held on February 22, 1995.

The February 8, 1995, interim final rule delayed the conformity lapse imposed as a result of the following: an incomplete 15% rate-of-progress SIP with a "protective finding" (described below); a failure to submit or submission of an incomplete ozone attainment/3% rate-of-progress SIP; and a disapproval of any control strategy SIP (i.e., 15% rate-of-progress SIP, reasonable further progress SIP, or attainment demonstration) with a protective finding.

The interim final rule did not affect the timing of the conformity lapse which results from failure to determine conformity by the deadlines established in 40 CFR 51.400 (93.104) and 51.448(a) (93.128(a)), including deadlines to redetermine conformity with respect to submitted SIPs, following promulgation of the November 1993 rule, and following control strategy SIP approvals.

When the conformity status of the transportation plan and transportation improvement program (TIP) lapses, no new project-level conformity determinations may be made, and the only federal highway and transit projects which may proceed are exempt or grandfathered projects. Non-federal highway or transit projects may be adopted or approved by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act only if they are not regionally significant.

EPA is delaying the conformity lapse resulting from the specific SIP deficiencies listed above because EPA has recognized that in practice, the twelve-month time period which the November 24, 1993, transportation conformity rule allowed for areas to correct those SIP deficiencies is too short to be reasonable for purposes of determining when transportation plans and TIPs should lapse following SIP development failures.

Today's final rule amends the transportation conformity rule, "Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act" (58 FR 62188, November 24, 1993). Required under section 176(c) of the Clean Air Act, as amended in 1990, the transportation conformity rule established the criteria and procedures by which the Federal Highway Administration, the Federal Transit Administration, and metropolitan planning organizations (MPOs) determine the conformity of federally funded or approved highway and transit plans, programs, and projects to state implementation plans (SIPs). According to the Clean Air Act, federally supported activities must conform to the implementation plan's purpose of attaining and maintaining the national ambient air quality standards.

##### II. Description of Final Rule

This final rule makes no substantive changes from the proposed rule. This final rule permanently applies the provisions of the February 8, 1995, interim final rule by eliminating the six-month limit to the interim final rule's