

States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(b) In fiscal year 2005, the Secretary shall withhold four percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(c) In fiscal year 2006, the Secretary shall withhold six percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

(d) In fiscal year 2007, and in each fiscal year thereafter, the Secretary shall withhold eight percent of the amount required to be apportioned for Federal-aid highways to any State under each of paragraphs (1), (3), and (4) of section 104(b) of title 23, United States Code, if a State has not enacted and is not enforcing a law that meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part.

**§ 1225.9 Period of availability of withheld funds.**

If a State meets the requirements of 23 U.S.C. 163 and § 1225.4 of this part within four years from the date that a State's apportionment is reduced under § 1225.8, the apportionment for such State shall be increased by an amount equal to the reduction, as illustrated by appendix A of this part.

**§ 1225.10 Apportionment of withheld funds after compliance.**

If a State has not met the requirements of 23 U.S.C. 163 and § 1225.4 of this part by October 1, 2007, the funds withheld under § 1225.8 shall begin to lapse and will no longer be available for apportionment to the State, in accordance with appendix A of this part.

**§ 1225.11 Notification of compliance.**

(a) Beginning with FY 2004, NHTSA and FHWA will notify States of their compliance or noncompliance with the statutory and regulatory requirements of 23 U.S.C. 163 and this part, based on a review of certifications received. States will be required to submit their certifications on or before September 30, to avoid the withholding of funds in a fiscal year.

(b) This notification of compliance will take place through FHWA's normal certification of apportionments process. If the agencies do not receive a certification from a State or if the certification does not conform to the requirements of 23 U.S.C. 163 and this part, the agencies will make an initial determination that the State is not in compliance.

**§ 1225.12 Procedures affecting states in noncompliance.**

(a) Each fiscal year, beginning with FY 2004, based on a preliminary review of certifications received, States that are determined to be in noncompliance with 23 U.S.C. 163 and this part, will be advised of the amount of funds expected to be withheld through FHWA's advance notice of apportionments, normally not later than ninety days prior to final apportionment.

(b) If NHTSA and FHWA determine that any State is not in compliance with 23 U.S.C. 163 and this part, based on the agencies' preliminary review, the State may, within 30 days of its receipt of the advance notice of apportionments, submit documentation showing why it is in compliance. Documentation shall be submitted through NHTSA's Regional Administrators, who will refer the requests to appropriate NHTSA and FHWA offices for review.

(c) Each fiscal year, each State determined not to be in compliance with 23 U.S.C. 163 and this part, based on NHTSA's and FHWA's final determination, will receive notice of the funds being withheld under § 1225.8 from apportionment, as part of the certification of apportionments required under 23 U.S.C. 104(e), which normally occurs on October 1 of each fiscal year.

**Appendix A to Part 1225—Effects of the 0.08 BAC Sanction Program on Non-Complying States**

**EFFECTS OF THE 0.08 BAC SANCTION PROGRAM ON NON-COMPLYING STATES**

| Fiscal year | Withhold (percent) | Lapse (percent)      |
|-------------|--------------------|----------------------|
| 2004 .....  | 2                  |                      |
| 2005 .....  | 4                  |                      |
| 2006 .....  | 6                  |                      |
| 2007 .....  | 8                  |                      |
| 2008 .....  | 8                  | 2% withheld in FY04. |
| 2009 .....  | 8                  | 4% withheld in FY05. |
| 2010 .....  | 8                  | 6% withheld in FY06. |
| 2011 .....  | 8                  | 8% withheld in FY07. |
| 2012 .....  | 8                  | 8% withheld in FY08. |

Issued on: January 31, 2003.

**Mary E. Peters,**  
*Administrator, Federal Highway Administration.*

**Jeffrey W. Runge,**  
*Administrator, National Highway Traffic Safety Administration.*

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**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**33 CFR Part 117**

**[CGD05-02-065]**

**RIN 2115-AE47**

**Drawbridge Operation Regulations; Raccoon Creek, NJ**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulations that govern the operation of the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. The proposed rule would increase openings and eliminate the need for a bridge tender by allowing the bridge to be operated by a train crewmember. This change will provide for the reasonable needs of navigation.

**DATES:** Comments and related material must reach the Coast Guard on or before April 7, 2003.

**ADDRESSES:** You may mail comments and related material to Commander (Aowb), 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 (Aowb), 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:** Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

**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 (CCGD5-02-065), 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

CONRAIL, who owns and operates this movable (swing-type) bridge, requested changes to the operating procedure for the drawbridge located at mile 2.0 across Raccoon Creek, in Bridgeport, New Jersey. Currently, Title 33 Code of Federal Regulations (CFR) Part 117.741 requires the bridge to open on signal from March 1 through November 30 from 7 a.m. to 11 p.m. At all other times, the draw must open on signal if at least four hours notice is given. The draw must open at all times as soon as possible for passage of a public vessel of the United States.

In late September 2002, CONRAIL will be installing a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Raccoon Creek in Bridgeport, New Jersey. The proposal would allow a radio-controlled system to operate the opening and closing of the swing span, which would be controlled from the cab of the locomotive. From March 1 through November 30, the swing bridge will normally be left in the fully opened position displaying flashing green channel lights indicating that vessels may pass through. At all other times, the draw the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231-2393.

When a train approaches the bridge, it will stop and a train crewmember will

observe the waterway for approaching craft, which will be allowed to pass. The train crewmember will then enter a prearranged code number using a radio keypad. The radio code will send a radio signal to the Programmable Logic Controller attached to the bridge, which will begin the process of closing the bridge. At that time, the bridge channel lights will change from flashing green to flashing red, a horn blast will sound four times, followed by a pause, then the four horn blasts will be repeated and the bridge will close. Once closed, the train will proceed across the bridge. After the train has cleared the swing span, which is approximately 300 feet from the bridge, the horn will automatically sound five times to indicate the span of the bridge is about to return to the full open position. Channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. In the full open position, the channel traffic lights will turn from flashing red to flashing green.

This change is being requested to make the closure process of the CONRAIL Railroad Bridge be more efficient during train crossings and periodic maintenance and to save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

#### Discussion of Proposed Rule

The Coast Guard proposes to revise 33 CFR 117.741, which governs the Route 130 highway bridge, mile 1.8 and the CONRAIL Railroad bridge at mile 2.0, both across Raccoon Creek in Bridgeport, New Jersey. From March 1 through November 30 from 7 a.m. to 11 p.m., the draw of both bridges currently open on signal. At all other times, the draws shall open on signal if at least four hours notice is given. The draws shall open at all times as soon as possible for passage of a public vessel of the United States.

The current paragraph would be divided into paragraphs (a) and (b). Paragraph (a) would contain the existing rule for the Route 130 highway bridge, mile 1.8, at Bridgeport and would state that the draw of shall open on signal from March 1 to November 30. At all other times, the draw shall open on signal if at least four hours notice is given.

Paragraph (b) would contain the proposed rule for the CONRAIL Railroad Bridge, mile 2.0, at Bridgeport. The proposed rule would require the draw of the CONRAIL Railroad Bridge, mile 2.0, at Bridgeport, to be operated by a train crewmember. From March 1 through November 30, the bridge would

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

At all other times, the draw of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231-2393.

When the CONRAIL Railroad Bridge closes for any reason, a train crewmember will assist in observing the waterway for approaching craft, which will be allowed to pass. The train crewmember will then operate the bridge by control radiophone.

The CONRAIL Railroad Bridge would only be closed if the train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

While the CONRAIL Railroad Bridge is moving from the full open position to the full closed position, the train crewmember will maintain constant surveillance of the navigation channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop and return to the full open position.

The CONRAIL Railroad Bridge channel traffic lights would change from flashing green to flashing red any time the bridge is not in the full open position. During span movement, the channel traffic lights would change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close.

When the rail traffic has cleared, the horn will automatically sound five times to indicate that the draw of the CONRAIL Railroad Bridge is about to return to its full open position. During the open span movement, the channel traffic lights would turn from flashing green to flashing red, the horn will sound four times, followed by a pause, then four repeat blasts of the horn until the bridge is in the full open position. In the full open position, the bridge channel traffic lights will turn from flashing red to flashing green. After the train has cleared the bridge by leaving the track circuit, any delay in opening of the draw shall not exceed ten minutes except as provided in 33 CFR 117.31(b).

The surplus language currently stated in 33 CFR 117.741 would be removed to be consistent with the general operating regulations under 33 CFR 117.31. The Coast Guard intends to delete the phrase "the draws shall open on signal as soon as possible for passage of a public vessel of the United States." This requirement is currently published in 33 CFR

117.31(a)(1) and is no longer required to be published in each specific bridge regulation.

### 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 Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. We reached this conclusion based on the fact that the proposed changes for the CONRAIL Railroad Bridge regulation will provide for greater flow of vessel traffic than the current regulations of the drawbridge.

Under the current regulations, the CONRAIL Railroad Bridge remains closed and open after proper signal March 1 through November 30 from 7 a.m. to 11 p.m. The proposed regulation will require the bridge to remain in the open position from March 1 through November 30, 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 proposed rule will provide for the CONRAIL Railroad Bridge to remain in the open position from March 1 through November 30, allowing 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. 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 Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (757) 398–6222.

### 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 effect 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.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

### 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. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have considered the environmental impact of this proposed 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. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATIONS 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 authority of Pub.L. 102-587, 106 Stat. 5039.

2. Section 117.741 is revised to read as follows:

#### § 117.741 Raccoon Creek.

(a) The draw of the Route 130 highway bridge, mile 1.8 at Bridgeport, shall open on signal:

(1) March 1 through November 30, from 7 a.m. to 11 p.m.

(2) At all other times, if at least four hours notice is given.

(b) The draw of the CONRAIL Railroad Bridge, mile 2.0 at Bridgeport, shall operate as follows:

(1) From March 1 through November 30, the draw shall be left in the open position at all times and will only be close for the passage of trains and to perform periodic maintenance authorized in accordance with subpart A of this part.

(i) 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).

(ii) Before the bridge closes for any reason, a train crewmember will observe the waterway for approaching craft, which will be allowed to pass. A train crewmember will then operate the bridge by radiophone. The bridge shall only be closed if a train crewmember's visual inspection shows that the channel is clear and there are no vessels transiting in the area.

(iii) While the CONRAIL Railroad Bridge is moving from the full open to the full closed position, a train crewmember will maintain constant surveillance of the navigational channel to ensure no conflict with maritime traffic exists. In the event of failure or obstruction, the train crewmember will stop the bridge and return the bridge to the open position.

(iv) The CONRAIL Railroad channel traffic lights will change from flashing green to flashing red anytime the bridge is not in the full open position.

(v) During closing of the span, the channel traffic lights will change from flashing green to flashing red, the horn will sound four times, followed by a pause, then the four blasts will be repeated and the bridge will close. When the rail traffic has cleared the swing span, the horn will automatically sound five times to signal the draw of the CONRAIL Railroad Bridge is about to return to its full open position.

(vi) During open span movement, the channel traffic lights will be flashing red, the horn will sound four times, followed by a pause, then four blasts will be repeated until the bridge is in the full open position. In the full open position, the channel traffic lights will then turn from flashing red to flashing green.

(2) At all other times, the draw may be left in the closed position and opened on signal if at least four hours notice is given by telephone at (856) 231-2393.

Dated: January 28, 2003.

**James D. Hull,**

*Vice Admiral, USCG, Commander, Fifth Coast Guard District.*

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#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 300

[Docket No. 030124019-3019-01; I.D. 010703E]

RIN 0648-AQ67

#### Pacific Halibut Fisheries; Catch Sharing Plan

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; proposed changes to the Catch Sharing Plan and to sport fishing management.

**SUMMARY:** NMFS proposes, under authority of the Northern Pacific Halibut Act (Halibut Act), to approve and implement changes to the Area 2A Pacific Halibut Catch Sharing Plan (Plan) to: implement closed areas for the Washington North Coast sport fishery subarea and the nontreaty commercial halibut fishery to protect yelloweye rockfish; allocate subarea halibut quota between the May and June sport seasons in Washington's North Coast subarea; cap the incidental halibut retention allocation for the primary sablefish

fishery at 70,000 lb (31.8 kg) when halibut is available to that fishery; move the season ending date for Oregon sport fisheries in the North Central and South Central areas from September 30 to October 31; provide more flexibility for inseason sport fishery management; and revise the names of Oregon sport seasons. These actions are intended to enhance the conservation of Pacific halibut and to protect yelloweye rockfish, and overfished groundfish species, from incidental catch in the halibut fisheries.

**DATES:** Comments on the proposed changes to the Plan and on the proposed sport fishery regulations must be received by February 18, 2003.

**ADDRESSES:** Send comments or requests for a copy of the Plan and/or the EA/RIR to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115. Electronic copies of the Plan, including proposed changes for 2003, and of the draft EA/RIR are also available at the NMFS Northwest Region Web site: <http://www.nwr.noaa.gov>, click on "Pacific Halibut." Comments will not be accepted if submitted via email or the Internet.

#### FOR FURTHER INFORMATION CONTACT:

Yvonne deReynier or Jamie Goen (Northwest Region, NMFS), phone: 206-526-6140; fax: 206-526-6736 and; e-mail: [yvonne.dereynier@noaa.gov](mailto:yvonne.dereynier@noaa.gov) or [jamie.goen@noaa.gov](mailto:jamie.goen@noaa.gov).

**SUPPLEMENTARY INFORMATION:** The Halibut Act of 1982, at 16 U.S.C. 773c, gives the Secretary of Commerce (Secretary) general responsibility for implementing the provisions of the Halibut Convention between the United States and Canada. It requires the Secretary to adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. Section 773c(c) of the Halibut Act authorizes the Regional Fishery Management Councils to develop regulations governing the Pacific halibut catch in their corresponding U.S. Convention waters that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Each year between 1988 and 1995, the Pacific Fishery Management Council (Pacific Council) developed a catch sharing plan in accordance with the Halibut Act to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-treaty harvesters and among non-treaty commercial and sport