

with an applicable standard or contains an imminent safety hazard, and to direct manufacturers to notify owners, and to remedy violations of the federal construction and safety standards and, in some cases, to remedy the defect or imminent safety hazard.

The proposal is a mandate upon local jurisdiction to prohibit landowners from restricting the use of their land. The use of real property, or private or contractual restrictions upon it, is not within the scope of the Secretary's authority under the Act or within the applicability of the procedural and enforcement regulations.

2. Regardless of the authority given to the Consensus Committee under the Act to propose regulations, it proposal would seek the expand the authority of the Department beyond a reasonable interpretation of any provisions in the Act.

The Department may not expand its jurisdiction of the limitations of its statutory powers through statutory interpretation. The Department's statutory jurisdiction and authority must be delegated to it by Congress and be found within an authorizing provision of a statute. 5 U.S.C. 706(2).

The proposal is not based upon the federal construction and safety standards or the enforcement of those federal standards. It seeks to establish mandates on state and local jurisdictions, and to expand responsibilities and authority beyond what Congress had granted by requiring HUD to become involved in state and local land use issues and to take remedial action against local governments if they do not comply. There is no congressional authorization in the Act permitting or mandating the Department to be involved in such issues. As such, any actions by the Secretary to promulgate the proposal would be held unlawful under the APA.

HUD has long interpreted its authority under the Act to exclude involvement in local land use issues. 62 FR 3456, 3458 (1997). It had not previously interpreted the preemption provisions in the Act to preempt local laws unless the local laws involved building or construction standards. There is nothing in the Act or in the legislative history of the Act that would suggest a directive by Congress to change HUD's long-held legal position.

In addition, there is no applicable authority under any other statutory grant of power of the Secretary. The action requested by the Consensus Committee is not within any general authority of the Secretary, such as it granted in Section 7(d) of the

Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

For HUD to promulgate and enforce a regulation of such massive impact upon individual landowners and local jurisdictions nationwide and to assert federal involvement in areas traditionally reserved to the states, the Department would need a more specific statement from Congress of its intent.

3. The proposed regulation does not delineate a procedure by which state or local jurisdictions are to ascertain or to prohibit restrictions on land use nor a procedure by which the Department is to enforce against a state or local jurisdiction that does not comply. While the proposal purports to create a mandate, the regulation is only one sentence and does not contain any structure by which to enforce it or to ascertain violations. As such, the regulation is administratively incomplete.

Accordingly, for these reasons, the Secretary rejects the proposed regulation of the Consensus Committee.

Dated: July 11, 2003.

John C. Weicher,

Assistant Secretary for Housing-Federal Housing Commissioner.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 31

[REG-144908-02]

RIN 1545-BB66

Federal Unemployment Tax Deposits— De Minimis Threshold

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations relating to the deposit of Federal Unemployment Tax Act (FUTA) taxes. The proposed regulations would provide an additional exception to the FUTA deposit requirements for taxpayers that qualify for the *de minimis* exception to the deposit requirements applicable to Federal Insurance Contribution Act (FICA) and withheld income taxes. The regulations affect small employers required to make deposits of FUTA taxes.

DATES: Written or electronically generated comments and requests for a public hearing must be received by October 15, 2003.

ADDRESSES: Send submissions to: CC:PA:RU (REG-144908-02), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:RU (REG-144908-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet directly to the IRS Internet site at <http://www.irs.gov/regs>.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Heather L. Dostaler, (202) 622-4940; concerning submissions of comments and requests for a public hearing, Treena Garrett of the Regulations Unit at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The current rules relating to the deposit of FUTA taxes require employers to deposit taxes on a quarterly basis. The only generally applicable exception to this requirement is for employers whose accumulated FUTA taxes (*i.e.*, FUTA taxes for the current quarter plus undeposited FUTA taxes for prior quarters) do not exceed \$100. These employers are not subject to the deposit requirements until the quarter in which accumulated FUTA taxes exceed \$100. Similarly, if FUTA tax liability for a calendar year exceeds deposits for the year, the employer may remit the balance with the annual return only if it does not exceed \$100. In all other cases, the balance must be deposited with an authorized financial institution.

An employer is also generally required to deposit FICA taxes and withheld income taxes (employment taxes) on at least a monthly basis and file a quarterly or annual employment tax return. For any return period in which the employer's total liability for these taxes is less than \$2,500, the employer may satisfy its deposit obligation by remitting the tax with a timely filed employment tax return. An employer that qualifies for this exception with respect to employment taxes accumulated during a return period may, nevertheless, be required to deposit FUTA taxes for that period if the amount of accumulated FUTA taxes exceeds \$100.

Explanation of Provisions

The proposed regulations would provide an additional exception to the FUTA deposit requirements for

employers that are permitted to satisfy their obligation to deposit employment taxes by remitting the taxes with the employment tax return (*de minimis* depositors). Thus, an employer will not be required to deposit FUTA taxes for a quarter if the amount of the employer's accumulated FICA taxes and withheld income taxes for the quarter is less than \$2,500 and those taxes are remitted with the employer's timely filed employment tax return for the quarter. The employer will remain subject to the FUTA deposit requirements and will be required to deposit accumulated FUTA taxes for any quarter in which the amount of accumulated FICA taxes and withheld income taxes is at least \$2,500 and the amount of accumulated FUTA taxes exceeds \$100. The proposed regulations would also permit an employer that is a *de minimis* depositor for the last calendar quarter of a year to remit the balance of its FUTA tax liability for the year with a timely filed return. These additional exemptions from the FUTA deposit requirements will lessen burdens on small business owners, especially those employing part-time or seasonal workers.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) and electronic comments that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by any person that timely submits comments. If a public hearing is scheduled, notice of

the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Heather L. Dostaler of the Office of Associate Chief Counsel, Procedure and Administration (Administrative Provisions and Judicial Practice Division).

List of Subjects in 26 CFR Part 31

Employment taxes, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 31 is proposed to be amended as follows:

PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

1. The authority citation for part 31 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. In § 31.6302(c)–3, paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 31.6302(c)–3 Use of Government depositaries in connection with tax under the Federal Unemployment Tax Act.

(a) * * *

(2) *Special rules*—(i) *De minimis rule for deposit of taxes attributable to payments made after December 31, 2003.* The provisions of paragraph (a)(1) of this section do not apply to a period described therein if the period ends after December 31, 2003, and the taxpayer is a *de minimis* depositor of employment taxes as defined in § 31.6302–1(e) (Federal Insurance Contributions Act (FICA) taxes and withheld income taxes) for such period. A taxpayer is a *de minimis* depositor of employment taxes for a period described in paragraph (a)(1) of this section if—

(A) The period is a single calendar quarter and, under the *de minimis* rule of § 31.6302–1(f)(4), the taxpayer is permitted to satisfy its obligation to deposit employment taxes accumulated during the quarter by remitting the taxes with a timely filed return; or

(B) The period includes two or more calendar quarters and, under the *de minimis* rule of § 31.6302–1(f)(4), the taxpayer is permitted to satisfy its obligation to deposit employment taxes accumulated during the last quarter in the period by remitting the taxes with a timely filed return.

(ii) *Special rule where accumulated amount does not exceed \$100.* The provisions of paragraph (a)(1) of this section do not apply with respect to a period described therein if the amount of the tax imposed by section 3301 for the period as computed under the provisions of section 6157 plus amounts not deposited for prior periods in the same calendar year does not exceed \$100. Thus, an employer is not required to make a deposit for a period unless the tax for the period plus tax not deposited for prior periods exceeds \$100.

(iii) The provisions of this paragraph (a)(2) are illustrated by the following examples. In the examples, A's FUTA tax rate, after the credit for contributions to state unemployment funds, is assumed to be 0.8 percent. The examples are as follows:

Example 1. In 2004, Employer A makes quarterly returns of employment taxes. In the first quarter, A's only employees are part-time workers B and C, who are each paid an annual salary of \$15,000 in semi-monthly installments. Both B and C claim single filing status with one exemption on Form W–4 and each is paid \$3,750 during the first quarter. The employees' share of FICA tax for the quarter is \$573.75 (.0765 × (\$3,750 + \$3,750)), A's matching FICA tax is also \$573.75, and Federal income tax withheld from B and C is \$518. Thus, the amount of accumulated employment taxes for the quarter (\$1,665.50) is less than \$2,500 and, under the *de minimis* rule of § 31.6302–1(f)(4), A is permitted to satisfy its obligation to deposit employment taxes by remitting the taxes with a timely filed return. A's FUTA tax liability for the first quarter is \$60 (.008 × (\$3,750 + \$3,750)). Because A is a *de minimis* depositor under paragraph (a)(2)(i) of this section and A's FUTA tax liability does not exceed \$100, both of the exceptions in this paragraph (a)(2) apply and A is not required to deposit FUTA taxes for the first calendar quarter.

Example 2. On April 16, 2004, A hires part-time worker D, who is also paid an annual salary of \$15,000 in semi-monthly installments and who also claims single filing status with one exemption on Form W–4. During the second quarter, B and C are each paid \$3,750 and D is paid \$3,125. The employees' share of FICA tax for the quarter is \$812.81 (.0765 × (\$3,750 + \$3,750 + \$3,125)), A's matching FICA tax is also \$812.81, and Federal income tax withheld from B, C, and D is \$734. Again, the amount of accumulated employment taxes for the quarter (\$2,359.62) is less than \$2,500 and, under the *de minimis* rule of § 31.6302–1(f)(4), A is permitted to satisfy its obligation to deposit employment taxes by remitting the taxes with a timely filed return. The FUTA tax applies only to the first \$7,000 that each employee is paid during the calendar year. Thus, for both B and C, amounts paid in the second quarter are subject to the FUTA tax only to the extent they do not exceed \$3,250 (the \$7,000 annual limit less first quarter wages of \$3,750). A's FUTA tax liability for the second quarter is \$77 (.008 × (\$3,250 +

\$3,250 + \$3125)) and A has an accumulated FUTA tax liability in the amount of \$137. Accordingly, the exception in paragraph (a)(2)(ii) of this section does not apply. A is, however, a *de minimis* depositor under paragraph (a)(2)(i) of this section and is, therefore, not required to deposit FUTA taxes for the second calendar quarter.

Example 3. On June 30, 2002, B and C quit employment with A. The following day, A hires E, a full-time employee who is paid an annual salary of \$40,000 in semi-monthly installments and who also claims single filing status with one exemption on Form W-4. During the third quarter, D is paid \$3,750 and E is paid \$10,000. The employees' share of FICA tax for the quarter is \$1,051.88 (.0765 × (\$3,750 + \$10,000)), A's matching FICA tax is also \$1,051.88, and Federal income tax withheld from D and E is \$1,609. The *de minimis* rule of § 31.6302-1(f)(4) does not apply because the amount of accumulated employment taxes for the quarter (\$3,712.76) is not less than \$2,500 and A may not satisfy its obligation to deposit employment taxes by remitting the taxes with a timely filed return. All amounts paid to D in the third quarter are subject to the FUTA tax because the total amount paid to D through the end of the quarter does not exceed the \$7,000 annual limit. The tax also applies to the first \$7,000 paid to E. A's FUTA tax liability for the third quarter is \$86 (.008 × (\$3,750 + \$7,000)) and A has an accumulated FUTA tax liability of \$223. Because A is not a *de minimis* depositor under paragraph (a)(2)(i) of this section and A's accumulated FUTA tax liability exceeds \$100, neither of the exceptions in this paragraph (a)(2) apply and A is required to deposit the accumulated FUTA tax liability on or before October 31, 2004.

(3) *Requirement for deposit in lieu of payment with return.* If the amount of tax reportable on a return on Form 940 for a calendar year beginning after December 31, 2003, exceeds by more than \$100 the sum of the amount deposited by the employer pursuant to paragraph (a)(1) of this section for such calendar year and the employer does not qualify as a *de minimis* depositor under paragraph (a)(2)(i) of this section during the last quarter of the calendar year, the employer shall, on or before the last day of the first calendar month following the calendar year for which the return is required to be filed, deposit the balance of the tax due with an authorized financial institution. If the amount of tax reportable on a return on Form 940 for a calendar year beginning after December 31, 2003, does not exceed by more than \$100 the sum of the amount deposited by the employer pursuant to paragraph (a)(1) of this section for such calendar year or if the employer qualifies as a *de minimis* depositor under paragraph (a)(2)(i) of this section during the last quarter of the calendar year, the employer may, on or before the last day of the first calendar month

following the calendar year for which the return is required to be filed, remit the balance of the tax at the time and place fixed for filing the return.

* * * * *

Robert E. Wenzel,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 03-18042 Filed 7-16-03; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD07-03-072]

RIN 1625-AA09

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Boca Grande, Charlotte County, FL

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to change the operating regulations and the name of the Gasparilla Island Causeway bridge, across the Gulf Intracoastal Waterway, mile 34.3, in Boca Grande, Florida. The proposed rule would require the bridge to open only two times an hour during the weekdays and four times an hour during certain times on the weekends and Federal holidays. This change would improve the flow of vehicular traffic while not significantly impacting navigation.

DATES: Comments and related material must reach the Coast Guard on or before September 15, 2003.

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

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Branch, 909 SE. 1st Ave Miami, Florida, 33131, telephone number 305-415-6743.

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 [CGD07-03-072], 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. 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, Florida, 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 Gasparilla Island Causeway bridge across the Gulf Intracoastal Waterway, mile 34.3, is a swingbridge with a vertical clearance of 9 feet at mean high water and a horizontal clearance of 81 feet. The current operating regulations published in 33 CFR 117.287(a-1), require the bridge to open on signal; except that, from January 1 to May 31, from 7 a.m. to 5 p.m., the bridge need open only on the hour, quarter hour, half hour and three quarter hour. The bridge owner requested a change to the bridge operating schedule so that the bridge must open on signal, except that from 7 a.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need open only on the hour and half hour, and, from 7 a.m. to 6 p.m. on weekends and Federal holidays, the bridge need open only on the hour, quarter hour, half hour and three quarter hour. This regulatory proposal would ease vehicular traffic congestion while providing for the reasonable needs of navigation. The bridge currently opens less than two times per hour on both weekdays and weekends.

In addition, the owner requested that the name of the bridge be changed to the Boca Grande Swingbridge, as it is known locally. The local name is more