

## 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 rule is categorically excluded, under figure 2–1, paragraph (34)(h), of the Instruction, from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade permit are specifically excluded from further analysis and documentation under that section.

Under figure 2–1, paragraph (34)(h), of the Instruction, an “Environmental Analysis Check List” and a “Categorical Exclusion Determination” are not required for this rule. Comments on this section will be considered before we make the final decision on whether to categorically exclude this rule from further environmental review.

### List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 100 as follows:

### PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

1. The authority citation for part 100 continues to read as follows:

**Authority:** 33 U.S.C. 1233; Department of Homeland Security Delegation No. 0170.1.

2. Add a temporary § 100.35–T05–147 to read as follows:

#### § 100.35–T05–147 Choptank River, Cambridge, MD.

(a) *Definitions:* As used in this section—*Coast Guard Patrol Commander* means a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Activities Baltimore.

*Official Patrol* means any vessel assigned or approved by Commander, Coast Guard Activities Baltimore with a commissioned, warrant, or petty officer on board and displaying a Coast Guard ensign.

*Participant* includes all vessels participating in the 2004 Cambridge Offshore Challenge under the auspices of the Marine Event Permit issued to the event sponsor and approved by Commander, Coast Guard Activities Baltimore.

*Regulated area* includes all waters of the Choptank River, from shoreline to shoreline, bounded to the west by the Route 50 bridge and bounded to the east by a line drawn longitude 076°01'30" W at Chancellor Point. All coordinates reference Datum: NAD 1983.

(b) *Special local regulations.* (1) Except for event participants and persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the regulated area must:

(i) Stop the vessel immediately when directed to do so by any Official Patrol.

(ii) Proceed as directed by any Official Patrol.

(iii) Unless otherwise directed by the Official Patrol, operate at a minimum wake speed not to exceed six (6) knots.

(c) *Enforcement period.* This section will be enforced from 10:30 a.m. to 5:30 p.m. on September 26, 2004.

Dated: August 16, 2004.

**Ben R. Thomason, III,**

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

[FR Doc. 04–19565 Filed 8–26–04; 8:45 am]

**BILLING CODE 4910–15–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05–04–117]

RIN 1625–AA09

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, Elizabeth River (Southern Branch), 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 #7 Railroad Bridge across the Southern Branch of the Elizabeth River at Atlantic Intracoastal Waterway mile 5.8, in Chesapeake, Virginia. The proposed rule would increase vessel openings and eliminate the need for a bridge tender by allowing the bridge to be operated from a remote location. This change will provide for the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before October 26, 2004.

**ADDRESSES:** You may mail comments and related material to Commander

(obr), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or they may be hand delivered to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays. The telephone number is (757) 398–6222. The Commander (obr), 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 the above address.

**FOR FURTHER INFORMATION CONTACT:** Bill Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398–6422.

### 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 (CGD05–04–117), 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 to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material 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 the Commander, 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 at a time and place announced by a later notice in the **Federal Register**.

#### Background and Purpose

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

NSC proposes to remotely control the opening and closing of the Norfolk Southern (NS) #7 Railroad Bridge across the Southern Branch of the Elizabeth River at Atlantic Intracoastal Waterway

(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.

This change is being requested to make the closure process of the NS #7 Railroad Bridge more efficient. It will save operational costs by eliminating bridge tenders, and is expected to decrease maintenance costs. In addition, the draw being left in the open position most of the time 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 #7 Railroad Bridge across the Southern Branch of the Elizabeth River, at AICW mile 5.8, which currently opens on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR 117.997(e).

A new paragraph (e) would contain the proposed rule for the NS #7 Railroad Bridge, at AICW mile 5.8, in Chesapeake. The rule would allow the drawbridge to be remotely controlled by the off-site remote operator at the NS #5 Railroad Bridge office across the Eastern Branch of the Elizabeth River, at mile 1.1, in Norfolk. The drawbridge would be left in the 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 monitor 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 in 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 on-site within 30 minutes to operate the bridge.

During span movement, the channel traffic lights would 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 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 its full open position to vessels. During the open span movement, the channel traffic lights would 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 turn from flashing red to flashing 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.

The Coast Guard proposes to revise § 117.997 by redesignating paragraphs (e) through (i) and inserting a new paragraph (e). Text modifications to be consistent with other proposed changes will 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 for the NS #7 Railroad Bridge regulation will provide for greater flow of vessel traffic than the current regulations of the drawbridge.

Under the current regulations, the NS #7 Railroad Bridge remains closed and opens only on signal to vessels. The proposed regulation 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 proposed regulation 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 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 reasons. The 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.

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 (Pub. L. 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 process. 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 would 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 security 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 M16475.1D, 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.

#### 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 § 117.997, 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, South Branch of the Elizabeth River to the 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 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.

(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 these situations, a bridge tender must be called and on-

site within 30 minutes to operate the bridge.

(6) During closing of the span, the channel traffic lights would 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 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 would 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 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.

\* \* \* \* \*

Dated: August 18, 2004,

**Ben R. Thomason, III,**

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

[FR Doc. 04-19564 Filed 8-26-04; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Part 402

[CMS-6146-CN]

RIN 0938-AL53

#### Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Correction of proposed rule.

**SUMMARY:** This document corrects a technical error that appeared in the proposed rule published in the **Federal Register** on July 23, 2004 entitled "Medicare Program; Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures."

**FOR FURTHER INFORMATION CONTACT:** Joel Cohen, (410) 786-3349.

## SUPPLEMENTARY INFORMATION:

### I. Background

In FR Doc. 04-16791 of July 23, 2004 (69 FR 43956), there was a technical error that is identified and corrected in the Correction of Errors section below.

We inadvertently omitted the correct **ADDRESSES** section, which included the e-mail address for electronic comments. We are correcting this error by republishing the **ADDRESSES** section of the proposed rule.

### II. Correction of Errors

In FR Doc. 04-16791 of July 23, 2004 (69 FR 43956), make the following correction:

1. On page 43956, in the third column; in the second paragraph, replace the **ADDRESSES** section with the following:

**ADDRESSES:** In commenting, please refer to file code CMS-6146-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of three ways (no duplicates, please):

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to <http://www.cms.hhs.gov/regulations/ecomments>. (Attachments should be in Microsoft Word, WordPerfect, or Excel; however, we prefer Microsoft Word.)

2. *By mail.* You may mail written comments (one original and two copies) to the following address only:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS-6146-P, P.O. Box 8013, Baltimore, MD 21244-8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments (one original and two copies) before the close of the comment period to one of the following addresses. If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786-7197 in advance to schedule your arrival with one of our staff members.

Room 445-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; or 7500 Security Boulevard, Baltimore, MD 21244-1850.

(Because access to the interior of the HHH Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main

lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

### III. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this notice merely provides a technical correction to the regulation. Therefore, we find good cause to waive notice and comment procedures.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: August 16, 2004.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 04-19257 Filed 8-26-04; 8:45 am]

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

#### 42 CFR Parts 431 and 457

[CMS-6026-P]

RIN 0938-AM86

#### Medicaid Program and State Children's Health Insurance Program (SCHIP): Payment Error Rate Measurement

**AGENCY:** Centers for Medicare & Medicaid Services (CMS), HHS.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would require State agencies to estimate improper payments in the Medicaid program and SCHIP program. The Improper Payments Information Act of 2002 requires Federal agencies to annually review and identify those programs and activities that may be susceptible to significant erroneous