

enforcement efforts against a seller or telemarketer who violates the TSR and claims falsely that it has an established business relationship with called consumers?

10. Is it appropriate that the proposed new safe harbor in § 310.4(b)(5) specifies that the seller or telemarketer must allow the telephone to ring for at least fifteen seconds or four rings before disconnecting an unanswered call? If not, is there some other more appropriate element that should be included in the safe harbor to preclude the problem of premature “hang-ups” before consumers can reach the telephone?

11. Is it appropriate that the proposed new safe harbor in § 310.4(b)(5) specifies that the seller or telemarketer must comply with all other requirements of the TSR and other applicable federal and state laws? If not, why not?

12. Is the burden on telemarketers in meeting the three percent maximum abandoned call level per day per telemarketing campaign outweighed by benefits to consumers in having call abandonment distributed evenly at a uniformly low level to all called consumers? What, if any, characteristics of the telemarketing equipment currently in use might make compliance with the “per day per campaign” standard problematic? What, if any, costs would result from having the equipment adjusted or replaced to eliminate problems?

13. According to DMA, “marketers who use predictive dialing technology are having difficulty configuring their software to comply with the FTC’s per day, per calling campaign 3% [maximum abandoned call] standard.” Is this statement accurate? If so, why? And if so, how widespread is this difficulty? If this statement is not accurate, why not? Were similar problems encountered in meeting the DMA’s former guideline of no more than five percent of calls abandoned per day per telemarketing campaign? Why or why not?

14. If the three percent maximum call abandonment rate were measured over a 30-day period, instead of per day per telemarketing campaign, what effect, if any, would this change have on actual call abandonment rates? What would prevent a telemarketer from targeting call abandonments at certain less valued groups of consumers, resulting in their receipt of more than their share of abandoned calls? What would prevent setting predictive dialers to abandon calls at a higher rate to one subset of the population and a lower rate to another subset of the population? Is it

appropriate that some segments of the population should be subjected to a higher rate of call abandonment than other segments of the population? If so, why?

15. Can telemarketing equipment be programmed to dynamically maintain a steady level of no more than three percent call abandonment for all calls being placed? What, specifically, is the equipment that has that capacity to be programmed in such a manner, if any? What are the costs associated with this equipment?

## IX. Proposed Rule

### List of Subjects in 16 CFR Part 310

Telemarketing, Trade practices.

Accordingly, the Commission proposes to amend title 16, Code of Federal Regulations, as follows:

### PART 310—TELEMARKETING SALES RULE

1. The authority citation for part 310 continues to read as follows:

**Authority:** 15 U.S.C. 6101–6108.

2. Amend § 310.4 by adding a new paragraph (b)(5).

#### § 310.4 Abusive telemarketing acts or practices.

\* \* \*

(b) \* \* \*

(5) A seller or telemarketer initiating an outbound telephone call that delivers a prerecorded message to a person with whom the seller has an established business relationship will not be liable for violating § 310.4(b)(1)(iv) if:

(i) The seller or telemarketer, for each such telemarketing call placed, allows the telephone to ring for at least fifteen (15) seconds or four (4) rings before disconnecting an unanswered call;

(ii) Within two (2) seconds after the person’s completed greeting, the seller or telemarketer promptly plays a prerecorded message that:

(A) Presents an opportunity to assert an entity-specific Do Not Call request pursuant to § 310.4(b)(1)(iii)(A) at the outset of the message, with only the prompt disclosures required by § 310.4(d) or (e) preceding such opportunity; and

(B) Complies with all other requirements of this part and other applicable federal and state laws.\* \* \*

By direction of the Commission.

**Donald S. Clark,**

*Secretary.*

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**BILLING CODE 675–01–P**

\* This provision does not affect any seller’s or telemarketer’s obligation to comply with relevant state and federal laws, including but not limited to the TCPA, 47 U.S.C. 227, and 47 CFR part 64.1200.

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 117

[CGD08–04–042]

RIN 1625–AA09

### Drawbridge Operation Regulation; Gulf Intracoastal Waterway, Cypremort, LA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to change the regulation governing the operation of the State Route 319 (Louisiana) bridge across the Gulf Intracoastal Waterway, mile 134.0 west of Harvey Lock, near Cypremort, Louisiana. A new high-level, double-leaf bascule bridge that will require limited openings is replacing the low-level swing bridge across the waterway. This proposed regulation change would remove the regulation governing the to-be-removed bridge and replace it with a regulation for the operation of the new bascule bridge.

**DATES:** Comments and related material must reach the Coast Guard on or before January 18, 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 (CGD08–04–042),

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 State of Louisiana, Department of Transportation and Development (LDOTD), and supported by the Port of West St. Mary, proposes to establish a schedule of operation for the new SR 319 movable bridge and eliminate the schedule of operation of the old SR 319 bridge. Currently, the bridge opens on signal; except that from 15 August to 5 June, the draw need not be opened from 6:55 to 7:10 a.m. and from 3:50 to 4:10 p.m. Monday through Friday except holidays.

The new bridge is presently under construction and should be completed by the end of January 2005. Upon completion of the new bridge and the relocation of traffic to the new bridge, the old bridge will be removed. Removal of the old bridge should be completed within 90 days after the new bridge has been opened to traffic. The existing regulation will no longer be required.

The new bridge will provide mariners with 73 feet of vertical clearance above mean high water in the closed to navigation position. The new bridge will only be required to open for vessels with vertical clearances of greater than 73 feet. Gulf Intracoastal Waterway bridges to the east and to the west of this bridge are fixed bridges providing only 73 feet of vertical clearance. Only vessels wishing to transit to the Port of West St. Mary will require openings as this facility is currently the only facility or waterway between the SR 319 bridge at mm 134.0 and the Bayou Sale bridge at mm 113.0.

In an effort to assess and accurately determine the opening requirements of the new bridge, LDOTD supplied opening data for the present bridge and identified the number of openings that would have been required if the new bridge with 73 feet of vertical clearance were operating. In 2003, the existing bridge opened for the passage of vessels approximately 12,800 times. During that time period, the new bridge would have been required to open for marine traffic three times. Through mid-October of 2004, the existing bridge opened for the passage of vessels approximately 11,000 times. In 2004, during the final phases of construction of the new bridge (with the bascule leaves for the new bridge in place), vessels transiting the waterway only required 5 openings.

Based upon the existing statistics for bridge openings and the limited number of openings that will be required for the passage of traffic for the new bridge, LDOTD has requested that the new bridge be required to open on signal if at least 24-hours advanced notice is given. The Port of West St. Mary is the only facility known to be affected by the new advanced notice requirement. They have stated by letter that this requirement is reasonable and have no objections.

Navigation at the site of the bridge consists primarily of tugboats with barges. Alternate routes to the Port of West St. Mary are not available to marine traffic requiring vertical clearances of greater than 73 feet.

#### Discussion of Proposed Rule

The proposed rule change to 33 CFR 117.451.d would require the SR 319 (Louisiana) bridge across the Gulf Intracoastal Waterway, mile 134.0, near Cypremort to open on signal if at least 24-hours' notice is given. This change would allow for the unimpeded flow of all vessels with vertical clearance requirements of less than 73 feet while providing for vessels with vertical clearances of greater than 73 feet.

#### 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 provides advanced notification of opening requirements for vessels wishing to transit to the Port of West St. Mary. The facility has no objections to the requirement as vessel arrivals and departures are scheduled and the advanced notification requirement of the bridge will not affect these vessel movements.

#### 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 or operators of vessels with vertical clearance requirements of greater than 73 feet.

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. Paragraph (32)(e) excludes the promulgation of operating regulations or procedures for drawbridges from the environmental documentation requirements of NEPA. Since this proposed rule will alter the normal operating conditions of the drawbridges, 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. In § 117.451, paragraph (d) is revised to read as follows:

#### § 117.451 Gulf Intracoastal Waterway.

\* \* \* \* \*

(d) The draw of the SR 319 (Louisa) bridge across the Gulf Intracoastal Waterway, mile 134.0, near Cypremort, shall open on signal if at least 24 hours notice is given.

\* \* \* \* \*

Dated: November 8, 2004.

**J.W. Stark,**

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

[FR Doc. 04–25490 Filed 11–16–04; 8:45 am]

**BILLING CODE 4910–15–P**

### FEDERAL COMMUNICATIONS COMMISSION

#### 47 CFR Part 73

[DA 04–3446; MB Docket No. 04–194, RM–10729]

#### Radio Broadcasting Services; Creede, CO

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; dismissal.

**SUMMARY:** The Audio Division dismisses a Petition for Rule Making filed by Jacor Broadcasting of Colorado, Inc., requesting the allotment of Channel 261C2 to Creede, Colorado, as its first local service. See 67 FR 69703, November 19, 2002. Jacor Broadcasting of Colorado, Inc., or no other party, filed comments in support of the allotment of Channel 261C2 to Creede, Colorado. It is the Commission's policy to refrain from making a new allotment to a community absent an expression of interest.

**ADDRESSES:** Federal Communications Commission, 445 Twelfth Street, SW., Washington, DC 20554.