Executive Order 12866

This regulation has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review'', section 1(b), Principles of Regulation. The Director of the Bureau of Prisons has determined that this rule is not a ''significant regulatory action'' under Executive Order 12866, section 3(f), and accordingly this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Under Executive Order 13132, this rule does not have sufficient federalism implications for which we would prepare a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, *under* the Regulatory Flexibility Act (5 U.S.C. 605(b)), reviewed this regulation. By approving it, the Director certifies that it will not have a significant economic impact upon a substantial number of small entities because: This rule is about the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not cause State, local and tribal governments, or the private sector, to spend $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. We do not need to take action under the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

List of Subjects in 28 CFR Part 549

Prisoners.

Harley G. Lappin,

Director, Bureau of Prisons.

■ Under the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons, we amend 28 CFR part 549 as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 549—MEDICAL SERVICES

■ 1. The authority citation for 28 CFR part 549 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4005, 4042, 4045, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4241–4247, 5006–5024 (Repealed October 12, 1984, as to offenses committed after that date), 5039; 28 U.S.C. 509, 510.

Subpart B—Over-The-Counter (OTC) Medications

■ 2. Revise § 549.31(a) to read as follows:

§ 549.31 Inmates without funds.

(a) The Warden must establish procedures to provide up to two OTC medications per week for an inmate without funds. An inmate without funds is an inmate who has not had a trust fund account balance of $6.00 for the past 30 days.

* * * * *

[FR Doc. 04–20097 Filed 9–2–04; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[CGD08–04–031]

RIN 1625–AA09

Drawbridge Operation Regulation; Massalina Bayou, Panama City, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Commander, Eighth Coast Guard District, has temporarily changed the regulation governing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, at Panama City, Bay County, Florida. The regulation will allow the draw of the bridge to remain closed to navigation for one hour to facilitate the American Heart Walk.

DATES: This temporary rule is effective from 9 a.m. to 10 a.m. on October 30, 2004.

ADDRESSES: Documents referred to in this rule are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, 500 Poydras Street, New Orleans, Louisiana 70130–3310, between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (504) 589–2965. The Eighth District Bridge Administration Branch maintains the public docket for this rulemaking.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, (504) 589–2965.

SUPPLEMENTARY INFORMATION:

Good Cause for Not Publishing an NPRM

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Thousands of pedestrians will cross the bridge during the event and this temporary rule is necessary to ensure their safety as they cross the bridge. Additionally, the event will only impact the waterway users for one hour and will open for vessels in distress.

Background and Purpose

The City of Panama City has requested a temporary rule changing the operation of the Tarpon Dock bascule span drawbridge across Massalina Bayou, mile 0.0, in Panama City, Bay County, Florida. This temporary rule is needed to accommodate approximately 2,000 pedestrians that are expected to participate in a 3.5-mile walk. The bridge is near the beginning of the walk and allowing the bridge to open for navigation during this short time period would disrupt the event and could result in injury. The bridge has a vertical clearance of 7 feet above mean high water in the closed-to-navigation position and unlimited in the open-to-navigation position. Navigation on the waterway consists primarily of commercial fishing vessels, sailing vessels and other recreational craft. Presently, Title 33, Code of Federal Regulations (CFR), Part 117.301 states: The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0, shall open on signal; except that from 9 p.m. until 11 p.m. on July 4, each year, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress. This temporary rule will allow the bridge to be maintained in the closed-to-

navigation position from 9 a.m. to 10 a.m. on October 30, 2004 to facilitate the American Heart Walk.

Regulatory Evaluation

This 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 (DHS).

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

This temporary rule will be only one hour in duration and is therefore expected to have only a minor affect on the local economy.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this 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 temporary rule will not have a significant economic impact on a substantial number of small entities.

This rule may affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit through the Tarpon dock bridge across Massalina Bayou during the closure. There is not expected to be a significant impact due to the short duration of the closure and the publicity given the event.

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 rule so that they can better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

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

Taking of Private Property

This rule will 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 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 rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not cause an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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 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 rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Commandant Instruction M16475.lD, 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 temporary rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation because

it modifies an existing bridge operation regulation.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

■ For the reasons set out in the preamble, the Coast Guard amends 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. Effective 9 a.m. until 10 a.m. on October 30, 2004, § 117.301 is temporarily suspended and a new § 117.T302 is added to read as follows:

§ 117.T302 Massalina Bayou.

The draw of the Tarpon Dock bascule span bridge, Massalina Bayou, mile 0.0, shall open on signal; except that from 9 a.m. until 10 a.m. on October 30, 2004, the draw need not open for the passage of vessels. The draw will open at any time for a vessel in distress.

Dated: August 19, 2004.

R.F. Duncan,

Rear Admiral, U. S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 04–20118 Filed 9–2–04; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AL77

Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as final the proposed rule amending the Appeals Regulations and Rules of Practice of the Board of Veterans' Appeals (Board). The final rule removes the Board's authority to develop evidence for initial consideration unless the appellant or appellant's representative waives the right to initial review by the agency of original jurisdiction of new evidence received by the Board. The final rule also redefines ''agency of original jurisdiction'' to refer to the Veterans Benefits Administration, Veterans Health Administration, or National Cemetery Administration, depending upon the origin of the appealed decision. This rulemaking is required to simplify the appellate process and to conform to a recent decision from the United States Court of Appeals for the Federal Circuit.

DATES: *Effective date:* October 4, 2004.

Applicability date: The amendments in this final rule will apply to appeals pending before the Board on the effective date of this final rule and to all appeals for which a notice of disagreement is filed on or after the effective date of this final rule.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals (01C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202–565–5978).

SUPPLEMENTARY INFORMATION: The Board of Veterans' Appeals is the component of the Department of Veterans Affairs (VA) in Washington, DC, that decides appeals from denials of claims for veterans' benefits.

On December 11, 2003, VA published in the **Federal Register** (68 FR 69062), a notice of proposed rulemaking to remove the Board's authority to develop evidence for initial consideration. The proposed rule would require the Board, with certain exceptions, to remand an appeal to the agency of original jurisdiction (AOJ) when there is a need to obtain evidence, clarify the evidence, correct a procedural defect, or take any other action deemed essential for a proper appellate decision. The proposed rule would also provide that the Board may consider additional evidence in the first instance, without remand to the AOJ, when the appellant or appellant's representative waives this procedural right. In addition, the proposed rule would redefine ''agency of original jurisdiction'' to refer to the broad administrative body within VA that governs the office from which the decision on appeal originated. As set forth in the proposed rule, we are adopting the proposed rule as a final rule without change.

We received one comment from a veterans' service organization opposing the amendments in the proposed rule. We do not agree with the commenter's objections.

The veterans' service organization suggests that the proposed rule amending 38 CFR 20.903 and 20.1304(b)(2), insofar as it relates to the Board's consideration of medical opinions obtained by the Board from the Veterans Health Administration (VHA) pursuant to 38 CFR 20.901, exceeds the Board's authority under 38 U.S.C. 7109 and, therefore, is unlawful. This comment actually concerns an interim final rule amending 38 CFR 20.901 (specifically, section 20.901(a) authorizing Board requests for medical opinions from the VHA), which was published on July 23, 2001, in the **Federal Register** (66 FR 38158). This particular comment is more appropriately addressed at length in the final rulemaking notice amending 38 CFR 20.901, which has been published recently in the **Federal Register**.

The commenter's statements specific to the amendments finalized in this document concern 38 CFR 20.903 and 20.1304(b)(2). In 38 CFR 20.903(a), the second sentence is revised to require that a medical opinion obtained by the Board be provided to the appellant and his or her representative, if any, rather than to just the representative. With regard to 38 CFR 20.1304(b)(2), the changes are not substantive and involve removing references to ''paragraph (b) or (c)'' and replacing those references with ''paragraph (a) or (b).'' Since these changes are not relevant to the commenter's concerns, we decline to make changes based on this comment. Accordingly, the proposed rule is adopted as a final rule without change.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more in any given year. This proposed rule would have no such effect on State, local, or tribal governments, or the private sector.

Regulatory Flexibility Act

The Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Paperwork Reduction Act

The Secretary hereby certifies that this final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521).