

replacement of timber rail stringers and structural steel, at the bridge. The bridge must remain closed during these structural repairs.

The bridge opening records indicate this bridge has not received any requests to open during the requested closure time during the past four years; therefore, no navigational impacts to the marine transit system are expected.

This deviation from the drawbridge operation regulations will allow the bridge to remain in the closed position from 1 a.m. on September 7, 2002 through 8 p.m. on September 8, 2002.

This deviation from the drawbridge operation regulations is authorized under 33 CFR 117.35, and will be performed with all due speed in order to return the bridge to normal operation as soon as possible.

Dated: August 26, 2002.

**V.S. Crea,**

*Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.*

[FR Doc. 02-22736 Filed 9-5-02; 8:45 am]

**BILLING CODE 4910-15-P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Substance Abuse and Mental Health Services Administration

#### 42 CFR Part 51d

**RIN 0930-AA09**

### Mental Health and Substance Abuse Emergency Response Criteria

**AGENCY:** Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

**ACTION:** Final rule.

**SUMMARY:** Section 3102 of the Children's Health Act of 2000, Pub. L. 106-310, amends section 501 of the Public Health Service (PHS) Act (42 U.S.C. 290aa) to add a new subsection (m) entitled "Emergency Response." This newly enacted subsection 501(m) authorizes the Secretary to use up to, but no more than, 2.5% of all amounts appropriated under Title V of the PHS Act, other than those appropriated under Part C, in each fiscal year to make "noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities."

Because Congress believed the Secretary needed the ability to respond to emergencies, it exempted any grants, contracts, or cooperative agreements authorized under this section from the

peer review process. See section 501(m)(1) of the PHS Act. Instead, the Secretary is to use an objective review process by establishing objective criteria to review applications for funds under this authority.

**DATES:** This Final Rule will become effective on September 6, 2002.

**FOR FURTHER INFORMATION CONTACT:**

Joseph D. Faha, Substance Abuse and Mental Health Services Administration (SAMHSA), (301) 443-7017.

**SUPPLEMENTARY INFORMATION:**

#### Background

In the *Federal Register* of October 11, 2001 (66 FR 51873), the Department of Health and Human Services (the Department) published an Interim Final Rule to implement the new emergency grant program under its recent reauthorization legislation, which was signed into law on October 17, 2000, Pub. L. 106-310. Section 3102 of this law adds a new subsection, entitled "Emergency Response" to section 501 of the Public Health Service (PHS) Act. This newly enacted subsection enables the Secretary to use a small portion of funds appropriated each fiscal year to make "noncompetitive grants, contracts or cooperative agreements to public entities to enable such entities to address emergency substance abuse or mental health needs in local communities." The Interim Final Rule established procedures by which the Department may provide these funds.

#### Comments and Agency Response

In response to the October 11, 2001, Interim Final Rule, SAMHSA received two comments. Both commenters believe that the emergency criteria are too narrow in requiring that the emergency must have a "sudden, rapid onset and definite conclusion." They point out, for example, that because the health needs of their community resulting from asbestos-related diseases "unfolded as an ongoing process of discovering long term latent health effects that occurred in the past, the precipitating event would not fit the criteria." The Secretary has purposely included the criteria of "sudden, rapid onset and definite conclusion" to be consistent with the definition of an emergency in the regulations of the Federal Emergency Management Agency and declines to modify the criteria.

The commenters also noted the importance of standardizing data collection from funded programs, in order to develop response models that fit each type of disaster, and to provide for meaningful evaluations of overall effectiveness and meta analysis. The

Secretary responds that the primary purpose of the Emergency Response grants is to provide substance abuse and mental health services in the event of an emergency, and that focusing on data collection efforts to develop response models, evaluation, and meta analysis is outside the purview of this primary goal.

#### Technical Corrections

We are making a few minor technical changes to the rule. We find that these minor technical changes do not rise to the level of substantive change and thus comment is unnecessary. See 5 U.S.C. 553(b)(3)(B).

First, the term "Presidential disaster declaration" is defined in § 51d.2, but is not used in the regulation. We are deleting this definition because it is unnecessary.

Second, the Interim Final Rule, at § 51d.8, mistakenly indicated that 42 CFR part 50, subpart D—Public Health Service grant appeals procedure applies to the Emergency Grant awards. However, the Department amended this regulation to remove SAMHSA from the list of agencies to which these informal appeal procedures apply. Aggrieved grantees have direct access to the Departmental Appeals Board and that Board's original jurisdiction. See 63 FR 66062 (Dec. 1, 1998). We are deleting reference to this section to avoid any confusion.

Finally, the Interim Final Rule mistakenly indicated that 45 CFR part 75—Informal grant appeals procedures applies to the Emergency Grant awards. This provision has been deleted from the Code of Federal Regulations, as obsolete and ineffective. See 62 FR 38217 (July 17, 1997). We are deleting reference to this section to avoid any confusion.

#### Executive Order 12866: Economic Impact

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when rulemaking is necessary, to select regulatory approaches that provide the greatest net benefits (including potential economic, environmental, public health, safety distributive and equity effects). As noted in the October 11, 2001, Interim Final Rule, we have determined that the rule is not a "significant regulatory action" under section 3(f) of the Executive Order. This rule does not have an annual effect on the economy of \$100 million or more, create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, materially alter the budgetary impact of entitlements,

grants, user fees, or loan programs or the rights and obligations of recipients thereof, or raise novel legal or policy issues. Therefore, this interim final rule does not require an assessment of the potential costs and benefits under section 6(a)(3) of that Order and thus has been exempted from review by the Office of Management and Budget under that Order.

#### Regulatory Flexibility

The Regulatory Flexibility Act (5 U.S.C. chapter 6) requires that regulatory actions be analyzed to determine whether they will have a significant impact on a substantial number of small entities. As noted in the October 11, 2001, Interim Final Rule, we have determined that this is not a "major" rule under the Regulatory Flexibility Act of 1980, and that it will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government.

#### Unfunded Mandates

The Unfunded Mandates Reform Act requires 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. As noted in the October 11, 2001, Interim Final Rule, this rule contains no Federal mandates for State, tribal, or local governments or for the private sector.

#### Executive Order 13132: Federalism Implications

Executive Order 13132, Federalism, requires that Federal agencies consult with State and local government officials in the development of regulatory policies with federalism implications. As noted in the October 11, 2001, Interim Final Rule, we reviewed the rule as required under the Order and determined that it does not have any federalism implications. This rule will not have an effect on the States or on the distribution of power and responsibilities among the various levels of government. This having been stated, States support the flexibility that this regulation offers them in seeking Federal assistance for substance abuse and/or mental health emergencies that may occur in their borders.

#### Paperwork Reduction Act of 1995

The information collection provisions in this final rule have been approved under OMB control number 0930-0229. This approval expires April 30, 2005.

#### Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

As noted in the October 11, 2001, Interim Final Rule, this proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175.

#### List of Subjects in 42 CFR Part 51d

Administrative practice and procedure, Disaster assistance, Drug abuse, Emergency medical services, Grant programs-health, Health facilities, Mental health programs, Privacy, Reporting and recordkeeping requirements.

**Charles G. Curie,**

*Administrator, Substance Abuse and Mental Health Services Administration.*

Dated: August 23, 2002.

**Tommy G. Thompson,**  
*Secretary.*

For the reasons stated above, the Department of Health and Human Services amends Part 51d of Subchapter D of Title 42 CFR as follows:

#### PART 51d—[AMENDED]

1. The authority citation for part 51d continues to read as follows:

**Authority:** 42 U.S.C. 290aa(m).

##### § 51d.2 [Amended]

2. Amend § 51d.2 by removing the definition of "presidential disaster declaration."

##### § 51d.8 [Amended]

3. Amend § 51d.8 by removing the entry for "42 CFR part 50, subpart D—Public Health grant appeal procedure."

[FR Doc. 02-22601 Filed 9-5-02; 8:45 am]

**BILLING CODE 4162-20-P**

#### DEPARTMENT OF COMMERCE

#### National Oceanic and Atmospheric Administration

#### 50 CFR Part 223

[Docket No. 010926236-2199-02; I.D. 081202B]

**RIN 0648-AP63**

#### Sea Turtle Conservation; Restrictions to Fishing Activities

**AGENCY:** National Marine Fisheries Service (NOAA Fisheries), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule.

**SUMMARY:** NOAA Fisheries is closing the waters of Pamlico Sound, NC, to fishing with gillnets with a mesh size larger than 4 1/4 inch (10.8 cm) stretched mesh ("large-mesh gillnet"), on a seasonal basis, from September 1 through December 15 each year, to protect migrating sea turtles. The closed area includes all inshore waters of Pamlico Sound south of 35°46.3' N. lat., north of 35°00' N. lat., and east of 76°30' W. long.

**DATES:** This final rule is effective on September 3, 2002.

**ADDRESSES:** Copies of the Environmental Assessment (EA) prepared for this final rule may be obtained by writing to the Chief, Endangered Species Division, Office of Protected Resources, NOAA Fisheries, 1315 East-West Highway, Silver Spring, MD 20910. Requests may also be sent via fax to 301-713-0376, Attn: Chief, Endangered Species Division, Office of Protected Resources.

**FOR FURTHER INFORMATION CONTACT:** David M. Bernhart (phone, 727-570-5312; fax 727-570-5517; e-mail, [David.Bernhart@noaa.gov](mailto:David.Bernhart@noaa.gov)), or Barbara A. Schroeder (phone, 301-713-1401; fax 301-713-0376; e-mail, [Barbara.Schroeder@noaa.gov](mailto:Barbara.Schroeder@noaa.gov)).

**SUPPLEMENTARY INFORMATION:** All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even