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Dated: November 16, 2004.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD05-04-117]

RIN 1625-AA09

Drawbridge Operation Regulation: Atlantic Intracoastal Waterway, Elizabeth River (Southern Branch), VA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the operating regulations for the Norfolk Southern (NS) #7 Railroad Bridge at Atlantic Intracoastal Waterway (AICW) mile 5.8, in Chesapeake, Virginia. The final rule for the NS Railroad Bridge will eliminate the need for a bridge tender by allowing the bridge to remain in the fully open position, to be operated from a remote location, and to close the bridge for train crossings and periodic repairs. The final rule will provide for the reasonable needs of navigation.

DATES: This rule is effective January 3, 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 CGD05-04-117 and are available for inspection or copying at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 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: Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:

Regulatory History

On August 27, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River (Southern Branch), VA" in the **Federal Register**

(69 FR 52617). We received four letters commenting on the proposed rule. No public hearing was requested nor held.

Background and Purpose

Norfolk Southern Corporation (NSC) requested a change to the current operating regulation set out in 33 CFR 117.5 that requires the drawbridge to open promptly and fully for the passage of vessels when a request to open is given.

NSC would remotely control the opening and closing of the Norfolk Southern (NS) #7 Railroad Bridge across the Southern Branch of the Elizabeth River at AICW mile 5.8 in Chesapeake, Virginia, by the remote operator at the NS #5 Railroad Bridge across the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk, Virginia. NSC installed a Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the drawbridge. NSC has installed motion sensors, laser scanners and high-resolution video cameras on the bridge to enhance the remote operator's ability to monitor and control the equipment. The NS #5 Railroad Bridge office, in Norfolk, is also equipped with an amplified open-mike from the bridge to enable the remote operator to hear boat horns that may signal for an opening. NS has also installed additional safety warning lights to the bridge for the remote operation.

Under this rule, the drawbridge would be left in open position to vessels and would only close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of part 117.

Before the NS #7 Railroad Bridge closes for any reason, the remote operator will observe the waterway traffic in the area with closed-circuit cameras and motion 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 the area.

While the NS #7 Railroad Bridge is moving from the full open position to the full closed position, the off-site remote operator will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction, the off-site remote operator will stop and return the bridge to the full open position to vessels. In these situations, a bridge tender must be called and must be on-site within 30 minutes to operate the bridge.

During span movement, the channel traffic lights will flash red, the horn would sound twice, and an audio voice-

warning device will announce bridge movement, then two repeat blasts of the horn will continue until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will flash red.

When the rail traffic has cleared, the horn will automatically sound five times to indicate that the draw of the NS #7 Railroad Bridge is about to return to the full open position to vessels. During the open span movement, the channel traffic lights will flash red, the horn will sound twice, followed by a pause, and then five repeat blasts of the horn until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will flash green then an audio warning device will announce bridge movement by stating "Security, security, security, the NS #7 Railroad Bridge at mile 5.8 is open for river traffic". After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw to vessels shall not exceed ten minutes except as provided in 33 CFR 117.31(b). Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 924-5320.

This rule will make the closure process of the NS #7 Railroad Bridge be more efficient during train crossings and periodic maintenance and will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

Discussion of Comments and Changes

The Coast Guard received four comments on the NPRM. Three comments, from commercial vessel operators, expressed their concerns with the location of the off-site remote operation. Their interests centered around the limited effectiveness of monitoring and communications with approaching vessels, their past experience with current bridge tenders' failure to respond to security calls, the lowering of the bridge while their vessels are transiting, and the loss of on-site bridge tenders controlling the operation of the bridge.

The remaining comment, offered by NSC, addressed the commercial vessel operators' concerns. NSC indicated that the location of the Norfolk area bridge operation center at the NS #5 Railroad Bridge office was selected because of the better-quality operators' house and facilities, economic considerations for relocation and that the communication between marine interests and the NS #5 Railroad Bridge operator will be comparable to the communication with the NS #7 Railroad Bridge operator. The

cameras installed at the NS #7 Railroad Bridge will provide the same level of general visibility of the channel and better visibility to the north and at night; and the infrared detector system will ensure that the NS #7 Railroad Bridge is not lowered on any vessel, because it is equipped with sensors.

NSC has provided a detailed plan which indicates that the effectiveness of the communication systems, cameras, boat detection system and other enhancements made to their systems will address all of the communication and safety needs of the marine community as well as those of rail transportation and their customers. Therefore, no changes are being made to this final rule.

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 reached this conclusion based on the fact that this final rule for the NS #7 Railroad Bridge will provide for greater flow of vessel traffic than the current regulations for the drawbridge.

Under the current regulations, the NS #7 Railroad Bridge remains closed and opens on signal to vessels. The final rule will require the bridge to remain in the open position permitting vessels to pass freely. The bridge will close only for train crossings and bridge maintenance. This final rule will provide for the reasonable needs of navigation.

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 will not have a significant economic impact on a substantial number of small entities.

This final rule will not have a significant economic impact on a substantial number of small entities for the following reasons. The final rule will provide for the NS #7 Railroad

Bridge to remain in the open position, allowing for the free flow of vessel traffic. The bridge would only close for the passage of trains and maintenance.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 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. In our notice of proposed rulemaking, we provided a point of contact to small entities who could answer questions concerning proposed provisions or option for compliance.

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 will 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. 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 consistent 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 considered the environmental impact of this rule and concluded that under figure 2-1, paragraph (32)(e), of Commandant Instruction M16475.ID, this rule is categorically excluded from further environmental documentation. The final rule only involves the operation of an existing drawbridge and will not have any impact on the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

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 § 117.997, redesignate paragraphs (e) through (i) as paragraphs (f) through (j) respectively, and add a new paragraph (e) to read as follows:

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

* * * * *

(e) The draw of the Norfolk Southern #7 Railroad Bridge, mile 5.8 in Chesapeake, shall operate as follows:

(1) The draw shall be remotely controlled by the operator at the Norfolk Southern #5 Railroad Bridge office over the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk.

(2) The draw shall be left in the open position to vessels and will only be closed for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(3) Trains shall be controlled so that any delay in opening of the draw shall not exceed ten minutes except as provided in § 117.31(b).

(4) Before the bridge closes for any reason, the off-site remote operator will monitor waterway traffic in the area with closed circuit cameras and motion sensors mounted on the bridge. The bridge will 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.

(5) While the bridge is moving from the full open position to the full closed position, the off-site remote operator will maintain constant surveillance of the navigation channel to ensure that no conflict with maritime traffic exists. In the event of failure or obstruction, the off-site remote operator will stop and return the bridge to the full open position to vessels. In the event of a failure or obstruction, a bridge tender must be called by the off-site remote operator and must be on-site within 30 minutes of the call to operate the bridge.

(6) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound twice, and an audio voice warning device will announce bridge movement, then two repeat blasts of the horn will sound until the bridge is seated and locked down. When the bridge is seated and locked down to vessels, the channel traffic lights will flash red.

(7) During the open span movement, the channel traffic lights will flash red, the horn will sound twice, followed by a pause, and then five repeat blasts of the horn will sound until the bridge is in the full open position to vessels. In the full open position to vessels, the bridge channel traffic lights will turn from flashing red to flashing green then an audio warning device will announce bridge movement by stating "Security, security, security, the Norfolk Southern #7 Railroad Bridge at mile 5.8 is open for river traffic".

(8) Operational information will be provided 24 hours a day on marine channel 13 and via telephone (757) 924-5320.

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Dated: November 22, 2004.

Ben R. Thomason, III,

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

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DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[CGD05-04-120]

RIN 1625-AA09

Drawbridge Operation Regulations; Northeast Cape Fear River, Wilmington, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations that govern the operation of the CSX Transportation (CSX) Hilton Railroad Bridge across the Northeast Cape Fear River, at mile 1.5, in Wilmington, NC. The final rule will eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. This rule change will maintain the bridge's current level of operational capabilities and continue providing for the reasonable needs of rail transportation and vessel navigation.

DATES: This rule is effective January 3, 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 CGD05-04-120 and are available at Commander (obr), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Terrance Knowles, Environmental Protection Specialist, Fifth Coast Guard District, at (757) 398-6587.

SUPPLEMENTARY INFORMATION:**Regulatory History**

On August 4, 2004, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations: Northeast Cape Fear River, Wilmington, NC" in the **Federal Register** (69 FR 47045). We received one comment on the proposed rule. No public hearing was requested nor held.

Background and Purpose

CSX, who owns and operates this movable (bascule type) bridge, requested changes to the operating procedures for the drawbridge located at mile 1.5 across the Northeast Cape Fear River, in Wilmington, NC. The vertical clearance under CSX Hilton Railroad Bridge in the closed position to vessels is 9 feet at mean low water and 6 feet at mean high water. The existing regulation listed at 33 CFR 117.5 requires the bridge to open on signal.

Under this rule, CSX will remotely operate the opening and closing of the CSX Hilton Railroad Bridge across Northeast Cape Fear River in Wilmington, NC, from the nearby CSX Navassa Railroad Bridge located on the Cape Fear River. CSX has installed motion sensors, laser scanners and high-resolution video cameras on the bridge to enhance the remote operator's ability