

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 117**

[CGD05-98-090]

RIN 2115-AE47

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the Norfolk and Western Railroad drawbridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia. This change will require on-signal openings from 6 a.m. to 10 p.m. using a half-cycle draw operation and will reduce the advance notice required at other times from 3 hours to 2 hours. This change will provide for the reasonable needs of navigation.

DATES: This rule is effective February 9, 2001.

ADDRESSES: Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket (CGD05-98-090) and are available for inspection or copying at Commander (Aowb), Fifth Coast Guard District, Federal Building, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On November 2, 1998, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations, Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (63 FR 58676). We also distributed local notice of the **Federal Register** publication. We received 652 comments on the proposed rule. Most of the comments were on "form letters", signatures on a petition, and letters that although individually drafted contained the same language. These and other comments opposed the proposed changes and favored maintaining the current regulations or slightly increasing the hours of on-signal openings on weekend and holiday nights. Other suggestions included requiring the bridge to remain in the open position unless actually being used for train traffic, automating the operation of the

bridge, and requiring the bridge to open on-signal at all times. On May 15, 2000, we published a supplemental notice of proposed rulemaking (SNPRM) entitled "Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, VA" in the **Federal Register** (65 FR 30938). We also distributed local notice of the **Federal Register** publication. We received seven (7) comments on the supplemental proposed rule. No public hearing was requested, and none was held.

Background and Purpose

33 CFR 117.1007(a) currently requires the Norfolk Southern Railroad Bridge (formerly called the Norfolk and Western Railroad Bridge), mile 2.7, across the Eastern Branch of the Elizabeth River, to open on signal from 6 a.m. to 10 p.m., seven days a week, year round. At all other times, the bridge only opens with at least a three-hour advance notice.

Norfolk Southern Corporation (NSC) initially requested in 1998 a change to the regulations that would have reduced the hours during the day and times of the year when on-signal openings are required. NSC based their request on data from the 1996 and 1997 drawlogs. We reviewed the drawlogs and made recommendations to NSC changing their request to reflect more closely with the data obtained from the drawlogs. On November 2, 1998, a notice of proposed rulemaking (NPRM) was published in the **Federal Register** (63 FR 58676) proposing on-signal openings from April 15 to November 30, Monday through Thursday, from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times the bridge would only have to open for vessel traffic after three hours advance notice. As a result of this proposal, 652 comments were received all objecting to the proposed changes. We facilitated a meeting on April 20, 1999 during which NSC, local government representatives, and other interested attendees discussed the proposed rule. A written summary of the meeting is available for public review in the public docket. Based on all information received, we revised our original proposal to keep the original hours as in the current regulations using a "half-cycle operation", reducing the number of openings during the on-signal hours and reducing the current advance notice requirement from three hours to two hours during the 10 p.m. to 6 a.m. period. The Coast Guard's goal is to provide practical and feasible scheduled opening times for drawbridges during seasons of the year, and during times of the day, when scheduled openings would benefit users

and owners of the bridge as well as users of the waterway.

Discussion of Comment and Changes

We received seven (7) comments to the supplemental notice of proposed rulemaking. Six (6) responded in favor of the proposed change to the operating schedule of the Norfolk and Western Railroad Bridge. One (1) comment opposed the proposed change referring to it as being a more restricted schedule. This supplemental proposal is more lenient than the current schedule since it will provide "half cycle" operation, that is, the bridge goes from the closed position to the open position or vice versa, but does not complete the "cycle" to its original position. This provides boaters freer access of the river. Reducing the advance notification from three (3) to two (2) hours will allow waterway users greater flexibility in planning their transit of the bridge while not burdening the bridge owner with extended hours of on-signal operation unnecessarily. Based on this and the comments received since the publication of the SNPRM, we are amending 33 CFR 117.1007(a) which governs the Norfolk and Western Railroad Bridge, across the Elizabeth River, Eastern Branch, mile 2.7, at Norfolk, Virginia.

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. 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 Transportation (DOT) (44 FR 11040, February 26, 1979).

We reached this conclusion based on the fact that the proposed changes will not impede maritime traffic but actually serve to increase the ease of use by waterway users, while still providing for the needs of the bridge owner.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we 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 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.

This final rule would affect the following entities, some of which might be small entities: The owners and operators of vessels that desire to transit the waterway and homeowners associations representing property owners upstream of the drawbridge. This rule will not have a significant economic impact on a substantial number of small entities for the following reasons. This rule will increase the amount of time the drawbridge is open during peak waterway usage and decreases the notification requirement for off-peak opening of the drawbridge.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. This was accomplished through the solicitation of comments from local waterway users during a Coast Guard field study, and through publication of the NPRM and SNPRM in the **Federal Register** in which comments were solicited.

Collection of Information

This rule calls for no collection of information under the Paperwork Reduction Act (44 U.S.C. 3510-3520).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

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

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 concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.1C this rule is categorically excluded from further environmental documentation. This rule involves the operating schedule of an existing drawbridge and will have no impact on the environment. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For 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; 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 117.1007(a) is revised as to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk and Western Railroad bridge, mile 2.7 at Norfolk, shall open as follows:

(1) From 6 a.m. to 10 p.m., the draw shall open on signal if it is in the closed to navigation position and remain open until a train crossing requires that it be returned to the closed position.

(2) From 10 p.m. to 6 a.m., the draw shall open on signal if at least two hours notice is given.

* * * * *

Dated: December 21, 2000.

John E. Shkor,

Vice Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

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DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 219

National Forest System Land and Resource Management Planning; Review of Decisions To Amend or Revise Plans

AGENCY: Forest Service, USDA.

ACTION: Interpretive rule.

SUMMARY: The Department is adopting this interpretive rule to make explicit its intent regarding the procedure(s) that citizens and entities may use to appeal or object to plan revisions or amendments subsequent to the recent revision of the planning regulations at 36 CFR part 219 and the corollary rescission of the appeal regulations at 36 CFR part 217.

EFFECTIVE DATE: This interpretive rule is effective January 10, 2001.

ADDRESSES: Written inquiries about this interpretive rule may be sent to the Director, Ecosystem Management Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090.

FOR FURTHER INFORMATION CONTACT: Steve Segovia, Assistant Director for Appeals and Litigation, Forest Service; Telephone (202) 205-1066; Fax (202) 205-1012.

SUPPLEMENTARY INFORMATION: On November 9, 2000, the Secretary of Agriculture adopted a final rule which revised the land and resource management planning rules at 36 CFR part 219 and removed the administrative appeal of plan decisions at 36 CFR part 217 (65 FR 67514). The revised rule at 36 CFR part 219 establishes requirements for the implementation, monitoring, evaluation, amendment, and revision of land and resource management plans, and affirms sustainability as the overall goal for National Forest System planning and management. The intended effects of the rule are to simplify, clarify, and otherwise improve the planning process. To help achieve these intended effects, § 219.32 of the recently revised planning rule establishes an objection process to replace the appeals process embodied in part 217. Section 219.35 of the recently revised rule provides