

Captain of the Port before anchoring in Anchorages A or B.

Dated: January 10, 1995.

William P. Leahy,

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

[FR Doc. 95-6435 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 117

[CGD8-94-027]

RIN 2115-AE47

Drawbridge Operation Regulations; Mermentau River, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the Louisiana Department of Transportation and Development (LDOTD), the Coast Guard is changing the regulation governing the operation of the swing span bridge on State Route 82, across the Mermentau River, mile 7.1, at Grand Chenier, Cameron Parish, Louisiana, by permitting the draw to open on signal from 6 a.m. to 6 p.m. and open on four hours notice from 6 p.m. to 6 a.m. Presently, the draw is required to open on signal from 5 a.m. to 9 p.m. and from 9 p.m. to 5 a.m. the bridge opens on 4 hours notice. This action will provide relief to the bridge owner, thereby creating a savings to the taxpayer, and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This regulation becomes effective on April 17, 1995.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Commander (ob), Eighth Coast Guard District, 501 Magazine Street, Room 1313, New Orleans, Louisiana 70130-3396, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589-2965.

FOR FURTHER INFORMATION CONTACT: Mr. John Wachter, Bridge Administration Branch, at the address given above, telephone (504) 589-2965.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are Mr. John Wachter, project officer, and LT Elisa Holland, project attorney.

Regulatory History

On October 4, 1994, the Coast Guard published a notice of proposed rulemaking entitled Drawbridge

Operation Regulation; Mermentau River, LA, in the **Federal Register** (59 FR 50529). The Coast Guard received three letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

LDOTD requested the 4 hour reduction in the number of hours the bridge owner is required to have an attendant on duty, due to the small number of vessels which use the Mermentau River bridge. Data provided by LDOTD show that from January 1, through December 31, 1993, the number of vessels broke down to 8.0 vessels per 24 hour period. The four hour reduction will allow the bridge owner relief from having a person available at the bridge site during that period, thereby, creating a savings to the taxpayer while still serving the reasonable needs of navigational interests.

Discussion of Comments and Changes

Three letters of comment were received in response to the proposal. The Federal Emergency Management Agency, the National Marine Fisheries Service and the Louisiana Department of Wildlife & Fisheries offered no objection to the rule change. Therefore, the Final Rule remains unchanged from the Proposed Rule.

Assessment

This regulation is not a significant regulatory action under Section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under Section 6a(3) of that order. It has not been reviewed by the Office of Management and Budget 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).

Small Entities

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The basis for this conclusion is the number of vessels which pass the bridge, (8.0 per 24 hour period). The three comments received offered no objection to the proposed rule. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.g.5 of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations, is amended 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; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. Section 117.480 is revised to read as follows:

§ 117.480 Mermentau River.

The draw of the S82 bridge, mile 7.1 at Grand Chenier, shall open on signal; except that, from 6 p.m. to 6 a.m. the draw shall open on signal if at least 4 hours notice is given. During the advance notice period, the draw will open on less than 4 hours notice for an emergency and will open on demand should a temporary surge in waterway traffic occur.

Dated: February 1, 1995.

C.B. Newlin,

Acting Captain, U.S. Coast Guard, Chief of Staff.

[FR Doc. 95-6434 Filed 3-15-95; 8:45 am]

BILLING CODE 4910-14-M

**DEPARTMENT OF VETERANS
AFFAIRS**

38 CFR Part 3

RIN 2900-AH44

**Compensation for Disability Resulting
From Hospitalization, Treatment,
Examination, or Vocational
Rehabilitation**

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule with request for comments.

SUMMARY: This document amends Department of Veterans Affairs (VA) adjudication regulations concerning compensation for disability or death resulting from VA hospitalization, medical or surgical treatment, or examination. Previously, the regulations required that VA be at fault or that an accident occur to establish entitlement to compensation for adverse results of medical or surgical treatment. This rule deletes the fault-or-accident requirement and instead provides that compensation is not payable for the necessary consequences of proper treatment to which the veteran consented. This amendment is necessary to conform the regulations to a recent United States Supreme Court decision.

DATES: This interim final rule is effective November 25, 1991, the date of the Court of Veterans Appeals decision that invalidated former 38 CFR 3.358(c)(3). Comments must be received on or before May 15, 1995.

ADDRESSES: Mail written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or hand deliver written comments to: Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001. Comments should indicate that they are submitted in response to "RIN 2900-AH44." All written comments received will be available for public inspection in the Office of Regulations Management, Room 1176, 801 Eye Street NW., Washington, DC 20001, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Paul Trowbridge, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, telephone (202) 273-7210.

SUPPLEMENTARY INFORMATION: 38 U.S.C. 1151 provides for the payment of

disability or dependency and indemnity compensation for additional disability or death resulting from an injury or aggravation of an injury suffered as the result of VA hospitalization, medical or surgical treatment, examination, or pursuit of a course of vocational rehabilitation under 38 U.S.C. ch. 31. VA had long interpreted the statute to require a showing of fault on the part of VA or the occurrence of an accident to establish entitlement to § 1151 compensation for adverse consequences of VA medical treatment. See 38 CFR 3.358(c)(3) (1994). The Supreme Court, however, recently affirmed a lower court ruling that invalidated VA's fault-or-accident interpretation.

In deciding *Brown v. Gardner*, U.S. Sup. Ct. No. 93-1128 (Dec. 12, 1994), the Court held that the fault-or-accident requirement in 38 CFR 3.358(c)(3) was inconsistent with the plain language of the statute and that no fault requirement was implicit in the statute.

Although the Supreme Court found that the statutory language simply requires a causal connection between an injury or aggravation of an injury and VA hospitalization, medical or surgical treatment, examination, or vocational rehabilitation, it also indicated that not every additional disability resulting from an injury or aggravation so connected was compensable under § 1151. The Court noted that it did not intend to exclude application of the doctrine *volenti non fit injuria* (which is sometimes loosely translated as "assumption of the risk" but more precisely refers to the doctrine of consent). Moreover, the Court provided an example of disabilities that, although causally connected to VA treatment, are not compensable under § 1151. In this regard, the Court stated, "[i]t would be unreasonable, for example, to believe that Congress intended to compensate veterans for the necessary consequences of treatment to which they consented (i.e., compensating a veteran who consents to the amputation of a gangrenous limb for the loss of the limb)."

Under the authority granted in 38 U.S.C. 505, the Secretary of Veterans Affairs requested an opinion from the U.S. Attorney General on precisely what the Supreme Court meant by its statement regarding application of the doctrine *volenti non fit injuria*. The response, from the Department of Justice's Office of Legal Counsel, was that the Court construed § 1151 to exclude from coverage only those injuries that are the certain, or perhaps the very nearly certain, result of proper medical treatment.

In this document VA is revising 38 CFR 3.358(c)(3) to reflect the Supreme Court's holding that 38 U.S.C. 1151 permits compensation for all but the necessary consequences of properly administered VA medical or surgical treatment or examination to which a veteran consented. "Necessary consequences" is the term the Supreme Court used in its example of what Congress could not reasonably have intended to cover with § 1151. We define "necessary consequences" as those consequences certain or intended to result from treatment or examination. We consider this interpretation of the statute to be consistent with the Supreme Court's opinion.

Consistent with our interpretation of the Supreme Court's opinion, this rule also provides that whether results were either certain or intended is to be determined in relation to the examination or treatment actually administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered. For example, consider a case in which a veteran is about to undergo exploratory surgery and, depending on the findings, would undergo one of two possible additional procedures, each of which has distinct consequences that are certain or intended to result. Under these circumstances it is not known before the exploratory surgery which additional procedure will actually be performed. However, if the veteran consents both to the exploratory surgery and whichever procedure ultimately is determined to be required, the certainty of consequences is to be determined in relation to the consented-to procedure or procedures actually performed.

Also, as reflected in the text of the rule, we have concluded that when the Supreme Court stated that compensation should not be payable for the necessary consequences of treatment to which the veteran "consented," the Court meant both express and implied consent. This is consistent with the common meaning of the term "consent" and the Court did not indicate that any other meaning should be applied.

This interim final rule, unlike the regulatory provision it replaces, expressly includes the consequences of VA examinations. The statute covers injuries or aggravation of injuries resulting from examination, as well as from medical or surgical treatment. Thus, the rule's inclusion of examination consequences is necessary

to reflect completely the provisions of the statute.

We also are deleting other references in the section to the invalidated fault requirement. We are eliminating paragraph (c)(4), which requires that VA be at fault to establish entitlement for claims based on being transported while in hospitalized status. Such claims will now be adjudicated under the standard applicable to hospitalization, treatment, or examination. We are also making corresponding changes to paragraph (c)(7) to remove the fault requirement for claims based on nursing home care.

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601-612). This rule will directly affect VA beneficiaries but will not affect small businesses. Therefore, pursuant to 5 U.S.C. 605(b), this rule is exempt from the initial and final regulatory flexibility analysis requirements of section 603 and 604.

The Office of Management and Budget has reviewed this regulatory action under Executive Order 12866.

The Catalog of Federal Domestic Assistance program number is 64.109.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Health care, Individuals with disabilities, Pensions, Veterans.

Approved: February 23, 1995.

Jesse Brown,
Secretary of Veterans Affairs.

For the reasons set forth in the preamble, 38 CFR Part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.358, paragraph (c)(4) is removed, and paragraphs (c)(5), (c)(6), and (c)(7) are redesignated as paragraphs (c)(4), (c)(5), and (c)(6), respectively.

3. In § 3.358, paragraph (c)(3) is revised, and redesignated paragraph (c)(6) is amended by revising the third sentence, to read as follows:

§ 3.358 Determinations for disability or death from hospitalization, medical or surgical treatment, examinations or vocational rehabilitation training (§ 3.800).

* * * * *

(c) * * *

(3) Compensation is not payable for the necessary consequences of medical or surgical treatment or examination properly administered with the express or implied consent of the veteran, or, in appropriate cases, the veteran's representative. "Necessary consequences" are those which are certain to result from, or were intended to result from, the examination or medical or surgical treatment administered. Consequences otherwise certain or intended to result from a treatment will not be considered uncertain or unintended solely because it had not been determined at the time consent was given whether that treatment would in fact be administered.

* * * * *

(6) * * * If additional disability results from medical or surgical treatment or examination through negligence or other wrongful acts or omissions on the part of such a nursing home, its employees, or its agents, entitlement does not exist under this section unless there was an act or omission on the part of the Department of Veterans Affairs independently giving rise to such entitlement and such acts on the part of both proximately caused the additional disability.

(Authority: 38 U.S.C. 1151)

[FR Doc. 95-6510 Filed 3-15-95; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 410

[BPD-724-F]

RIN 0938-AF26

Medicare Program; Medicare Coverage of Screening Mammography; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendment.

SUMMARY: This document corrects a technical error that appeared in the final regulations published in the **Federal Register** on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are

similar to those we had established for screening mammography. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: William Larson, (410) 966-4639.

SUPPLEMENTARY INFORMATION: This document corrects a technical error that appeared in the final regulations published in **Federal Register** Document [94-24335] on September 30, 1994 (59 FR 49826). Those regulations, in part, established conditions for coverage of diagnostic mammography that are similar to those we had established for screening mammography.

The regulation set forth at 42 CFR 410.34 ("Mammography services: Conditions for and limitations on coverage") contains an omission, which may prove to be misleading. In the definition of "diagnostic mammography" in paragraph (a)(1) of § 410.34, we inadvertently failed to include a symptomatic man in the coverage of services under the diagnostic mammography benefit. This correcting amendment restates the applicability of diagnostic mammography to men as well as to women. Therefore, we are correcting § 410.34(a)(1) to clarify that a symptomatic man or woman can receive coverage of services under the diagnostic mammography benefit.

We wish to note that section 1861(jj) of the Social Security Act states explicitly that "screening" mammography is covered only for women. Section 410.34(a)(2), relating to the definition of screening mammography, is correct as it reads, based on current law.

List of Subjects in 42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

Accordingly, 42 CFR part 410 is corrected by making the following correcting amendment:

PART 410—[AMENDED]

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 410.34, the introductory text of paragraph (a) is republished, and paragraph (a)(1) is revised to read as follows: