

DEPARTMENT OF HOMELAND SECURITY**Coast Guard****33 CFR Part 117**

[USCG-2008-1141, formerly CGD11-03-005]

RIN 1625-AA09

Drawbridge Operation Regulations; Connection Slough, Bacon Island, CA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the drawbridge operation regulation governing the operation of the Connection Slough Drawbridge. This final rule ensures a drawbridge operator can be contacted, is present at the drawbridge during identified increased navigation periods, and reduces the hours a drawbridge operator is required to be at the drawbridge and not gainfully employed. These changes will continue to provide for the reasonable needs of navigation.

DATES: This rule is effective July 27, 2009.

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG-2008-1141 and are available online by going to <http://www.regulations.gov>, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG-2008-1141 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at the 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, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Mr. David H. Sulouff, Bridge Administrator, Eleventh Coast Guard District; telephone (510) 437-3516, e-mail David.H.Sulouff@uscg.mil. If you have questions on viewing the electronic docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:**Regulatory Information**

On September 22, 2003, the Coast Guard published a Notice of Proposed

Rulemaking (NPRM) entitled Drawbridge Operation Regulations; Connection Slough, Stockton, CA (68 FR 55020), to adjust the advance notice procedures for mariners to contact the drawbridge for an opening. Based on the 220 comments received, the Coast Guard reopened the comment period on June 18, 2004, with a Supplemental Notice of Proposed Rulemaking (SNPRM) (69 FR 34100), under the same title, to explain and reemphasize the continued availability for the drawbridge to open, with seasonal adjustments to the "advance notice" times for mariners to schedule openings of the bridge. Two non-substantive comments were received from the SNPRM; however, due to variances between the bridge owner and the public, the Coast Guard chose to not move forward with the proposed rule but left the docket open.

At the request of the bridge owner to reassess the proposed rule, the Coast Guard published another SNPRM on December 1, 2008, (73 FR 72752) using the electronic docket tracking system as USCG-2008-1141. The comment period concluded on March 2, 2009 with no comments.

Background and Purpose

The drawbridge owner, Central California Redevelopment Company (CCRC Farms), requested changing the dates and times for advance notice for drawspan operation at their Reclamation District drawbridge, crossing Connection Slough between Mandeville and Bacon Islands, near Stockton, CA. The reason for the proposal was to reduce operating costs of the drawbridge while continuing to meet the reasonable needs of vessel traffic. CCRC Farms provided drawbridge operating logs for a two-year period (2000 to 2002) that documented a significant decrease in calls for operation of the drawspan from September 16 to May 14, annually, between the hours of 5 p.m. and 9 a.m. This supported their request to adjust the existing advance notice period to more closely match the reduced navigational activity. On September 22, 2003, we published an NPRM and the information was also published in the Coast Guard Local Notice to Mariners (LNM), 40/3, dated October 7, 2003. The Coast Guard received approximately 220 letters and observed at least two articles in a local publication that objected to a reduced availability of the drawbridge to open for vessels. The wording in the NPRM and the LNM did not clearly explain that the drawspan will continue to be available for passage of vessels on a 24 hour, seven day per week basis. We

addressed those comments in the June 18, 2004 SNPRM and provided written copies of the SNPRM to the local media and to those who commented previously, to ensure any replies to our office are based upon the official proposal. The Coast Guard received two non-substantive comments regarding the SNPRM. However there remained conflicting information between the bridge owner and the waterways users. At that time the Coast Guard chose not to pursue the proposed schedule until the differing issues could be resolved and chose to leave the docket open. On July 24, 2008, Tuscan Research Institute and CCRC Farms provided additional supporting documentation in favor of revised advance notice drawbridge operation regulation for the bridge and reinitiated the request for the Coast Guard to evaluate the proposal. On December 1, 2008, the Coast Guard published an SNPRM in the **Federal Register**, proposing adjusted advance notice times for this drawbridge. The Coast Guard also published the information in the Local Notice to Mariners for 21 weeks, beginning October 8, 2008 and ending February 25, 2009.

The existing regulation, 33 CFR 117.150, requires the drawbridge, from May 1 through October 31, to open on signal between the hours of 6 a.m. and 10 p.m., and from November 1 through April 30, to open on signal between the hours of 9 a.m. and 5 p.m. All other times the drawbridge must open on signal if notice is given at least four hours in advance. All drawbridges are required to open for emergencies as required by 33 CFR 117.31. It is also important to note that the existing regulation presently allows the drawbridge owner to operate the drawbridge with advance notice, during certain dates and times. It does not allow the drawbridge to remain closed or to obstruct navigation, when the proper signals to open have been given. Many comments, received in response to the NPRM, indicated a lack of understanding of the existing advance notice operation. Therefore, the Coast Guard will ensure signs are installed, maintained and updated by the bridge owner, on the upstream and downstream sides of the drawbridge, in compliance with 33 CFR 117.55, to post the advance notice schedules, with telephone numbers and point of contact to be notified for drawbridge operation. Vessel operators are reminded to adhere to requirements in 33 CFR 117.11 regarding unnecessary opening of the draw. The Coast Guard periodically reminds bridge owners of their

responsibility to provide drawbridge openings for vessels when signals have been given, and failure to comply may result in significant civil penalties against the bridge owner. Waterway users are encouraged to promptly notify the Eleventh Coast Guard District Bridge Office at (510) 437-3516, if vessel delays are caused by improper operation of the drawbridge.

Discussion of Comments and Changes

This rule amends 33 CFR 117.150 by revising the current operating schedule for the Reclamation District No. 2027 bridge across Connection Slough. This rule extends both the annual date and daily time when the bridge is allowed to operate under advanced notice.

Comments received from the NPRM are discussed more fully above and were addressed in the SNPRM dated June 18, 2004. The June 18, 2004 SNPRM received two comments and neither was substantive in regard to the proposed rule and the 2008 SNPRM received no comments. No public meeting was requested and none was held.

Regulatory Analysis

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analysis based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This 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.

This conclusion is based on the fact that these changes have only a minimal impact on maritime traffic transiting the bridge. Mariners can schedule bridge openings any time, night or day, any day of the year. Mariners may also plan their trips to arrive at the drawbridge during times when a bridge operator is scheduled to be present at the bridge. Vessels that can pass under the bridge without a bridge opening may do so at all times.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this 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 rule would not have a significant economic impact on a substantial number of small entities.

This conclusion is based on the fact that the changes will have only a minimal impact on maritime traffic transiting the bridge. Mariners can schedule bridge openings any time, night or day, any day of the year. Mariners may also plan their trips to arrive at the drawbridge during times when a bridge operator is scheduled to be present at the bridge. Vessels that can pass under the bridge without a bridge opening may do so at all times.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), in the SNPRM we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule calls 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 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 rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This 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 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 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 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.

Energy Effects

We have analyzed this 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not

require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which does not individually or cumulatively have a significant effect on the human environment. Therefore this rule is categorically excluded, under section 2.B.2. figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, neither an environmental analysis checklist nor a categorical exclusion determination are not required for this rule.

List of Subjects in 33 CFR Part 117

Bridges.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 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; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise 33 CFR 117.150 to read as follows:

§ 117.150 Connection Slough.

The draw of the Reclamation District No. 2027 bridge between Mandeville and Bacon Islands, mile 2.5 near Stockton, from May 15 through September 15, shall open on signal between the hours of 9 a.m. and 5 p.m., and it shall open upon 12 hours advance notice between the hours of 5 p.m. and 9 a.m.; and from September 16 through May 14 the draw shall open upon 12 hours advance notice between the hours of 9 a.m. and 5 p.m., and it shall open upon 24 hours advance notice between the hours of 5 p.m. and 9 a.m. Advance notice shall be given to the drawbridge operator by telephone at (209) 464-2959 or (209) 464-7928 weekdays between 8 a.m. and 5 p.m., and at (209) 993-8878 all other times.

Dated: June 8, 2009.

P.F. Zukunft,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. E9-14946 Filed 6-24-09; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AN07

Foreign Medical Program of the Department of Veterans Affairs—Hospital Care and Medical Services in Foreign Countries

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends Department of Veterans Affairs (VA) medical regulations applicable to VA's Foreign Medical Program, Hospital Care and Medical Services in Foreign Countries. This rule is intended to change provisions concerning the location for filing Foreign Medical Program claims and delegations of authority for adjudicating those claims. It also corrects an obsolete regulatory citation. These changes are made for accuracy.

DATES: *Effective Date:* July 27, 2009.

FOR FURTHER INFORMATION CONTACT: Richard M. Trabert, Policy Management Division (741/PMD), VA Health Administration Center, P.O. Box 65020, Denver, CO 80206-9020; (303) 331-7549. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: This document amends certain provisions concerning VA's Foreign Medical Program (FMP) in VA's medical regulations in 38 CFR part 17. The FMP

is a VA health benefits program designed for a veteran who is residing or traveling outside of the United States, if the veteran requires treatment for a VA-rated service-connected disability or any disability associated with and aggravating a service-connected disability; or if the veteran requires care for certain reasons during participation in a rehabilitation program under 38 U.S.C. chapter 31.

This rule amends 38 CFR 17.35, 17.125, and 17.141.

We are amending § 17.35, "Hospital care and medical services in foreign countries," to correct an obsolete reference in § 17.35(b) to 38 CFR 17.48(j)(2). The reference is corrected to § 17.47(i)(2) to reflect the redesignation of that paragraph pursuant to two earlier final rules (see 61 FR 21964, 21965 (May 13, 1996); 65 FR 54207, 54218 (Oct. 6, 1999)).

This rule amends § 17.125, "Where to file claims," to reflect a change in the mailing address for FMP claims sent to the Health Administration Center in Denver, Colorado. It also amends § 17.125, as well as § 17.141, "Authority to adjudicate foreign reimbursement claims," to remove provisions that distinguish the filing and adjudication of FMP claims for services rendered in Canada from those claims for services rendered in other foreign countries. Currently, these provisions instruct claimants to file claims for services rendered in Canada with the VA Medical Center in White River Junction, Vermont, and reflect a delegation of authority to that office for adjudication of those claims. Current § 17.125 provides that claims for services rendered in other foreign countries (except the Philippines) must be mailed to the Denver Health Administration Center and § 17.141 reflects a delegation of authority to that office for adjudication of those claims. This rule removes the distinction between Canada and other foreign countries, thereby requiring claims under the FMP for services rendered in Canada to be mailed to and adjudicated by the Health Administration Center.

Administrative Procedure Act

This document merely corrects a citation to a regulatory paragraph to reflect that paragraph's redesignation and makes other changes pertaining to agency management, organization, and procedure. Accordingly, its publication as a final rule is pursuant to 5 U.S.C. 553, which exempts such a document from the notice-and-comment requirements of section 553.