DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 604

RIN 1205–AB33

Unemployment Compensation—Trust Fund Integrity Rule: Birth and Adoption Unemployment Compensation; Removal of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of proposed rule making (NPRM).

SUMMARY: The Department of Labor (Department or DOL) is proposing to remove the Birth and Adoption Unemployment Compensation (BAA–UC) regulations. Those regulations provide an experimental opportunity for states to provide, in the form of unemployment compensation (UC), partial wage replacement for parents taking approved leave or otherwise leaving employment while caring for their newborns or newly-adopted children.

DATES: DOL invites written comments on this proposal. Comments must be submitted by February 3, 2003.

ADDRESSES: Submit written comments to Cheryl Atkinson, Administrator, Office of Workforce Security, Employment and Training Administration (ETA), U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–4231, Washington, DC, 20210. E-mail: *trustfundintegrity@doleta.gov.*

FOR FURTHER INFORMATION CONTACT: Gerard Hildebrand, Office of Workforce Security, ETA, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4518, Washington, DC 20210. Telephone: (202) 693–3038 (voice) (this is not a toll-free number); 1–800–326–2577 (TDD); facsimile: (202) 693–2874; e-mail: *ghildebrand@doleta.gov.*

SUPPLEMENTARY INFORMATION: On June 13, 2000, the BAA–UC Final Rule was published in the **Federal Register** at 65 FR 37210 (June 13, 2000) and codified at 20 CFR Part 604. It implemented an experimental opportunity for state agencies responsible for administering the Federal-State UC program to provide partial wage replacement for parents taking approved leave, or otherwise leaving employment, following the birth or placement for adoption of a child. In qualifying for UC, the individual would not have to be able to or available for work, commonly known as the able and available (A&A) requirements, in the sense traditionally used by the Department. Instead, parents of newborns and newly-adopted children would be viewed as meeting the federal A&A requirements (as implemented in state law) under the premise that the parents' long-term attachment to the workforce would be strengthened and promoted by the payment of UC, which would provide some financial support to accompany the introduction of a new child into the family.

As we noted during the final rulemaking, the BAA–UC experiment was ''a reversal of our position taken in 1997,'' when the Department advised a state that UC could not be used in this manner. (65 FR 37212 (June 13, 2000).) The BAA–UC experiment was described as ''part of an evolving interpretation of the Federal A&A requirements that recognizes practical and economic realities.'' (*Id.*) Simply stated, the A&A requirements were interpreted in a new and different way that emphasized the individual's potential attachment to the workforce. BAA–UC was intended to test whether individuals would be more attached to the workforce, even if their current separation from the workforce was either a conscious decision on their part, or due to compelling personal and family reasons relating to the birth or adoption of a child. Significantly, since the Department made the BAA–UC experiment available in 2000, no state has elected to participate.

The Department has now reviewed the BAA–UC Final Rule as part of a Department-wide review of all regulations. This review was conducted in the context of a substantial downturn in the economy, resulting in substantially lower state unemployment fund balances than in 2000. The review was also conducted in the context of a legal challenge in federal district court that the BAA–UC rule was inconsistent with federal UC law. Although the case was dismissed on procedural grounds, *LPA, Inc.* v. *Chao,* 211 F.Supp. 2d 160 (D.D.C. 2002), it did cause the Department to scrutinize the underlying statutory authority for BAA–UC.

Upon completion of this review, our conclusion is that the BAA–UC experiment is poor policy and a misapplication of federal UC law relating to the A&A requirements. Therefore, we are proposing to remove the BAA–UC regulations. As will be discussed below, the UC program is designed to provide temporary wage replacement to individuals who are unemployed due to lack of suitable work. However, the intended recipients of BAA–UC generally do not meet this test as they have initiated their separation from the workforce and it is their personal situation, rather than the lack of available work, that has removed them from the labor market. Because the BAA–UC experiment is based on an assumption of increased *future* labor force attachment, the payment of BAA–UC will likely be made for periods where parents have completely suspended their labor force attachment. Indeed, in cases where the parent is on approved leave from a job, BAA–UC more closely resembles a paid-leave program than a UC program.

As noted above, to date no state has elected to participate in the BAA–UC experiment. Therefore, terminating the experiment will not result in any state withdrawing benefits it previously granted. The only effect of the removal of the regulations is that it reduces state flexibility since a state could no longer elect to use its unemployment fund to pay BAA–UC. The Department's position on the A&A requirements will revert to that in existence before publication of the BAA–UC rule. Thus, to be eligible for UC an individual must, among other things, demonstrate current labor force attachment by meeting the A&A requirements. Each state remains free to create a paid family leave-type program using state moneys from sources other than its unemployment fund. Indeed, as discussed below, one state has already done so.

Policy. The UC program is designed as wage insurance for individuals who are unemployed due to lack of suitable work. This would generally not be the case for parents who would avail themselves of BAA–UC. Such parents would be out of work because they both initiated their separation from the workforce and are currently unavailable for work; they would have effectively withdrawn from the labor market for a brief period. For those individuals who were taking approved leave when an employer is holding a job open for them, BAA–UC would be a payment for voluntarily taking time off work rather than payment due to lack of suitable work. As such, it would be paid leave, which was not envisioned in the design of the UC program.

We again note that no state has actually enacted BAA–UC legislation since being given DOL clearance to do so. While we recognize that declining unemployment fund balances may have some bearing on this, the fact that one state has enacted a broad paid leave program suggests that there may be other factors. California recently passed legislation (enacted Senate Bill 1661; Chapter No. 901) that contains features of BAA–UC, as well as many features beyond the scope of BAA–UC. Notably,

it authorizes payments to certain individuals who take time off from work to care for a sick or injured child, spouse, parent or domestic partner as well as for foster care placements of a new child. The California law does not use its unemployment fund as a funding source, but instead uses employee contributions to its Temporary Disability Insurance fund.

The restrictive nature of the BAA–UC rule, which limits the eligible population to parents taking leave or otherwise leaving employment to be with their newborns or newly-adopted children, would not have granted California the flexibility it desired. Similarly, the BAA–UC rule limits the types of eligibility conditions that may be imposed on individuals. Other flexibility issues may also exist. For example, we expressed concern with a state bill that appeared to be close to enactment because it appeared to be inconsistent with Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA). This bill would have made BAA–UC mandatory for all services performed in the state, except for services performed for certain governmental and nonprofit entities that could elect to participate. Since federal law requires that, with respect to these governmental and nonprofit services, UC must be paid ''in the same amount, on the same terms, and subject to the same conditions'' as UC payable on other services performed under state law, we advised the state that this legislation, if enacted, would be inconsistent with Section 3304(a)(6)(A) of the FUTA. In sum, it appears that the limited flexibility of the BAA–UC approach may not be conducive to state needs and, therefore, may have contributed to the lack of state enactments.

Finally, since the implementation of the BAA–UC Final Rule in 2000, many states have seen a drastic decline in their unemployment fund balances, and most states are below our recommended 1.00 average high-cost multiple. (The average high-cost multiple indicates how many years of benefits a state has available under a recessionary scenario. A rating of 1.00 indicates the state has one year's worth of benefits on hand. The Department recommends a 1.00 high-cost multiple as a reasonable margin of safety to ensure trust fund solvency in periods of high unemployment.) Recognizing that fund levels were dropping, the Administration supported Congress's enactment of legislation distributing $8 billion to states to assist in the payment of UC and for other purposes. (Section 209 of Public Law 107–147, March 9, 2002.) Indeed, but for this extraordinary infusion of funds, some states would have had to borrow money from the federal government to keep their unemployment funds solvent. While we recognize that some states still have adequate reserves, we are concerned that current fund balances would be even lower had states enacted the BAA–UC experiment. Indeed, one of the policy arguments made for using a state's unemployment fund for BAA–UC was the claim that states had ''surpluses'' in their unemployment funds, which funds could be made immediately available to implement a BAA–UC experiment. The sudden and rapid decline in fund balances undercuts this argument.

Legal. The Department and its predecessors (the Social Security Board and the Federal Security Agency) have interpreted and enforced federal A&A requirements since the inception of the federal-state UC program. Although no A&A requirements are explicitly stated in federal law, the Department and its predecessors interpreted four provisions of federal UC law, contained in the Social Security Act (SSA) and FUTA, as requiring that states condition the payment of UC upon a claimant being able to and available for work. Two of these provisions, at section 3304(a)(4), FUTA, and section 303(a)(5), SSA, limit withdrawals, with specific exceptions, from a state's unemployment fund to the payment of ''compensation.'' Section 3306(h), FUTA, defines ''compensation'' as ''cash benefits payable to individuals with respect to their unemployment.'' The A&A requirements provide a federal test of an individual's continuing ''unemployment.'' (The meaning of ''unemployment'' in this statutory framework is discussed below.) The other two provisions, found in section 3304(a)(1), FUTA, and section 303(a)(2), SSA, require that compensation ''be paid through public employment offices.'' The requirement that UC be paid through the public employment system (the purpose of which is to find people jobs) ties the payment of UC to both an individual's ability to work and availability for work. These A&A requirements serve, in effect, to limit UC eligibility.

The basis for the federal A&A requirements was summarized in a March 11, 1939, letter from the Chair of the Social Security Board to the Governor of California, concerning whether the state could make payments with respect to temporary disability from its unemployment fund:

> The entire legislative history [of the UC titles of the original SSA] including the Report to the President of the Committee on Economic Security, the report of the House Committee on Ways and Means, the report of the Senate Committee on Finance, and the Congressional debates all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work. Several provisions of those titles are meaningful only if applied to State laws for the payment of such compensation. For example, the requirement that compensation be paid through public employment offices, or the requirement that States make [certain information] available to agencies of the United States charged with the administration of public works or assistance through public employment, are obviously without reasonable basis if applied to payments to disabled individuals. Many of the standards contained [in the experience rating provisions] are similarly without reasonable basis if applied to a State law for the payment of disability compensation.
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> For these reasons, the Board is of the opinion that the [UC titles of the SSA] are applicable solely to State laws for the payment of compensation to individuals who are *able to work and are unemployed by reason of lack of work.''* [Emphasis added.]

That involuntary unemployment due to lack of suitable work was the key test is supported by the Congressional Committee Reports:

> The essential idea in unemployment compensation* * * is the accumulation of reserves in time of employment from which partial compensation may be paid to workers who become unemployed and are unable to find work.* * * In normal times it will enable most workers who lose their jobs to tide themselves over, until they get back to their old work or find other employment without having to resort to relief.* * * [H. Rep. 615, 74th Cong. 1st Sess. 1935 Page 5.]
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> The essential idea in unemployment compensation is the creation of reserves during periods of employment from which compensation is paid to workmen who lose their positions when employment slackens and who cannot find other work. Unemployment compensation differs from relief in that payments are made as a matter of right, not on a needs basis, but only while the worker is involuntarily unemployed.* * * Payment of compensation is conditioned upon continued involuntary unemployment. Beneficiaries must accept suitable employment offered them or they lose their right to compensation. [S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 11.]
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> * * * In normal times most workers will secure other employment before exhaustion of their benefit rights.* * * For the great bulk of industrial workers unemployment compensation will mean security during the period following unemployment while they are seeking another job, or are waiting to return to their old position. [Id. Page 12.]

As illustrated by the above, the Federal A&A requirements are placed on claimants to test whether the fact that they did not work for any week was

involuntary due to the *unavailability of work.* Since the BAA–UC experiment did not examine the Federal A&A requirements from this perspective, it permits the payment of UC to individuals for whom suitable work may exist, thus contradicting the basic purpose of the A&A requirements.

The legislative history quoted above indicates that eligibility for UC is not based on the individual's personal need, except to the extent that his/her ''need'' is created by lack of suitable work. (Note that this test looks only to whether the unemployment is due to lack of work for each given week of benefits claimed. That is, it does not require that states hold an individual ineligible based on the reason for separation from employment, except to the extent that the individual may have not been A&A for the particular week of the separation.) BAA–UC, however, extended eligibility for UC to parents based on considerations of compelling personal or family need regardless of whether there is a lack of work. While the idea of providing UC to parents or families experiencing birth or adoption may be admirable, it is not in keeping with the fundamental limitation of paying UC only to individuals who are unemployed due to lack of work.

The legislative history also establishes a link between the public works programs in existence in 1935 and the UC program that bears on the A&A requirements. As noted in the Social Security Board's contemporaneous interpretation, an SSA provision (section 303(a)(7)) requires that states make available to agencies of the United States charged with the administration of public works or assistance through public employment, the name, address, ordinary occupation, and the government's employment status of UC recipients. This requirement is predicated upon the understanding that UC recipients must be out of work due to a lack of available work. It would make no sense to refer an individual, for whom work was available, to a public works program, which should be the employer of last resort. Senator Wagner, who introduced the SSA in the Senate, described the relationship between the proposed UC program and the government's public works programs (as well as public employment offices) as follows in the floor debate on the SSA:

> [unemployment insurance] is not designed to supplant, but rather to supplement the public-works projects which must absorb the bulk of persons who may be disinherited for long periods of time by private industry.* * * A provision in the present bill requires that the Federal tax rebate shall be used to encourage a close connection between State job-insurance laws and unemployment-exchange offices. This provision emphasizes the fact that the [monetary] relief of existent unemployment is but a subordinate phase of the main task of providing work for all who are strong and willing. [79 Cong. Rec. 9284 (June 14, 1934).]

Thus, Congress intended the UC system to be subordinate to the main task of getting people back to work, which is, as noted above, implemented through the A&A requirements. BAA–UC is not consistent with this goal since it encourages parents to refuse available work.

Finally, as noted in the Social Security Board's letter, experience rating standards are meaningless if the test of involuntary unemployment due to lack of work is not used. Experience rating was originally established to ensure an equitable distribution among employers of the cost of the system, and to encourage employers to stabilize their work forces. (''Credits'' will be provided ''in the form of lower contribution rates * * * to employers who have stabilized their employment.'' (S. Rep. 628, 74th Cong. 1st Sess. 1935 Page 14.)) BAA–UC contradicts the intent of experience rating since it allows payments based on a worker's own actions without regard to an employer's attempt to stabilize employment by offering suitable work to its current and former employees. Indeed, if BAA–UC (and similar-type payments which might be allowed) is paid to individuals who are not A&A, the states' experience rating systems could be overwhelmed to the point where an employer's efforts to stabilize its workforce through its continuing willingness to employ the worker is ignored, thereby effectively nullifying one of the primary purposes of experience rating.

In the preamble to the BAA–UC Final Rule, we addressed four situations—illness, jury duty, approved training, and temporary layoffs—that affected individuals' ability ''to meet the stricter interpretations of the A&A requirements.'' (65 FR 37213 (June 13, 2000).) Although we also noted that ''none of these situations precisely parallels the payment of BAA–UC, they do operate on the same premises: that situations exist in which it is important to allow a flexible demonstration of availability and in which attachment to the workforce can be demonstrated, and indeed strengthened, without requiring a current demonstration of availability.'' (Id.) Upon re-examination, we note that, unlike the BAA–UC experiment, none of these situations permit a voluntary withdrawal from the workforce:

- *Illness.* The interpretation pertaining to illness applies only to individuals who initially meet the A&A requirements, but who then become ill *and* who do not refuse suitable work. Until work is refused, the unemployment is due to lack of work, which is what the A&A requirements are designed to test. The A&A requirements are preserved because the individual must initially demonstrate availability before the illness and must be held ineligible if s/he refuses suitable work offered.
- *Jury Duty.* The interpretation pertaining to jury duty applies only to individuals who initially meet the A&A requirements, but who are then called for jury duty. It is unreasonable for a state to compel jury service for previously eligible individuals and at the same time hold such individuals ineligible for complying. Indeed, attendance at jury duty may be taken as evidence that the individual would otherwise be available for work.
- *Approved training.* Approved training is limited to situations where the state determines that short-term training will improve an individual's job prospects. Attendance at such training is accepted as evidence of availability for work. Indeed, if the individual refuses training, or fails to attend training, the states will evaluate eligibility under their A&A provisions.
- *Temporary lay-offs.* An individual on temporary layoff must be available to work for the employer who laid-off the individual. While this requires an individual's availability for work with only one employer, it is nonetheless a test of whether the unemployment is due to lack of suitable work.

None of these precedents is consistent with BAA–UC. Unlike the illness exception, an offer of suitable work under BAA–UC may be refused with no effect on eligibility. Unlike the illness and jury duty exceptions, no initial establishment of A&A is required. Unlike jury duty, there is no governmental compulsion. Unlike approved training, BAA–UC does not address a situation where an individual is attempting to remedy his or her continuing unemployment; indeed BAA–UC addresses a situation where a parent is responsible for his or her separation from the workforce. Also, for approved training, the state must approve the training as increasing the individual's job prospects; no similar requirement exists for BAA–UC, with the result that increased attachment to the workforce for any one individual is highly speculative. Finally, unlike temporary lay-offs, there is no requirement that the individual be available for at least one job; indeed, an offer of suitable work may be refused

with no effect on eligibility. These precedents differ from BAA–UC in that they do not permit an individual to voluntarily remove him/herself from the labor market for a given week. BAA–UC, on the other hand, allows parents who have initiated their separation from the workforce and whose personal situation, rather than the lack of available work, that makes them unavailable for other employment.

In summary, A&A tests involuntary unemployment due to a continuing lack of suitable work. The legislative history amply supports this. The BAA–UC rule not only failed to recognize this, but is in fact contrary to the A&A requirement.

Executive Order 12866

This proposal to remove 20 CFR part 604 is a ''significant regulatory action'' within the meaning of section 3(f)(4) of Executive Order 12866 because it raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. Accordingly, this proposal was submitted to, and reviewed by, the Office of Management and Budget.

Before publication of the BAA–UC final rule (65 FR 37210 (June 13, 2000)), the Department prepared a Regulatory Impact Analysis, which estimated that the rule would result in costs ranging from zero to $196 million, depending upon the number of states enacting BAA–UC. Since publication of the BAA–UC final rule, no state enacted BAA–UC meaning that no benefits have been paid, nor administrative costs expended. Removing the BAA–UC rule would end the possibility that BAA–UC and its associated administrative costs will be paid out of state unemployment funds with the result that the estimated costs would not be incurred. Therefore, the removal of the rule would result in no costs or cost savings and potentially prevent costs from being incurred in the future. Because the Department expects the immediate economic impact of removing the rule to involve no costs, this regulatory action is unlikely to have an annual effect on the economy of $100 million or more and, consequently, is not ''economically significant'' within the meaning of Section 3(f)(1) of that Executive Order.

Finally, we have evaluated this regulatory action and find it consistent with the regulatory philosophy and principles set forth in Executive Order 12866. Though this action would remove authority for states to fund family leave from the state's unemployment fund, states would have flexibility to provide paid family leave from other funding sources. Further, because no state has enacted BAA–UC, no state would be adversely affected in a material way by having to dismantle such an experiment. Finally, this action removes a regulation and imposes no alternative regulatory requirements.

Paperwork Reduction Act

This regulatory action contains no information collection requirements.

Executive Order 13132

We have reviewed this proposal in accordance with Executive Order 13132 regarding federalism. That order requires agencies, when formulating and implementing policies that have federalism implications, to refrain from limiting state policy options, to consult with states before taking any action which would restrict states' policy options, and to take such action only where there is clear statutory or constitutional authority and the presence of a problem of national scope. Policies with federalism implications are those with substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

Because this regulatory action would limit state policy options, by eliminating authority to pay for family leave out of unemployment funds, we will consult with organizations representing state elected officials at the Department of Labor in the upcoming weeks. We solicit comment on the federalism implications and the impact of this regulation on the relationship between the national government and the states.

Executive Order 13084

This regulatory action does not impose any regulatory requirements on Indian tribal governments and therefore does not impose substantial direct compliance costs on Indian tribal governments.

Executive Order 12988

This proposal has been drafted and reviewed in accordance with Executive Order 12988, Civil Justice Reform, and will not unduly burden the federal court system. The proposal, a mere one sentence, removes 20 CFR part 604. In its brevity, it is not likely to lead to litigation resulting from drafting errors or ambiguities.

Unfunded Mandates Reform Act of 1995

This proposal has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (UMRA) (2 U.S.C. 1501 *et seq.*) and does not include any unfunded federal mandate.

Regulatory Flexibility Act

This regulatory action will not have a significant economic impact on a substantial number of small entities. This action affects states and state agencies, which are not within the definition of ''small entity'' under 5 U.S.C. 601(6). Under 5 U.S.C. 605(b), the Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Effect on Family Life

We certify that this regulatory action has been assessed in accordance with section 654 of Public Law 105–277, 112 Stat. 2681, for its effect on family well-being. We conclude that this action would not adversely affect the well-being of the nation's families. No state has enacted BAA–UC; consequently no families would experience a termination of BAA–UC benefits. Though this proposed rule would withdraw authorization for states to pay for such benefits from the state's unemployment fund, paid family leave could be provided from other state funding sources. This proposal would preserve the availability of state unemployment funds for times when workers, who may support families, are unemployed due to lack of work.

Congressional Review Act

This proposed rule is not a ''major rule'' as defined by the Congressional Review Act (section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996). This proposed rule would not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Catalogue of Federal Domestic Assistance Number

20 CFR Part 604 is listed in the Catalogue of Federal Domestic Assistance at No. 17.225, Unemployment Insurance.

List of Subjects in 20 CFR Part 604

Unemployment compensation.

Signed at Washington, DC on November 25, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Words of Issuance

For the reasons set forth in this preamble, Chapter V of Title 20, Code of Federal Regulations, is proposed to be amended by removing part 604.

[FR Doc. 02–30316 Filed 12–3–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–02–099]

RIN 2115–AE47

Drawbridge Operation Regulations; Miami Beach Channel and Indian Creek, Miami-Dade County, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the regulations governing the operation of the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, Miami-Dade County, Florida by allowing these bridges to remain closed during peak vehicular rush hour traffic. We anticipate that this proposed rule would reduce vehicle traffic congestion on Miami Beach during the rush hours while providing for the reasonable needs of navigation.

DATES: Comments and related material must reach the Coast Guard on or before February 3, 2003.

ADDRESSES: You may mail comments and related material to Commander (obr), Seventh Coast Guard District, 909 SE. 1st Ave, Room 406, Miami, FL 33131. Comments and material received from the public, as well as documents indicated in the preamble as being available in the docket, are part of (CGD07–02–099) and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 SE. 1st Avenue, Room 432, Miami, FL 33131 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, FL 33131, telephone number 305–415–6744.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD07–02–099), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

A public meeting has not been scheduled. However, you may submit a request for a meeting by writing to Bridge Branch, Seventh Coast Guard District, 909 SE. 1st Ave, Room 432, Miami, FL 33131, explaining 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**.

Background and Purpose

The City of Miami Beach has requested that the Coast Guard consider changing the existing regulations for the East 79th Street, East Venetian Causeway, and the 63rd Street bridges that lead into the City of Miami Beach because of the vehicle gridlock within the city each time the bridges are opened during rush hours. Based on the limited number of requested bridge openings during the proposed time window, the Coast Guard believes it can accommodate the request while still providing for the reasonable needs of navigation.

The East 79th Street, the East Venetian Causeway, and the 63rd Street bridges are located between Miami and Miami Beach. The current regulations in 33 CFR 117.5 require the East 79th Street and the 63rd Street bridges to open on signal. The current East Venetian Causeway bridge regulation in 33 CFR 117.269 requires this bridge to open on signal; except that, from November 1 through April 30 from 7:15 a.m. to 8:45 a.m. and from 4:45 p.m. to 6:15 p.m. Monday through Friday, the draw need not be opened. However, the draw must open at 7:45 a.m., 8:15 a.m., 5:15 p.m., and 5:45 p.m., if any vessels are waiting to pass. The draw must open on signal on Thanksgiving Day, Christmas Day, New Year's Day, and Washington's Birthday. The draw must open at any time for public vessels of the United States, tugs with tows, regularly scheduled cruise vessels, and vessels in distress.

We believe that this proposed rule would lessen vehicular traffic congestion during the workday rush hours. This proposed rule would modify the current regulation for the East Venetian Causeway bridge by requiring ''regularly scheduled cruise vessels'' to comply with the regulation's opening schedule by eliminating the language that currently excepts them from the existing rule. This proposed rule would modify the existing regulation of the East Venetian Causeway bridge by requiring the bridge to open on signal during all Federal holidays, not just the holidays enumerated in the rule. This proposed rule would also slightly modify the existing times when the East Venetian Causeway bridge need not open during the morning and evening rush hours, and would allow the East 79th Street and the 63rd Street bridges to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

Discussion of Proposed Rule

The Coast Guard proposes to modify the existing bridge operating regulations and create a permanent rule that would allow the East 79th Street and the East Venetian Causeway bridges across Miami Beach Channel, and the 63rd Street bridge across Indian Creek, to remain closed from 7 a.m. to 8:59 a.m.; and from 4:10 p.m. to 6 p.m., Monday through Friday, except Federal holidays. Public vessels of the United States, tugs with tows, and vessels in distress would be passed at anytime.

Regulatory Evaluation

This proposed 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 Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary because there have been limited numbers of requests for openings during