

authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 165 be amended as follows:

**PART 165—BEVERAGES**

1. The authority citation for 21 CFR part 165 continues to read as follows:

**Authority:** 21 U.S.C. 321, 341, 343, 343–1, 348, 349, 371, 379e.  
 2. Section 165.110 is amended by removing the entry for “Arsenic” in the table in paragraph (b)(4)(i)(A), by revising paragraph (b)(4)(iii)(A) and the introductory text of paragraph (b)(4)(iii)(E), and by adding paragraph (b)(4)(iii)(E)(14) to read as follows:

**§ 165.110 Bottled water.**  
 \* \* \* \* \*  
 (b) \* \* \*  
 (4) \* \* \*  
 (iii) \* \* \*  
 (A) The allowable levels for inorganic substances are as follows:

Contaminant	Concentration in milligrams per liter (or as specified)
Arsenic .....	0.010.
Antimony .....	006.
Barium .....	2.
Beryllium .....	0.004.
Cadmium .....	0.005.
Chromium .....	0.1.
Copper .....	1.0.
Cyanide .....	0.2.
Lead .....	0.005.
Mercury .....	0.002.
Nickel .....	0.1.
Nitrate .....	10 (as nitrogen).
Nitrite .....	1 (as nitrogen).
Total Nitrate and Nitrite .....	10 (as nitrogen).
Selenium .....	0.05.
Thallium .....	0.002.

\* \* \* \* \*  
 (E) Analyses to determine compliance with the requirements of paragraph (b)(4)(iii)(A) of this section shall be conducted in accordance with an applicable method and applicable revisions to the methods listed in paragraphs (b)(4)(iii)(E)(1) through (b)(4)(iii)(E)(14) of this section and described, unless otherwise noted, in “Methods for Chemical Analysis of Water and Wastes,” U.S. EPA Environmental Monitoring and Support Laboratory (EMSL), Cincinnati, OH 45258 (EPA–600/4–79–020), March 1983, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition’s Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

\* \* \* \* \*  
 (14) Arsenic shall be measured using the following methods:  
 (i) Method 200.8—“Determination of Trace Elements in Water and Wastes by Inductively Coupled Plasma-Mass Spectroscopy,” contained in the manual entitled “Methods for the Determination of Metals in Environmental Samples—Supplement 1,” EPA/600/R–94/111,

May 1994, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of this publication are available from NTIS, PB95–125472, U.S. Department of Commerce, 5825 Port Royal Rd., Springfield, VA 22161, or may be examined at the Center for Food Safety and Applied Nutrition’s Library, Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.  
 (ii) Method 200.9—“Determination of Trace Elements by Stabilized Temperature Platform Graphite Furnace Atomic Absorption Spectrometry,” contained in the manual entitled “Methods for the Determination of Metals in Environmental Samples—Supplement 1,” EPA/600/R–94/111, May 1994, which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The availability of this incorporation by reference is given in paragraph (b)(4)(iii)(E)(14)(i) of this section.

\* \* \* \* \*  
 Dated: October 6, 2004.  
**Jeffrey Shuren,**  
*Assistant Commissioner for Policy.*  
 [FR Doc. 04–26531 Filed 11–26–04; 4:44 pm]  
**BILLING CODE 4160–01–S**

**DEPARTMENT OF HOMELAND SECURITY**  
**Coast Guard**  
**33 CFR Part 117**  
**[CGD05–04–209]**  
**RIN 1625–AA09**  
**Drawbridge Operation Regulations; Elizabeth River-Eastern Branch, Norfolk, VA**  
**AGENCY:** Coast Guard, DHS.  
**ACTION:** Notice of proposed rulemaking.  
**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Norfolk Southern (NS) Railroad Bridge (NS #V2.8) across Eastern Branch of the Elizabeth River, at mile 2.7, in Norfolk, VA. The proposed change would allow the NS #V2.8 bridge to be operated from a remote location, and to be operated from a remote location, and to remain open for vessel traffic and only close for train crossings and periodic maintenance. This proposed rule would make the operation of the bridge more efficient, because currently the bridge only opens on signal, or on signal after notice.  
**DATES:** Comments and related material must reach the Coast Guard on or before January 18, 2005.  
**ADDRESSES:** You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704–5004. The Fifth

Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Commander (obr), Fifth Coast Guard District between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Anton Allen, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6227.

**SUPPLEMENTARY INFORMATION:**

**Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking CGD05-04-209, indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like a return receipt, please enclose a stamped, self-addressed postcard or envelope. We will consider all submittals received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander (obr), Fifth Coast Guard District at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one public meeting at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

Norfolk Southern Corporation (NSC), who owns and operates this swing-type bridge at mile 2.7 across the Eastern Branch of the Elizabeth River, in Norfolk, VA, requested a change to the current operating procedures set out in 33 CFR 117.1007(a), which requires the draw to open on signal, from 6 a.m. to 10 p.m., and open on signal with at least two hours notice, from 10 p.m. to 6 a.m. This proposed rule would allow the NS Railroad Bridge (NS #V2.8) to remain open to vessel traffic and to close only for train crossings and periodic maintenance. This proposed rule would also allow the NS Railroad Bridge (NS #V2.8) to be operated from a remote location at the NS Railroad Bridge (NS

#5), at mile 1.1, over the Eastern Branch of the Elizabeth River.

NSC has installed closed circuit cameras in the area of the bridge and directly beneath the bridge, mounted on the center pier fender systems on both sides. Infrared sensors have also been installed to cover the swing radius of the bridge. This equipment enhances the controller's ability to monitor vessel traffic from the remote location. The controller will also monitor marine channel 13.

This change is being requested to make the operation of the NS Railroad Bridge (NS #V2.8) more efficient. It will save operational costs by eliminating the continuous presence of bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position and only closing for train crossings or periodic maintenance will provide for greater flow of vessel traffic than the current regulation.

**Discussion of Proposed Rule**

The Coast Guard proposes to amend the regulations governing the NS Railroad Bridge (NS #V2.8), at mile 2.7, in Norfolk, VA, which currently operates on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR § 117.1007(a). The amended regulation would allow the draw of the bridge to be operated remotely by the off-site controller at the NS Railroad Bridge (NS #5), at mile 1.1, over the Eastern Branch of the Elizabeth River in Norfolk, VA.

The draw would remain in the open position for navigation and shall only be closed for the passage of trains or periodic maintenance authorized in accordance with subpart A of this part.

Before the NS Railroad Bridge (NS #V2.8) closes for any reason, the remote operator will monitor waterway traffic in the area with closed circuit cameras and infrared sensors mounted on the bridge. The bridge would only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the NS Railroad Bridge (NS #V2.8) is moving from the full open to the full closed position, the controller will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction of monitoring equipment, the controller will stop and return the bridge to the full open position to vessels. In these situations, a bridge tender must be called and on-site within 30 minutes to operate the bridge.

Before closing the draw, the channel traffic lights would change from flashing green to flashing red, the horn would sound five short blasts, and an audio voice warning stating, "Norfolk Southern's Railroad Bridge over the Eastern Branch of the Elizabeth River at milepost 2.7 will be closing to river traffic." Five short blasts of the horn would continue until the bridge is seated and locked down to vessels, the channel traffic lights would continue to flash red.

When the rail traffic has cleared, the horn would automatically sound one prolonged blast followed by one short blast to indicate that the draw of the NS Railroad Bridge (NS #V2.8) is about to return to its full open position to vessels. During the open swing movement, the channel traffic lights would flash red until the bridge is in the full open position. In the full open position to vessels, the bridge channel lights would flash green followed by an announcement stating, "Security, security, security, the Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic." Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 446-5320.

The Coast Guard proposes to amend 33 CFR 117.1007 by revising paragraph (a).

The proposal would also change the name of the bridge in paragraph (a) from "Norfolk and Western Railroad Bridge" to "Norfolk Southern Railroad Bridge". The name changes would accurately reflect the names of this bridge. Text modifications to be consistent with other proposed changes would be made in these paragraphs, as appropriate.

**Regulatory Evaluation**

This proposed 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).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. We reached this conclusion based on the fact that the proposed changes have only a minimal impact on maritime traffic transiting the bridge. Although the NS Railroad Bridge (NS #V2.8) will be untended and

operated from a remote location, mariners can continue their transits because the bridge will remain open to mariners, only to be closed for train crossings or periodic maintenance.

#### Small Entities

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

This proposed rule would not have a significant economic impact on a substantial number of small entities for the following reason. The rule allows the NS Railroad Bridge to operate remotely and requires the bridge to remain in the open position to vessels the majority of the time, only closing for train crossings or periodic maintenance.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

#### Assistance for Small Entities

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 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 Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, (757) 398–6222. 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.

#### Collection of Information

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

#### Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

#### Environment

We have analyzed this proposed 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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e) of the Instruction, from further environmental documentation because it has been determined that the promulgation of operating regulations for drawbridges are categorically excluded.

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

Bridges.

## Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. In § 117.1007 revise paragraph (a) to read as follows:

#### § 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk Southern Railroad Bridge (NS #V2.8), mile 2.7 at Norfolk, shall operate as follows:

(1) The draw shall remain in the open position for navigation. The draw shall only be closed for train crossings or periodic maintenance authorized in accordance with Subpart A of this part.

(2) The bridge shall be operated by the controller at the Norfolk Southern Railroad Bridge (NS #5), mile 1.1, over the Eastern Branch of the Elizabeth River in Norfolk, VA. The controller shall monitor vessel traffic with closed circuit cameras and infrared sensors covering the swing radius. Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 446-5320.

(3) The bridge shall not be operated from the remote location in the following events: Failure or obstruction of the infrared sensors, closed-circuit cameras or marine-radio communications, or when controller visibility is less than  $\frac{3}{4}$  of a mile. In these situations, a bridge tender must be called to operate the bridge on-site.

(4) Before the bridge closes for any reason, the remote operator will monitor waterway traffic in the area. The bridge shall only be closed if the off-site remote operator's visual inspection shows that the channel is clear and there are no vessels transiting in the area. While the bridge is moving, the operator shall maintain constant surveillance of the navigation channel.

(5) Before closing the draw, the channel traffic lights will change from flashing green to flashing red, the horn will sound five short blasts, and an audio voice warning stating, "Norfolk Southern's Railroad Bridge over the Eastern Branch of the Elizabeth River at milepost 2.7 will be closing to river traffic." Five short blasts of the horn will continue until the bridge is seated

and locked down to vessels, the channel traffic lights will continue to flash red.

(6) When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate the draw is opening to vessel traffic. During the opening swing movement, the channel traffic lights will flash red until the bridge returns to the fully open position. In the fully open position to vessels, the bridge channel lights will flash green followed by an announcement stating, "Security, security, security, the Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic."

\* \* \* \* \*

Dated: November 22 2004.

**Ben R. Thomason, III,**

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

[FR Doc. 04-26520 Filed 12-1-04; 8:45 am]

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 229

[Docket No. 041108310-4310-01; I.D. 100104H]

RIN 0648-AS78

#### List of Fisheries for 2005

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

**ACTION:** Proposed rule.

**SUMMARY:** The National Marine Fisheries Service (NMFS) is publishing the proposed List of Fisheries (LOF) for 2005, as required by the Marine Mammal Protection Act (MMPA). The proposed LOF for 2005 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must categorize each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The categorization of a fishery in the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

**DATES:** Comments must be received by January 3, 2005.

**ADDRESSES:** You may send comments by any of the following methods:

- Mail: Chief, Marine Mammal Conservation Division, Attn: List of Fisheries, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

- E-mail: [2005LOF.comments@noaa.gov](mailto:2005LOF.comments@noaa.gov).

- Federal eRulemaking portal: <http://www.regulations.gov> (follow instructions for submitting comments).

Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this proposed rule, should be submitted in writing to the Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 and to David Rostker, OMB, by e-mail at [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to 202-395-7285.

Registration information, materials, and marine mammal reporting forms may be obtained from the following regional offices:

NMFS, Northeast Region, One Blackburn Drive, Gloucester, MA 01930-2298, Attn: Marcia Hobbs;

NMFS, Southeast Region, 9721 Executive Center Drive North, St. Petersburg, FL 33702, Attn: Teletha Griffin;

NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802-4213, Attn: Don Peterson;

NMFS, Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115, Attn: Permits Office;

NMFS, Alaska Region, Protected Resources, P.O. Box 22668, 709 West 9<sup>th</sup> Street, Juneau, AK 99802; or

NMFS, Pacific Islands Region, Protected Resources Division, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700.

#### FOR FURTHER INFORMATION CONTACT:

Kristy Long, Office of Protected Resources, 301-713-1401; David Gouveia, Northeast Region, 978-281-9328; Juan Levesque, Southeast Region, 727-570-5312; Cathy Campbell, Southwest Region, 562-980-4060; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Tamra Faris, Pacific Islands Region, 808-973-2937.

Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1-800-877-8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

**SUPPLEMENTARY INFORMATION:**