

by reason of holding stock in T, and L owns 45 shares of U stock by reason of holding stock in T. Under paragraph (b) of this section, the U stock held by K is not included in either the numerator or the denominator of the fraction that determines the percentage of U stock owned by former shareholders of T by reason of holding stock in T. Accordingly, the fraction is 45/45 and the percentage is 100%. If the EAG does not have substantial business activities in U's country of incorporation when compared to the total business activities of the EAG, U is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

Example 7. Intra-group restructuring; less than wholly owned partnership—(i) Facts. LLC, a Delaware limited liability company engaged in the conduct of a trade or business, is 90% owned by C, a corporation, and 10% owned by D, a person unrelated to C. LLC has not elected to be treated as an association taxable as a corporation. As part of an internal restructuring within the C group, C and D transfer their interests in LLC to E, a newly formed foreign corporation, in exchange for 90 shares and 10 shares, respectively, of E's common stock, which are all of the issued and outstanding shares of E.

(ii) Analysis. LLC is a domestic partnership for Federal income tax purposes. E has indirectly acquired substantially all the properties constituting a trade or business of LLC pursuant to a plan. After the acquisition, C holds 90% of E's stock by reason of holding a capital or profits interest in LLC, and D holds 10% of E's stock by reason of holding a capital or profits interest in LLC. Before the acquisition, LLC is more than 80% owned by C, the common parent of the EAG, and after the acquisition, less than 20% of E's stock is owned by non-members of the EAG (that is by D) by reason of holding a capital or profits interest in LLC. Under paragraph (c)(1) of this section, the E stock held by C is included in the denominator but not the numerator of the fraction that determines the percentage of E stock owned by former partners of LLC by reason of holding an interest in LLC. Accordingly, the fraction is 10/100 and the percentage is 10%. E is not a surrogate foreign corporation.

Example 8. Acquisition of 50–50 joint venture partnership—(i) Facts. The facts are the same as in *Example 7* except that C and D each own 50% of the capital and profits interests in LLC. C and D transfer their interests in LLC to G, a newly formed foreign corporation, in exchange for 50 shares each of G's common stock, which are all of the issued and outstanding shares of G.

(ii) Analysis. G has indirectly acquired substantially all the properties constituting a trade or business of LLC, a domestic partnership, pursuant to a plan. After the acquisition, C and D each hold 50% of G's stock by reason of holding an interest in LLC. G is not included in an expanded affiliated group after the acquisition. Accordingly, none of the stock of G is disregarded under this section in determining the percentage of G stock held by former partners of LLC by reason of holding an interest in LLC. Thus, the fraction is 100/100 and the percentage is 100%. If the EAG does not have substantial

business activities in G's country of incorporation when compared to the total business activities of the EAG, G is a surrogate foreign corporation which is treated as a domestic corporation under section 7874(b).

(e) Effective date. This section applies to taxable years ending after March 4, 2003.

Mark E. Matthews,

Deputy Commissioner for Services and Enforcement.

Approved: December 13, 2005.

Eric Solomon,

Acting Deputy Assistant Secretary of the Treasury (Tax Policy).

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–05–049]

RIN 1625–AA09

Drawbridge Operation Regulation; Bayou Lafourche, LA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is changing the regulations governing six bridges across Bayou Lafourche, south of the Gulf Intracoastal Waterway, in Lafourche Parish, Louisiana. The Lafourche Parish Council has requested that the bridges remain closed to navigation at various times on weekdays during the school year. These closures will facilitate the safe, efficient movement of staff, students and other residents within the parish.

DATES: This rule is effective January 27, 2006.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket [CGD08–05–049], which has incorporated docket [USCG–2005–22363] into the original docket, and 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 Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone 504–589–2965.

SUPPLEMENTARY INFORMATION:

Regulatory History

On September 2, 2005, we published a notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA,” in the **Federal Register** (70 FR 52340). Due to the passage of Hurricane Katrina, the Coast Guard issued a second notice of proposed rulemaking indicating that comments should be sent to a new location due to the temporary closure of the Bridge Administration Office in New Orleans. On September 8, 2005, we published the second notice of proposed rulemaking (NPRM) entitled, “Drawbridge Operation Regulation; Lafourche Bayou, Lafourche Parish, LA,” in the **Federal Register** (70 FR 53328). We received four letters commenting on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

The U.S. Coast Guard, at the request of the Lafourche Parish Council, proposes to modify the existing operating schedules of six bridges across Bayou Lafourche south of the Gulf Intracoastal Waterway in Lafourche Parish, Louisiana. The six bridges include: Golden Meadow Vertical Lift Bridge, mile 23.9; the Galliano Pontoon Bridge, mile 27.8; the South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6; the Cote Blanche Pontoon Bridge, mile 33.9; the Cutoff Vertical Lift Bridge, mile 36.3; and the Larose Pontoon Bridge, mile 39.1. The modification of the existing regulations will allow these bridges to remain closed to navigation from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m., Monday through Friday from August 15 through May 31. At all other times, the bridges would open on signal for the passage of vessels.

Presently, only two of these bridges have special operation regulations in place. The Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6, and the Cote Blanche Pontoon Bridge, mile 33.9, open on signal; except that, from 2:30 p.m. to 3:30 p.m. and from 4:30 p.m. to 5:30 p.m. Monday through Friday except Federal holidays, the draws need not open for the passage of vessels. The other four bridges open on signal for the passage of vessels.

Traffic counts and vessel openings vary among the six bridges. The Louisiana Department of Transportation and Development provided information on vessel openings and traffic counts for the Larose Pontoon Bridge, mile 39.1; the Galliano/South Lafourche (Tarpon)

Vertical Lift Bridge, mile 30.6; and the Golden Meadow Vertical Lift Bridge, mile 23.9. The Lafourche Parish Council provided information on vessel openings and traffic counts for the Cutoff Vertical Lift Bridge, mile 36.3; the Cote Blanche Pontoon Bridge, mile 33.9; and the Galliano Pontoon Bridge, mile 27.8.

The Larose Pontoon Bridge, mile 39.1, is the first bridge south of the Gulf Intracoastal Waterway intersection. This bridge is located just south of a flood control structure that has a horizontal clearance of 56 feet and a depth over the sill of 10 feet. The bridge opens an average of 410 times a month for vessels. Based upon the request, approximately 18% of the vessels would be affected by the proposed closures. Traffic counts indicate that 9000 vehicles cross the bridge daily and approximately 23% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic nine minutes per opening, delaying 20 vehicles per opening. The Larose Pontoon Bridge is presently scheduled for replacement. The new bridge will be a vertical lift bridge and it will be located 0.4 miles downstream from its present location. Once the new bridge is constructed, the old bridge will be removed. The special operating regulation for the old bridge, if approved, may not be transferred to the new bridge and a new request for a special operation regulation must be made for the new bridge.

The Cutoff Vertical Lift Bridge, mile 36.3 is the next bridge downstream from the Larose Pontoon Bridge. The bridge opens an average of 419 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 7180 vehicles cross the bridge daily and approximately 33% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 80 vehicles per opening.

The Cote Blanche Pontoon Bridge, mile 33.9 is the next bridge downstream from the Cutoff Vertical Lift Bridge. The bridge opens an average of 441 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 7180 vehicles cross the bridge daily and approximately 33% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 54 vehicles per opening.

The Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6 is the next bridge downstream from the Cote Blanche Pontoon Bridge. The bridge opens an average of 430 times a month for vessels. Based upon the request, approximately 20% of the vessels would be affected by the proposed closures. Traffic counts indicate that 8000 vehicles cross the bridge daily and approximately 28% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic six minutes per opening, delaying 43 vehicles per opening.

The Galliano Pontoon Bridge, mile 27.8 is the next bridge downstream from the Galliano/South Lafourche (Tarpon) Vertical Lift Bridge. The bridge opens an average of 580 times a month for vessels. Based upon the request, approximately 23% of the vessels would be affected by the proposed closures. Traffic counts indicate that 5040 vehicles cross the bridge daily and approximately 34% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic five minutes per opening, delaying 60 vehicles per opening.

The Golden Meadow Vertical Lift Bridge, mile 23.9 is the next bridge downstream from the Galliano Pontoon Bridge. The bridge opens an average of 610 times a month for vessels. Based upon the request, approximately 30% of the vessels would be affected by the proposed closures. Traffic counts indicate that 2400 vehicles cross the bridge daily and approximately 30% of those vehicles cross during the requested closure times. Vessel openings of the bridge delay vehicular traffic six minutes per opening, delaying 16 vehicles per opening.

Navigation at the site of the bridge consists primarily of commercial and recreational fishing vessels, crew boats, and some tugboats with barges. Alternate routes are not readily accessible.

The existing regulations on the Galliano/South Lafourche (Tarpon) Vertical Lift Bridge, mile 30.6 and the Cote Blanche Pontoon Bridge, mile 33.9, were established on September 20, 1995. Since the establishment of these special operation regulations, the Coast Guard has not received any formal complaints regarding the operation of the bridges. It has been approximately ten years since the last formal request to change the operating regulations of the Cote Blanche bridge and the Galliano/South Lafourche bridge.

Discussion of Comments and Changes

Four letters were received with regard to the NPRM. The Gulf Intracoastal Canal Association objected to the proposed changes. Blessey Marine objected to the proposed changes. American Commercial Barge Lines objected to the proposed changes. The Greater Lafourche Port Commission (GLPC) provided comments regarding their authority to regulate commerce and traffic in the Tenth Ward of Lafourche Parish and sought the right to discuss this serious matter at its committee and board meetings and possibly comment on the proposed revisions. The GLPC held its meeting and did not submit any additional comments.

The Coast Guard contacted the three entities that objected to the proposed changes and provided additional information with regard to the location of the bridges so that their objections and concerns have been relieved. Based upon these comments and subsequent discussions with the objectors, no changes were made to the proposed regulation.

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).

This rule allows vessels ample opportunity to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the vehicle traffic surveys, the public at large is better served by the additional closure 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.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 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. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Eighth Coast Guard District Bridge Administration Branch at the address above. The Coast Guard will not retaliate against any individual or entity that questions or complains about this rule or any policy or action of the Coast Guard.

Collection of Information

This rule would call 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 this preamble.

Taking of Private Property

This rule would 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 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 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. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this rule will alter the normal operating conditions of the drawbridge, it falls within this exclusion.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons discussed in the preamble, the Coast Guard proposes to amend 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. § 117.465(a) is revised to read as follows:

§ 117.465 Lafourche Bayou.

The draws of the following bridges shall open on signal; except that, from August 15 through May 31, the draw need not open for the passage of vessels Monday through Friday except Federal holidays from 7 a.m. to 8 a.m.; from 2 p.m. to 4 p.m.; and from 4:30 p.m. to 5:30 p.m.:

- (1) SR 308 (Golden Meadow) Bridge, mile 23.9, at Golden Meadow
- (2) Galliano Pontoon Bridge, mile 27.8, at Galliano
- (3) SR 308 (South Lafourche (Tarpon)) Bridge, mile 30.6, at Galliano
- (4) Cote Blanche Pontoon Bridge, mile 33.9, at Cutoff
- (5) Cutoff Vertical Lift Bridge, mile 36.3, at Cutoff
- (6) SR 310 (Larose Pontoon) Bridge, mile 39.1, at Larose

* * * * *

Dated: December 20, 2005.

R.F. Duncan,

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

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