

Approved: February 6, 2007.

**Gregg A. Cervi,**

*Commander, JAGC, U.S. Navy Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

[FR Doc. E7-4254 Filed 3-8-07; 8:45 am]

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD05-07-018]

RIN 1625-AA-09

#### Drawbridge Operation Regulations; Susquehanna River, at Havre de Grace, MD

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Fifth Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the National Railroad Passenger Corporation (AMTRAK) Bridge, at mile 1.0, across Susquehanna River at Havre de Grace, Maryland. This deviation allows the drawbridge to remain closed-to-navigation beginning at 6 p.m. on March 30, 2007, until and including 6 p.m. on June 8, 2007, to facilitate structural repairs.

**DATES:** This deviation is effective from 6 p.m. on March 30, 2007, until 6 p.m. on June 8, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (dpb), Fifth Coast Guard District, Federal Building, 1st Floor, 431 Crawford Street, Portsmouth, VA 23704-5004 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398-6222. Commander (dpb), Fifth Coast Guard District maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Bill H. Brazier, Bridge Management Specialist, Fifth Coast Guard District, at (757) 398-6422.

**SUPPLEMENTARY INFORMATION:** The AMTRAK Bridge, a swing-type drawbridge, has a vertical clearance in the closed position to vessels of 52 feet, above mean high water.

AMTRAK, the bridge owner, has requested a temporary deviation from the current operating regulation set out in 33 CFR 117.575 and to close the

drawbridge to navigation to perform needed structural repairs.

The repairs will include the renewal of 3,184 bridge timbers as well as the installation of new rail and expansion joints. To facilitate this work, the AMTRAK Bridge will be maintained in the closed-to-navigation position beginning at 6 p.m. on March 30, 2007, until and including 6 p.m. on June 8, 2007.

The Coast Guard has informed the known users of the waterway of the closure periods for the bridge so that these vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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: February 28, 2007.

**Waverly W. Gregory, Jr.,**

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

[FR Doc. E7-4215 Filed 3-8-07; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF EDUCATION

### 34 CFR Part 280

#### Magnet Schools Assistance Program

**AGENCY:** Office of Innovation and Improvement, Department of Education.

**ACTION:** Final regulations.

**SUMMARY:** The Secretary amends the regulations governing the Magnet Schools Assistance Program (MSAP) in 34 CFR part 280. These amendments allow the MSAP to use an approach similar to that in § 75.200 for establishing selection criteria in grant competitions. Under this approach the MSAP has the flexibility to use selection criteria from its program regulations, from the menu of general selection criteria in the Education Department General Administrative Regulations (EDGAR) in § 75.210, based on statutory provisions in accordance with § 75.209, or from any combination of these.

**DATES:** These regulations are effective April 9, 2007.

**FOR FURTHER INFORMATION CONTACT:** Steven L. Brockhouse, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W229, Washington, DC 20202-5970. Telephone: (202) 260-2476 or via Internet: [steve.brockhouse@ed.gov](mailto:steve.brockhouse@ed.gov).

If you use a telecommunications device for the deaf (TDD), you may call

the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

**SUPPLEMENTARY INFORMATION:** On August 22, 2006 the Secretary published a notice of proposed rulemaking (NPRM) for these amendments in the **Federal Register** (71 FR 48866).

In the preamble to the NPRM, the Secretary discussed on pages 48866 and 48867 the major changes proposed in that document to provide the MSAP with the flexibility to use different types of selection criteria when evaluating grant applications in a specific grant competition. These included the following:

- Amending § 280.30 to give the Secretary the flexibility to use selection criteria from § 280.31, from the approved menu of general selection criteria in § 75.210 or from selection criteria based on statutory provisions governing the MSAP, established in accordance with § 75.209.

- Amending § 280.31 to remove the mandatory point values from the selection criteria in this section of the MSAP regulations.

There are no differences between the NPRM and these final regulations.

#### Analysis of Comments

In response to the Secretary's invitation in the NPRM, nine parties submitted comments on the proposed regulations. An analysis of the comments follows.

We discuss substantive issues under the sections of the regulations to which they pertain. Generally, we do not address technical and other minor changes—and suggested changes the law does not authorize the Secretary to make.

#### *Section 280.30 How Does the Secretary Evaluate an Application?*

*Comment:* Two commenters expressed the opinion that the current selection criteria work effectively to address the MSAP's statutory purpose and requirements, and consequently that a change in approach to permit the use of other selection criteria is not needed at this time.

*Discussion:* The Department proposed these changes because we have been constrained in past MSAP competitions to using only the program selection criteria in § 280.31, whether or not their use continues to work well in the

selection of new projects that are likely to be effective in achieving results. This approach limited our ability to tailor the selection criteria in a manner that allowed us to take into consideration current program needs, new research findings relating to magnet schools, or other appropriate information in order to facilitate the selection of applications that show the greatest promise of meeting the program's statutory purposes.

The amended regulations provide the flexibility to make adjustments to the selection criteria that are used for a particular competition. Implementation of this change does not mean that existing selection criteria that continue to work effectively in the selection of high-quality applications for awards will be disregarded or abandoned. In fact, it is unlikely that the use of this approach will result in major changes from one grant competition to the next. Nonetheless, the Department does believe that the flexibility gained in using this approach will enable us to more effectively tailor selection criteria to ensure projects best address the purpose and requirements of the MSAP statute.

*Change:* None.

*Comment:* Two commenters expressed concerns about the effects of different criteria, especially general criteria from EDGAR, and indicated that they believed that the use of such criteria would be detrimental to the quality of applications.

*Discussion:* Any criterion or factor from the approved menu in § 75.210 must be considered in the context of the MSAP and in conjunction with applicable statutory provisions and program regulations. As a result, we do not believe that the use of selection criteria or factors from § 75.210 will negatively affect program quality.

*Change:* None.

*Comment:* Two commenters criticized the approach in § 280.30 because they believed that it would provide too much flexibility to manipulate the MSAP's statutory purpose or disregard desegregation-related factors.

*Discussion:* Fears that this approach will allow the Secretary to supersede statutory provisions or program requirements are misplaced. The Secretary is bound by statutory provisions. In evaluating applications, the Department must adhere to selection criteria or other provisions related to the evaluation of applications that are required by statute and the regulations. In addition, the Department intends to use this approach to establish selection criteria in conjunction with the statute

and program requirements in the MSAP regulations, not instead of them.

*Change:* None.

*Comment:* One commenter criticized the approach in § 280.30 because the public would not be afforded the opportunity to comment formally on the Department's choice of selection criteria for a particular competition and another commenter indicated that rulemaking for each proposed change or set of changes would be preferable.

*Discussion:* The Magnet Schools Assistance Program (MSAP) Application for Grants is approved under OMB number 1855-0011. This information collection follows the streamlined grant application clearance procedures approved under OMB numbers 1890-0001 and 1890-0006. For special information collection processes such as the use of generic grant applications using the EDGAR selection criteria, public comment on the information collection is generally solicited at three year intervals. The current approval for the MSAP application package expires April 30, 2007 and the Department will publish a **Federal Register** notice shortly to solicit comments on that application package (1855-0011).

The Department welcomes comments and suggestions on selection criteria, and the application process generally, apart from formal opportunities to comment. Potential applicants, grantees, program beneficiaries, and others are encouraged to advise the Department about their experience with the selection criteria, and to provide recommendations for criteria for future competitions at any time, for the Department's use in designing selection criteria.

Moreover, as discussed earlier in these comments, the Department believes that this approach provides flexibility to make adjustments to the selection criteria that are used for a particular competition and that the flexibility gained in using this approach will enable us to more effectively tailor selection criteria to help ensure the selection of projects that best address the purpose and requirements of the MSAP statute.

*Change:* None.

*Comment:* Other commenters expressed varying views regarding the approach in § 280.30 that would give the Secretary the flexibility to use selection criteria from the approved menu of general selection criteria in § 75.210 or from selection criteria based on statutory provisions governing the MSAP, in accordance with § 75.209. One commenter indicated that the additional flexibility would be beneficial. Three others expressed

reservations about this approach, but only in the context of whether there would be sufficient time available to adequately address any new selection criteria. One other commenter also expressed concern that the change would have a detrimental effect on planning prior to the announcement of selection criteria.

*Discussion:* The Secretary does not believe that the new approach will prevent potential applicants from beginning to prepare applications in advance of an application announcement. Applicants may begin work on the basis of statutory purposes and requirements. Additionally, it is unlikely that there will be substantial changes in the selection criteria used in evaluating applications from one competition to the next in the absence of statutory changes that might otherwise require more significant revisions. Further, under the Paperwork Reduction Act of 1995, an agency must obtain OMB approval to require responses to an information collection in less than 30 days. As a result, under most circumstances respondents will have a minimum of 30 days to prepare applications and in most instances an even longer period based on past practices. Over the previous four MSAP competitions, applicants have actually had a minimum of 42 days from the date of publication of the application notice to the application due date in which to prepare applications, and an average of more than 60 days in which to prepare applications over the course of these four competitions.

*Change:* None.

#### *Section 280.31 What Selection Criteria Does the Secretary Use?*

*Comment:* Two commenters addressed the amendment to § 280.31 that removes the mandatory point values from the selection criteria in this section of the MSAP regulations. One commenter expressed the opinion that removing point values was not a good idea, however the commenter offered no explanation of this position. The other commenter sought clarification regarding whether a different set of point values for selection criteria would be used.

*Discussion:* Removing the currently specified point values from the selection criteria in § 280.31 does not mean that point values will not be used. As set forth in § 280.30(e), there will continue to be 100 points awarded for the selection criteria. Removing the mandatory point values merely provides the flexibility to assign specific point values based on the selection criteria actually used in a particular

competition, consistent with the Department's approach for other discretionary grant programs that use selection criteria from § 75.210 and selection criteria based on the statute, as set forth in § 75.209, as well as selection criteria from program regulations.

*Change:* None.

#### Executive Order 12866

We have reviewed these final regulations in accordance with Executive Order 12866. Under the terms of the order we have assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the final regulations are those resulting from statutory requirements and those we have determined to be necessary for administering this program effectively and efficiently.

In assessing the potential costs and benefits—both quantitative and qualitative—of these final regulations, we have determined that the benefits of the regulations justify the costs.

We have also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

#### Summary of Potential Costs and Benefits

We summarized the potential costs and benefits of these final regulations in the preamble to the NPRM (71 FR 48867).

#### Paperwork Reduction Act of 1995

The Paperwork Reduction Act of 1995 does not require you to respond to a collection of information unless it displays a valid OMB control number. We display the valid OMB control number assigned to the collection of information in these final regulations at the end of the affected section of the regulations.

#### Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, we intend this document to provide early notification of the Department's specific plans and actions for this program.

#### Electronic Access to This Document

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You may also view this document in text or PDF at the following site: <http://www.ed.gov/programs/magnet/applicant.html>.

**Note:** The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: <http://www.gpoaccess.gov/nara/index.html>.

(Catalog of Federal Domestic Assistance Number 84.165A Magnet Schools Assistance Program.)

#### List of Subjects in 34 CFR Part 280

Civil rights, Desegregation, Education, Elementary and secondary education, Grant programs—education, Magnet schools, Reporting and recordkeeping requirements.

Dated: March 6, 2007.

**Morgan S. Brown,**

*Assistant Deputy Secretary for Innovation and Improvement.*

■ For the reasons discussed in the preamble, the Assistant Deputy Secretary for Innovation and Improvement amends part 280 of title 34 of the Code of Federal Regulations as follows:

#### PART 280—MAGNET SCHOOLS ASSISTANCE PROGRAM

■ 1. The authority citation for part 280 continues to read as follows:

**Authority:** 20 U.S.C. 7231–7231j, unless otherwise noted.

■ 2. Section 280.30 is revised to read as follows:

#### § 280.30 How does the Secretary evaluate an application?

(a) The Secretary evaluates an application under the procedures in 34 CFR part 75 and this part.

(b) To evaluate an application for a new grant the Secretary may use—

(1) Selection criteria established under 34 CFR 75.209;

(2) Selection criteria in § 280.31;

(3) Selection criteria established under 34 CFR 75.210; or

(4) Any combination of criteria from paragraphs (b)(1), (b)(2), and (b)(3) of this section.

(c) The Secretary indicates in the application notice published in the **Federal Register** the specific criteria that the Secretary will use and how points for the selection criteria will be distributed.

(d) The Secretary evaluates an application submitted under this part on the basis of criteria described in paragraph (c) of this section and the priority factors in § 280.32.

(e) The Secretary awards up to 100 points for the extent to which an application meets the criteria described in paragraph (c) of this section.

(f) The Secretary then awards up to 30 additional points based upon the priority factors in § 280.32.

(Approved by the Office of Management and Budget under control number 1855–0011)

(Authority: 20 U.S.C. 7231–7231j)

#### § 280.31 [Amended]

■ 3. Section 280.31 is amended:

■ A. In the introductory text, by removing the word “uses” and adding, in its place, the words “may use”.

■ B. In paragraph (a) introductory text, by removing the parenthetical “(25 points)”.

■ C. In paragraph (b) introductory text, by removing the parenthetical “(10 points)”.

■ D. In paragraph (c) introductory text, by removing the parenthetical “(35 points)”.

■ E. In paragraph (d) introductory text, by removing the parenthetical “(5 points)”.

■ F. In paragraph (e) introductory text, by removing the parenthetical “(15 points)”.

■ G. In paragraph (f) introductory text, by removing the parenthetical “(10 points)”.

[FR Doc. E7–4270 Filed 3–8–07; 8:45 am]

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