

mail [Waverly.W.Gregory@uscg.mil](mailto:Waverly.W.Gregory@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

**SUPPLEMENTARY INFORMATION:** The Norfolk Southern Railway (NSR) owns and operates the swing span of the Neuse River Railroad Bridge across Neuse River in New Bern NC. The bridge has zero vertical clearance in the closed position to vessels, above mean high water. The current operating regulations are outlined at 33 CFR 117.5, which requires the bridge to open promptly and fully for the passage of vessels when a request to open is given.

NSR has requested a temporary deviation to the existing regulations for the Neuse River Railroad Bridge to facilitate mechanical repairs. The repairs consist of removing, refurbishing, and replacing of drive shaft bearings, wedge blocks, rail levers, and turnbuckles.

Under this deviation, the swing span of the drawbridge will be maintained in the closed-to-navigation position from 8 a.m. on November 16, 2010, through 8 a.m. on November 18, 2010.

According to information furnished by NSR, the swing span normally remains open to vessels, closing to permit rail traffic usually four times in a 24-hour period and these closures generally occur between 11 p.m. and 10 a.m. In 2009, between 10 a.m. and 11 p.m., vessel traffic passing at the swing span typically consisted of four yachts.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notices to Mariners of the closure period so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

There are no alternate routes for vessels transiting this section of the Neuse River and the drawbridge will be unable to open in the event of an emergency.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulation is authorized under 33 CFR 117.35.

Dated: November 2, 2010.

**Waverly W. Gregory, Jr.**

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

[FR Doc. 2010-28736 Filed 11-15-10; 8:45 am]

**BILLING CODE 9110-04-P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2010-0879]

#### Drawbridge Operation Regulations; Atlantic Intracoastal Waterway (AIWW), Elizabeth River, Southern Branch, VA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Commander, Fifth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Gilmerton (US13/460) Bridge across the Elizabeth River (Southern Branch), AIWW mile 5.8, at Chesapeake, VA. This deviation will test a change to the drawbridge operation schedule to determine whether a schedule change is needed. This deviation will allow the bridge to remain in the closed position for certain vessels for longer morning and evening rush hour periods during the weekdays and will implement scheduled bridge openings between the rush hours and on the weekends.

**DATES:** This deviation is effective from 6:30 a.m. on December 20, 2010 through 6:30 p.m. on June 18, 2011.

Comments and related material must be received by the Coast Guard on or before April 18, 2011.

**ADDRESSES:** You may submit comments identified by docket number USCG-2010-0879 using any one of the following methods:

(1) *Federal Rulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

(4) *Hand delivery:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

To avoid duplication, please use only one of these methods. See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this proposed rule, call or e-mail Bill H. Brazier, Bridge Management Specialist, Fifth

Coast Guard District; telephone 757-398-6422, e-mail

[Bill.H.Brazier@uscg.mil](mailto:Bill.H.Brazier@uscg.mil). If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

#### SUPPLEMENTARY INFORMATION:

#### Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

#### Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG-2010-0879), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand delivery, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, click on the "submit a comment" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0879," click "Search," and then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

**Viewing Comments and Documents**

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "USCG-2010-0879" and click "Search." Click the "Open Docket Folder" in the "Actions" column. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

**Privacy Act**

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

**Public Meeting**

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain 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**.

**Basis and Purpose**

The City of Chesapeake, Virginia (the City), who owns and operates the lift-type Gilmerton (US13/460) Bridge, has requested a temporary deviation to the existing bridge regulations. The normal operating schedule requires the Gilmerton (US13/460) Bridge, at AIWW mile 5.8 in Chesapeake, with a vertical clearance of seven feet above mean high tide in the closed position, to open on signal at anytime for commercial vessels carrying liquefied flammable gas or other hazardous materials. From 6:30 a.m. to 8:30 a.m. and from 3:30 p.m. to 5:30 p.m. Monday through Friday, except Federal holidays, the draw need not open for the passage of recreational or commercial vessels; except the draw shall open any time for commercial cargo vessels, including tugs, and tugs with tows, if two hours advance notice is given to the Gilmerton Bridge at (757) 545-1512. In addition, the draw shall open on signal at all other times as required by 33 CFR 117.995(c). The current operating schedule has been in effect since November 17, 2003.

The Gilmerton Bridge Replacement project, which has been underway since November 2009, will provide a new vertical-lift type bridge over the Southern Branch of the Elizabeth River to replace the existing bridge that was constructed in 1938.

Due to the construction for the new Gilmerton (US13/460) Bridge, traffic is limited to one lane in each direction for the next three years. This test deviation will allow the City to monitor, measure, and identify congested roadway locations during heavy traffic periods. By expanding the morning and evening rush hour periods on the weekdays and implementing scheduled bridge openings between the rush hour periods and on the weekends, we anticipate a decrease in vehicular traffic congestion during the daytime hours.

During this test deviation, the City will gather data from the scheduled openings, along with vessel counts, to compare, evaluate, and monitor both old and new traffic patterns in hope of reducing roadway congestion on the bridge and local commuting area by adjusting bridge openings to ensure any future regulation will not have a significant impact on navigation. Vessel traffic on this waterway consists of pleasure craft, tug and barge traffic, and ships with assist tugs. There are no alternate routes for vessels transiting this section of the Atlantic Intracoastal Waterway and the drawbridge will be able to open in the event of an emergency.

According to records furnished by the City, there were a total of 6,195 bridge openings and 12,498 vessel passages occurring at the drawbridge between September 2009 and September 2010. (See Table A)

TABLE A

2009	2009	2009	2009	2010	2010	2010	2010	2010	2010	2010	2010	2010
SEP	OCT	NOV	DEC	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP
<b>BRIDGE OPENINGS FOR SEPTEMBER 2009-SEPTEMBER 2010</b>												
551	621	549	503	299	284	317	476	639	616	459	365	516
<b>BOAT PASSAGES FOR SEPTEMBER 2009-SEPTEMBER 2010</b>												
892	1,858	1,361	645	406	392	478	967	1,770	1,408	791	628	902

Under normal conditions, the Gilmerton (US13/460) Bridge is a vital transportation route for over 35,000 motorists per day. According to recent vehicular traffic counts submitted by the City, the average daily traffic volume decreased at the Gilmerton (US13/460) Bridge to approximately 20,000 cars a day. Due to construction, the I-64 High Rise Bridge is the suggested alternate route for motorists. Even with the alternative vehicular route, the Coast Guard anticipates a continued increase in vehicular traffic congestion over the

Gilmerton (US13/460) Bridge due to the previously referenced vehicular traffic limitations.

A Notice of Proposed Rulemaking, USCG-2010-0879, is being issued in conjunction with this Temporary Deviation to obtain additional public comments. The proposed rule will be in effect for three years until December 20, 2013.

The Coast Guard will evaluate public comments from this Test Deviation and the above-referenced Notice of Proposed Rulemaking to determine if a temporary

change to the drawbridge operating regulation at 33 CFR 117.997(c) is warranted.

From 6:30 a.m. on December 20, 2010 through 6:30 p.m. on June 18, 2011, the draw of the Gilmerton (US13/460) Bridge, at AIWW mile 5.8, shall open on signal at any time for commercial vessels carrying liquefied flammable gas or other hazardous materials. From 6:30 a.m. to 9:30 a.m. and from 3:30 p.m. to 6:30 p.m., Monday through Friday, except Federal holidays, the draw need not open for the passage of recreational

or commercial vessels; except the draw shall open anytime for commercial cargo vessels, including tugs, and tugs with tows, if two hours advance notice is given to the Gilmerton Bridge at (757) 545-1512.

From 9:30 a.m. to 3:30 p.m. Monday through Friday and from 6:30 a.m. to 6:30 p.m. Saturdays, Sundays and Federal holidays, the draw shall open on signal hourly on the half hour; except the draw shall open anytime for commercial cargo vessels, including tugs, and tugs with tows, if two hours advance notice is given to the Gilmerton Bridge at (757) 545-1512. At all other times, the draw shall open on signal.

We anticipate a decrease in vehicular traffic congestion at the bridge, with no impact to vessels passing under the bridge in the closed position; however we foresee slight delays to vessels while transitioning to the new test opening schedule.

This test deviation has been coordinated with the main commercial waterway user group, specifically, the Virginia Maritime Association who represents waterborne commerce in the Port of Hampton and there is no expectation of any significant impacts on navigation. Vessels with a mast height of less than seven feet can pass underneath the bridge in the closed position. There are no alternate waterway routes.

In accordance with 33 CFR 117.35(e), the drawbridge must return to its regular operating schedule immediately at the end of the designated time period. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: November 2, 2010.

**Patrick B. Trapp,**

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

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**BILLING CODE 9110-04-P**

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## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

RIN 2900-AN45

#### Responding to Disruptive Patients

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) regulation that authorizes appropriate action when a patient engages in disruptive behavior at a VA medical facility. This amendment updates VA's current regulation to reflect modern

medical care and ethical practices. The final rule authorizes VA to modify the time, place, and/or manner in which VA provides treatment to a patient, in order to ensure the safety of others at VA medical facilities, and to prevent any interference with the provision of medical care.

**DATES:** This final rule is effective December 16, 2010.

**FOR FURTHER INFORMATION CONTACT:** Roscoe Butler, Acting Director, Business Policy, Chief Business Office (163), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 461-1586. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** Under 38 U.S.C. chapters 17 and 18, VA has authority to provide medical care to certain veterans and non-veterans. VA is required, per 38 U.S.C. 1721, to prescribe rules and regulations to promote good conduct on the part of VA patients. VA has implemented this authority in 38 CFR part 17.

Regarding the rights of patients receiving VA care, 38 CFR 17.33(a) prescribes, in part, that patients have "a right to be treated with dignity in a humane environment that affords them both reasonable protection from harm and appropriate privacy with regard to their personal needs." Patients also have "a right to receive, to the extent of eligibility therefor under the law, prompt and appropriate treatment for any physical or emotional disability." Section 17.33(b) also prescribes rights with respect to visitations and communications, clothing, personal possessions, money, social interaction, exercise, and worship for VA residents and inpatients. These rights may be restricted by the appropriate health care professional in certain circumstances. See 38 CFR 17.33(c). The restrictions authorized by § 17.33(c), however, do not apply to outpatients and only cover restrictions on the listed rights. In certain cases, VA must restrict the provision of medical care to a patient in order to prevent harm to other patients and VA staff and disruptions in VA's provision of medical care due to the patient's behavior.

VA regulations also prescribe rules of conduct for patients and other individuals who have access to VA facilities. See 38 CFR 1.218. In particular, § 1.218(a)(5) prohibits persons on VA property from causing a wide variety of disturbances, including creating "loud or unusual noise," obstructing public areas, and impeding or disrupting "the performance of official duties by Government

employees." The sole enforcement mechanism provided by paragraph (a)(5) is "arrest and removal from the premises." 38 CFR 1.218(a)(5). VA has determined that arrest is generally not an appropriate remedy in a situation where the Department must balance the rights and needs of a disruptive patient against the need to protect other patients, guests, and staff. Some patients establish a pattern of disruptive behavior when interacting with VA personnel or when they are on VA property, and we believe that by understanding these patterns of behavior, planning for such behavior in advance, and setting safe conditions for care delivery, we can intervene in ways that can prevent subsequent episodes requiring removal and arrest.

In addition to §§ 1.218 and 17.33, the behavior of patients is specifically governed by current 38 CFR 17.106. It requires, in part, that VA maintain the good conduct of patients through "corrective and disciplinary procedure." However, current § 17.106, which VA promulgated in 1973 and last amended over 10 years ago, does not adequately reflect modern practice or VA's policy regarding disruptive patients in the health care setting, which opposes the use of punishment in the management of disruptive patients. Instead, it reflects the view that patients exhibiting disruptive behavior must be punished. For example, current § 17.106 emphasizes disciplining patients who do not engage in "good conduct," and includes measures (such as withholding pass privileges) that do not differentiate between providing care and ensuring the safety of others. Moreover, the current rule could be viewed as interfering with VA's legal obligation to provide medical care to certain veterans and non-veterans. Accordingly, VA has determined that amendments to current regulations are necessary to implement its policy regarding disruptive patients, which emphasizes continuation of treatment.

On June 1, 2010, we proposed to amend § 17.106 to prescribe the remedial measures VA will take when a patient is disruptive and the procedures for implementing those measures. 75 FR 30,306. We stated that our intent was to minimize the risk of a particular patient jeopardizing the health or safety of others, or disrupting the safe provision of medical care to another patient, in a VA medical facility. We received three comments on the proposed rule. All of the commenters supported the proposed rule, and there were no adverse comments on the content of the proposed regulation text or on the rationales for the regulation text that we