

in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this proposed rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction, from further environmental documentation.

#### 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.

(a) 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: August 26, 2005.

**Kevin L. Marshall,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Part 117

[CGD08-05-046]

RIN 1625-AA09

#### Drawbridge Operation Regulation; Gulf Intracoastal Waterway, West Larose, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulation governing the operation of the SR 1 (West Larose) vertical lift bridge across the Gulf Intracoastal Waterway, mile 35.6 west of Harvey Lock, at Larose, Louisiana. The Lafourche Parish Council has requested that the bridge 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:** Comments and related material must reach the Coast Guard on or before November 1, 2005.

**ADDRESSES:** You may mail comments and related material to Commander (obc), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130-3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

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

#### 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 (CGD08-05-046), 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

We do not now plan to hold a public meeting. You may submit a request for a meeting by writing to Commander, Eighth Coast Guard District, Bridge Administration Branch at the address under **ADDRESSES** 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 U. S. Coast Guard, at the request of the Lafourche Parish Council, proposes to modify the existing operating schedule of the SR 1 (West Larose) vertical lift bridge across the Gulf Intracoastal Waterway, mile 35.6 west of Harvey Lock, at Larose, Louisiana. The modification of the existing regulations will allow the bridge 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 during the school year. Currently, the bridge opens on signal pursuant to 33 CFR 117.5.

Approximately 11,600 vehicles cross the bridge daily, 25% of which cross the bridge during the requested closure times. The bridge averages 976 openings a month. Approximately 25% of the bridge openings occur during the requested closure times. The average length of a bridge opening is approximately 10 to 12 minutes.

Navigation at the site of the bridge consists primarily of tugboats with barges. Alternate routes east and west through the bridge are not readily accessible; however, the bridge, in the closed-to-navigation position provides a vertical clearance of 35 feet above high water.

It should be noted that there have been two previous requests by the Lafourche Parish to establish special operating regulations for this bridge. On December 7, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) in the **Federal Register** (59 FR 63068). The proposed change to the regulation would have required that from 7 a.m. to 8:30 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw

would open on signal for passage of vessels.

The Coast Guard received 10 letters in response to the NPRM objecting to the proposed rule. Many of the objectors, who were associated with a local school, stated that the bridge would reopen after an extended closure 30 minutes before the start of school possibly affecting the ability of students to arrive at school on time. The applicant was given an opportunity to address the objections. The applicant modified their proposal and resubmitted a new request for a proposed rule.

A second NPRM was published in the **Federal Register** (60 FR 40139) on August 7, 1995, instead of a Supplementary Notice of Proposed Rulemaking (SNPRM).

The second NPRM proposed to change the regulation to require that from 7 a.m. to 9 a.m. and from 4:30 p.m. to 6 p.m. Monday through Friday, except Federal holidays, the draw of the bridge would remain closed to navigation for passage of vehicular traffic during peak traffic periods. At all other times the draw would open on signal for the passage of vessels.

Two letters of objection were received in response to the second NPRM. These objections were from waterway interests stating that the closure would increase the risk of accidents by vessels having to wait for bridge openings, while vehicles have an alternate route across the waterway. These concerns were forwarded to the applicant to attempt to reach an acceptable solution. The applicant did not address the concerns of these objectors or offer an alternative proposal.

The Coast Guard, therefore, withdrew the notices of proposed rulemaking and terminated further rulemaking on the proposals.

The Lafourche Parish Council submitted another request in 1998. When the Coast Guard requested additional information regarding the closure, no further information was submitted and the request was suspended.

It has been approximately seven years since the last formal request. The Coast Guard is interested in obtaining comments in response to this current request from all interested parties with regard to how the proposed changes to the regulations will affect them.

#### **Discussion of Proposed Rule**

The proposed rule would modify the existing regulation in 33 CFR 117.5 to facilitate the movement of high volumes of vehicular traffic across the bridge during periods of increased transit during the school year. These closures

would allow for vehicles and school busses to transit across the bridge unimpeded both before and after school hours. The change would allow the SR 1 (West Larose) vertical lift bridge across the Gulf Intracoastal Waterway, mile 35.6 west of Harvey Lock, at Larose, 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 to May 31. At all other times, the bridge would open on signal for the passage of vessels.

#### **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 Homeland Security. We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This proposed rule would allow vessels to transit this waterway with proper notification before and after the peak vehicular traffic periods. According to the information provided by the applicant, the public at large is better served by the closure times.

#### **Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed 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 proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities: the owners and operators of vessels needing to transit the bridge during the requested closure periods.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see

**ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

#### **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 proposed 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 small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### **Collection of Information**

This proposed 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 proposed 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 proposed rule will not result in such an expenditure, we do discuss the effects of this proposed rule elsewhere in this preamble.

#### **Taking of Private Property**

This proposed 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 proposed 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 proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed 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 proposed 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 proposed 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 proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

## Environment

We have analyzed this proposed 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 proposed rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation.

## 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. In § 117.451, paragraphs (c), (d), and (e) are redesignated paragraphs (d), (e), and (f) and a new paragraph (c) is added to read as follows:

#### § 117.451 Gulf Intracoastal Waterway.

\* \* \* \* \*

(c) The draw of the SR 1 (West Larose) Bridge, mile 35.6 west of Harvey Lock, at Larose, 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.

\* \* \* \* \*

Dated: August 26, 2005.

**Kevin L. Marshall,**

*Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.*

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## FEDERAL MARITIME COMMISSION

### 46 CFR Part 531

[Docket No. 05–06]

### Non-Vessel-Operating Common Carrier Service Arrangements

**AGENCY:** Federal Maritime Commission.

**ACTION:** Notice of inquiry.

**SUMMARY:** The Federal Maritime Commission is requesting comments on possible changes to its exemption for non-vessel-operating common carriers (NVOCCs) from certain tariff publication requirements of the Shipping Act of 1984.

**DATES:** Submit original and 15 copies of comments (paper), or e-mail comments as an attachment in WordPerfect 10, Microsoft Word 2003, or earlier versions of these applications, no later than October 6, 2005.

**ADDRESSES:** Address all comments to: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Room 1046, Washington, DC 20573–0001. [Secretary@fmc.gov](mailto:Secretary@fmc.gov).

**FOR FURTHER INFORMATION CONTACT:** Amy W. Larson, General Counsel, Federal Maritime Commission, 800 N. Capitol St., NW., Washington, DC 20573–0001. (202) 523–5740. [generalcounsel@fmc.gov](mailto:generalcounsel@fmc.gov).

**SUPPLEMENTARY INFORMATION:** On January 19, 2005, a final rule of the Federal Maritime Commission ("FMC" or "Commission") exempting non-vessel-operating common carriers ("NVOCCs") from certain tariff publication requirements of the Shipping Act of 1984 ("Shipping Act") became effective. 69 FR 75850 (December 20, 2004). The rule was issued pursuant to the Commission's authority under section 16 of the Shipping Act, 46 U.S.C. app. 1715. The exemption enables individual NVOCCs to offer NVOCC Service Arrangements ("NSAs") to NSA shippers, provided that such NSAs are filed with the Commission and their essential terms are published in the NVOCC's tariff. The rule defines an NSA as "a written contract, other than a bill of lading or receipt, between one or more NSA shippers and an individual NVOCC in which the NSA shipper makes a commitment to provide a certain minimum quantity or portion of its cargo or freight revenue over a fixed time period, and the NVOCC commits to a certain rate or rate schedule and a defined service level." 46 CFR 531.3(p).

Since the publication of the proposal that led to the final NSA rule, the