

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD07-03-172]

#### Drawbridge Operation Regulations; Loxahatchee River, Palm Beach County, FL

**AGENCY:** U.S. Coast Guard, DHS.

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

**SUMMARY:** The Commander, Seventh Coast Guard District, has approved a temporary deviation from the regulations governing the operation of the Florida East Coast Railway bridge across the Loxahatchee River, mile 1.2, Jupiter, Florida. This deviation allows the bridge to remain in the closed position from 7 p.m. to 7 a.m. each day from December 10, 2003 until December 19, 2003 for repairs.

**DATES:** This deviation is effective from 7 p.m. on December 10 until 7 a.m. on December 19, 2003.

**ADDRESSES:** Material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07-03-172] will become part of this docket and will be available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131-3050 between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Project Officer, Seventh Coast Guard District, Bridge Branch at (305) 415-6744.

**SUPPLEMENTARY INFORMATION:** The Florida East Coast Railway bridge across the Loxahatchee River, Jupiter, Florida, is a single leaf bascule bridge with a vertical clearance of 4 feet above mean high water (MHW) measured at the fenders in the closed position with a horizontal clearance of 40 feet. The current operating regulation in 33 CFR 117.300 requires that the bridge is not constantly tended. The draw is normally in the fully open position, displaying flashing green lights to indicate that vessels may pass. When a train approaches, the lights go to flashing red and a horn starts four blasts, pauses, and then continues four blasts. After an eight minute delay, the draw lowers and locks, providing the scanning equipment reveals nothing under the draw. The draw remains down for a period of eight minutes or while the approach track circuit is occupied. After

the train has cleared, the draw opens and the lights return to flashing green.

On October 30, 2003, the bridge owner, Florida East Coast Railroad, requested a deviation from the current operating regulations to allow the owner and operator to keep this bridge in the closed position during certain times each day to facilitate repairs. The Commander, Seventh Coast Guard District has granted a temporary deviation from the operating requirements listed in 33 CFR 117.300 to complete repairs to the bridge. Under this deviation the Florida East Coast Railway bridge, across the Loxahatchee River, mile 1.2, Jupiter, Florida, need not open from 7 p.m. to 7 a.m., each day, from December 10, 2003 until December 19, 2003.

Dated: December 10, 2003.

**Greg Shapley,**

*Chief, Bridge Branch, Seventh Coast Guard District.*

[FR Doc. 03-31243 Filed 12-18-03; 8:45 am]

**BILLING CODE 4910-15-U**

## DEPARTMENT OF AGRICULTURE

### Forest Service

#### 36 CFR Part 242

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR Part 100

#### Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Seasonal Adjustment—Unit 22(A)

**AGENCIES:** Forest Service, USDA; Fish and Wildlife Service, Interior.

**ACTION:** Seasonal adjustment.

**SUMMARY:** This provides notice of the Federal Subsistence Board's management action to protect a declining moose population in Unit 22(A). This action provides an exception to the Subsistence Management Regulations for Public Lands in Alaska, published in the **Federal Register** on June 27, 2003. Those regulations established seasons, harvest limits, methods, and means relating to the taking of wildlife for subsistence uses during the 2003 regulatory year.

**DATES:** This action is effective December 4, 2003, through January 31, 2004.

**FOR FURTHER INFORMATION CONTACT:** Thomas H. Boyd, Office of Subsistence Management, U.S. Fish and Wildlife Service, telephone (907) 786-3888. For

questions specific to National Forest System lands, contact Steve Kessler, Subsistence Program Leader, USDA—Forest Service, Alaska Region, telephone (907) 786-3592.

#### SUPPLEMENTARY INFORMATION:

##### Background

Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3111-3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands in Alaska, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. In December 1989, the Alaska Supreme Court ruled that the rural preference in the State subsistence statute violated the Alaska Constitution and, therefore, negated State compliance with ANILCA.

The Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. The Departments administer Title VIII through regulations at Title 50, Part 100 and Title 36, Part 242 of the Code of Federal Regulations (CFR). Consistent with Subparts A, B, and C of these regulations, as revised January 8, 1999, (64 FR 1276), the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, National Park Service; the Alaska State Director, Bureau of Land Management; the Alaska Regional Director, Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for Subparts A, B, and C, which establish the program structure and determine which Alaska residents are eligible to take specific species for subsistence uses, and the annual Subpart D regulations, which establish seasons, harvest limits, and methods and means for subsistence take of species in specific areas. Subpart D regulations for the 2003 hunting seasons, harvest limits, and methods and means were

published on June 27, 2003, (68 FR 38464). Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical closures and adjustments would apply to 36 CFR part 242 and 50 CFR part 100.

The Alaska Department of Fish and Game (ADF&G), under the direction of the Alaska Board of Game (BOG) and the Board of Fisheries (BOF), manages sport, commercial, personal use, and State subsistence harvest on all lands and waters throughout Alaska. However, on Federal lands and waters, the Federal Subsistence Board implements a subsistence priority for rural residents as provided by Title VIII of ANILCA. In providing this priority, the Federal Board may, when necessary, preempt State harvest regulations for fish or wildlife on Federal lands and waters.

This adjustment is necessary because of the need to protect a declining moose population in a portion of Unit 22. This action is authorized and in accordance with 50 CFR 100.19(d-e) and 36 CFR 242.19(d-e).

#### *Unit 22(A)—Moose*

In 2003 recruitment surveys were completed by ADF&G and BLM in the Golsovia River drainage and on the main stems of the Unalakleet, Shaktoolik and Ungalik river drainages for comparison to similar Unit 22(A) surveys completed in 2000. In all drainages surveyed, except the Golsovia, considerably fewer moose were seen in 2003 than in 2000. This information points to a substantial decline in moose numbers in Unit 22(A) especially the population north of the Golsovia River. Current Federal regulations provide opportunity to harvest bull moose in the affected area December 1 through January 31. This Board action closes the moose season in a portion of Unit 22(A) north of the Golsovia River drainage, closes the winter season in the remainder of Unit 22(A) at the end of December, and changes the harvest limit in remainder of Unit 22(A) to antlered bulls only. ADF&G has executed an Emergency Order for a similar adjustment of the State moose season on private lands in response to the ongoing population declines.

The Board finds that additional public notice and comment requirements under the Administrative Procedure Act (APA) for this adjustment is impracticable, unnecessary, and contrary to the public interest. Lack of appropriate and immediate measures could seriously affect the continued viability of wildlife populations, adversely impact subsistence

opportunities for rural Alaskans, and would generally fail to serve the overall public interest. Therefore, the Board finds good cause pursuant to 5 U.S.C. 553(b)(3)(B) to waive additional public notice and comment procedures prior to implementation of this action and pursuant to 5 U.S.C. 553(d)(3) to make this rule effective as indicated in the **DATES** section.

#### **Conformance with Statutory and Regulatory Authorities**

##### *National Environmental Policy Act Compliance*

A Final Environmental Impact Statement (FEIS) was published on February 28, 1992, and a Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD) was signed April 6, 1992. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations. A final rule that redefined the jurisdiction of the Federal Subsistence Management Program to include waters subject to the subsistence priority was published on January 8, 1999, (64 FR 1276.)

##### *Compliance with Section 810 of ANILCA*

The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. A Section 810 analysis was completed as part of the FEIS process. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but the program is not likely to significantly restrict subsistence uses.

##### *Paperwork Reduction Act*

The adjustment and emergency closure do not contain information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995.

##### *Other Requirements*

The adjustments have been exempted from OMB review under Executive Order 12866.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant effect on a substantial number of small entities, which include small businesses, organizations, or governmental jurisdictions. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant economic effect (both positive and negative) on a small number of small entities supporting subsistence activities, such as firearm, ammunition, and gasoline dealers. The number of small entities affected is unknown; but, the effects will be seasonally and geographically-limited in nature and will likely not be significant. The Departments certify that the adjustments will not have a significant economic effect on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of \$100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence preference on public lands. The scope of this program is limited by definition to certain public lands. Likewise, the adjustments have no potential takings of private property implications as defined by Executive Order 12630.

The Service has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that the adjustments will not impose a cost of \$100 million or more in any given year on local or State governments or private entities. The implementation is by Federal agencies, and no cost is involved to any State or local entities or Tribal governments.

The Service has determined that the adjustments meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988, regarding civil justice reform.

In accordance with Executive Order 13132, the adjustments do not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As these actions are not expected to significantly affect energy supply, distribution, or use, they are not significant energy actions and no Statement of Energy Effects is required.

#### *Drafting Information*

William Knauer drafted this document under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Taylor Brelsford, Alaska State Office, Bureau of Land Management; Greg Bos, Alaska Regional Office, U.S. Fish and Wildlife Service; Sandy Rabinowitch, Alaska Regional Office, National Park Service; Warren Eastland, Alaska Regional Office, Bureau of Indian Affairs; and Steve Kessler, USDA-Forest Service, provided additional guidance.

**Authority:** 16 U.S.C. 3, 472, 551, 668dd, 3101-3126; 18 U.S.C. 3551-3586; 43 U.S.C. 1733.

Dated: December 3, 2003.

**Thomas H. Boyd,**

*Acting Chair, Federal Subsistence Board.*

Dated: December 3, 2003.

**Steve Kessler,**

*Subsistence Program Leader, USDA-Forest Service.*

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**BILLING CODE 3410-11-P; 4310-55-P**

## **DEPARTMENT OF VETERANS AFFAIRS**

### **38 CFR Part 17**

**RIN 2900-AL06**

#### **Reasonable Charges for Medical Care or Services; 2003 Methodology Changes**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran:

- For a nonservice-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract;
- For a nonservice-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or
- For a nonservice-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance.

The regulations contain methodologies designed to establish VA charges that replicate, insofar as possible, the 80th percentile of community charges, adjusted to the market areas in which VA facilities are located, and trended forward to the time period during which the charges will be used. This document amends the regulations regarding VA's reasonable charges methodologies for the following purposes: To establish charges for medical care, procedures, services, durable medical equipment (DME), drugs, injectables, medical items, and supplies for which we previously did not have charges; to replace certain charges previously based on VA costs with charges based on community charges; to establish separate charges for medical care, procedures, services, DME, drugs, injectables, medical items, and supplies whose charges were previously combined with other charges; to bring our charge structures and associated billing practices closer to industry standard charge structures and billing practices; and to provide certain clarifications.

**DATES:** This final rule is effective December 19, 2003.

**FOR FURTHER INFORMATION CONTACT:** Stephanie Mardon, Chief Business

Office (168), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 254-0362. (This is not a toll free number.)

**SUPPLEMENTARY INFORMATION:** In a proposed rule published in the **Federal Register** on October 2, 2003 (68 FR 56876), we proposed to amend VA's medical regulations as summarized in this document and discussed in full in the proposed rule. We provided a comment period that ended on November 3, 2003. We received one comment to the proposed rule, which we are now adopting as a final rule with minor revisions based on the public comment, plus clarifications and minor technical changes.

The comment focused on the use of the term "medically directed" as it applies to VA charges for anesthesia services. The commenter pointed out that under the Medicare program, the term "medically directed" has specific meaning having to do with Medicare payments to anesthesiologists for providing certain services. The commenter also pointed out that Medicare does not require that Certified Registered Nurse Anesthetists (CRNAs) be medically directed by anesthesiologists while providing anesthesia services. The commenter stated that Medicare and other primary insurers recognize the terms "personally performed" and "non-medically directed," and recommended that these terms be used in the VA regulation. We appreciate this information, and we have revised paragraph (g) of the regulation to incorporate the recommended language.

The commenter also recommended that VA establish an "Anesthesia Reimbursement Working Group" to advise VA regarding methodology for determining professional charges and values for anesthesia services. Our response to this recommendation is that we believe our current methodology for determining professional charges and values for anesthesia services is appropriate, and that establishing the indicated working group is not necessary at this time.

In the proposed rule, we identified the Internet site of the Veterans Health Administration Chief Business Office as <http://www.va.gov/revenue>. In connection with ongoing improvements to this Internet site, the address has been changed to <http://www.va.gov/cbo>. We have made this change in the two places in the regulation in which it occurs, in paragraphs (a)(2) and (a)(3), indicating that this is the current address of this Internet site.