

will operate in accordance with the general operating regulations set out in 33 CFR 117.5 that require the bridge to open promptly and fully for the passage of vessels when a request to open is given.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviations.

The District Commander has granted a temporary deviation from the operating requirements listed in 33 CFR 117.35 for the purpose of repair completion of the drawbridge. The temporary deviation allows the NS #5 Railroad Bridge across the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk VA, to remain in the closed-to-navigation position during the following closure periods: each day from 8 a.m. to 4 p.m., on May 3 and 4, 2005; each day from 8:30 a.m. to 12 p.m. and from 1 p.m. to 4:30 p.m. on May 9 to 12 and on May 16 to 19, 2005.

Dated: April 12, 2005.

**Waverly W. Gregory, Jr.,**

*Chief, Bridge Administration Branch, Fifth Coast Guard District.*

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BILLING CODE 4910-15-P

## 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:** Final rule.

**SUMMARY:** The Coast Guard is changing the regulations that govern the operation of the Norfolk Southern (NS) Railroad Bridge (NS #V2.8) across the Eastern Branch of the Elizabeth River, at mile 2.7, in Norfolk, VA. The final rule allows the NS #V2.8 bridge to be operated from a remote location, and to remain open for vessel traffic and to close only for train crossings and periodic maintenance. This rule will make the operation of the bridge more efficient, because currently the bridge only opens on signal, or on signal after notice.

**DATES:** This rule is effective May 31, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-04-209 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Fifth Coast Guard District maintains the public docket for this rulemaking.

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

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On December 2, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Elizabeth River—Eastern Branch, Norfolk, VA" in the **Federal Register** (69 FR 70091). We received one comment on the proposed rule. No public meeting was requested, and none was held.

##### 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 Part 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.

Under this rule, the NS Railroad Bridge (NS #V2.8) will remain open to vessel traffic, closing only for train crossings and periodic maintenance. This rule allows 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 made 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 will be left in the open position and will only close for train crossings or periodic maintenance, and therefore will provide for greater flow of vessel traffic than the current regulation.

##### Discussion of Comments and Changes

The Coast Guard received one comment on the NPRM from NSC. NSC requested slight revisions to the language to be used in this rule. The Coast Guard has incorporated the following changes to this rule: In paragraph (a)(3), replaced "less than 3/4 of a mile" with "inhibited." A specific visibility distance was deemed impractical. Added the words "Attention, Attention" to the announcement in paragraph (a)(5). In paragraph (a)(6), removed the word "automatically." The operation of this bridge is not intended to be automatic. Also in paragraph (a)(6), added the following statement: "Vessels shall stay clear of both channels as to not interfere with the infrared detectors, until green lights are displayed on the swing span."

The Coast Guard considers these changes necessary for safe navigation and the final rule was changed to reflect these proposals.

##### 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).

We expect the economic impact of this 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 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 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 would not have a significant economic impact on a substantial number of small entities.

#### 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 rule so that they can better evaluate its effects on them and participate in the rulemaking process. No assistance was requested from any small entity.

#### 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 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 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 would not create an environmental risk to health or risk to safety that might 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 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 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. 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 anytime controller's visibility is inhibited. In these situations, a bridge tender with Norfolk Southern 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, "Attention, Attention. 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 sound one prolonged blast followed by one short blast to indicate that 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 full open position to vessels, the bridge channel lights will flash green followed by an announcement stating, "Security, security, security. Norfolk Southern Railroad Bridge at mile 2.7 is open for river traffic." Vessels shall stay clear of both channels as to not interfere with infrared detectors, until green lights are displayed on the swing span.

\* \* \* \* \*

Dated: April 18, 2005.

**Ben A. Thomason III,**

*Captain, United States Coast Guard, Acting Commander, Fifth Coast Guard District.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 165

[COTP SAN JUAN 05-002]

RIN 1625-AA87

#### Moving and Fixed Security Zone: Port of Fredericksted, Saint Croix, U.S. Virgin Islands

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing a moving and fixed security zone around cruise ships entering,

departing, mooring or anchoring at the Port of Fredericksted in Saint Croix, U.S. Virgin Islands. This regulation is a security measure designed to protect cruise ships at this port. All vessels, with the exception of cruise ships, are prohibited from entering the moving and fixed security zone around a cruise ship without the express permission of the Captain of the Port San Juan or their designated representative. The current temporary final rule at 33 CFR 165.T07-05-005 will be removed when this final rule is effective because it is unnecessary.

**DATES:** This rule is effective May 31, 2005.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP-05-002 and are available for inspection or copying at Prevention Operations Command Office, San Juan, #5 LaPuntilla Final, Old San Juan, PR 00901-1800, between 7 a.m. and 3:30 p.m. Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** LTJG Katuska Pabon, Prevention Operations Command San Juan at 787-729-2376.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory Information

On February 1, 2005, we published a notice of proposed rulemaking (NPRM) entitled "Moving and Fixed Security Zone: Port of Fredericksted, Saint Croix, U.S. Virgin Islands" in the **Federal Register** (70 FR 5083). We received no letters commenting on the proposed rule. No public meeting was requested and none was held.

##### Background and Purpose

Based on the September 11, 2001, terrorist attacks on the World Trade Center buildings in New York and the Pentagon in Arlington, Virginia, there is an increased risk that subversive activity could be launched from vessels in close proximity to cruise ships entering, departing, mooring or anchoring at any port of call. Following these attacks, national security and intelligence officials have warned that future terrorists attacks are likely and may include maritime interests such as cruise ships. The Captain of the Port San Juan proposes to reduce this risk by preventing unauthorized vessels from entering a moving or fixed security zone around each cruise ship entering, departing, anchoring or mooring at the Port of Fredericksted without the authorization of the Captain of the Port

San Juan or their designated representative.

Captain of the Port San Juan can be contacted on VHF Marine Band Radio, Channel 16 (156.8 Mhz), or by telephone number (787) 289-0739. The United States Coast Guard Communications Center would notify the public via Broadcast Notice to Mariners VHF Marine Band Radio, Channel 22, when a moving and fixed security zone is activated around a cruise ship at Fredericksted.

##### Discussion of Comments and Changes

We did not receive any comments regarding this regulation and therefore made no changes from the proposed rule based on comments. We did, however, correct typographical errors in the coordinates in the proposed rule used for the Fredericksted Pier Lights. The final rule contains the correct coordinates.

##### 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).

We expect the economic impact of this security zone to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Entry into the security zone would be prohibited for a limited period of time. Additionally, vessels may be allowed to enter the security zone with the express permission of the Captain of the Port San Juan or their designated representative.

##### 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.

Therefore, 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.