The Rule

This amendment to Part 71 of the Federal Aviation Regulations revises the Livermore, California, transition area and extends the 700 foot transition area to the southeast of the Livermore Municipal Airport, California. The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; Februay 25, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—[AMENDED]

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Livermore, CA—[Revised]

That airspace extending upward from 700 feet above the surface bounded by a line beginning at lat. 37°44′00″ N., long. 121°52′00″ W.; to lat. 37°48′15″ N., long 121°40′00″ W.; to lat. 37°41′30″ W., long 121°34′00″ W.; to lat. 37°37′15″ N., long. 121°32′00″ W., to lat. 37°38′00″ N., long. 121°52′00″ W.; thence, to the point of beginning.

Issued in Los Angeles, California, on December 9, 1986.

James A. Holweger,

Acting Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 86–28585 Filed 12–19–86; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Temporary Licenses for Guaranteed Introducing Broker Applicants

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") has adopted amendments to Part 1 and Part 3 of its regulations to authorize the National Futures Association ("NFA") to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker, on essentially the same terms that temporary licenses currently may be issued to applicants for registration as an associated person of a Commission registrant.

EFFECTIVE DATE: January 2, 1987.

FOR FURTHER INFORMATION CONTACT: Michael A. Watkins, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Telephone: (202) 254–8955.

SUPPLEMENTARY INFORMATION: On November 10, 1986, the Commission published in the **Federal Register** proposed amendments to Part 3 of the Commission's regulations, 17 CFR Part 3 (1986), to authorize the National Futures Association to issue temporary licenses to apparently qualified applicants for registration with the Commission as an introducing broker. 51 FR 40814. This authorization is limited to introducing broker applicants guaranteed by a futures commission merchant ("FCM") pursuant to § 1.10(j) of the Commission's regulations, 17 CFR 1.10(j) (1986). The Commission's proposal authorizes temporary licenses for applicants for registration as an introducing broker on essentially the same terms as those governing the issuance of temporary licenses to associated persons of Commission registrants.

As explained in the **Federal Register** release accompanying the proposed amendments, by letter dated August 28, 1986, NFA had submitted for Commission approval, pursuant to section 17(j) of the Commodity Exchange Act ("Act"), 7 U.S.C. 21(j) (1982), proposed amendments to NFA Bylaw 305, Schedule A, Section I for this same purpose. The Commission reviewed the proposed NFA rule amendments, and additional information provided by NFA in connection therewith, and was satisfied that the amendments are consistent with the bases for issuing temporary licenses as adopted by the Commission. However, because current Commission regulations permit the issuance of temporary licenses only to applicants for registration as an associated person,[1] NFA rules authorizing the issuance of temporary licenses for introducing broker applicants would conflict with Commission regulations. In addition, the NFA amendments provide that a guarantee agreement will become effective upon the issuance of a temporary license to an introducing broker applicant, in conflict with the provisions of Commission rule § 1.10(j)(3), 17 CFR 1.10(j)(3) (1986), which provides, among other things, that the guarantee agreement will become effective upon registration being granted to the introducing broker. Therefore, the Commission's own rules in this regard must be amended before the proposed rules submitted by NFA can be approved by the Commission. *See* 51 FR 40815.

The Commission received no comments on its proposed rules. After careful consideration, the Commission has determined to adopt the proposed rules essentially as proposed, with one exception.[2] As noted above, the NFA amendments provide that a guarantee agreement will become effective upon the issuance of a temporary license to an introducing broker applicant, in conflict with the provisions of Commission rule § 1.10(j)(3), which provide that the guarantee agreement will become effective upon registration being granted. The Commission had proposed to resolve this conflict in proposed rule § 3.44(b). Upon reconsideration, however, the Commission has determined to amend rule § 1.10(j)(3) directly.[3]

[1] *See* Commission rules §§ 3.40 through 3.43, 17 CFR 3.40–3.43 (1986).

[2] Concurrently, the Commission has approved the amendments to NFA Bylaw 305, Schedule A, Section I, as proposed by NFA. The Commission has been advised that NFA will implement its program to issue temporary licenses to guaranteed introducing broker applicants after January 1, 1987. NFA will separately notify its members of the effective date of this program.

[3] As amended, therefore, Commission rule § 1.10(j)(3) provides in pertinent part:

A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

I. Related Matters

A. Paperwork Reduction Act

The Commission previously submitted to the Director of the Office of Management and Budget ("OMB"), pursuant to the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), an explanation and details of the information collection and recordkeeping requirements which would be necessary to implement these proposals. Part 3 of the Commission's regulations has previously been assigned OMB control number 3038–0023.

Copies of the OMB information collection submission associated with this rule may be obtained from Katie Lewin, Office of Management and Budget, Room 3235, NEOB, Washington, DC 20503. Telephone: (202) 395–7231.

B. Regulatory Flexibility Act

The Commission has previously determined that futures commission merchants should not be considered small entities for purposes of the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.* Specifically, the Commission found that with respect to FCMs, based upon the fiduciary nature of FCM/customer relationships, as well as the requirement that FCM's meet minimum financial requirements, FCMs should be excluded from the definition of a small entity.[4] Accordingly, the requirement of the RFA do not apply to FCMs. Moreover, when the Commission first adopted rules governing introducing brokers, it stated that it would "evaluate within the context of a particular rule proposal whether all or some introducing brokers should be considered to be small entities and, if so, to analyze the economic impact on introducing brokers of any such rule at the time."[5] In this connection, these rules impose no additional requirements on applicants for registration as an introducing broker. Therefore, pursuant to section 3(a) of the RFA, 5 U.S.C. 605(b), the Chairman certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

C. Effective Date

Section 4(c) of the Administrative Procedure Act, 5 U.S.C. 553(d), provides that rules promulgated by an agency may not be made effective less than thirty days after publication in the **Federal Register** except, *inter alia*, "a substantive rule which grants or recognizes an exemption or relieves a restriction." In proposing these amendments, the Commission stated that, because they essentially relieved a restriction, the Commission may determine that the amendments may take effect on less than thirty days notice. In this connection, NFA has advised the Commission that it will be prepared to issue temporary licenses shortly after January 2, 1987. Therefore, the Commission, pursuant to 5 U.S.C. 553(d), has determined that these rules shall take effect on that date.

List of Subjects

17 CFR Part 1

Contract markets, Futures commission merchants, Guarantee agreements, Guaranteed accounts, Introducing brokers, Minimum financial requirements, Standard fluctuation factor.

17 CFR Part 3

Registration requirements, Conditional registration, Temporary licenses, Statutory disqualifications, Authority delegations, Fingerprinting, Associated persons, Floor brokers, Introducing brokers, Commodity trading advisors, Commodity pool operators, Futures commission merchants, Leverage transaction merchants, Petitions for review.

In consideration of the foregoing, the Commission hereby amends Part 1 and Part 3 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

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

Authority: Secs. 2(a)(1), 2(a)(2), 4, 4a, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4j, 4k, 4l, 4m, 4n, 4o, 5, 5a, 6(a), 8a, 6b, 6c, 6d, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2, 4, 4a, 6, 6a, 6b, 6c, 6d, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 7, 7a, 8, 12a, 13a, 13a-1, 13a-2, 19, 21 and 23.

2. Section 1.10 is amended by revising paragraph (j)(3) to read as follows:

§ 1.10 Financial reports of Futures Commission merchants and introducing brokers.

* * * * *

(j) * * *

(3) A guarantee agreement filed in connection with an application for initial registration as an introducing broker in accordance with the provisions of § 3.15(a) of this chapter shall become effective upon the granting of registration or, if appropriate, a temporary license, to the introducing broker. A guarantee agreement filed other than in connection with an application for initial registration as an introducing broker shall become effective as of the date agreed to by the parties.

* * * * *

PART 3—REGISTRATION

3. The authority citation for Part 3 continues to read as follows:

Authority: Secs. 2(a)(1), 4, 4b, 4c, 4d, 4e, 4f, 4g, 4h, 4i, 4k, 4m, 4n, 4o, 4p, 6, 8, 8a, 14, 15, 17 and 19 of the Commodity Exchange Act, 7 U.S.C. 2 and 4, 6, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6k, 6m, 6n, 6o, 6p, 8, 9, 9a and 13b, 12, 12a, 18, 19, 21 and 23 (1982).

4. Sections 3.44 through 3.47 are added to Subpart B to read as follows:

Subpart B—Temporary Licenses

* * * * *

§ 3.44 Temporary licensing of applicants for guaranteed introducing broker registration.

(a) Notwithstanding any other provisions of these regulations, and pursuant to the terms and conditions of this subpart, the National Futures Association may grant a temporary license to any applicant for registration as an introducing broker upon the contemporaneous filing with the National Futures Association of:

(1) A properly completed guarantee agreement (Form 1–FR Part B) from a futures commission merchant which is eligible to enter into such an agreement pursuant to § 1.10(j)(2) of this chapter;

(2) A Form 7–R properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(3) A Form 8–R for the applicant, if a sole proprietor, and each principal (including each branch office manager) thereof, properly completed in accordance with the instructions thereto, the Disciplinary History portion of which contains no "Yes" answers indicating that the applicant may be subject to a statutory disqualification under sections 8a(2) through 8a(4) of the Act;

(4) A signed and dated certification from the futures commission merchant that has executed the guarantee agreement required by paragraph (a)(1) of this section, signed by an appropriate person as defined in § 1.10(j)(1) of this chapter, stating that:

(i) The futures commission merchant has verified the information on the

[4] *See* 47 FR 18618, 18619 (April 30, 1982).

[5] *See* 48 FR 35248, 35276 (August 3, 1983).

Forms 8–R filed pursuant to paragraph (a)(3) of this section which relate to education and employment history of the applicant's principals (including each branch office manager) thereof during the preceding five years; and

(ii) To the best of the futures commission merchant's knowledge, information, and belief, all of the publicly available information supplied by the applicant and its principals and each branch office manager of the applicant on the Form 7–R and Forms 8–R, as appropriate, is accurate and complete; and

(5) The fingerprints of the applicant, if a sole proprietor, and of each principal (including each branch office manager) thereof on fingerprint cards provided by the National Futures Association for that purpose: *Provided*, That a principal who has a current Form 8–R or Form 94 on file with the Commission or the National Futures Association is not required to submit a fingerprint card if the principal is not otherwise required to be registered as an associated person of the applicant.

(b) The effective date of a guarantee agreement filed in accordance with paragraph (a)(1) of this section is the date upon which the temporary license is granted by the National Futures Association.

(c) An applicant that fails to respond timely to a request by the National Futures Association for clarification or explanation of any information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card will be deemed to have withdrawn its registration application and the temporary license issued to such applicant and any associated person thereof shall terminate immediately.

§ 3.45 Restrictions upon activities.

(a) Subject to the provisions of § 3.46 of this subpart and all of the obligations imposed on such registrants under the Act (in particular, section 14 thereof) and the rules, regulations and orders thereunder, an applicant for registration as an introducing broker who has received written notification that a temporary license has been granted may act in the capacity of a guaranteed introducing broker.

(b) An applicant for registration as an introducing broker who has received a temporary license may be guaranteed by a futures commission merchant other than the futures commission merchant which provided the initial guarantee agreement described in § 3.44(a)(1) of this subpart: *Provided*, That, at least 10 days prior to the effective date of the termination of the existing guarantee agreement in accordance with the provisions of § 1.10 (j)(4)(ii) or (j)(5) of this chapter, or such other period of time as the National Futures Association may allow for good cause shown, the applicant files with the National Futures Association (1) written notice of such termination and (2) a new guarantee agreement with another futures commission merchant effective the day following the last effective date of the existing guarantee agreement.

§ 3.46 Termination.

(a) A temporary license shall terminate:

(1) Five days after service upon the applicant of a notice by the National Futures Association that the applicant for registration may be found subject to a statutory disqualification from registration; or

(2) Immediately upon termination of the applicant's guarantee agreement in accordance with § 1.10(j)(4)(ii) or (j)(5) of this chapter, unless a new guarantee agreement is filed in accordance with § 3.45(b) of this subpart; or

(3) Upon failure of an applicant to respond timely to a request by the National Futures Association for clarification of information set forth in the application of the applicant or any principal (including any branch office manager) thereof or for the resubmission of a fingerprint card pursuant to § 3.44(c) of this subpart.

(b) Upon termination, the applicant may not engage in any activity which requires registration as an introducing broker.

§ 3.47 Relationship to registration.

(a) A temporary license shall not be deemed to be a registration or to confer any right to such registration.

(b) Unless a temporary license has terminated, a temporary license shall become a registration upon the earlier of:

(1) A determination by the National Futures Association that the applicant is qualified for registration as an introducing broker; or

(2) The expiration of six months from the date of its issuance.

§§ 3.48 through 3.49 [Reserved]

Issued in Washington, DC on December 16, 1986, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 86–28599 Filed 12–19–86; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 111, 171, and 178

[T.D. 86–161]

Customs Regulations Amendments Relating to Customs Brokers; Correction

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 86–19256, published as T.D. 86–161 on August 26, 1986 (51 FR 30336), Parts 111, 171 and 178, Customs Regulations (19 CFR Parts 111, 171, 178), were extensively revised to implement the statutory changes made by the Trade and Tariff Act of 1984, relating to customs brokers. Corrections were made to T.D. 86–161 on September 5, 1986, in 51 FR 31760, on September 10, 1986, in 51 FR 32208 and on October 9, 1986, in 51 FR 36221. It has come to our attention that another correction is necessary. On page 30346 of T.D. 86–161, it states that § 171.12(b), Customs Regulations (19 CFR 171.12(b)), is amended by removing the words "paragraph (c)" and inserting, in their place, "paragraph (c) or (d)".

It has now been determined that this change is unnecessary because of another change to § 171.12. By T.D. 85–195, published in the **Federal Register** on December 10, 1985 (50 FR 50287), various sections in Parts 162 and 171, Customs Regulations (19 CFR Parts 162, 171), relating to fines, penalties, and forfeiture procedures, were amended. One of the changes made by T.D. 85–195 was to revise § 171.12 in its entirety. As revised, § 172.12(b) no longer contains a reference to paragraph (c).

Accordingly, the change made to § 171.12(b) by T.D. 86–161, which cannot now be made because of the change made by T.D. 85–195, is no longer needed.

To avoid any further confusion in this regard, the change made to § 171.12(b) by T.D. 86–161, is withdrawn.

EFFECTIVE DATE: September 25, 1986.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter or Fred Burns O'Brien, Entry, Licensing and Restricted Merchandise Branch (202–566–5765).

Dated: December 16, 1986.

B. James Fritz,

Director, Regulations Control and Disclosure Law Division.

[FR Doc. 28623 Filed 12–19–86; 8:45 am]

BILLING CODE 4820-02-M

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 200

[T.D. ATF-244, RE: Notice No. 597]

Rules of Practice in Permit Proceedings

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule amends the regulations for conducting permit proceedings. The amendments will provide a more efficient use of agency and administrative law judge (ALJ) time in uncontested proceedings. The amendments will also require that an appeal to the Director be made prior to court review of agency action.

EFFECTIVE DATE: January 21, 1987.

FOR FURTHER INFORMATION CONTACT: Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202) 566-7774.

SUPPLEMENTARY INFORMATION:

Background

Under current regulations, all citations for suspension, revocation, or annulment of permits held by the regulated industry are referred to an ALJ for a hearing. A hearing is held even if the proceeding is uncontested and the permit holder or applicant does not appear. In May 1985, the ALJ position in ATF became vacant and ATF has elected not to fill this position.

Current regulations also permit, but do not require, an appeal to be taken to the Director from an initial decision of an ALJ or regional director (compliance).

Notice of Proposed Rulemaking

In the interests of administrative consistency and judicial economy and to provide a mechanism to expedite treatment of uncontested proceedings, ATF published a notice of proposed rulemaking on July 3, 1986 [Notice No. 597, 51 FR 24383]. During the comment period, which closed August 4, 1986, no comments were received. Accordingly, this document amends Part 200 as published in the notice.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because it will not have a significant economic impact on a substantial number of small entities. The final rule will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance burdens on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this final rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 12291

In compliance with Executive Order 12291 of February 17, 1981, the Bureau has determined that this final rule is not a major rule since it will not result in:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or

(c) Significant adverse effects on competition, employment, investment, productivity, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Pub. L. 96-511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule, because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Bradley A. Buckles, Office of Chief Counsel, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 200

Administrative practice and procedure, Alcohol and alcoholic beverages, Tobacco.

Authority

PART 200—[AMENDED]

27 CFR Part 200—Rules of Practice in Permit Proceedings is amended as follows:

Paragraph 1. The authority citation for Part 200 is revised to read as follows:

Authority: 26 U.S.C. 7805, 27 U.S.C. 204.

Par. 2. The table of contents for 27 CFR Part 200 is amended to reflect the addition of §§ 200.63 and 200.107a, and the revision in the titles of § 200.60, § 200.71, and § 200.118 to read as follows:

Par. 3. Section 200.5 is amended to revise the definition of *Initial decision* to read as follows:

§ 200.5 Meaning of terms.

* * * * *

Initial decision. The decision of the regional director (compliance) or administrative law judge in a proceeding on the suspension, revocation or annulment of a permit.

* * * * *

Par. 4. Section 200.36 is revised to permit the regional director (compliance) to dismiss proceedings when a satisfactory settlement is reached between the parties to read as follows:

§ 200.36 General.

In all proceedings in which a permittee is cited to show cause why the permit should not be suspended, revoked or annulled, the permittee shall be afforded opportunity for the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment, where time, the nature of the proceeding, and the public interest permit. Such submittals should be made to the regional director (compliance), but may be made through the attorney for the Government. Where necessary, the date of the hearing may be postponed, pending consideration of such proposals, when they are made in good faith and not for the purpose of delay. If proposals of settlement are submitted, and they are considered unsatisfactory, the regional director (compliance) may reject the proposals and may, either directly or through the attorney for the Government, inform the permittee of any conditions on which the alleged violations may be settled. If the proposals of settlement are considered satisfactory to the regional director (compliance), the permittee shall be notified thereof and the proceeding shall be dismissed, unless such proposals of settlement include a monetary offer in compromise considered satisfactory to the regional director (compliance), in which event the proceeding shall be held in abeyance pending final action on such monetary offer in compromise.

Par. 5. Section 200.37 is amended by revising the last sentence by eliminating the requirement of a hearing to read as follows:

§ 200.37 Notice of contemplated action.

* * * Where informal settlement is not reached promptly because of inaction of the permittee or proposals are made for the purpose of delay, a citation shall be issued in accordance with §§ 200.55 and 200.56.

Par. 6. Section 200.55 is revised to require a request for a hearing before a hearing will be scheduled to read as follows:

§ 200.55 Content.

(a) Citation for the suspension, revocation or annulment of a permit shall be issued by the regional director (compliance) and shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact constituting the violations specified, dates, places, section of law and regulations violated, and (3) the permittee has 15 days within which to request a hearing before an administrative law judge.

(b) Citations for the disapproval of an application for a permit shall set forth (1) the sections of law and regulations relied upon for authority and jurisdiction, (2) in separate paragraphs, the matters of fact and law relied upon for the contemplated disapproval of the application, and (3) that the application will be disapproved unless a hearing is requested within 15 days.

§ 200.56 [Amended]

Par. 7. Section 200.56(a) is amended by replacing the words "Form 1430-A" with the words "Form 5000.6." Section 200.56(b) is amended by replacing the words "Forms 1430-C" with the words "Forms 5000.17."

Par. 8. Section 200.57 is revised to reflect the optional nature of the hearing to read as follows:

§ 200.57 Execution and disposition.

Forms 5000.6 and 5000.17 shall be executed in quintuplicate. A signed duplicated original shall be served on the permittee. If a hearing is requested, one copy shall be sent to the administrative law judge designated to conduct the hearing. The original copy containing the certificate of service shall be placed in the official record of the proceeding; and the remaining copies shall be retained for the office of the regional director (compliance).

Par. 9. Section 200.60 is revised to provide procedures for requesting a hearing before an administrative law judge in suspension, revocation, or annulment cases to read as follows:

§ 200.60 Suspension, revocation, or annulment proceedings.

(a) If a hearing is desired, the respondent shall file a request, in writing, with the regional director (compliance) within 15 days after receipt of the citation or within such time as the regional director (compliance) may allow.

(b) Where a respondent requests a hearing, the regional director (compliance) shall forward a copy of the request together with a copy of the citation to the Director for the assignment of an administrative law judge.

(c) After the Director notifies the regional director (compliance) of the assignment of the administrative law judge, the regional director (compliance) shall serve a notice of designation of the administrative law judge on the respondent.

(d) The administrative law judge shall set a time and place for a hearing and shall serve notice thereof on the parties at least 10 days in advance of the hearing date.

Par. 10. A new § 200.63 is added under "Non-Request for Hearing" to provide that in the case of the failure to request a hearing in a suspension, revocation or annulment case the regional director (compliance) shall make the initial decision to read as follows:

§ 200.63 Suspension, revocation, or annulment proceedings.

If the respondent does not request a hearing within the time specified in § 200.60, and does not file an answer as required in § 200.64, the regional director (compliance) shall make the initial decision in the case in accordance with § 200.79.

Par. 11. Section 200.64 is revised to reflect the optional nature of a hearing and to require an answer in all contested proceedings to read as follows:

§ 200.64 When required.

(a) Where the respondent requests a hearing in accordance with § 200.60, a written answer shall be filed with the administrative law judge and served on the regional director (compliance) within 15 days after service of the designation of the administrative law judge.

(b) Where no hearing is requested, the respondent shall file a written answer with the regional director (compliance) within 15 days after service of a citation.

(c) An answer shall contain a concise statement of the facts that constitute his grounds for defense. The hearing may be limited to the issues contained in the citation and the answer. The administrative law judge, or regional director (compliance) as the case may be, may, as a matter of discretion, waive any requirement of this section.

(d) Answers need not be filed in application proceedings.

Par. 12. Section 200.65 is revised to eliminate the reference to the administrative law judge to read as follows:

§ 200.65 Answer admitting facts.

If the respondent desires to waive the hearing on the allegations of fact set forth in the order to show cause, and does not contest the facts, the answer may consist of a statement that the respondent admits all material allegations of fact charged in the citation to be true. The regional director (compliance) shall thereupon base the decision on the citation and such answer although such an answer shall not affect the respondent's right to submit proposed findings of fact and conclusions of law, or the right to appeal.

Par. 13. Section 200.71 is amended by repealing the existing section as unnecessary, and adding a new procedure for adjudicating citations without a hearing. The revised § 200.71 reads as follows:

§ 200.71 Adjudication based upon written submissions.

The respondent may waive the hearing before the administrative law judge, and stipulate that the matter will be adjudicated by the regional director (compliance) based upon written submissions. Written submissions may include stipulations of law or facts, proposed findings of fact and conclusions of law, briefs, or any other documentary material. The pleadings together with the written submissions of both the attorneys for the Government and the respondent shall constitute the record on which the initial decision shall be based. The election to contest the citation without a hearing under this section does not affect the respondent's right to appeal.

Par. 14. Section 200.72 is amended by revising the second sentence to remove the reference to § 200.71 and by removing the last sentence. As revised § 200.72 reads as follows:

§ 200.72 Before citation.

If a respondent surrenders the permit before citation, the regional director (compliance) may accept the surrender. But if the evidence, in the opinion of the regional director (compliance), warrants citation for suspension, revocation or annulment, the surrender shall be refused and the regional director (compliance) shall issue the citation.

Par. 15. Section 200.73 is revised to allow the regional director (compliance) to move to dismiss the proceeding as moot and by removing the last sentence to read as follows:

§ 200.73 After citation.

If a respondent surrenders the permit after citation and prior to an initial decision, the regional director (compliance) may accept the surrender of the permit and dismiss the proceeding as moot. If, however, in the opinion of the regional director (compliance), the evidence is such as to warrant suspension, revocation or annulment, as the case may be, the surrender of the permit shall be refused, and the proceeding shall continue.

Par. 16. Section 200.77 is revised to reflect the optional nature of the hearing to read as follows:

§ 200.77 General.

If a hearing is requested, it shall be held at the time and place stated in the notice of hearing unless otherwise ordered by the administrative law judge.

Par. 17. Section 200.79 is revised to reflect the alternative decisionmaking options available to the respondent to read as follows:

§ 200.79 Suspension, revocation, or annulment.

(a) The administrative law judge who presides at the hearing in proceedings for the suspension, revocation and annulment of permits shall make the initial decision.

(b) If no hearing is requested, the regional director (compliance) shall make the initial decision.

Par. 18. A new § 200.107a is added describing the contents of an initial decision rendered by the regional director (compliance) to read as follows:

§ 200.107a Regional director's decision.

(a) When the regional director (compliance) issues an initial decision in accordance with § 200.79, the decision shall become a part of the record. The decision shall consist of (1) a brief statement of the issues involved in the proceedings; (2) the regional director's findings and conclusions, as well as the reasons therefor; and (3) the regional director's determination on the record.

Par. 19. Section 200.108 is amended by designating the current section as paragraph (a) and adding a new paragraph (b) covering cases where the regional director (compliance) renders the initial decision to read as follows:

§ 200.108 Suspension, revocation, or annulment proceedings.

* * * * *

(b) In a case where the initial decision is made by the regional director (compliance) in accordance with § 200.79, the regional director will also issue an order suspending, revoking or annulling the permit (on Form 5000.5), or dismissing the proceedings in accordance with his initial decision. A signed duplicated original of the decision and order of the regional director (compliance) shall be served upon the respondent and the original copy placed in the official record of the proceeding. In all proceedings in which a suspension is imposed, the regional director's order shall state the time when the suspension period set forth in the initial decision shall commence and terminate.

Par. 20. Section 200.110 is revised to clarify that the regional director issuing a permit will have jurisdiction to respond to violations even if they occur outside the region to read as follows:

§ 200.110 Proceedings involving violations not within region of issuance of permit.

In the event violations occurred at a place not within the region of issuance of a permit, the regional director (compliance) of the region of issuance will take jurisdiction over any proceeding including issuing the citation, and taking appropriate action in accordance with § 200.108.

Par. 21. Section 200.115 is revised to require an appeal to the Director prior to seeking court review to read as follows:

§ 200.115 Appeal on petition to the Director.

An appeal to the Director is required prior to application to the Federal courts for review. An appeal may be taken by the applicant or respondent or by the regional director (compliance). Such appeal shall be taken by filing a petition for review on appeal with the Director within 15 days of the service of the order disapproving an application for a permit or the initial decision suspending, revoking or annulling a permit. The petition must set forth facts tending to show action of an arbitrary nature, or action without reasonable warrant in fact, or action contrary to law and regulations. A copy of the petition shall be filed with the regional director (compliance) or served on the respondent or applicant as the case may be. In the event of such appeal, the regional director (compliance) shall immediately certify and forward the complete original record, by certified mail, to the Director, for his consideration and review.

Par. 22. Section 200.118 is combined with § 200.119 to conform with current court practices. As revised, § 200.118 reads as follows:

§ 200.118 Court review.

If an applicant or respondent files an appeal in Federal court of the Director's decision, the Director, upon notification that an appeal has been taken, shall prepare the record for submission to the court in accordance with the applicable court rules.

§ 200.119 [Removed]

Par. 23. Section 200.119 is removed.

§ 200.126 [Amended]

Par. 24. Section 200.126 is amended by replacing the words "Form 1644" with the words "Form 5600.10" and by replacing the words "Form 1645" with the words "Form 5600.11."

Signed: November 10, 1986.

Stephen E. Higgins,

Director.

Approved: December 3, 1986.

Michael H. Lane,

Acting Assistant Secretary (Enforcement).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD8 86-05]

Safety Zone Regulations; Mississippi River Gulf Outlet

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its Safety Zone Regulations, 33 CFR Part 165, by disestablishing the safety zone in the Mississippi River Gulf Outlet (MRGO). Improvements to the navigational channel since the safety zone's establishment (**Federal Register** Vol. 46, No. 107/4 June 1981) and the ability of the U.S. Army Corps of Engineers to deal quickly with critical shoaling, have made this safety zone unnecessary. Its removal will provide economic benefits to the shipping industry and the Port of New Orleans without reducing navigation safety.