

authorization from the injured individual or legal representative or an order from a court of competent jurisdiction. A clerk or attorney signed subpoena is not "an order from a court of competent jurisdiction." Subpoenas are processed in accordance with 32 CFR part 725.

(2) Requests for testimony of any Navy employees will be processed in accordance with DoD Directive 5405.2, 32 CFR part 725, and SECNAVINST 5820.8A. If the injured person, or his or her attorney has signed an agreement to protect the Government's interest and is requesting the testimony of a locally available physician who treated the injured person, however, this request falls within an exception to the regulations. See 32 CFR 725.5(g)(3). In this situation, the injured person or the attorney need only ask the JAG designee for assistance in scheduling the testimony of the treating physician and the JAG designee will coordinate with the physician's command to determine availability. Such testimony is limited to factual issues. The definition of factual issues is slightly different under the regulations than it is in civil litigation. Opinions that are formed prior to, or contemporaneously with, the treatment at issue and are routinely required in the course of the proper performance of professional duties constitute essentially factual matters. For example, the physician will have opined at the time of treatment if further treatment will be necessary. The physician may testify to that as factual, not opinion, testimony. Opinions that are formed after treatment and are not required for continuing treatment, especially those that respond to hypothetical questions, are not factual and are considered to be expert testimony. This expert testimony, regardless of who requests it, will be processed in accordance with 32 CFR part 725, and must be forwarded to OJAG Code 14, General Litigation Division. Requests for expert testimony are rarely granted.

■ 15. Section 757.19 is amended by revising paragraphs (a), (b) introductory text, (b)(6), and removing paragraph (c) to read as follows:

**§ 757.19 Waiver and compromise.**

(a) *General.* OJAG Code 15 (Claims and Tort Litigation) may authorize waiver or compromise of any claim that does not exceed \$100,000.00. NLSO EURSWA may agree to compromise or waive claims for \$40,000.00 or less. NLSO EURSWA claims in excess of \$40,000.00 may be compromised or waived only with Code 15 approval.

(b) *Waiver and compromise.* The JAG designee may waive the Federal government's MCRA interest when a responsible third-party tortfeasor cannot be located, is judgment proof, or has refused to pay and litigation is not feasible. Waiver or compromise is also appropriate when, upon written request by the injured person or legal representative, it is determined that collection of the full amount of the claim would result in undue hardship to the injured person. In assessing undue hardship, the following should be considered:

\* \* \* \* \*

(6) Amount of settlement or award from third-party tortfeasor or contract insurer; and

\* \* \* \* \*

■ 16. Section 757.20 is revised to read as follows:

**§ 757.20 Receipt and release.**

The JAG designee will execute and deliver appropriate releases to third parties who have made full or agreed upon compromised payments. A copy of the release will be kept in the claims file.

Dated: September 10, 2007.

**T.M. Cruz,**

*Lieutenant, Judge Advocate General's Corps,  
U.S. Navy, Federal Register Liaison Officer.*

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**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 117**

[Docket No. CGD07-07-203]

**Drawbridge Operation Regulations;  
Gulf Intracoastal Waterway, Pinellas  
County, FL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations.

**SUMMARY:** The Commander, Seventh Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Welch Causeway/Tom Stuart (SR 666) Bridge across the Gulf Intracoastal Waterway, mile 122.8, at Madeira Beach, Pinellas County, Florida. This deviation is necessary to expedite repairs to the Welch Causeway Bridge. This deviation allows the bridge to open a single-leaf only with double-leaf openings available upon three hours notice to the bridge tender.

**DATES:** This deviation is effective from 7 a.m. on September 19, 2007 through 5 p.m. on November 30, 2007.

**ADDRESSES:** Materials referred to in this document are available for inspection or copying at Commander (dpb), Seventh Coast Guard District, 909 S.E. 1st Avenue, Room 432, Miami, Florida 33131 between 7 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (305) 415-6744. The Seventh Coast Guard District Bridge Branch maintains the public docket for this temporary deviation.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lieberum, Bridge Branch, (305) 415-6744 or e-mail [Michael.b.lieberum@uscg.mil](mailto:Michael.b.lieberum@uscg.mil).

**SUPPLEMENTARY INFORMATION:** Coastal Marine Construction has requested a deviation from the regulation published in 33 CFR 117.287(l) that states "the draw of the Welch Causeway (SR 699) bridge, mile 122.8 at Madeira Beach shall open on signal \* \* \*"

A deviation from the aforementioned schedule in 33 CFR 117.287(l) is necessary for worker safety and to expedite repairs to the Welch Causeway Bridge. This deviation will remain in effect from 7 a.m. on September 19, 2007 through 5 p.m. on November 30, 2007.

The Welch Causeway/Tom Stuart Bridge will open a single-leaf only on the hour and half-hour. A double-leaf opening will be available so long as a three hour notice to the bridge tender is provided. Vessels in any situation that endangers life or property will be allowed to pass through the bridge on signal.

In accordance with 33 CFR 117.35, the drawbridge must return to its regular operating schedule on November 30, 2007.

Dated: August 30, 2007.

**Greg Shapley,**

*Chief, Bridge Administration, Seventh Coast Guard District.*

[FR Doc. E7-18403 Filed 9-18-07; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 38**

**RIN 2900-AM64**

**Government-Furnished Headstone and Marker Regulations**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** This final rule amends the Department of Veterans Affairs (VA) regulations applicable to Government-furnished headstones or markers for placement in a national, State veterans, or private cemetery. The final rule specifies that a veteran's spouse or surviving spouse, whose remains are unavailable for burial, and who died after November 11, 1998, is eligible for a memorial headstone or marker for placement in a national or State veterans cemetery. This final rule also specifies that a veteran's dependent child, whose remains are unavailable for burial, and who died after December 22, 2006, is eligible for a memorial headstone or marker for placement in a national or State veterans cemetery. Lastly, this final rule extends for 1 year the authority to provide a Government-furnished headstone or marker for already marked graves of eligible veterans whose deaths occurred on or after September 11, 2001, for placement in private cemeteries. This final rule is necessary to incorporate statutory amendments into VA regulations.

**DATES:** *Effective Date:* September 19, 2007.

*Applicability Dates:* The amendments to 38 CFR 38.630 shall apply to requests for memorialization of a veteran's spouse or surviving spouse whose death occurred after November 11, 1998, and to requests for memorialization of a veteran's dependent child whose death occurred after December 22, 2006. The amendments to 38 CFR 38.631 apply to eligible veteran deaths occurring on or after September 11, 2001.

**FOR FURTHER INFORMATION CONTACT:** Deanna Wilson, Chief, Legislative and Regulatory Division, National Cemetery Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. Telephone: (202) 273-5306 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The National Cemetery Administration administers VA's memorial benefit programs, which include providing interment or memorialization of eligible deceased veterans, their spouses, and eligible dependents in national or State veterans cemeteries. For eligible veterans, VA provides, upon request, to any cemetery in the world, a Government-furnished headstone or marker to mark the burial location of a deceased veteran's remains. Under Public Law 107-103, the Veterans Education and Benefits Expansion Act of 2001, VA had authority to furnish a Government marker to mark the grave of a veteran buried in a private cemetery, regardless of whether the grave was

already marked with a privately purchased headstone or marker. This authority expired on December 31, 2006; however, Public Law 109-461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, extended this authority until December 31, 2007. The Act also amended the governing statute, 38 U.S.C. 2306(d), to clarify that VA could furnish either a headstone or a marker and to clarify the requirements for delivery and placement of Government-furnished headstones and markers. This final rule amends 38 CFR 38.631 to make it consistent with the amended statute.

VA also furnishes a memorial headstone or marker with the mandatory inscription "In Memory Of" to commemorate certain individuals whose remains are not available for interment, i.e., have not been recovered or identified, were buried at sea, were donated to science, or were cremated and the ashes scattered. Originally, VA was authorized to furnish a memorial headstone or marker only for an eligible veteran, and the headstone or marker had to be placed in a national cemetery. However, Public Law 105-368, the Veterans Programs Enhancement Act of 1998, permitted a veteran's memorial headstone or marker to be placed in a national, state or private cemetery. Public Law 105-368 also expanded eligibility to include a veteran's spouse or surviving spouse whose remains are unavailable and permitted a memorial headstone or marker to be placed in a national or State veterans cemetery for deaths occurring after November 11, 1998.

Public Law 109-461 recently expanded eligibility to an eligible dependent child of a veteran whose remains are unavailable and permits placement of a memorial headstone or marker in a national or State veterans cemetery. The expanded eligibility applies to individuals who die after December 22, 2006. This final rule amends 38 CFR 38.630 to make it consistent with the amended statute.

#### **Administrative Procedure Act**

Because these amendments merely reflect statutory changes, this rule-making is exempt from the prior notice-and-comment and delayed-effective-date requirements of 5 U.S.C. 553.

#### **Paperwork Reduction Act**

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501-3521). The Office of Management and Budget (OMB) previously approved all collections of information referenced in this final rule

under control number 2900-0222. This rule does not change those collections.

#### **Executive Order 12866**

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The Executive Order classifies a "significant regulatory action," requiring review by OMB unless OMB waives such review, as any regulatory action that is likely to result in a rule that may: (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

The economic, interagency, budgetary, legal, and policy implications of this final rule have been examined and it has been determined not to be a significant regulatory action under the Executive Order 12866.

#### **Regulatory Flexibility Act**

The initial and final regulatory flexibility analysis requirements of sections 603 and 604 of the Regulatory Flexibility Act, 5 U.S.C. 601-612, are not applicable to this rule because a notice of proposed rulemaking is not required for this rule. Even so, the Secretary of Veterans Affairs 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. This final rule would not affect any small entities. Only individual VA beneficiaries would be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is also exempt from the regulatory flexibility analysis requirements of sections 603 and 604.

#### **Unfunded Mandates**

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before

issuing 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 (adjusted annually for inflation) in any one year. This final rule would have no such effect on State, local, or tribal governments, or on the private sector.

#### Catalog of Federal Domestic Assistance Numbers and Titles

The Catalog of Federal Domestic Assistance program numbers and titles for this final rule are 64.201, National Cemeteries; and 64.202, Procurement of Headstones and Markers and/or Presidential Memorial Certificates.

#### List of Subjects in 38 CFR Part 38

Administrative practice and procedure, Cemeteries, Veterans.

Approved: August 27, 2007.

**Gordon H. Mansfield,**

*Deputy Secretary of Veterans Affairs.*

■ For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 38 as set forth below:

#### PART 38—NATIONAL CEMETERIES OF THE DEPARTMENT OF VETERANS AFFAIRS

■ 1. The authority citation for part 38 is revised to read as follows:

**Authority:** 38 U.S.C. 501(a), 2306, unless otherwise noted.

■ 2. Revise § 38.630(c) to read as follows:

#### § 38.630 Headstones and markers.

\* \* \* \* \*

(c) *Memorial headstones or markers.* VA will furnish, when requested, a *memorial* headstone or marker to commemorate an eligible individual whose remains are unavailable. A Government memorial headstone or marker for placement in a national cemetery will be of the standard design authorized for the cemetery in which it will be placed. In addition to the authorized inscription on a Government memorial headstone or marker, the phrase "In Memory Of" is mandatory.

(1) *Eligible individuals.* An eligible individual for purposes of paragraph (c) is:

(i) A veteran, which includes an individual who dies in the active military, naval, or air service;

(ii) The spouse or surviving spouse of a veteran, which includes an unremarried surviving spouse whose subsequent remarriage was terminated by death or divorce; or

(iii) An eligible dependent child of a veteran.

(A) A dependent child of a veteran is eligible if the child is under the age of 21 years, or under the age of 23 years if pursuing a course of instruction at an approved educational institution.

(B) A dependent child of a veteran is also eligible if the child is unmarried and became permanently physically or mentally disabled and incapable of self-support before reaching the age of 21 years, or before reaching the age of 23 years if pursuing a course of instruction at an approved educational institution.

(2) *Unavailable remains.* An individual's remains are considered unavailable if they:

(i) Have not been recovered or identified;

(ii) Were buried at sea, whether by the individual's own choice or otherwise;

(iii) Were donated to science; or

(iv) Were cremated and the ashes scattered without interment of any portion of the ashes.

(3) *Placement of memorial headstones or markers.* (i) *Veterans.* A Government memorial headstone or marker to commemorate a veteran may be placed in a national cemetery, in a State veterans cemetery, or in a private cemetery.

(ii) *Other eligible individuals.* A Government memorial headstone or marker to commemorate a veteran's spouse or surviving spouse, who died after November 11, 1998, may be placed in a national cemetery or in a State veterans cemetery. A Government memorial headstone or marker to commemorate a veteran's dependent child who died after December 22, 2006, may be placed in a national cemetery or in a State veterans cemetery.

(Authority: 38 U.S.C. 2306)

#### § 38.631 [Amended]

■ 3. Amend § 38.631 as follows:

■ a. In paragraphs (a), (c), (d), and (e), remove "marker" each place it appears and add, in its place, "headstone or marker".

■ b. In paragraph (f) remove "markers" and add, in its place, "headstones or markers".

■ c. In paragraph (g) remove "marker" and add, in its place, "headstone or marker" and remove "December 31, 2006" and add, in its place, "December 31, 2007".

(Authority: 38 U.S.C. 2306)

[FR Doc. E7-18503 Filed 9-18-07; 8:45 am]

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#### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Parts 52 and 81

[EPA-R04-OAR-2007-0548-200741; FRL-8466-4]

#### Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Georgia: Redesignation of Macon, Georgia 8-Hour Ozone Nonattainment Area to Attainment for Ozone

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** EPA is taking final action to approve a request submitted on June 15, 2007, from the State of Georgia, through the Georgia Environmental Protection Division (EPD), to redesignate the Macon 8-hour ozone nonattainment area to attainment for the 8-hour ozone National Ambient Air Quality Standard (NAAQS). The Macon 8-hour ozone area is comprised of Bibb County, and a portion of Monroe County located in middle Georgia (hereafter referred to as the "Macon Area"). EPA's approval of the redesignation request is based on the determination that Georgia has demonstrated that the Macon Area has met the criteria for redesignation to attainment specified in the Clean Air Act (CAA), including the determination that the Macon Area has attained the 8-hour ozone standard. Additionally, EPA is approving a revision to the Georgia State Implementation Plan (SIP) including the 8-hour ozone maintenance plan for the Macon Area that contains the new regional 2020 motor vehicle emission budgets (MVEBs) for nitrogen oxides (NO<sub>x</sub>) and volatile organic compounds (VOCs). Through this action, EPA is also finding the new regional 2020 MVEBs adequate for the purposes of transportation conformity.

**DATES:** *Effective Date:* This rule will be effective October 19, 2007.

**ADDRESSES:** EPA has established a docket for this action under Docket Identification No. EPA-R04-OAR-2007-0548. All documents in the docket are listed on the [www.regulations.gov](http://www.regulations.gov) Web site. Although listed in the index, some information is not publicly available, i.e., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through