

DEPARTMENT OF JUSTICE**28 CFR Part 50**

[Docket No. DEA-250F; A.G. Order No. 2920-2007]

**Office of the Attorney General;
Destruction of Contraband Drug
Evidence**

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule makes one revision to the Department of Justice regulations on the destruction of contraband drug evidence. The rule concerns the proper handling and disposal of liquid phencyclidine (PCP).

DATES: *Effective Date:* December 7, 2007.

FOR FURTHER INFORMATION CONTACT:

Wendy H. Goggin, Chief Counsel, Drug Enforcement Administration, Washington, DC 20537, Telephone (202) 307-1000.

SUPPLEMENTARY INFORMATION: This final rule implements one change to Title 28, Code of Federal Regulations (CFR), Part 50 and addresses the proper handling and disposal of liquid PCP, which is problematic because it is a controlled substance and acutely hazardous by nature. Liquid PCP contains piperidine, a flammable liquid that can be fatal if inhaled or ingested; sodium/potassium cyanide, which is highly poisonous and corrosive; and solvents, such as benzene, toluene and ethyl ether, which are toxic, flammable and possibly carcinogenic. These hazardous materials pose significant hazards to life and property because of their explosive, flammable, poisonous, and toxic characteristics. These risks can partially be mitigated by reducing the amount of liquid PCP that the Drug Enforcement Administration (DEA) and the Federal Bureau of Investigation (FBI) are presently required to preserve.

A detailed explanation of this revision follows:

28 CFR 50.21

To address the proper handling and disposal of liquid PCP, this amendment implements a change to Title 28, CFR, Part 50, regarding the preservation of contraband drug evidence by DEA and the FBI, and will reduce the amount of liquid PCP the Government is required to preserve. Specifically, the amended regulation will reduce the amount of liquid PCP that Department of Justice (DOJ) law enforcement agencies (LEAs) are required to preserve from 200 grams of pure liquid PCP, or 2,000 grams of a liquid that contains a detectable amount of PCP, to 28.35 grams, or one (1) fluid

ounce, of a liquid that contains PCP, in any form. Because the quantities currently required to be preserved jeopardize the safety of DOJ LEA personnel, reducing the preserved amount of liquid PCP to 28.35 grams will substantially reduce the risk to DOJ employees and facilities, and simultaneously ensure sufficient quantities for re-tests if the identity of a substance is disputed. Retention of a greater amount of PCP is unnecessary for due process in criminal cases. *See* 28 CFR 50.21(c); *see also United States v. Gibson*, 963 F.2d 708, 711 (5th Cir. 1992).

The preservation amounts for powdered PCP are unchanged.

Regulatory Certifications

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and is a rule of agency organization, procedure, and practice. As such, this rule is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. *See* 5 U.S.C. 553(a)(2), (b)(3)(A), (d)(3).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. Further, a Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, Regulatory Planning and Review, section 1(b), Principles of Regulation. This rule is limited to agency organization, management and personnel as described by Executive Order 12866 section 3(d)(3) and, therefore, is not a "regulation" or "rule" as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 12988

This regulation meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, Federalism, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a "rule" for purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

The Department of Justice has determined that this action is a rule relating to agency organization, procedure or practice that does not substantially affect the rights or obligation of non-agency parties and, accordingly, it is not a "rule" as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 50

Administrative practice and procedure.

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, Part 50 of Title 28 of the Code of Federal Regulations is amended as follows:

PART 50—STATEMENTS OF POLICY [AMENDED]

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; 42 U.S.C. 1921 *et seq.*, 1973c; and Pub. L. 107-273, 116 Stat. 1758, 1824.

■ 2. In § 50.21, paragraph (d)(4)(iv) is revised to read as follows:

§ 50.21 Procedures governing the destruction of contraband drug evidence in the custody of Federal law enforcement authorities.

* * * * *

(d) * * *
(4) * * *

(iv) Two hundred grams of powdered phencyclidine (PCP) or two kilograms of a powdered mixture or substance containing a detectable amount of phencyclidine (PCP) or 28.35 grams of a liquid containing a detectable amount of phencyclidine (PCP);

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Dated: November 30, 2007.

Michael B. Mukasey,
Attorney General.

[FR Doc. E7-23792 Filed 12-6-07; 8:45 am]

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD07-07-252]

RIN 1625-AA09

Drawbridge Operation Regulation; Atlantic Intracoastal Waterway, Mile 1134, Key Largo, FL

AGENCY: Coast Guard, DHS.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is temporarily changing the operating regulations governing the Jewfish Creek Bridge, Atlantic Intracoastal Waterway mile 1134, Key Largo, Monroe County, Florida. This rule will allow the Drawbridge to open on signal, except that from 7 a.m. until sunset this bridge will open on the hour and half-hour. This action is necessary for workers' safety.

DATES: This rule is effective 7 a.m. December 7, 2007 to April 30, 2008.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of the docket [Docket No. CGD07-07-252] and are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131-3028 between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Lieberum, Seventh Coast Guard District, Bridge Administration Branch, telephone number 305-415-6744.

SUPPLEMENTARY INFORMATION:

Regulatory Information

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. An NPRM would be impracticable and contrary to the public interest as a delay in the effective date poses a risk to the construction workers and increases the risk of traffic accidents.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective in less than 30 days after publication in the **Federal Register**. The bridge owner had informed the Coast Guard that there have been more vehicle accidents, resulting in an increased risk to workers during normal operation of this bridge then during the half-hour closure periods. Therefore, it is in the best interest of safety to implement this regulation as soon as possible.

Background and Purpose

The existing regulation of the draw requires that the Jewfish Creek Bridge, mile 1134 at Key Largo, shall open on signal; except that, from 10 a.m. to Sunset, Thursday through Sunday and Federal holidays, the draw need open only on the hour and half hour.

The owner of the bridge notified the Coast Guard that there is a noticeable difference in the vehicular delays and safety because of the vehicles backed up due to the on-demand openings. This has created additional accidents within the work zone and increases the potential of serious injuries to construction workers in the work zone. For these reasons the bridge owner has requested that the Coast Guard change the current operation of the Jewfish Creek Bridge. The drawbridge will be required to open twice an hour from 7 a.m. to sunset.

In cases of emergency, the drawbridge will be opened as soon as possible. This

regulation is necessary for workers' safety.

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.

Although bridge openings will be restricted, vessel traffic will still be able to transit the Atlantic Intracoastal Waterway pursuant to the revised opening schedule.

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 rule will not have a significant economic impact on a substantial number of small entities. This rule would affect the following entities, some of which may be small entities: The owners or operators of vessels needing to transit the Atlantic Intracoastal Waterway in the vicinity of the Jewfish Creek Bridge, persons intending to drive over the bridge, and nearby business owners. The revision to the openings schedule would not have a significant impact on a substantial number of small entities, although bridge openings will be restricted, vessel traffic will still be able to transit the Atlantic Intracoastal Waterway pursuant to the revised opening schedule.

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 the rule so that they could 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