

## 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.

## 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. From 8 a.m. on September 12, 2005 until 6 p.m. on December 9, 2005, in § 117.729, suspend paragraph (b) and add a new paragraph (c) to read as follows:

### § 117.729 Mantua Creek.

\* \* \* \* \*

(c) From 8 a.m. on September 12, 2005, through 6 p.m. on December 9, 2005, the S.R. 44 Bridge, mile 1.7, at Paulsboro, may remain closed to navigation.

Dated: September 22, 2004.

**Sally Brice-O'Hara,**

*Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.*

[FR Doc. 04–22848 Filed 10–8–04; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

[CGD05–04–168]

RIN 1625–AA09

## Drawbridge Operation Regulations; Christina River, Wilmington, DE

**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 across Christina River, at mile 1.4, in Wilmington, DE. The proposed change would maintain the bridge's current level of operational capabilities and continue to provide for the reasonable needs of rail transportation and vessel navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before December 13, 2004.

**ADDRESSES:** You may mail comments and related material to Commander (obr), Fifth Coast Guard District, Federal Building, 4th 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 CGD05–04–168, 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 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 1.4 across the Christina River, in Wilmington, DE, requested a change to the current operating procedures set out in 33 CFR part 117.237(a)(2) which requires the draw to open on signal, except that the draw of a railroad bridge need not be opened when a train is in the bridge block, approaching the bridge, or within 5 minutes of the passage of a passenger train; but in no event shall the opening of the draw be delayed more than 10 minutes. This proposed rule would allow the NS Railroad Bridge to remain open to vessel traffic, closing only for train crossings and periodic maintenance. This proposed rule would also allow the NS Railroad Bridge to be operated from a remote location at the Harrisburg, PA Dispatcher's Office.

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 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 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 Railroad Bridge, at mile 1.4, in Wilmington, DE, which currently operates on signal. The Coast Guard proposes to insert this new specific regulation at 33 CFR 117.237(b).

Paragraph (b) would contain the proposed rule for the NS Railroad Bridge, at mile 1.4, in Wilmington, DE. The rule would allow the draw of the bridge to be operated remotely by the off-site controller at the Harrisburg, PA Dispatcher's Office.

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 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 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 will sound five short blasts, and an audio voice warning stating, "Norfolk Southern's Railroad Bridge over Christina River at milepost 1.4 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.

When the rail traffic has cleared, the horn will automatically sound one prolonged blast followed by one short blast to indicate that the draw of the Norfolk Southern Railroad Bridge 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 will flash green followed by an announcement stating, "Security, security, the Norfolk Southern Railroad Bridge at mile 1.4 is open for river traffic." Operational information will be provided 24 hours a day on marine channel 13 and via telephone (717) 541-2140.

The Coast Guard proposes to amend 33 CFR 117.237 by redesignating paragraphs (b) through (d) as paragraphs

(c) through (e) and add a new paragraph (b).

The proposal will also change the name of the bridges in redesignated paragraph (2)(d) from "Conrail Bridges" to "Norfolk Southern Railroad Bridges". The name changes will accurately reflect the names of these bridges. 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 have only a minimal impact on maritime traffic transiting the bridge. Although the NS Railroad Bridge 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 § 117.237 redesignate paragraphs (b) through (d) as paragraphs (c) through (e) and add a new paragraph (b), and revise newly redesignated paragraph (d) to read as follows:

##### § 117.237 Christina River.

\* \* \* \* \*

(b) The draw of the Norfolk Southern Railroad Bridge, mile 1.4 at Wilmington, 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 Harrisburg, PA Dispatcher's Office. 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 (717) 541-2140.

(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 would 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 Christina River at milepost 1.4 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 would 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, the Norfolk Southern Railroad Bridge at mile 1.4 is open for river traffic."

(c) \* \* \*

(d) The draws of the Norfolk Southern Railroad bridges, at miles 4.1 and 4.2, both at Wilmington, shall open on signal from 6 a.m. to 8 p.m. if at least 24 hours notice is given. From 8 p.m. to 6 a.m., the draws need not be opened for the passage of vessels.

\* \* \* \* \*

Dated: September 28, 2004.

**Ben R. 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

[CGD13-04-040]

RIN 1625-AA87

### Security Zones; Protection of Military Cargo, Captain of the Port Zone Puget Sound, WA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a security zone in Budd Inlet, Olympia, WA to protect Department of Defense assets and military cargo in Puget Sound, Washington. The proposed security zone, when enforced by the Captain of the Port Puget Sound, would provide for the regulation of vessel traffic in the vicinity of military cargo loading operations in the navigable waters of the United States. **DATES:** Comments and related material must reach the Coast Guard on or before November 26, 2004.

**ADDRESSES:** You may mail comments and related material to Commanding Officer, Marine Safety Office Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134. Marine Safety Office Puget Sound maintains the public docket [CGD13-04-040] 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 Marine Safety Office Puget Sound between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. **FOR FURTHER INFORMATION CONTACT:** LTjg T. Thayer, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, WA 98134, (206) 217-6232. For specific information concerning enforcement of this rule, call Marine Safety Office Puget Sound at (206) 217-6200 or (800) 688-6664.

#### 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 (CGD13-04-040), 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 that your submission 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 Marine Safety Office Puget Sound 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 separate notice in the **Federal Register**.

#### Background and Purpose

Hostile entities continue to operate with the intent to harm U.S. National Security by attacking or sabotaging national security assets. The President has continued the national emergencies he declared following the September 11, 2001 terrorist attacks. 67 FR 58317 ((Sept. 13, 2002) (continuing national emergency with respect to terrorist attacks)); 67 FR 59447 ((Sept. 20, 2002) continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)); 68 FR 55189 ((Sept. 22, 2003) (continuing national emergency with respect to persons who commit, threaten to commit or support terrorism)).

The President also has found pursuant to law, including the Magnuson Act (50 U.S.C. 191 *et seq.*), that the security of the United States is and continues to be endangered following the attacks (E.O. 13,273, 67 FR 56215 (Sept. 3, 2002) (security endangered by disturbances in international relations of U.S. and such disturbances continue to endanger such relations)).

Moreover, the ongoing hostilities in Afghanistan and Iraq make it prudent for U.S. ports and waterways to be on a higher state of alert because the Al Qaeda organization and other similar organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The Coast Guard, through this proposed rule, intends to assist the Department of Defense protect vital national security assets, in waters of Puget Sound. This proposed rule would add Budd Inlet as a permanent security zone in 33 CFR 165.1321. The security zones permanently established in 33 CFR 165.1321 exclude persons and vessels from these zones during military