

31.2) and/or the Cost Accounting Standards (48 CFR part 99).

(iii) *Other business units.* DCAA or a qualified IPA may perform any necessary audit of a business unit of the awardee or subawardee if, at the time of agreement award, the business unit does not meet the criteria in (c)(2)(i) or (c)(2)(ii) of this section. The clause must provide for the use of a qualified IPA if such a business unit will not accept the agreement if the Government has access to the business unit's records. The Agreements Officer will include a statement in the file that the business unit is not performing on a procurement contract subject to the Cost Principles or Cost Accounting Standards at the time of agreement award, and will not accept the agreement if the government has access to the business unit's records. The Agreements Officer will also prepare a report (Part III to the annual report submission) for the Director, Defense Procurement that identifies, for each business unit that is permitted to use an IPA: the business unit's name, address and the expected value of its award. When the clause provides for use of an IPA to perform any necessary audits, the clause must state that:

(A) The IPA will perform the audit in accordance with Generally Accepted Government Auditing Standards (GAGAS). Electronic copies of the standards may be accessed at [www.gao.gov](http://www.gao.gov). Printed copies may be purchased from the U.S. Government Printing Office (for ordering information, call (202) 512-1800 or access the Internet Site at [www.gpo.gov](http://www.gpo.gov)).

(B) The Agreements Officers' authorized representative has the right to examine the IPA's audit report and working papers for 3 years after final payment or three years after issuance of the audit report, whichever is later, unless notified otherwise by the Agreements Officer.

(C) The IPA will send copies of the audit report to the Agreements Officer and the Assistant Inspector General (Audit Policy and Oversight) [AIG(APO)], 400 Army Navy Drive, Suite 737, Arlington, VA 22202.

(D) The IPA will report instances of suspected fraud directly to the DoDIG.

(E) The Government has the right to require corrective action by the awardee or subawardee if the Agreements Officer determines (subject to appeal under the disputes clause of the agreement) that the audit has not been performed or has not been performed in accordance with GAGAS. The Agreements Officer should take action promptly once the Agreements Officer determines that the audit is not being accomplished in a timely manner or the audit is not

performed in accordance with GAGAS but generally no later than twelve (12) months of the date requested by the Agreements Officer. The awardee or subawardee may take corrective action by having the IPA correct any deficiencies identified by the Agreements Officer, having another IPA perform the audit, or electing to have the Government perform the audit. If corrective action is not taken, the Agreements Officer has the right to take one or more of the following actions:

(1) Withhold or disallow a specified percentage of costs until the audit is completed satisfactorily. The agreement should include a specified percentage that is sufficient to enhance performance of corrective action while also not being unfairly punitive.

(2) Suspend performance until the audit is completed satisfactorily; and/or

(3) Terminate the agreement if the agreements officer determines that imposition of either (c)(2)(iii)(E)(1) or (c)(2)(iii)(e)(2) of this section is not practical.

(F) If it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles Applicable to Commercial Organizations (48 CFR part 31.2) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award, the Agreements Officer, or an authorized representative, has the right to audit records of the awardee or subawardee to verify the actual costs or reporting information used as the basis for payment or to verify statutorily required cost share under the agreement, and the IPA is to be paid by the awardee or subawardee. The cost of an audit performed in accordance with this policy is reimbursable based on the business unit's established accounting practices and subject to any limitations in the agreement.

(3) *Scope of audit.* The Agreements Officer should coordinate with the auditor regarding the nature of any audit envisioned.

(4) *Length and extent of access.* (i) *Clauses that do not provide for use of an IPA*—The clause must provide for the Agreements Officer's authorized representative to have access to directly pertinent records of those business units of the awardee or subawardee's performing effort under the OT agreement, when needed to verify the actual costs or reporting used as the basis for payment or to verify statutorily required cost share under the agreement.

(ii) *Clauses that provide for use of an IPA to perform the audits.* The clause must:

(A) Provide the Agreements Officer's authorized representative access to the IPA's audit reports and working papers to ensure that the IPA has performed the audit in accordance with GAGAS.

(B) State that the Government will make copies of contractor records contained in the IPA's work papers if needed to demonstrate that the audit was not performed in accordance with GAGAS.

(C) State that the Government has no direct access to any awardee or subawardee records unless it is found that the awardee or subawardee was performing a procurement contract subject to Cost Principles (48 CFR part 31) and/or Cost Accounting Standards (48 CFR part 99) at the time of agreement award.

(iii) *Business Units subject to the Single Audit Act.* The clause must provide access to the extent authorized by the Single Audit Act.

(iv) *Record Retention/Period of Access.* The clause must require that the awardee and subawardee retain, and provide access to, the records referred to in (c)(4)(i) and (c)(4)(ii) of this section for three years after final payment, unless notified of a shorter or longer period by the Agreements Officer.

(5) *Awardee flow down responsibilities.* Agreements must require awardees to include the necessary provisions in subawards that meet the conditions set forth in this DoD access to records policy.

(d) *DoDIG and GAO access.* In accordance with statute, if an agreement gives the Agreements Officer or another DoD component official access to a business unit's records, the DoDIG or GAO are granted the same access to those records.

Dated: May 12, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 100

[CGD05-03-047]

RIN 1625-AA08

#### Special Local Regulations for Marine Events; Chesapeake Bay Bridges Swim Races, Chesapeake Bay, MD

AGENCY: Coast Guard, DHS.

**ACTION:** Notice of implementation of regulation.

**SUMMARY:** The Coast Guard is implementing the special local regulations at 33 CFR 100.507 during the Twelfth Annual Great Chesapeake Bay Swim Event to be held on June 8, 2003. This action is necessary to provide for the safety of life on navigable waters before, during and after the event. The effect will be to restrict general navigation in the regulated area for the safety of participants and support vessels in the event area.

**EFFECTIVE DATES:** 33 CFR 100.507 is effective from 11 a.m. to 3 p.m. local time on June 8, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ron Houck, Marine Information Specialist, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226-1971, at (410) 576-2674.

**SUPPLEMENTARY INFORMATION:** The Great Chesapeake Bay Swim, Inc. will sponsor the "Great Chesapeake Bay Swim Event" on the waters of the Chesapeake Bay between and adjacent to the spans of the William P. Lane Jr. Memorial Bridge. Approximately 600 swimmers will start from Sandy Point State Park and swim between the spans of the William P. Lane Jr. Memorial Bridge to the Eastern Shore. A large fleet of support vessels will be accompanying the swimmers. Therefore, to ensure the safety of participants and support vessels, 33 CFR 100.507 will be in effect for the duration of the event. Under provisions of 33 CFR 100.507, a vessel may not enter the regulated area unless it receives permission from the Coast Guard Patrol Commander. Vessel traffic will be allowed to transit the regulated area as the swim progresses, when the Patrol Commander determines it is safe to do so.

In addition to this notice, the maritime community will be provided extensive advance notification via the Local Notice to Mariners, marine information broadcasts, and area newspapers, so mariners can adjust their plans accordingly.

Dated: May 13, 2003.

**Ben R. Thomason III,**

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

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-02-065]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Raccoon Creek, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is changing the operating regulations for the Consolidated Rail Corporation (CONRAIL) Railroad Bridge across Raccoon Creek at mile 2.0, in Bridgeport, New Jersey. This final rule for the CONRAIL Railroad Bridge eliminates the need for a bridge tender by allowing the bridge to be operated by a train crewmember. The final rule will provide for the reasonable needs of navigation.

**DATES:** This rule is effective June 19, 2003.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD05-02-065 and are available for inspection or copying at Commander (oan), Fifth Coast Guard District, Federal Building, 4th Floor, 431 Crawford Street, Portsmouth, Virginia 23704-5004 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

#### FOR FURTHER INFORMATION CONTACT:

Waverly W. Gregory, Jr., Bridge Administrator, Fifth Coast Guard District, at (757) 398-6222.

#### SUPPLEMENTARY INFORMATION:

##### Regulatory History

On February 6, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Drawbridge Operation Regulations; Raccoon Creek, New Jersey" in the **Federal Register** (68 FR 6100). We received one letter commenting on the proposed rule. No public hearing was requested nor held.

##### 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 also open at all times as soon as possible for passage of a public vessel of the United States.

CONRAIL installed a new Programmable Logic Controller and associated mechanical, electrical and signal apparatus on the CONRAIL Railroad Bridge over Raccoon Creek in Bridgeport, New Jersey. This rule allows a radio-controlled system to operate the opening and closing of the swing span 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 of the CONRAIL Railroad Bridge need only open on signal if at least four hours notice is given by calling (856) 231-2393.

Under this rule, 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 rule will make the closure process of the CONRAIL Railroad Bridge more efficient during train crossings and periodic maintenance, and will save operational costs by eliminating bridge tenders while providing greater bridge operating capabilities.

##### Discussion of Comments and Change

The Coast Guard received one comment on the NPRM. The comment offered by the U.S. Fish and Wildlife Service (Service) indicated that the federally listed (threatened) bald eagle currently nests within 1.6 miles of the CONRAIL Railroad Bridge. The Service