

Dated: October 26, 1998.

William C. Apgar,

*Assistant Secretary for Housing—Federal
Housing Commissioner.*

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD05-98-090]

RIN 2115-AE47

Drawbridge Operation Regulations; Elizabeth River, Eastern Branch, Norfolk, Virginia

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of Norfolk Southern Corporation, the Coast Guard is proposing to change the regulations that govern the operation of the Norfolk and Western Railroad drawbridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia. The proposed rule would reduce the hours when on-demand openings of the bridge are required during the boating season, and openings at all other times would require three-hours advance notice. This change is intended to reduce on-demand openings at times when there is minimal use of the bridge while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Comments may be mailed to Commander (Aowb), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004, or 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. Comments will become a part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested parties to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking

(CGD05-98-090) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander, Fifth Coast Guard District, at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid in this proposed rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

33 CFR 117.1007(a) currently requires the Norfolk and Western Railroad Bridge, mile 2.7, across the Eastern Branch of the Elizabeth River, to open on signal from 6 a.m. to 10 p.m., seven days a week, year round. At all other times, the bridge only opens with at least a three-hour advance notice.

The Norfolk Southern Corporation has requested that the Coast Guard change the operating schedule of the Norfolk and Western Railroad bridge by reducing the hours when on-demand openings are provided during the boating season and requiring three-hours advance notice for openings outside of the boating season. Specifically, Norfolk Southern Corporation has requested that the drawbridge open on demand from April 15 to September 30, Monday through Thursday from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, the drawbridge would only open with at least a three-hour advance notice.

The Norfolk Southern Corporation has based their request on data obtained from the 1996 and 1997 drawlogs. The logs revealed that from April to October during the weekdays (Monday through Thursday) from 10 a.m. to 6 p.m., and during the weekends (Friday through Sunday) from 6 a.m. to 11 p.m., the waterway traffic was at its peak. From 6 p.m. to 10 a.m. weekdays, and from 11 p.m. to 6 a.m. weekends during these same months, waterway traffic

decreased sufficiently to request placing the bridge in advance-notice status. Norfolk Southern Corporation has also requested that from October to April, all bridge openings be provided only with a three-hour advance notice.

A Coast Guard review of the drawlogs revealed that waterway traffic, particularly recreational, remains active through October and November. From December to mid-April, recreational waterway traffic decreases by 80% while commercial waterway traffic remains steady. The majority of bridge openings during the weekends from April through November were a result of recreational boaters. Additional information provided by Norfolk Southern Corporation showed that during October and November 1996, the number of draw openings were 86 and 73, respectively. During October and November 1997, the number of openings were 88 and 59, respectively. During the months of June, July and August of 1996, the number of openings were 180, 106, and 137. In 1997 during the same months, the number of openings were 155, 107, and 148. Even though draw openings are lower from October through November than during the peak summer months, it is apparent the need exists to extend the boating season to the end of November to meet the needs of navigation.

Located upstream of the railroad bridge are commercial businesses that depend on this waterway for their livelihood and numerous property owners who own boats and frequent the river during the boating season. The Coast Guard's goal is to provide practical and feasible scheduled opening times for drawbridges during seasons of the year, and during times of the day, when scheduled openings would benefit users and owners of the bridge as well as users of the waterway. Even though Norfolk Southern Corporation has requested that the boating season begin in mid-April and end in September, the Coast Guard feels it is necessary to extend the boating season to the end of November based on information acquired from the drawlogs and local knowledge of the Eastern Branch of the Elizabeth River. It is also felt that, since this railroad bridge currently opens on-demand year round from 6 a.m. to 10 p.m., extending the boating season by two months is a reasonable compromise between the waterway users and the railroad. The Coast Guard believes that this proposed rule would reduce the need for providing a bridgetender for on-demand bridge openings at times of the year when there is minimal need for one

while still providing for the reasonable needs of navigation.

Discussion of Proposed Amendment

The Coast Guard proposes to amend 33 CFR 117.1007(a), which governs the Norfolk and Western Railroad bridge across the Eastern Branch of the Elizabeth River, mile 2.7, at Norfolk, Virginia, by requiring on-demand openings from April 15 to November 30, Monday through Thursday from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, the bridge would be required to open only upon three-hours advance notice.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard reached this conclusion based on the fact that the proposed changes will not prevent mariners from transiting the bridge, but merely require mariners to adhere to the proposed new operation procedures during transits of the bridge.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), the U.S. Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small independently owned and operated businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3510-3520).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed regulation will not raise

sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under figure 2-1, paragraph (32)(e) of Commandant Instruction M16475.1C this proposed rule is categorically excluded from further environmental documentation based on the fact that this is a promulgation of an operating regulation for a drawbridge. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, to read 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; 49 CFR 1.46; 33 CFR 1.05-1(g); Section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

2. In section 117.1007, paragraph (a) is revised to read as follows:

§ 117.1007 Elizabeth River—Eastern Branch.

(a) The draw of the Norfolk and Western Railroad bridge, mile 2.7 at Norfolk, shall open on signal from April 15 to November 30, Monday through Thursday from 10 a.m. to 6 p.m., and Friday through Sunday from 6 a.m. to 11 p.m. At all other times, openings shall require three-hours advance notice.

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Dated: October 22, 1998.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 98-29244 Filed 10-30-98; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AJ28

Medical: Advance Healthcare Planning

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the VA medical regulations to codify VA policy regarding advance healthcare planning. The proposed rule sets forth a mechanism for the use of written advance directives, i.e., a VA Living Will, a VA durable power of attorney for health care, and a state-authorized advance directive. The proposed rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent *and* the patient is not physically able to sign an advance directive form, or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future healthcare.

DATES: Comments must be received on or before January 4, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulation Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN: 2900-AJ28." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 AM and 4:30 PM, Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ruth-Ann Phelps, Ph.D., Veterans Health Administration, National Center for Clinical Ethics (10AE), 810 Vermont Avenue, NW, Washington, DC 20420, at 202-273-8473 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Under the authority of 38 U.S.C. 7331 through 7333, this document proposes to amend the medical regulations (38 CFR Part 17) to codify VA policy concerning advance healthcare planning. Advance healthcare planning provides an opportunity for patients to give guidance to their caregivers regarding their treatment preferences for the future should they become incapable of participating fully in the decision-making process.

The proposed rule sets forth a mechanism for the use of written advance directives, i.e., a VA Living Will, a VA durable power of attorney for health care, and a state-authorized advance directive. The proposed rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a