

controlled foreign corporation stock is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(B) If the carryover basis rules under paragraphs (g) and (h)(4)(i) of this section apply to an asset, and the purchasing corporation or the target or a target affiliate, as appropriate, disposes of the stock of the selling controlled foreign corporation to an unrelated party in a taxable transaction and recognizes and includes in its U.S. gross income or the U.S. gross income of its shareholders the greater of the amount of the basis reduction under paragraph (h)(4)(ii) of this section, or the gain recognized in the stock by the purchasing corporation or by the target or a target affiliate, as appropriate, on the disposition of the stock, then the purchasing corporation shall increase the basis of the asset, as of the date of the disposition of the stock of the selling controlled foreign corporation by the purchasing corporation or by the target or a target affiliate, as appropriate, by the amount of the basis increase that was denied pursuant to paragraphs (g) and (h)(4)(i) of this section. The preceding sentence shall apply only to the extent that the asset is owned (within the meaning of section 958(a)) by a member of the purchasing corporation's affiliated group.

(5) *Examples.* This paragraph (h) may be illustrated by the following examples:

Example 1. Stock of target affiliate that is a CFC. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T1 sells the T2 stock to P and recognizes gain. On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Under paragraph (b)(1) of this section, paragraph (d) of this section applies to the T2 stock. Under paragraph (h)(3) of this section, paragraph (d)(2)(iii) of this section does not apply to the T2 stock. Consequently, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

Example 2. Stock of target affiliate CFC; inclusion under subpart F. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. On December 1 of Year 1, T2 sells an asset to P and recognizes subpart F income that results in an inclusion in T1's gross income under section 951(a)(1)(A). On January 2 of Year 2, P makes a qualified stock purchase of T from S. No section 338 election is made for T.

(b) Because gain from the disposition of the asset results in an inclusion under section 951(a)(1)(A), the gain is reflected in the basis of the T stock as of T's acquisition date. See paragraph (h)(2)(i) of this section. Consequently, under paragraph (b)(1) of this section, paragraph (d)(1) of this section applies to the asset. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased under section 961(a) by the amount of the inclusion that is attributable to the sale of the asset.

(c) If, in addition to making a qualified stock purchase of T, P acquires the T2 stock from T1 on January 1 of Year 2, the results are the same for the asset sold by T2. In addition, under paragraph (h)(2)(ii) of this section, T1's basis in the T2 stock is not increased by the amount of the inclusion that is attributable to the gain on the sale of the asset. Further, under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock. However, after applying paragraph (d)(1) of this section, P's basis in the T2 stock is increased by the amount of T1's gain on the sale of the T2 stock that is treated as a dividend under section 1248. Finally, because P has a carryover basis in the T2 stock, the T2 stock is not considered purchased within the meaning of section 338(h)(3) and no section 338 election may be made for T2.

(d) If P makes a qualified stock purchase of T2 from T1, rather than of T from S, and T1's gain on the sale of T2 is treated as a dividend under section 1248, under paragraph (h)(1) of this section, paragraphs (h)(2) and (3) of this section do not apply because there is no target that is a domestic corporation. Consequently, the carryover basis rules of paragraph do not apply to the asset sold by T2 or the T2 stock.

Example 3. Gain reflected by reason of section 1248 dividend; gain from non-subpart F asset. (a) The S group files a consolidated return; however, T2 is a controlled foreign corporation. In Years 1 through 4, T2 does not pay any dividends to T1 and no amount is included in T1's income under section 951(a)(1)(B). On December 1 of Year 4, T2 sells an asset with a basis of \$400,000 to P for \$900,000. T2's gain of \$500,000 is not subpart F income. On December 15 of Year 4, T1 sells T2, in which it has a basis of \$600,000, to P for \$1,600,000. Under section 1248, \$800,000 of T1's gain of \$1,000,000 is treated as a dividend. However, in the absence of the sale of the asset by T2 to P, only \$300,000 would have been treated as a dividend under section 1248. On December 30 of Year 4, P makes a qualified stock purchase of T1 from T. No section 338 election is made for T1.

(b) Under paragraph (h)(4) of this section, paragraph (g)(2) of this section applies by reference to the amount treated as a dividend under section 1248 on the disposition of the T2 stock. Because the amount treated as a dividend is taken into account in determining T's basis in the T1 stock under § 1.1502-32, the sale of the T2 stock and the deemed dividend have the effect of a transaction described in paragraph (g)(1) of this section. Consequently, paragraph (d)(1) of this section applies to the asset sold by T2 to P and P's basis in the asset is \$400,000 as of December 1 of Year 4.

(c) Under paragraph (h)(3) of this section, paragraph (d)(1) of this section applies to the T2 stock and P's basis in the T2 stock is \$600,000 as of December 15 of Year 4. Under paragraphs (h)(3) and (4)(ii) of this section, however, P's basis in the T2 stock is increased by \$300,000 (the amount of T1's gain treated as a dividend under section 1248 (\$800,000), other than the amount treated as a dividend solely as a result of the sale of the asset by T2 to P (\$500,000)) to \$900,000.

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§ 1.338-4T [Removed]

Par. 4. Section 1.338-4T is removed.

Par. 5. In § 1.338(i)-1, paragraphs (a) and (b) are revised to read as follows:

§ 1.338(i)-1 Effective dates.

(a) *In general.* Sections 1.338-1 through 1.338-5 (except § 1.338-4(h)), 1.338(b)-1, and 1.338(h)(10)-1 generally are applicable for targets with acquisition dates on or after January 20, 1994. Section 1.338-4(h) is applicable for targets with acquisition dates on or after January 20, 1997. Section 1.338-4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996) is generally applicable for targets with acquisition dates on or after January 20, 1994, and before January 20, 1997.

(b) *Elective retroactive application.* A target with an acquisition date on or after January 14, 1992 and before January 20, 1994 may apply §§ 1.338-1 through 1.338-5, 1.338-4T(h) (as contained in 26 CFR part 1 as revised April 1, 1996), 1.338(b)-1, and 1.338(h)(10)-1 by including a statement with its return (including a timely filed amended return) for the period that includes the acquisition date to the effect that it is applying all of these sections pursuant to this paragraph (b). A target with an acquisition date on or after January 14, 1992, and before January 20, 1997, may choose to apply § 1.338-4(h) for the period that includes the acquisition date pursuant to paragraph (b) of this section.

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Margaret Milner Richardson,
Commissioner of Internal Revenue.

Approved: January 13, 1997.

Donald C. Lubick,
Acting Assistant Secretary of the Treasury.
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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7-96-069]

RIN 2115-AE47

Drawbridge Operation Regulations; St. Johns River, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Coast Guard is hereby providing notice that the Florida Department of Transportation (FDOT) has been granted permission to temporarily deviate from the regulations governing the operation of the Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville from Friday November 8, 1996, through Friday, February 7, 1997, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation authorizes the draws of the Fuller Warren Bridge to remain closed for longer periods during the morning and afternoon weekday highway commuter periods. In addition, the Fuller Warren Bridge is allowed to open only once per hour from 9 a.m. to 4 p.m. on weekdays except Federal holidays. This test will help determine whether the revised opening schedule will improve the flow of highway traffic without unreasonably impacting navigation.

DATES: The deviation is effective from November 8, 1996 through February 7, 1997. Comments must be received on or before February 7, 1997.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 SE 1st Avenue, Miami, Florida 33131-3050. The comments and other materials referenced in this notice will be available for inspection and copying at the above address. Normal office hours are between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Comments may also be hand-delivered to the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Gary D. Pruitt, Project Officer, Seventh Coast Guard District, Aids to Navigation, at (305) 536-7331.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing the Fuller Warren Drawbridge operated by the State of Florida by submitting written data, view or arguments to the address above. Persons submitting comments should include their names and addresses, identify this notice [CGD7-96-069] and give the specific provision to which each comment applies, and give the reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period and determine whether to initiate a rulemaking to propose a

permanent change to the drawbridge operating schedule. Persons may submit comments by writing to the Commander Seventh Coast Guard District listed under **ADDRESSES**.

Background and Purpose

The Fuller Warren Drawbridge, mile 25.4, Highway I10/I95 over the St. Johns River, located in the City of Jacksonville, Florida has a vertical clearance, in the closed position, of 44 feet above mean high water and 45 feet above mean low water (MLW). On November 6, 1996 FDOT requested a deviation from the current operating schedule in 33 CFR 117.325 in order to reduce the number of drawbridge openings that would impact the heavy volumes of highway traffic being experienced on I95. The traffic volume has doubled on this interstate highway system since 1991, reducing the Level of Service (LOS) to LOS E during weekdays. This temporary deviation to the operating regulations for the Fuller Warren Drawbridge, owned and operated by the FDOT, increases the morning and afternoon closed periods and authorizes hourly openings from 9 a.m. to 4 p.m. on weekdays. This deviation is intended to reduce highway delays. However, due to strong river currents and difficult maneuvering characteristics, tugs with tows are exempted from these restrictions. Other vessels using this reach of the St. Johns River have adequate maneuvering room to wait the hourly openings and should not be unreasonably impacted by this deviation.

The Coast Guard has granted the Florida Department of Transportation a temporary deviation from the operating regulations outlined in Title 33, Code of Federal Regulations, § 117.325 governing the Fuller Warren Drawbridge located across the St. Johns River. This deviation from normal operating regulations is authorized in accordance with the provisions of Title 33, Code of Federal Regulations, § 117.43 for the purpose of evaluating a possible change to the permanent regulations. Under this deviation, the Fuller Warren Drawbridge operated by the FDOT shall open on signal; except that, Monday through Friday except Federal holidays from 7 a.m. to 6 p.m. the draw need not open except on the hour. However, the draw need not open between 7 a.m. and 9 a.m. and between 4 p.m. and 6 p.m. Monday through Friday except Federal holidays. Tugs with tows shall be passed at any time except during the authorized weekday closures from 7 a.m. to 9 a.m. and from 4 p.m. to 6 p.m. The bridge shall open at any time for

vessels in a situation where a delay would endanger life or property.

This period of deviation is effective from November 8, 1996 through February 7, 1997.

Dated: December 27, 1996.

R.C. Olsen, Jr.,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

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33 CFR Part 117

[CGD07-96-054]

RIN 2115-AE47

Drawbridge Operation Regulations; Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the regulation governing the operation of the Coronado Beach bridge, mile 845 at New Smyrna Beach. This drawbridge has been replaced by a higher drawbridge and there is no longer a need for the regulation. Therefore, the Coast Guard is removing 33 CFR 117.261(h).

DATES: January 23, 1997.

FOR FURTHER INFORMATION CONTACT: Mr. Walt Paskowsky, Project Officer, Seventh Coast Guard District, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION:

Regulatory History

The Coast Guard finds that in accordance with 5 U.S.C. 553, good cause exists for proceeding directly to final rule and making this rule effective in less than 30 days. This final rule removes a bridge regulation for a drawbridge that has been replaced. Therefore, publishing a notice of proposed rulemaking or delaying the effective date of the final rule is unnecessary and the Coast Guard is proceeding to final rule, effective upon publication in the Federal Register.

Background and Purpose

The bridge regulation for the old Coronado Beach drawbridge, locally known as the north bridge, was published in the Federal Register on December 14, 1987 [52 FR 47391]. This regulation established draw times on the opening of the old Coronado Beach drawbridge. This drawbridge was replaced by a new higher bascule drawbridge which opened to auto traffic on August 26, 1996. Therefore, the regulations governing the operation of