

Substances	Limitations
* * * Manganese Violet (manganese ammonium pyrophosphate; CAS Reg. No. 10101-66-3). * * *	* * * For use at levels not to exceed 2 percent by weight of polymers. The finished articles are to contact food only under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter. * * *

Dated: December 27, 2000.
Janice F. Oliver,
Deputy Director, Center for Food Safety and Applied Nutrition.
[FR Doc. 01-1565 Filed 1-19-01; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF JUSTICE

28 CFR PART 16

[AAG/A Order No. 212-2001]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.
ACTION: Final Rule.

SUMMARY: The Department of Justice is further exempting the United States Marshals Service (USMS) Internal Affairs System, JUSTICE/USM-002, from subsections (e)(1) and (e)(5) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), (k)(2) and (k)(5). This system is currently exempt from subsections (c)(3) and (4), (d), (e)(2) and (3), (e)(4)(G) and (H), (e)(8), (f) and (g) pursuant to subsections (j)(2) and (k)(5). In addition to records compiled during the course of investigations of allegations of misconduct or criminal violations by USMS personnel, this system also contains records compiled for law enforcement investigations related to actual or potential civil and regulatory violations. The additional exemptions are necessary to avoid interference with such law enforcement investigations and to protect the privacy of third party individuals.

EFFECTIVE DATE: This rule will be effective January 22, 2001.

FOR FURTHER INFORMATION CONTACT: Mary E. Cahill on (202) 307-1823.

SUPPLEMENTARY INFORMATION: A proposed rule with invitation to comment was published in the **Federal Register** on November 8, 1999 (64 FR 60753). The public was given 30 days in which to comment. No public comments were received.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601-612, it is

hereby stated that the order will not have a "significant economic impact on a substantial number of small entities."

List of Subjects in 28 CFR Part 16

Administrative Practice and Procedure, Courts, Freedom of Information Act, Government in the Sunshine Act, and Privacy.

Dated: January 8, 2001.
Stephen R. Colgate,
Assistant Attorney General for Administration.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793-78, 28 CFR Part 16 is amended as follows:

1. The authority for Part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. 28 CFR 16.101 is amended by revising paragraphs (e), introductory text, (e)(1), (f)(1), and (f)(3); by redesignating paragraphs (f)(7), (f)(8) and (f)(9) as paragraphs (f)(8), (f)(9) and (f)(10) and adding new paragraph (f)(7) as follows:

§ 16.101 Exemption of U.S. Marshals Service (USMS) Systems—limited access, as indicated.

(e) The following system of records is exempt from 5 U.S.C. 552a(c)(3) and (4), (d), (e)(1), (2) and (3), (e)(4)(G) and (H), (e)(5), (e)(8), (f) and (g).

(1) Internal Affairs System (JUSTICE/USM-002)—Limited access. These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j)(2), (k)(2) or (k)(5). Where compliance would not interfere with or adversely affect the law enforcement process, the USMS may waive the exemptions, either partially or totally.

(f) * * *

(1) From subsections (c)(3) and (d) to the extent that release of the disclosure accounting may impede or interfere with civil or criminal law enforcement efforts, reveal a source who furnished information to the Government in confidence, and/or result in an

unwarranted invasion of the personal privacy of collateral record subjects or other third party individuals.

* * *

(3) From subsection (e)(1) to the extent that it is necessary to retain all information in order not to impede, compromise, or interfere with civil or criminal law enforcement efforts, e.g., where the significance of the information may not be readily determined and/or where such information may provide leads or assistance to Federal and other law agencies in discharging their law enforcement responsibilities.

(4) * * *
(5) * * *
(6) * * *

(7) From subsection (e)(5) because in the collection of information for law enforcement purposes it is impossible to determine in advance what information is accurate, relevant, timely and complete. With the passage of time, seemingly irrelevant or untimely information may acquire new significance and the accuracy of such information can only be determined in a court of law. The restrictions imposed by subsection (e)(5) would restrict the ability to collect information for law enforcement purposes and interfere with the preparation of a complete investigative report or otherwise impede effective law enforcement.

* * *

[FR Doc. 01-1737 Filed 1-19-01; 8:45 am]
BILLING CODE 4410-04-M

DEPARTMENT OF JUSTICE

28 CFR Part 25

[AG Order No. 2354-2001]; [FBI 105F]
RIN 1110-AA02

National Instant Criminal Background Check System Regulation

AGENCY: Federal Bureau of Investigation, Department of Justice.
ACTION: Final rule.

SUMMARY: The United States Department of Justice ("DOJ" or "the Department") is publishing a final rule amending the

DOJ regulation implementing the National Instant Criminal Background Check System ("NICS") pursuant to the Brady Handgun Violence Prevention Act ("Brady Act"): to establish a reduced retention period of 90 days for information relating to allowed firearm transfers in the system transaction log of background check transactions ("NICS Audit Log"), to clarify that only the FBI has direct access to the NICS Audit Log, and to clarify that, in furtherance of the purpose of auditing the use and performance of the NICS, the FBI may extract and provide information from the NICS Audit Log to the Bureau of Alcohol, Tobacco and Firearms ("ATF") for use in ATF's inspections of Federal Firearms Licensee ("FFL") records, provided that ATF destroys the NICS Audit Log information about allowed firearm transfers within the applicable retention period (unless discrepancies are found) and maintains a written record certifying the destruction.

EFFECTIVE DATE: March 5, 2001.

FOR FURTHER INFORMATION CONTACT:

Fanny Haslebach, Attorney-Advisor, Federal Bureau of Investigation, Module A-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, (304) 625-2000.

SUPPLEMENTARY INFORMATION: This document finalizes the rule proposed in the **Federal Register** on March 3, 1999, (64 FR 10262). The FBI accepted comments on the proposed rule from interested parties until June 6, 1999, and slightly over 150 comments were received. With the exception of two technical changes explained below, the proposed rule is adopted as final.

Significant Comments or Changes

The Retention Period

Many of the comments asserted that the FBI was violating the requirements of the Brady Act by keeping information about approved firearm transfers for any period of time in the NICS Audit Log. Commenters stated that, in their view, the Brady Act requires immediate destruction of identifying information about individuals who have been approved for the transfer of a firearm. Commenters also asserted that the retention of information about approved firearm transfers in the NICS Audit Log constituted a firearms registry in violation of section 103(i) of the Brady Act. Some commenters labeled the NICS Audit Log a "back door" registration system or a *de facto* registry and expressed concern that such a "registry" could lead to future gun confiscations.

The Department of Justice received and considered similar comments when promulgating the final NICS regulation

that established the current retention period of six months for information in the NICS Audit Log about approved firearm transfers. The discussion accompanying the final rule provided the following explanation of the Department's construction of the Brady Act as it relates to the record destruction requirement and the question of whether the NICS Audit Log constitutes a firearms registry:

The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS. 63 FR 58304.

The United States Court of Appeals for the District of Columbia Circuit recently held that the Attorney General reasonably interpreted the Brady Act to permit the temporary retention of certain information regarding NICS background checks for purposes of auditing the NICS. The court held that the six-month retention period was reasonable. *National Rifle Ass'n of America, Inc. v. Reno*, 216 F.3d 122 (D.C. Cir. 2000), rehearing denied (Oct. 26, 2000).

The temporarily retained information on approved firearm transfers is used only for purposes related to discovering misuse or avoidance of the system or ensuring the proper operation of the system: *e.g.* (1) comparing system records of a transaction with FFL records of the same transaction in order to detect cases where discrepancies in personal identifying information or missing records may reveal either (a) unauthorized NICS checks or (b) the submission of inaccurate information to the NICS for the purpose of avoiding a background check on the person to whom the gun is transferred; (2) reviewing system records in response to allegations of system misuse; (3) performing internal employee audits to

monitor employee performance and adherence to established procedures; (4) evaluating system performance, identifying and resolving operational problems, and generating statistical reports; and (5) assisting in the resolution of appeals of NICS denials. Many of these system audits would not be possible with just the NICS Transaction Number and the date on which it was issued.

A number of comments incorrectly interpreted the proposed rule as intending to allow the FBI and/or ATF to regularly conduct continued scrutiny or "audits" of persons who have been approved for purchase of a firearm. It is true that, if during the course of any authorized system activity it is determined that a purchaser who should have been denied was given a proceed or a purchaser who should have been given a proceed was denied, the FBI will attempt to remedy the error. In the case of someone who was approved for a transfer who should have been denied, the NICS will notify the FFL of the error. If the NICS is informed that the firearm was transferred, the NICS will notify ATF. However, other than in conjunction with activities which are linked to discovering misuse or avoidance of the system or ensuring the proper operation of the system, proceed transactions are not subjected to continued scrutiny.

Some comments doubted the ability of the audits to prevent abuses or halt illegal or falsified transfers of firearms. The Department believes that examination of FFL records in conjunction with statistical reports (*i.e.*, the number of approved and disapproved transactions for a particular time period) combined with information in the NICS Audit Log about the background checks may reveal misuse of the system or improper record keeping practices when, for instance, (1) the FFL has requested more background checks than indicated by the number of ATF Firearm Transaction Record Form 4473s ("4473s") on file, (2) the FFL has requested fewer background checks than the number of 4473s on file, or (3) personal information recorded on the 4473s is significantly different from the information provided in the NICS background checks.

One comment suggested that the vast majority of FFLs are honest and would not abuse the system, and that if an FFL were to intentionally submit false information to the system, he or she would not record different information on the 4473 that would allow for the discovery of the discrepancy. While this scenario is possible, it is also possible, for example, that the information

recorded on the 4473 may in fact be different from the information provided to the system, or that there may be fewer 4473s than NICS checks that have been requested by the FFL. The latter scenarios would reveal possible system misuse. The Department believes that it is essential to retain approval information temporarily to allow for the possibility of discovering such abuses. At a minimum, allowing for the possibility of audits should have a deterrent effect on FFLs who might otherwise consider abusing the system. If approval information were destroyed immediately, the NICS would have to rely completely on the "honor system" without any means to determine whether FFLs or FFL employees submit accurate identifying information about prospective purchasers to the NICS. If approval information were destroyed immediately, there would be no safeguards against the submission of false information to the NICS for the purpose of avoiding Brady background checks or doing unauthorized checks. While most FFLs and their employees are honest and conscientious, even one instance of gun violence that results from an unlawful firearm transfer allowed by uncheckable and undeterred system abuse can have a devastating impact on the lives of individual victims and communities. The Brady Act's purpose is to prevent gun violence resulting from unlawful firearm transfers. The temporary retention of information about allowed firearm transfers is meant to advance this statutory purpose, as well as the statutory obligation to protect the privacy and security of the information of the system.

A number of comments asked how the privacy interests of individuals approved for a firearm transfer have been accounted for in the rule. Those interests have been addressed in the rule first by reducing the retention period for information about allowed transfers to the shortest practicable period of time that will allow audits. The numerous comments received expressing concern about the privacy of individuals purchasing guns is the reason the original proposal of an 18-month retention period was first reduced to six months, and now has been reduced to 90 days, even though a longer retention period would increase the FBI's ability to detect and deter misuse of the system. In fact, the 90-day period has been adopted notwithstanding comments from two law enforcement representatives and the FBI's Criminal Justice Information Services (CJIS) Advisory Policy Board

(an advisory committee made up of representatives of various government agencies involved in the criminal justice process which provides advice to the Director of the FBI on the management of criminal justice information systems operated by the FBI's CJIS Division) that recommended increasing the temporary retention of approved transactions from six months to one year.

The privacy interests of individuals approved for a firearm transfer have also been accounted for in the rule by the limitation on direct access to information about allowed transfers. As stated in the amended § 25.9(b)(2) of the regulation, the temporarily retained "[i]nformation in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS." Limiting direct access to allowed transfers in the NICS Audit log to the FBI ensures controlled access to the information so that it is used only for the authorized purposes discussed above.

Individual privacy interests are also protected through compliance by the NICS with the Privacy Act of 1974. The Privacy Act regulates the collection, maintenance, use and dissemination of personal information by federal government agencies. A Privacy Act notice has been published for the NICS system (63 FR 65223) (November 25, 1998) which explains the system's purpose, routine uses, and policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system. As stated in the NICS Privacy Act notice, "The NICS regulations are to be read together with the NICS system notice." (63 FR 65224.) Thus, for example, Routine Use "C" provides for further coordination among law enforcement agencies for the purposes of investigating, prosecuting, and/or enforcing violations of criminal or civil law or regulation that may come to light during NICS operations. This portion of the routine use notice, read together with the NICS regulations, makes it clear that only the FBI has direct access to allowed transactions in the NICS Audit Log for purposes of conducting audits of the use and performance of the NICS, and that, if any record is found during this activity that indicates, either on its face or in conjunction with other information, a violation or potential violation of law, that record may be disclosed to the agency responsible for investigating the matter. By limiting direct access to information concerning allowed transfers to the FBI, and by limiting dissemination of information pursuant to published routine uses, the

Department believes that it has struck the appropriate balance between protecting the personal privacy of individuals in the system and ensuring the proper and authorized operation of the system.

Several comments expressed concern that the information about allowed firearm transfers in the NICS Audit Log could fall into the hands of thieves who could target the homes of gun owners. The security measures used by the FBI at its computer facilities exceed industry standards to prevent either unauthorized destruction or theft of information. It is extremely unlikely that FBI firearm transaction records could be accessed or obtained by unauthorized individuals or entities.

Finally, one comment observed that if the NICS used technology that sent an encrypted "digital signature" of the information received by the system about prospective firearm purchasers back to the FFL, the goal of having such information available to audit the system could be achieved without any retention of the identifying information about approved purchasers by the FBI. In such a case, the FBI could destroy the information immediately and then simply provide to ATF the "key" that would unlock the encrypted information retained by the FFLs for use when ATF performed its FFL inspections. The Department believes that this approach is not currently feasible since its implementation would require an electronic interface with the system on the part of all FFLs. Although the FBI is working toward providing electronic access to the NICS by FFLs, such access has not yet been established, and, even when available, only FFLs with the appropriate computer equipment will be able to take advantage of the electronic link to NICS. In addition, the Brady Act requires that the system must, at a minimum, provide FFLs with telephone access to the NICS. It would not be easy or reliable to transmit digital signature information to FFLs over the telephone. Thus, while on its face this approach to the record retention and audit issues may have some appeal, there are technical and legal hurdles that do not make it feasible to pursue such an approach at this time. In addition, while such an approach would make record retention by the FBI unnecessary for FFL audits, it would not eliminate the need for some temporary retention of information about approved transfers to accomplish internal audits and to enable system troubleshooting.

Providing NICS Audit Log Information to ATF

Many of the comments dealt with the proposed provision allowing the FBI to share data with ATF for the purpose of comparing background check data received by the FBI with information recorded on the corresponding Form 4473 on file with an FFL. The commenters stated that the Brady Act requires immediate destruction of such records, thus making them unavailable for sharing; they also stated that the keeping and sharing of information about allowed firearms transfers constitutes a firearms registry. For the reasons cited above, the Department does not believe that the Brady Act requires immediate destruction of these records or that the temporary retention of NICS transaction information for the limited purpose of auditing use and performance of the system constitutes a firearms registry.

Several comments also stated that section 103(i)(1) of the Brady Act specifically prohibits transferring these records to ATF. Section 103(i)(1) provides that Federal officials may not "require that any record or portion thereof generated by the system established under [the Brady Act] be recorded at or transferred to a facility owned, managed, or controlled by the United States or any State or political subdivision thereof." The Department believes, however, that section 103(i), which is entitled "Prohibition Relating to Establishment of Registration Systems With Respect to Firearms," is intended only to prevent the establishment of a firearms registry and to prevent the government from requiring third parties outside the government from recording information about firearm transactions at a government facility. See *National Rifle Ass'n v. Reno*, 216 F.3d at 131. Therefore, since neither the NICS Audit Log itself nor the proposed provision of information to ATF for use in its inspections of FFLs (together with the proviso that ATF destroy the information about allowed transfers within the 90-day retention period) operates as or otherwise establishes a firearms registry, the sharing of such information with ATF does not violate section 103(i)(1).

Finally, some comments expressed the belief that the transfer of information from the NICS Audit Log to ATF also violates the Firearm Owners' Protection Act (FOPA), as codified in 18 U.S.C. 926(a). Section 926(a) provides, in relevant part, that regulations implementing the Gun Control Act promulgated by the Secretary of the Treasury after enactment of FOPA may

not require that records that must be maintained by an FFL be recorded at or transferred to a government facility. Since these regulations are promulgated by the Department of Justice pursuant to the Brady Act, and since the NICS Audit Log information that will be provided to ATF consists of NICS system records, not records of an FFL, section 926(a) does not apply to the regulation adopted here.

Technical and Editorial Changes

When the Retention Period Begins To Run

The Department did not adopt the change we proposed in section 25.9(b)(1) of the NICS regulation to provide that the retention period begins to run on "the day after the NICS check is received," instead of the day the "transfer is allowed." The intention of this proposed change was to provide a uniform date from which to begin the retention period. It was noted by NICS Operations Center staff, however, that beginning the retention period on the day after the NICS check was received would complicate the processing of appeals that result in the reversal of a NICS denial in cases where the reversal occurs more than 90 days after the request for the NICS check was received. Under the NICS appeals process, the system gives the successful appellant a form certifying to the FFL that the system has changed the NICS determination from "denied" to "allowed." When presented with the certificate, the FFL must contact the system to confirm the "allowed" determination. The system would not be able to provide such confirmation unless the record of the "allowed" determination is retained for a reasonable period after the transaction is allowed. For this reason, the provision in § 25.9(b)(1) of the regulation providing that the retention period begins running from the date the transfer is allowed is being left unchanged.

Syntactical Change

A syntactical change was made to clarify the following sentence in the proposed rule: "Information in the NICS Audit Log pertaining to allowed transfers may only be directly accessed by the FBI for the purpose of conducting audits of the use and performance of the NICS." In the final rule, the sentence reads as follows: "Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS." This change was made to better

convey the intended meaning of the proposed language, i.e., that only the FBI has direct access to the NICS Audit Log.

Applicable Administrative Procedures and Executive Orders

Regulatory Flexibility Analysis

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final regulation and by approving it certifies that this regulation will not have a significant economic impact on a substantial number of small entities. While many FFLs are small businesses, they are not subject to any additional burdens by the plan adopted to audit their use of the NICS. In addition, the rule will not have any impact on an FFL's ability to contact the NICS, nor will it result in any delay in receiving responses from the NICS.

Executive Order 12866

The Department of Justice has completed its examination of this final rule in light of Executive Order 12866, section 1(b), Principles of Regulation. The Department of Justice has determined that this rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, and thus it has been reviewed by the Office of Management and Budget (OMB).

Executive Order 13132

This final rule will not have a substantial direct effect 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 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

This final rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This final rule is not a major rule as defined by 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 \$100,000,000 or more, a major increase in costs or prices, or have 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.

Paperwork Reduction Act of 1995

The collection of information for NICS previously was approved by OMB and issued OMB control numbers 1110-0026, 1512-0129, and 1512-0130.

List of Subjects in 28 CFR Part 25

Administrative practice and procedure, Business and industry, Computer technology, Courts, Firearms, Law enforcement officers, Penalties, Privacy, Reporting and record keeping requirements, Security measures, Telecommunications.

Accordingly, part 25 of title 28 of the Code of Federal Regulations is amended as follows:

PART 25—DEPARTMENT OF JUSTICE INFORMATION SYSTEMS

1. The authority citation for Part 25 continues to read as follows:

Authority: Pub. L. 103-159, 107 Stat. 1536.

Subpart A—The National Instant Criminal Background Check System

§ 25.9 [Amended]

2. In § 25.9, paragraph (b) is revised to read as follows:

* * * * *

(b) The FBI will maintain an automated NICS Audit Log of all incoming and outgoing transactions that pass through the system.

(1) The NICS Audit Log will record the following information: type of transaction (inquiry or response), line number, time, date of inquiry, header, message key, ORI, and inquiry/response data (including the name and other identifying information about the prospective transferee and the NTN). In cases of allowed transfers, all information in the NICS Audit Log related to the person or the transfer, other than the NTN assigned to the transfer and the date the number was assigned, will be destroyed after not more than 90 days after the transfer is allowed. NICS Audit Log records relating to denials will be retained for 10 years, after which time they will be transferred to a Federal Records Center for storage. The NICS will not be used to establish any system for the registration of firearms, firearm owners,

or firearm transactions or dispositions, except with respect to persons prohibited from receiving a firearm by 18 U.S.C. 922 (g) or (n) or by state law.

(2) The NICS Audit Log will be used to analyze system performance, assist users in resolving operational problems, support the appeals process, or support audits of the use of the system. Searches may be conducted on the Audit Log by time frame, i.e., by day or month, or by a particular state or agency. Information in the NICS Audit Log pertaining to allowed transfers may be accessed directly only by the FBI for the purpose of conducting audits of the use and performance of the NICS. Permissible uses include extracting and providing information from the NICS Audit Log to ATF in connection with ATF's inspections of FFL records, provided that ATF destroys the information about allowed transfers within the retention period for such information set forth in paragraph (b)(1) of this section and maintains a written record certifying the destruction. Such information, however, may be retained as long as needed to pursue cases of identified misuse of the system. The NICS, including the NICS Audit Log, may not be used by any Department, agency, officer, or employee of the United States to establish any system for the registration of firearms, firearm owners, or firearm transactions or dispositions. The NICS Audit Log will be monitored and reviewed on a regular basis to detect any possible misuse of the NICS data.

* * * * *

Dated: January 12, 2001.

Janet Reno,

Attorney General.

[FR Doc. 01-1616 Filed 1-19-01; 8:45 am]

BILLING CODE 4410-06-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07-01-002]

RIN 2115-AE47

Drawbridge Operation Regulations: Hillsborough River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is temporarily changing the operation of the Brorein and Platt Street Drawbridges across the Hillsborough River in Tampa, Florida. This temporary rule allows the Brorein and Platt Street Drawbridges to

remain closed to navigation from 10 a.m. to 6 p.m. on Saturday, January 27, 2001. This action is necessary to facilitate the Ye Mystic Krewe of Gasparilla Invasion and Parade.

DATES: This rule is effective from 10 a.m. to 6 p.m. on January 27, 2001.

ADDRESSES: Material received from the public as well as documents indicated in this preamble as being available in the docket are part of docket [CGD07-01-002] and are available for inspection or copying at Commander (obr), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida, between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Barry Dragon, Seventh Coast Guard District, Bridge Section, at (305) 415-6743.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this rule. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing an NPRM was impracticable because there was not sufficient time remaining after the bridge owner notified us of the need for the bridge to remain closed for the Gasparilla event.

For the same reason, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

The Brorein and Platt Street Drawbridges, miles 0.16 and 0.0 respectively, across the Hillsborough River, have vertical clearances of 15.6 feet at mean high water and a horizontal clearance of 80 feet between fenders. The existing operating regulations in 33 CFR 117.291(a) require the bridge to open on signal after two hours notice.

The City of Tampa Department of Public Works requested that the Brorein and Platt Street Drawbridge operations be temporarily changed to allow the Ye Mystic krewe of Gasparilla Invasion and Parade. This temporary change to the drawbridge operating regulations will allow the drawbridge to remain closed from 10 a.m. to 6 p.m., Saturday, January 27, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and