

TABLE TWO

Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS AMERICA.	LHA 6 ..	9.00	.....	.....	.....	.....	2.8	89.3	.....
	*	*	*	*	*	*	*	*	*

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than 1/2 ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS AMERICA .....	LHA 6 .....	.....	X	X	31.6
	*	*	*	*	*

Approved: September 19, 2013.

**A.B. Fischer,**

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

Dated: September 25, 2013.

**P.A. Richelmi,**

*Lieutenant, Office of the Judge Advocate General, U.S. Navy, Alternate Federal Register Liaison Officer.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[Docket No. USCG-2013-0562]

#### Drawbridge Operation Regulation; Inner Harbor Navigational Canal, New Orleans, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations; request for comments.

**SUMMARY:** The Coast Guard has issued a temporary deviation from the operating schedules that govern the US 90 (Danzinger) Bridge across the Inner Harbor Navigational Canal (IHNC), mile 3.1, and the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) bridge across the IHNC, mile 4.6, both at New Orleans, LA. This deviation will test changes to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. These changes would allow for the safe navigation of vessels while reflecting the low volume of vessel traffic through the bridges thereby increasing efficiency of operations. The changes will allow the bridges to operate in a manner that will align the two operating schedules so the bridge owner will be able to use the same bridge crew personnel to operate both bridges with little to no affect on navigation through the bridges.

**DATES:** This deviation is effective from 12:01 a.m. on November 6, 2013 through 11:59 p.m. on December 6, 2013.

Comments and related material must be received by the Coast Guard on December 23, 2013.

**ADDRESSES:** You may submit comments identified by docket number USCG-2013-0562 using any one of the following methods:

(1) *Federal eRulemaking Portal:* <http://www.regulations.gov>.

(2) *Fax:* 202-493-2251.

(3) *Mail or Delivery:* Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC 20590-0001. Deliveries accepted between 9 a.m. and 5 p.m., Monday through Friday, except federal holidays. The telephone number is 202-366-9329.

See the "Public Participation and Request for Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. To avoid duplication, please use only one of these four methods.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this test deviation, call or email the Coast Guard;

Mr. Jim Wetherington, telephone 504–671–2128, emails [james.r.wetherington@uscg.mil](mailto:james.r.wetherington@uscg.mil). If you have questions on viewing or submitting material to the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### A. Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to <http://www.regulations.gov> and will include any personal information you have provided.

##### 1. Submitting comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2013–0562), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online (<http://www.regulations.gov>), or by fax, mail or hand delivery, but please use only one of these means. If you submit a comment online via <http://www.regulations.gov>, it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an email address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, type the docket number [USCG–2013–0562] in the “SEARCH” box and click “SEARCH.” Click on “Submit a Comment” on the line associated with this rulemaking. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

##### 2. Viewing comments and documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number (USCG–2013–0562) in the “SEARCH” box and click “SEARCH.” Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

##### 3. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

##### 4. Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

##### B. Basis and Purpose

On June 05, 2013 the Coast Guard District Eight Commander received a request from Louisiana Department of Transportation and Development (LDOTD), on behalf of the Orleans Levee District, to modify the operating regulations of the U.S. 90 (Danziger) and the Senator Ted Hickey (Leon c. Simon Blvd./Seabrook) bridges on the Inner Harbor Navigational Canal (IHNC) past the Gulf Intra-Costal Waterway (GIWW).

The US 90 (Danzinger) Bridge across the IHNC, mile 3.1, at New Orleans, Orleans Parish, Louisiana is a Vertical lift bridge with a vertical clearance of 50 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-navigation position and 120 feet MHW, elevation 5.0 MSL, in the open-to-navigation position. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge across the IHNC, mile 4.6, at New Orleans, Orleans Parish, Louisiana is a Bascule bridge with a vertical clearance of 46 feet above Mean High Water (MHW), elevation 5.0 Mean Sea Level (MSL), in the closed-to-

navigation position and unlimited in the open-to-navigation position.

Under 33 CFR 117.458(b), the draw of the US 90 (Danzinger) Bridge, mile 3.1, shall open on signal; except that from 8 p.m. to 7 a.m. the draw shall open on signal if at least four hours notice is given, and the draw need not be opened from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. Under 33 CFR 117.458(c), the draw of the Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge, mile 4.6, shall open on signal; except that from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday, the draw need not be opened. This operating regulation has been in effect since 2003.

This regulation would allow LDOTD to improve the systematic efficiency of bridge operations for vessels using the portions of the IHNC that are not associated with the GIWW. The changes will do this by allowing bridge operations to be accomplished with the same personnel and allowing the regulations to work with one another thereby allowing for faster response times for openings and more efficient use of the waterway and ultimately more fiscal responsibility on behalf of the owner. This test will allow for comments on a current notice of proposed rule making (NPRM) that is being run in conjunction with this test. Comments on this test and the NPRM with the same docket number will be evaluated at the same time. The bridges will return to normal operations upon completion of the test to allow for evaluation of any and all comments.

Currently, there is minimal vessel traffic (nine per month and 32 per month, respectively) in this area and land traffic would not be adversely impacted by this test as the opening times would be minimized.

The test deviation will begin at 12:01 a.m. on the date 15 days after publication in the **Federal Register**. It will end at 11:59 p.m. 30 days later. During this 30 day period, the US 90 (Danzinger) Bridge will open if two hours notice is given 24 hours a day; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. The Senator Ted Hickey (Leon C. Simon Blvd./Seabrook) Bridge will open on signal from 8 a.m. to 8 p.m. and from 8 p.m. to 8 a.m. if two hours notice is given; except the bridge need not open from 7 a.m. to 8:30 a.m. and 5 p.m. to 6:30 p.m. Monday through Friday. During this time, vessels that do not require an opening can still pass through the bridges. There are no alternate routes available. Waterway users are encouraged to comment on the test

deviation and the NPRM as described above.

In accordance with 33 CFR 117.35(e), the drawbridges must return to their regular operating schedules immediately at the end of the effective period of this temporary deviation. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: September 23, 2013.

**David M. Frank,**  
Bridge Administrator.

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BILLING CODE 9110-04-P

## DEPARTMENT OF VETERANS AFFAIRS

### 38 CFR Part 17

#### RIN 2900-AO85

#### VA Dental Insurance Program—Federalism

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Direct final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) is taking direct final action to amend its regulations related to the VA Dental Insurance Program (VADIP), a pilot program to offer premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. Specifically, this rule will add language to clarify the limited preemptive effect of certain criteria in the VADIP regulations.

**DATES:** This rule is effective on December 23, 2013, without further notice, unless VA receives a significant adverse comment by November 21, 2013.

**ADDRESSES:** Written comments may be submitted through <http://www.regulations.gov>; by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273-9026. Comments should indicate that they are submitted in

response to “RIN 2900-AO85-VA Dental Insurance Program—Federalism.” Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461-4902 (this is not a toll-free number) for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System at <http://www.regulations.gov>.

#### FOR FURTHER INFORMATION CONTACT:

Kristin Cunningham, Director, Business Policy, Chief Business Office (10NB), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; (202) 461-1599. (This is not a toll-free number.)

**SUPPLEMENTARY INFORMATION:** This rule amends 38 CFR 17.169 to add language to clarify the limited preemptive effect of certain criteria in the VA Dental Insurance Program (VADIP), a pilot program to offer premium-based dental insurance to enrolled veterans and certain survivors and dependents of veterans. Under VADIP, VA contracts with private insurers through the Federal contracting process to offer dental insurance, and the private insurer is then responsible for the administration of the dental insurance plan. VA's role under VADIP is primarily to form the contract with the private insurer and verify the eligibility of veterans, survivors, and dependents. VADIP is authorized, and its implementing regulations are required, by section 510 of the Caregivers and Veterans Omnibus Health Services Act of 2010, Public Law 111-163 (2010) (section 510).

“Preemption” refers to the general principle that Federal law supersedes conflicting State law. U.S. Const. art. VI, cl. 2; *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992); *M'Culloch v. Maryland*, 17 U.S. 316, 317 (1819). However, the subject of insurance

regulation is unique. Under 15 U.S.C. 1012, no Act of Congress may be construed to invalidate, impair, or supersede any law enacted by any State for the purpose of regulating the business of insurance, unless such Act specifically relates to the business of insurance. Although section 510 does not include express preemption language, Congress intended to legislate about the business of insurance in several subsections of section 510, hence preempting conflicting State and local laws. See *Swanco Ins. Co.-Arizona v. Hager*, 879 F.2d 353, 359 (8th Cir. 1989) (“Instead of total preemption, Congress ‘selected particularized means to [an] end in conscious recognition that a considerable area of state regulation would remain intact.’”) (quoting *Ins. Co. of the State of Pa. v. Corcoran*, 850 F.2d 88, 93 (2nd Cir. 1988)).

For example, section 510(h) requires VA to determine and annually adjust VADIP insurance premiums. Determining premium rates is an important aspect of the “business of insurance.” *Gilchrist v. State Farm Mut. Auto. Ins. Co.*, 390 F.3d 1327, 1331 (11th Cir. 2004) (citing *United States Dep't of Treasury v. Fabe*, 508 U.S. 491, 503 (1993); *Grp. Life & Health Ins. Co. v. Royal Drug Co.*, 440 U.S. 205, 224 (1979)). States strictly regulate insurance premium rates. See 5 Steven Plitt et al., *Couch on Insurance* § 69:13 (3d ed. 2012). If a State denies the premium rate set by VA and such rate is required by section 510(h)(1) in order “to cover all costs associated with the pilot program,” then the state would frustrate “the lawful objective of a [F]ederal statute.” *United States v. Composite State Bd. of Med. Exam'rs, State of Georgia*, 656 F.2d 131, 135 n.4 (5th Cir. 1981).

Applying these principles here, Congress specifically intended to legislate on the business of insurance under certain subsections of section 510. The following chart lists these subsections and their corresponding regulatory paragraphs.

Topic	Subsection of section 510	Paragraph of § 17.169
Eligibility for VADIP .....	510(b) .....	§ 17.169(b).
Duration of VADIP .....	510(c) .....	N/A.
Coverage locations .....	510(d) .....	N/A.
Plan benefits .....	510(f) .....	§ 17.169(c)(2).
Enrollment periods .....	510(g) .....	§ 17.169(d).
Establishing amounts of premiums, time frame for premium adjustments, and responsibility for payment of premiums.	510(h) .....	§ 17.169(c)(1).
Bases and minimum procedures for voluntary disenrollment	510(i) .....	§§ 17.169(e)(2)–(e)(5).