

the cost of repair would exceed 60 percent of the cost of replacement.

\* \* \* \* \*

(e) \* \* \*

(23) A speech generating device (SGD) as defined in § 199.2 of this part is covered as a voice prosthesis. The prosthesis provisions found in paragraph (d)(3)(vii) of this section apply.

(24) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss as defined in § 199.2 of this part. Medically necessary and appropriate services and supplies, including hearing examinations, required in connection with this hearing aid benefit are covered.

(25) Rehabilitation therapy as defined in § 199.2 of this part to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitation therapy must be medically necessary and appropriate medical care, rendered by an authorized provider, necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and must not be custodial care or otherwise excluded from coverage.

\* \* \* \* \*

(g) \* \* \*

(41) *Hair transplants, wigs/hair pieces/cranial prosthesis.*

**Note:** \* \* \*

\* \* \* \* \*

(45) [Reserved]

\* \* \* \* \*

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraphs (c)(2)(xvi), (c)(3)(xi), and (e)(24) of this section, or except when rendered in connection with medical or surgical treatment of a covered illness or injury.

\* \* \* \* \*

(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices, except those allowed in paragraph (e)(24) of this section.

\* \* \* \* \*

■ 4. Section 199.14 is amended by redesignating paragraphs (k) through (n) as (l) through (o) and by adding a new paragraph (k) to read as follows:

#### § 199.14 Provider reimbursement methods.

\* \* \* \* \*

(k) *Reimbursement of Durable Medical Equipment, Prosthetics, orthotics and Supplies 9DMEPOS).* Reimbursement of DMEPOS may be

based on the same amounts established under the Centers for Medicare and Medicaid Services (CMS) DMEPOS fee schedule under 42 CFR part 414, subpart D.

\* \* \* \* \*

Dated: September 28, 2004

**L.M. Bynum,**

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

[FR Doc. 04-22684 Filed 10-8-04; 8:45 am]

**BILLING CODE 5001-06-M**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-04-034]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Tensas River, Clayton, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is removing the existing drawbridge operation regulation for the draw of the Union Pacific Railroad bridge across the Tensas River, mile 27.2, at Clayton, Louisiana. The movable span of the bridge has been removed and the remains of the bridge are still in place. Since the movable span of the bridge has been removed, the regulation controlling the opening and closing of the bridge is no longer necessary.

**DATES:** This rule is effective October 12, 2004.

**ADDRESSES:** Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130-3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** David Frank, Bridge Administration Branch, at (504) 589-2965.

**SUPPLEMENTARY INFORMATION:**

#### Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds good cause exists for not publishing an NPRM. Public

comment is not necessary since the bridge that the regulation governed is out of service and mariners are no longer required to request an opening to transit through the bridge.

#### Good Cause for Making Rule Effective in Less Than 30 Days

Under 5 U.S.C. 553(d)(3), the Coast Guard finds good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. There is no need to delay the implementation of this rule because the bridge it governs is already out of service and mariners are no longer required to request an opening.

#### Background and Purpose

The movable span of the railroad bridge across the Tensas River, mile 27.2, which had previously serviced the area has been removed and the remaining portions of the bridge presently remain in place. These remaining portions of the bridge will be removed in the near future or permitted to remain in place by the U.S. Army Corps of Engineers. Since the movable span has been removed, mariners are no longer required to request openings for the bridge. The regulation governing the operation of the bridge is found in 33 CFR 117.503(a). The purpose of this rule is to remove 33 CFR 117.503(a) from the Code of Federal Regulations since it governs a bridge that is no longer in service and the movable span has been removed.

#### Regulatory Evaluation

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. It is not “significant” under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This rule removes the special regulation for a bridge that is already out of service.

#### 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 will not have a significant economic impact on a substantial number of small entities.

This rule will have no impact on any small entities because the regulation being removed applies to a bridge that has already been taken out of service and will be removed.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule so that they can 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).

#### 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 an expenditure, we do discuss the

effects of this rule elsewhere in the preamble.

#### Taking of Private Property

This rule will not affect 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 does not cause an environmental risk to health or risk to safety that may 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 does 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 Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation. This final rule only involves removal of the drawbridge operation regulation for a drawbridge that has been removed from service. It will not have any impact on the environment.

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

Bridges.

#### Regulations

■ For the reasons set out 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; Department of Homeland Security Delegation No. 0170.1; 33 CFR 1.05-1(g); section 117.255 also issued under the authority of Pub. L. 102-587, 106 Stat. 5039.

■ 2. Section 117.503 is revised to read as follows:

#### § 117.503 Tensas River

The draws of the S15 bridge, mile 27.3 at Clayton, and the S128 bridge, mile 61.0 at New Light, shall open on signal if at least 48 hours notice is given.

Dated: September 27, 2004.

**R.F. Duncan,**

*Rear Admiral, U. S. Coast Guard,  
Commander, Eighth Coast Guard District.*  
[FR Doc. 04-22849 Filed 10-8-04; 8:45 am]

**BILLING CODE 4910-15-P**