chargeability or, where applicable, immigrant status upon a spouse or child.

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(Section 104, 66 Stat. 174; Section 109(9)(1), Foreign Relations Authorization Act, 91 Stat. 847; 8 U.S.C. 1104)

Dated: August 19, 1980.

Barbara M. Watson,

Assistant Secretary for Consular Affairs.

[FR Doc. 80-26275 Filed 8-26-80; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-80-788]

Community Development Block Grant Program; Small Cities

AGENCY: Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule modifies the regulations governing the Small Cities Community Development Block Grant Program in order to permit, on a demonstration basis, a very limited number of States to participate to a greater degree in that program.

EFFECTIVE DATE: September 22, 1980.

FOR FURTHER INFORMATION CONTACT: Trudy P. McFall, Acting Director, Office of Planning and Program Coordination, Washington, D.C., (202) 755-6290.

SUPPLEMENTARY INFORMATION: An important part of the President's Urban Policy initiatives has involved efforts to strengthen the partnership between Federal and State governments in order to better aid distressed places and people. Toward this end, the Department of Housing and Urban Development is working to involve States more closely in the Department's programs. As a part of that effort HUD published a proposed rule in the **Federal Register** on April 22, 1980, for public comment. The rule governs a demonstration of increased participation for one or more States in the process used to select small cities to receive grants under the Community Development Block Grant program. HUD's objective is to determine whether increased State participation can further such objectives as more effective targeting and coordination of Federal and State resources to communities with greatest need, more responsiveness to State and local priorities and plans, and greater commitment of State resources to housing and community development. To the extent these objectives are achieved, HUD may continue the demonstration in a second year.

Participation by States in the Small Cities CDBG program is provided for in Section 104(e) of the Housing and Community Development Act of 1974, as amended, and in § 570.422 of the regulations. This section dealing with State involvement has been reserved until now pending the outcome of deliberations within HUD on appropriate roles for States in the CDBG program. The rule adds the language for the reserved § 570.422.

HUD expects to involve one or more States in the initial demonstration effort being established under this regulation. States expressing an interest in greater direct participation in the Small Cities CDBG program and appearing to best meet the criteria for participation will be given the opportunity to submit a proposal. The State or States selected will participate in the demonstration only if there is a consensus of eligible CDBG preapplicants obtained through a process acceptable to the Secretary that they wish the State to have such a rule. Furthermore, HUD will involve its Area Offices closely in the selection process and does not expect to select a State without the support of the Area Office.

The State or States selected will design a system for ranking small cities to receive the Community Development Block Grants and will manage the FY 1981 preapplication and selection process for Small Cities applications within the State. The State or States will develop the selection criteria and procedures in consultation with eligible local governments and HUD. HUD will review and approve the State selection criteria to ensure that they are consistent with CDBG law. Once approved by HUD, the State selection system will be substituted for the normal Small Cities selection criteria and process and appropriate notification of such substitution shall be provided in the **Federal Register.**

Using the approved selection system the State will advise HUD of the preapplications that it is recommending for funding. HUD will review the recommended preapplications for completeness, eligibility, and other appropriate programmatic requirements.

Interested persons were given until May 22, 1980 to submit written comments. Twenty-four persons submitted comments. All comments received with respect to the proposed rule were carefully considered.

The following paragraphs summarize the comments received and explain the Department's response to the comments received and other changes made to the proposed regulations.

The most frequently expressed concern received in the comments was that bringing State government into the Small Cities program's selection process would add an unnecessary layer of government which would increase paperwork and processing time. While the Department recognizes that this could happen, HUD will make every effort to organize the selection process with the State and make maximum efforts to avoid duplication. HUD will assess the degree of duplication or inefficiency in the demonstration project and use the results as important factors in determining the net value of State participation to small cities and whether to repeat the demonstrations in the future.

Ten of the commenters expressed serious concern about the possibility that what they consider to be an objective process could become politicized. The Department will exercise every precaution to prevent that through careful review and monitoring of the State's proposed selection criteria, proposed selection process, and actual operations of the selection system. Paragraph (e), Monitoring and Evaluation, has been added to the rule to make the Department's intent clear. Further protection will be provided by the requirement for the State to obtain recommendations from its cities while developing the selection criteria and the system for applying them. The Department will encourage cities' recommendations on how to avoid politicization of the State's selection process. Also, the Department will be closely involved in the demonstration to ensure that the criteria are applied consistently and fairly.

Four commenters made recommendations about the need for assuring that there is, in fact, a consensus among the States' communities of less than 50,000 to permit the State to play the role in the selection process defined by this rule. It was recommended by two commenters that approval of at least 60 percent of the States' small cities should be obtained. The Department agrees in principle with setting such a threshold percentage but considers it inappropriate to specify in the rule. Doing so would eliminate the flexibility to make allowances for the practical difficulty of obtaining the necessary endorsements in States with large

numbers of very small communities. Other methods of demonstrating support for State involvement such as the endorsement of a State municipal league should be permitted when it is clear to HUD that such an organization can indeed speak for its constituent eligible governments on this subject. The Department believes that flexibility to recognize the variations among State situations should be maintained and therefore has not introduced a specific national threshold. Since the Department will be working with only two States we will be able to determine that a workable consensus has been obtained.

A potential conflict of interest was seen by four commenters who felt a State should not be allowed both to assist the preparation of a local pre-application and subsequently evaluate it in the selection process. The Department agrees and has added the necessary language to paragraph (c).

The A–95 process was considered an adequate provision for State review by five commenters. Although A–95 provides an opportunity to comment on projects that are in conflict with State plans and projects, it does not provide an incentive for a State to look for opportunities to combine its resources with Federal resources to aid communities with the greatest needs nor to set priorities among projects. These are principal objectives of this demonstration. The Department wants the A–95 process used more effectively by State, areawides, and local government but does not believe A–95 can achieve the objectives sought in this demonstration.

A few commenters sought assurance of participation in the process for their organization. This included involvement for areawide planning agencies, State municipal leagues, groups which advocate the needs of low and moderate income persons, and rural areas. The Department believes it is desirable for such interests and organizations to contribute to the effort and will encourage States to involve them in designing the selection system.

Three commenters recommended stronger requirements for added State assistance in housing and community development to aid distressed places and expand housing choices for low and moderate income persons. One commenter proposed requiring a State match of small city program grants. The Department has modified the wording of paragraph (b)(1) to show that in evaluating State proposals it will look for evidence of a history of substantial assistance and a commitment to continue or increase it.

Several commenters said that the current selection system was working and that the proposed changes were unnecessary or, in one case, wasteful. They were further concerned that they would lose the benefit of direct contact with knowledgeable HUD staff. The Department's objective in undertaking this demonstration is to bring about increased and better-targeted assistance for distressed people and communities. That is both a necessary and important objective for the Department to seek to achieve in a period of shrinking resources. Department staff will continue to be available to work with local staff and could, in fact, have more time for technical assistance in demonstration States, since the work of the selection process is shared with the States.

In summary, the comments received raised a number of valuable cautions about various aspects of the Demonstrations to be conducted. The Department has modified the regulation to incorporate some of the more specific suggestions for changes and will be mindful of the general concerns in the conduct of the demonstration. On balance, the Department feels it is appropriate to proceed since this effort is designed as a demonstration.

The Department has determined that an Environmental Impact Statement is not required as a result of this rule. A copy of the Finding of Inapplicability is available for inspection in the Office of the Rules Docket Clerk at the above address.

This rule is not listed in the Department's semiannual agenda of significant rules, published pursuant to Executive Order 12044.

Accordingly, 24 CFR Part 570 Subpart F is amended by issuing § 570.422 to read as follows:

§ 570.422 State participation.

(a) *Demonstration.* The Secretary may establish an experimental demonstration program with one or more States to determine whether States' involvement in partnership with HUD, in the process of selection of Small Cities grantees increases the targeting of Federal and State resources to distressed places and to the special problems of low- and moderate-income persons and minorities, as well as increases the total amount of State resources to distressed places.

(b) *Criteria for State participation.* In order to be eligible for participation in the demonstration program, a State must obtain, through a process acceptable to HUD, a consensus of the eligible small city applicants within the State that they agree that the State should have a role in the selection process. In evaluating State proposals HUD will select the best proposals, considering both the State's past progress and the extent of future commitment to the following criteria:

(1) Providing substantial State funds for low- and moderate-income housing and community development which aid distressed places and expand housing choices for low- and moderate-income persons;

(2) Using plans, policies and programs which constitute a development strategy which is the basis for State decisionmaking;

(3) Demonstrating a system for targeting State resources to all distressed communities, including cities over 50,000 population, and to low- and moderate-income persons and minorities; and

(4) Having staff capacity and financial resources to undertake the demonstration.

(c) *Selection of small city grantees.* A State which is designated by the Secretary to participate in the demonstration shall in consultation with HUD and eligible small city applicants within the State, develop selection criteria and a system for managing the preapplication solicitation and selection process. Selection criteria and the management system and selection process shall be reviewed by HUD for consistency with the requirements of the Act. After HUD notifies a State of its approval, the State selection criteria and process shall be substituted for the selection process provided in §§ 570.424 through 570.430 and appropriate notice shall be published in the **Federal Register** and the State shall manage the preapplication process and make recommendations for funding to HUD. The States selected for participation in the demonstration shall not prepare preapplications or applications for Small Cities program grants nor submit applications on behalf of eligible Small Cities program applicants.

(d) *Grant approval.* HUD, which shall make the decision as to the preapplicants which shall be funded, shall as part of the grant approval process consider (1) the State's recommendations; (2) whether the State's approved selection criteria were reasonably and consistently applied; and (3) compliance by the preapplicants with the requirements of this subpart.

(e) *Monitoring and Evaluation.* HUD will monitor and evaluate the demonstration to determine how well State participation in the Small Cities program selection process achieves the objectives contained in paragraph (a).

(Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.); Title I, Housing and Community Development Act of 1977 (Pub. L. 95-123); and Sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d); Section 7(o) of the Department of HUD Act), (42 U.S.C. 3535(o), Section 324 of the Housing and Community Development Amendments of 1978))

Issued at Washington, D.C., August 20, 1980.

Robert C. Embry, Jr.,

Assistant Secretary for Community Planning and Development.

[FR Doc. 80-26159 Filed 8-26-80; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 31, 301

[T.D. 7716]

Withholding on Certain Crewmen Engaged in Fishing

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document provides final regulations relating to the treatment of certain crewmen on boats engaged in catching fish as self-employed rather than as employees. Changes to the applicable tax law were made by the Tax Reform Act of 1976 and the Revenue Act of 1978. These regulations provide operators and crewmen of fishing boats with guidance necessary for compliance with the Acts.

DATES: The amendments to the regulations relating to income tax withholding and self-employment taxes are effective for taxable years ending after December 31, 1954. The amendments to the regulations relating to social security taxes are effective with respect to services performed after December 31, 1954, except for services performed after December 31, 1954, but before October 4, 1976, in cases in which the owner or operator of a boat treated a share of the boat's catch as being subject to such taxes. The amendments to the regulations relating to reporting requirements are effective for calendar years beginning after October 4, 1976.

FOR FURTHER INFORMATION CONTACT: Claudine Ausness of the Legislation and Regulation Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3459).

SUPPLEMENTARY INFORMATION:

Background

On April 9, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1), the Employment Tax Regulations (26 CFR Part 31), and the Regulations on Procedure and Administration (26 CFR Part 301) under sections 1402, 3121, 3401, and 6050A of the Internal Revenue Code of 1954. These amendments were proposed to conform the regulations to section 1207 (e) and (f)(4) of the Tax Reform Act of 1976 (90 Stat. 1706), as amended by section 701(z) of the Revenue Act of 1978 (92 Stat. 2921). No public hearing was requested. After consideration of comments regarding the proposed amendments, those amendments are adopted by this Treasury decision as proposed.

Explanation of Provisions

Under the Tax Reform Act of 1976, as amended, if certain conditions are met, after 1954 crewmen on boats engaged in catching fish and other aquatic animals are generally considered self-employed, rather than employees, for purposes of income tax withholding, self-employment tax, and the social security laws.

In order for a crewman to be considered self-employed, all of the following conditions must be met:

(1) The crew member must receive in payment for his services a fixed share of the boat's catch or of the proceeds from the sale of the catch and he must be entitled to no other cash or property independent of the size of the catch;

(2) The amount of the crew member's share must depend solely on the amount of the boat's catch, and therefore the amount of the share cannot be fixed at any minimum (in dollars or weight); and

(3) The crew of the boat on which the individual performed these services must normally be made up of fewer than 10 individuals.

Even if the criteria under the new provision are satisfied, for purposes of the social security tax a crewman is nevertheless deemed an employee, with regard to any services performed after December 31, 1954, but before October 4, 1976, if the boat operator treated a share of the boat's catch received by the crewman as subject to social security taxes.

If the new criteria are satisfied, the boat operator must file an information return on Form 1099-F (Copy A) by February 28 of the calendar year following the year in which service is performed, and, if the crewman has made his address known, the operator must furnish Copy B of the same form to the crewman. The operator must report on Form 1099-F the identity of each individual performing services, the individual's percentage share of the catch, and the amount of the proceeds received or the type and weight of the catch each crewman received as compensation for his services.

The regulation explicitly states that a crewman's share is not dependent solely on the amount of the boat's catch if the crewman is entitled under any individual or collective agreement to any fee, hourly wage, minimum for services, or any other amount unrelated to the size of the catch. Further, the operating crew includes the captain for purposes of determining the number of persons who normally make up the crew of the boat.

Two comments made with respect to the proposed rules expressed some confusion as to whether the same individual could be considered self-employed for one voyage and an employee for the next voyage as a result of how remuneration for the crewman was calculated. The regulation clearly provides that services performed by a crewman on one voyage may be excepted from employment but may not be so excepted on a subsequent voyage on the same or on a different boat, and that services of some crewman on a voyage may be excepted from employment while services of other crewman on the same voyage may not be so excepted. For example, a crewman on a 5-man crab fishing boat, if paid solely on a share basis, might be considered self-employed for that trip, but the same crewman on a subsequent salmon tendering trip, if compensated on a per-diem basis, would be considered an employee.

The regulation specifies certain events which result in a boat operator's "treating" a share of the boat's catch as subject to social security taxes for purposes of the exception to the 1955 effective date in the case of such taxes. For example, the operator is generally deemed to have treated the share of the catch as subject to social security taxes (1) if the operator voluntarily filed Form 941, (2) if he made full or partial payment of FICA tax (unless he made such payment only in order to file a court claim for a refund), or (3) if the operator withheld FICA tax from the crewman's share (regardless of whether the tax was paid over to the Service).

The regulation makes clear that, if a share of the catch has been "treated" as subject to social security taxes, in the case of services performed after December 31, 1954, but before October 4, 1976, even though the crewman otherwise satisfied the criteria necessary for being considered self-

employed, he is not required to pay tax on self-employment income with respect to such services, but is required to pay income tax on income received for such services. The fact that a boat operator has treated a share of the catch as being subject to the social security tax does not mean that the operator is required to withhold income tax with respect to that share. However, in such cases the boat operator is required to pay over both the employee and employer portions of FICA tax.

The final regulations adopted by this Treasury decision impose no significant new reporting or recordkeeping requirements. The principal effect of the final regulations is to conform existing regulations to statutory changes. Evaluation of the effectiveness of these regulations after issuance will be based upon comments received from offices within Treasury and the Internal Revenue Service, other governmental agencies, and the public.

Drafting Information

The principal author of these regulations is Claudine Ausness of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

Adoption of Amendments to the Regulations

Accordingly, the amendments to 26 CFR Parts 1, 31, and 301 published as a notice proposed rulemaking in the **Federal Register** for April 9, 1980 (45 FR 24207), are hereby adopted as proposed.

The Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S.C. 7805).

Jerome Kurtz,

Commissioner of Internal Revenue.

Approved: August 18, 1980.

Donald C. Lubick,

Assistant Secretary of the Treasury.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Paragraph 1. Section 1.1402(c)–3 is amended by revising the second sentence of paragraph (a) and by adding a new paragraph (g) to read as follow:

§ 1.1402(c)–3 Employees.

(a) *General rule.* * * * However, in six cases set forth in paragraphs (b) to (g), inclusive, of this section, the performance of service by an individual is considered to constitute a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1. * * *

* * * * *

(g) *Individuals engaged in fishing.* For taxable years ending after December 31, 1954, service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life (hereinafter "fish") constitutes a trade or business within the meaning of section 1402(c) and § 1.1402(c)–1 if the service is excepted from the definition of employment by section 3121(b)(20) and § 31.3121(b)(20)–1(a). However, the preceding sentence does not apply to services performed after December 31, 1954, and before October 4, 1976, on a boat engaged in catching fish if the owner or operator of the boat treated the individual as an employee in the manner described in § 31.3121(b)(20)–1(b).

Par. 2. Section 1.6050A–1 is added immediately after § 1.6050–1, to read as follows:

§ 1.6050A–1 Reporting requirements of certain fishing boat operators.

(a) *Requirement of reporting.* The operator of a boat on which one or more individuals during a calendar year performed services described in § 31.3121(b)(20)–1(a) shall make an information return on Form 1099F for that calendar year. The return shall include the following information:

(1) The name and taxpayer identification number of each individual performing the services;

(2) The percentage of each individual's share of the catch of fish or other forms of aquatic life (hereinafter "fish");

(3) The percentage of the operator's share of the catch of fish;

(4) If the individual receives all or part of his share of the catch in kind, the type and weight of the share and, if it can be ascertained, the fair market value of his share;

(5) If the individual receives a share of the proceeds of the catch, the dollar amount received; and

(6) Any other information that is required by the form.

For purposes of this section, the term, "boat operator" means an employer (as defined in § 31.3121(d)–2) of an employee whose services are excepted from employment by section 3121(b)(20) and § 31.3121(b)(20)–1. The boat operator may make separate returns on Form 1099F for each crew member for each voyage, or he may aggregate the information required by this paragraph for an individual for all or any part of a return period in which the type of catch (if required) and the percentage due the crew member remain the same.

(b) *Time and place for filing.* Returns required to be made under this section on Form 1099F shall be filed with the Internal Revenue Service Center, designated in the instructions for Form 1099F, on or before February 28 of the year followlwing the year in which the relevant services were performed.

(c) *Requirement of and time for furnishing statement*—(1) *requirement of furnishing statement.* Every person filing a Form 1099F under this section shall furnish to the individual whose identifying number is (or should be) shown on the form a written statement showing the information required by paragraph (a) of this section. The requirement of the preceding sentence may be met by furnishing to the individual copy B of Form 1099F or a reasonable facsimile of Form 1099F that was filed pursuant to this section.

(2) *Time for furnishing statement.* Each statement required by this paragraph to be furnished to any individual for a calendar year shall be furnished on or before January 31 of the year following the calendar year for which the return was made.

PART 31—EMPLOYMENT TAXES; APPLICABLE ON AND AFTER JANUARY 1, 1955

Par. 3. Section 31.3121(b)(20)–1 is added immediately after § 31.3121(b)(19)–1, to read as follows:

§ 31.3121(b)(20)–1 Service performed on a boat engaged in catching fish.

(a) *In general.* (1) Service performed on or after December 31, 1954, by an individual on a boat engaged in catching fish or other forms of aquatic animal life (hereinafter "fish") are excepted from employment if—

(i) The individual receives a share of the boat's (or boats' for a fishing operation involving more than one boat) catch of fish or a share of the proceeds from the sale of the catch,

(ii) The amount of the individual's share depends solely on the amount of the boat's (or boats' for a fishing operation involving more than one boat) catch of fish.

(iii) The individual does not receive and is not entitled to receive, any cash remuneration, other than remuneration that is described in sub-division (1) of this subparagraph, and

(iv) The crew of the boat (or of each boat from which the individual receives a share of the catch) normally is made up of fewer than 10 individuals.

(2) The requirement of subdivision (ii) of subparagraph (1) is not satisfied if there exists an agreement with the

boat's (or boats') owner or operator by which the individual's remuneration is determined partially or fully by a factor not dependent on the size of the catch. For example, if a boat is operated under a remuneration arrangement, *e.g.*, a collective agreement which specifies that crew members, in addition to receiving a share of the catch, are entitled to an hourly wage for repairing nets, regardless of whether this wage is actually paid, then all the crew members covered by the arrangement are entitled to receive cash remuneration other than a share of the catch and their services are not excepted from employment by section 3121(b)(20).

(3) The operating crew of a boat includes all persons on the boat (including the captain) who receive any form of remuneration in exchange for services rendered while on a boat engaged in catching fish. See § 1.6050A–1 for reporting requirements for the operator of a boat engaged in catching fish with respect to individuals performing services described in this section.

(4) During the same return period, service performed by a crew member may be excepted from employment by section 3121(b)(20) and this section for one voyage and not so excepted on a subsequent voyage on the same or on a different boat.

(5) During the same voyage, service performed by one crew member may be excepted from employment by section 3121(b)(20) and this section but service performed by another crew member may not be so excepted.

(b) *Special rule.* Services performed after December 31, 1954, and before October 4, 1976, on a boat by an individual engaged in catching fish are not excepted from employment for any voyage (for purposes of section 3121(b) and the corresponding regulations), even though the individual satisfies the requirements of subdivision (i) through (iv) of paragraph (a)(1) of this section, if the owner or operator of the boat engaged in catching fish treated the individual as an employee. For purposes of this subparagraph, the individual was treated as an employee if—

(1) Form 941 was voluntarily filed by the boat operator or owner, regardless of whether the tax imposed by chapter 21 was withheld. For purposes of this subdivision, the filing of Form 941 is not voluntary if the filing was the result of action taken by the Service pursuant to section 6651(a) (relating to addition to the tax for failure to file tax return or to pay tax);

(2) The boat owner or operator withheld from the individual's share the tax imposed by chapter 21, regardless of whether the tax was paid over to the Service; or

(3) The boat owner or operator made full or partial payment of the tax imposed by chapter 21, unless the payment was made pursuant to section 7422(a) (relating to no civil actions for refund prior to filing claim for refund). However, for purposes of this paragraph crew members whose services, but for subdivisions (i) through (iii), would have been excepted from employment by section 3121(b)(20) are not required to pay self-employment tax on income earned in performing those services. See § 1.1402(c)–3(g). Moreover, in such cases the employer is not entitled to a refund of the employer's share of any tax imposed by chapter 21 that was paid.

Par. 4. Section 31.3401(a)(17)–1 is added after § 31.3401(a)(16)–1, to read as follows:

§ 31.3401(a)(17)–1 Remuneration for services performed on a boat engaged in catching fish.

(a) Remuneration for services performed on or after December 31, 1954, by an individual on a boat engaged in catching fish or other forms of aquatic animal life (hereinafter "fish") is excepted from wages and hence is not subject to withholding if—

(1) The individual receives a share of the boat's (or boats' for a fishing operation involved more than one boat) catch of fish or a share of the proceeds from the sale of the catch,

(2) The amount of the individual's share depends solely on the amount of the boat's (or boats' for a fishing operation involving more than one boat) catch of fish,

(3) The individual does not receive, and is not entitled to receive, any cash remuneration, other than remuneration that is described in subparagraph (1) of this paragraph, and

(4) The crew of the boat (or of each boat from which the individual receives a share of the catch) normally is made up of fewer than 10 individuals.

(b) The requirement of subparagraph (2) of paragraph (a) is not satisfied if there exists an agreement with the boat's (or boats') owner or operator by which the individual's remuneration is determined partially or fully by a factor not dependent on the size of the catch. For example, if a boat is operated under a remuneration arrangement, *e.g.*, a union contract, which specifies that crew members, in addition to receiving a share of the catch, are entitled to an hourly wage for repairing nets, regardless of whether this wage is actually paid, then all the crew members covered by the arrangement are entitled to receive cash remuneration other than as a share of the catch and are not excepted from employment by section 3121(b)(20).

(c) The operating crew of a boat includes all persons on the boat (including the captain) who receive any form of remuneration in exchange for services rendered while on a boat engaged in catching fish. See § 1.6050A–1 for reporting requirements for the operator of a boat engaged in catching fish with respect to individuals performing services described in this section.

(d) During the same return period, service performed by a crew member may be excepted from employment by section 3121(b)(20) and this section for one voyage and not so excepted on a subsequent voyage on the same or on a different boat.

PART 301—PROCEDURE AND ADMINISTRATION

Par. 5. Section 301.6050A–1 is added immediately after § 301.6050–1, to read as follows:

§ 301.6050A–1 Information returns regarding services performed by certain crewmen on fishing boats.

For provisions relating to the requirement of returns of information regarding services performed by certain crewmen on fishing boats, see § 1.6050A–1 of this chapter (Income Tax Regulations) and § 301.6652–1 of this chapter (Regulations on Procedure and Administration).

Par 6. Section 301.6652–1(a)(2) is amended to read as follows:

§ 301.6652–1 Failure to file certain information returns.

(a) *Returns with respect to payments made in calendar years after 1962* * * *

(2) *Other payments; statements with respect to tips.* In the case of each failure—

(i) To file a statement of a payment made to another person required under authority of section 6041, relating to information returns with respect to certain information at source, or section 6051(d), relating to information returns with respect to payments of wages as defined in section 3401(a), or section 6050(a), relating to information returns with respect to remuneration of certain crew members defined in section 3121(b)(20), or

(ii) To furnish a statement required under authority of section 6053(b), relating to statements furnished by employers with respect to tips, or section 6050A(b), relating to statements furnished by fishing boat operators with respect to remuneration of certain crew members, within the time prescribed by

regulations under those sections for filing such statements (determined with regard to any extension of time for filing),

there shall be paid by the person failing to so file the statement $1 for each such statement not so filed. However, the total amount imposed on the delinquent person for all such failures during any calendar year shall not exceed $1,000.

* * * * *

[FR Doc. 80-26214 Filed 8-26-80; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF JUSTICE

Attorney General

28 CFR Part 45

[Order No. 909-80]

Amendment to Standard of Conduct Governing Private Professional Practice and Outside Employment

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order amends the Department of Justice rule governing private professional practice and outside employment by expanding the categories of public interest legal work which Justice attorneys are permitted to undertake. The order also makes minor changes in language and structure in order to clarify existing policies and procedures under the rule.

EFFECTIVE DATE: September 26, 1980.

FOR FURTHER INFORMATION CONTACT: Sana Shtasel, Special Assistant to the Associate Attorney General, Office of the Associate Attorney General, Department of Justice, Washington, D.C. 20530 (202-633-3309).

By virtue of the authority vested in me by 28 U.S.C. 509, 510 and 5 U.S.C. 301, Part 45 of Chapter I of Title 28, Code of Federal Regulations is amended by inserting the following to replace § 45.735-9:

§ 45.735-9 Private professional practice and outside employment.

(a) No employee shall engage in the private practice of a profession, including the private practice of law, except as may be authorized under this section. Acceptance of a forwarding fee shall be deemed to be within the foregoing prohibition.

(b) Paragraph (a) of this section shall not be applicable to special Government employees.

(c)(1) Employees are encouraged to provide public interest professional services so long as such services do not interfere with their official responsibilities. Such public interest services must be conducted without compensation, and during off-duty hours or while on leave. Leave will be granted for court appearances or other necessary incidents of representation in accordance with established policy on leave administration (see DOJ Order 1630.1A). Representation of Federal employees in Equal Employment Opportunity (EEO) complaint procedures may be provided in accordance with § 45.735-6(c) of this title and the Department's established EEO policy (see DOJ Order 1713.5) rather than this subsection. No employee may seek, or assist a plaintiff who seeks, an award of attorney's fees for services provided pursuant to this subsection.

(2) Any *pro bono* services provided by an employee must be consistent with Federal law and regulations. In determining whether to provide *pro bono* services in a particular matter, the employee should give particular attention to the requirements of subsection (f) below. Notice of intention to provide *pro bono* services shall be given in writing to the head of the employee's division (or in the case of an Assistant U.S. Attorney to the Executive Office of U.S. Attorneys with the U.S. Attorney's comments appended thereto). Should the division head or Executive Office believe the public interest professional service may not conform to the requirements of this section the disagreement will promptly be referred to the Associate Attorney General for final resolution.

(3) Public interest services should fall into one of the following categories:

(i) Service to a client who does not have the financial resources to pay for professional services;

(ii) Services to assert or defend individual or public rights which society has a special interest in protecting;

(iii) Services to further the organizational purpose of a charitable, religious, civic, or educational organization; or

(iv) Services designed to improve the administration of justice.

(d) Employees may provide professional services, pursuant to § 45.735-6(d) of this title, to those relatives and personal fiduciaries who are listed in that section.

(e) The Associate Attorney General may make other specific exceptions to paragraph (a) of this section in unusual circumstances. Application for exceptions must be made in writing stating the reasons therefor, and directed to the Associate Attorney General through the applicant's superior. Action taken by the Associate Attorney General with respect to any such application shall be made in writing and shall be directed to the applicant.

(f) No employee shall engage in any professional practice under this section or any other outside employment if—

(1) The activity will in any manner interfere with the proper and effective performance of the employee's official duties;

(2) The activity will create or appear to create a conflict of interest;

(3) The activity will reflect adversely upon the Department of Justice;

(4) The employee's position in the Department of Justice will influence or appear to influence the outcome of the matter;

(5) The activity will involve assertions that are contrary to the interests or positions of the United States; or

(6) The activity involves any criminal matter or proceeding whether Federal, State or local, or any other matter or proceeding in which the United States (including the District of Columbia government) is a party or has a direct and substantial interest.

Dated: August 19, 1980.

Benjamin R. Civiletti,

Attorney General.

[FR Doc. 80-26184 Filed 8-26-80; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 204 and 207

Danger Zones and Restricted Areas at Certain Military Facilities in the Hawaiian Islands

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army is amending the regulations which establish danger zones and restricted areas at certain military facilities in the Hawaiian Islands. The changes are necessary to reflect existing conditions and organizational changes.

EFFECTIVE DATE: October 1, 1980.

ADDRESS: HQDA, DAEN-CWO-N Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard (202) 272-0200.

SUPPLEMENTARY INFORMATION: The Commander in Chief, U.S. Pacific Fleet has requested certain danger zone and restricted area regulations promulgated in 33 CFR Parts 204 and 207 respectively,