preparation of a Federalism Assessment.

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of these regulations is expected to be minimal, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6, and 160.5.

2. A new § 165.T0918 is added to read as follows:

§ 165.T0918 Safety Zone: St. Joseph River Basin, St. Joseph, MI.

(a) *Location:* The following area is a safety zone: St. Joseph River from the pierheads (mile 0.0) to the Napier Ave. Bridge (mile 3.11).

(b) *Effective date:* This regulation will become effective at 9:00 a.m. (EDST) 21 July 1990, and terminate at 12:30 a.m. (EDST) 23 July 1990.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited, except when expressly authorized by the Coast Guard Patrol Commander (Officer in Charge, U.S. Coast Guard Station St. Joseph, MI.).

(2) The Coast Guard will Patrol the safety zone under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander". Operators of vessels, not participating in the event, desiring to transit the regulated area, may do so only with prior approval of the Patrol Commander and when so directed by that officer. Transiting vessels will be operated at bare steerageway, and will exercise a high degree of caution in the area.

(3) The Patrol Commander may direct the anchoring, mooring or movement of any boat or vessel within the regulated area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area, under the direction of the Coast Guard Patrol Commander, shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(5) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

Dated: July 2, 1990.

L. L. Mizell,

Commander, U.S. Coast Guard, Captain of the Port, Grand Haven, MI.

[FR Doc. 90-16359 Filed 7-12-90; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 9F3798/R1075; FRL-3771-8]

Pesticide Tolerances for Lactofen (1-(Carboethoxy)Ethyl-5-(2-Chloro-4-(Trifluoromethyl)Phenoxy)-2-Nitrobenzoate); Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 90-13852 in the Federal Register of June 14, 1990, at page 24084 (55 FR 24084), EPA issued a final rule establishing an interim tolerance for residues of the herbicide lactofen (1-(carboethoxy)ethyl-5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitrobenzoate) and its metabolites containing the diphenyl ether linkage in or on the raw agricultural commodity cottonseed at 0.05 part per million. The table in § 180.453 in the first column of page 24085 inadvertently listed the raw agricultural commodity as "cotton" rather than "cottonseed" as specified throughout the preamble of the document. This correction document changes "cotton" to read "cottonseed" in the table of § 180.453.

EFFECTIVE DATE: July 13, 1990.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Acting Product Manager (PM) 23, (H7505C), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-557-1830.

Dated: Douglas D. Campt,

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 90-16399 Filed 7-12-90; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 15

[Gen. Docket No. 89-354; FCC 90-233]

Operation of Spread Spectrum Systems

AGENCY: Federal Communications Commission (FCC).

ACTION: Final rules.

SUMMARY: The Commission has adopted a Report and Order amending parts 2 and 15 of the rules concerning the operation of spread spectrum systems. The Commission adopted new rules to establish a power density limit and a processing gain standard for direct sequence systems and increase the hopping channel bandwidth for frequency hopping systems. The Commission also clarified the existing part 15 spread spectrum rules concerning out-of-band emissions and the use of hybrid frequency hopping and direct sequence systems. It further adopted new rules limiting the use of directional antennas with these systems. This action will provide greater flexibility in the design of spread spectrum systems. The new regulations will also answer industry's need for delineated guidelines on the parameters that classify and bound these systems.

EFFECTIVE DATE: August 24, 1990.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph F. McNulty, Engineering

Evaluation Branch, Office of Engineering and Technology, (301) 725-1585.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in General Docket No. 89-354, FCC 90-233, adopted June 14, 1990 and released July 9, 1990.

The full text of the Commission's decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of the Report and Order

1. Spread spectrum systems are communications systems in which a low speed stream of information is combined with a higher speed signal called a spreading code. When the combined signal is transmitted, it is spread over a much wider bandwidth than that which would be needed to convey the information alone. On May 9, 1985, in the First Report and Order in General Docket No. 81-413, the Commission adopted provisions for the use of spread spectrum emissions under § 15.126 of the Rules. The rules allowed direct sequence and frequency hopping spread spectrum systems to operate in the 902-928 MHz, 2400-2483.5 MHz and 5725-5850 MHz frequency bands. However, since that time, the Commission has received many requests for clarification of the parameters specifying these systems. These inquiries generally concerned the requirements for minimum spreading code length and the minimum system processing gain. Values of these parameters were not specified in the rules.

2. On August 9, 1989, the Commission adopted a Notice of Proposed Rule Making (NPRM) that addressed these concerns. The NPRM proposed a minimum spreading code length for direct sequence systems. In addition, the NPRM proposed to increase the hopping channel bandwidth for frequency hopping systems. To accommodate the increased channel bandwidth in the 902-928 MHz band and still retain the nonoverlapping hopping channel requirement, the NPRM proposed to reduce the required number of hopping frequencies for systems using this band. To clarify the Commission's intent for the existing rules, it was proposed that each hopping frequency be selected at least once before the hopping sequence repeated. Comments were sought on all of these proposals. In addition, comments were requested as to whether a processing gain standard was necessary to ensure that spread spectrum systems, not just wide band transmitters, were being developed and used.

3. The final rules adopted in the Report and Order specify a power density limit of 8 dBm/3 kHz for direct sequence systems in lieu of a minimum length for the spreading code. This limit applies to the radiation emitted within any 3 kHz interval within the 902-928 MHz, 2400-2483.5 MHz, and 5725-5850 MHz bands during any 1 second interval of time. The new rules also provide that direct sequence systems must have at least 10 dB of processing gain, as measured at the demodulated output of the receiver. Processing gain is to be determined from the ratio of the signal to noise ratio at this point as measured with the transmitter spreading code turned off to the signal to noise ratio at this point as measured with the transmitter spreading code turned on.

4. The final rules also increase the maximum channel bandwidth for frequency hopping systems 500 kHz in the 902-928 MHz band and to 1 MHz in the 2400-2483.5 and 5725-5850 MHz bands. To accommodate nonoverlapping channels of 500 kHz bandwidth in the 902-928 MHz band, the final rules reduce the minimum number of hopping channels in this band from 75 to 50, and change the maximum occupancy times on any bandwidth within this band from 400 milliseconds during any 30 second time interval to 400 milliseconds during any 20 second time interval. For the 2400-2483.5 and 5725-5850 MHz bands, the maximum occupancy times on any bandwidth within these two bands remains at 400 milliseconds during any 30 second time interval. Each transmitter is required to use each hopping channel equally on average.

5. The final rules also establish standards for receivers used in frequency hopping systems. These receivers are required now to have input bandwidths that match the hopping channel bandwidths of the associated transmitter and to hop in synchronization with the transmitter.

6. The new rules set out-of-band emission limits for part 15 spread spectrum systems to make them consistent with the general limits in § 15.209 of the rules. Limits have also been set on the use of directional antennas. If antennas of directional gains greater than 6 dBi are used on the transmitting units, the maximum peak output power must be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi. The new rules also clarify the regulations governing hybrid systems that employ both direct sequence and frequency hopping techniques have also been made.

7. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, the proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities because they provide guidance and minimum standards consistent with the industry's needs.

8. Hence it is ordered that, pursuant to the authority contained in sections 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, parts 2 and 15 of chapter 1 of title 47 of the Code of Federal Regulations *are amended* as set forth below. *It is further ordered* that this proceeding is *terminated*.

List of Subjects in 47 CFR Parts 2 and 15

Communications equipment.

Rule Changes

Title 47 of the Code of Federal Regulations, part 2, is amended as follows:

PART 2—[AMENDED]

1. The authority citation for part 2 continues to read as follows:

Authority: Sections 4, 302, 303, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 302, 303, and 307, unless otherwise noted.

2. Section 2.1(c) is amended by adding the following definition in alphabetical order to read as follows:

§ 2.1 Terms and definitions.

* * * * *

(c) * * *

Pseudorandom sequence. A sequence of binary data which has some of the characteristics of a random sequence but also has some characteristics which are not random. It resembles a true random sequence in that the one bits and zero bits of the sequence are distributed randomly throughout every length, N, of the sequence and the total numbers of the one and zero bits in that length are approximately equal. It is not a true random sequence, however, because it consists of a fixed number (or length) of coded bits which repeats itself exactly whenever that length is exceeded, and because it is generated by a fixed algorithm from some fixed initial state.

* * * * *

3. Section 2.1033 is amended by adding a new paragraph (b)(11), to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(11) Applications for the certification of direct sequence spread spectrum transmitters under part 15 shall be accompanied by an exhibit demonstrating compliance with the processing gain provisions of § 15.257(e) of this chapter. Applications for the certification of frequency hopping transmitters under part 15 shall be accompanied by an exhibit describing compliance of the associated receiver or receivers with § 15.247(a)(1) of this chapter.

* * * * *

Title 47 of the Code of Federal Regulations, part 15 is amended as follows:

1. The authority citation for part 15 is revised to read as follows:

Authority: Sec. 4, 302, 303, 304, and 307 of the Communications Act of 1934, as amended, 47 U.S.C. sections 154, 302, 303, 304, and 307.

2. Section 15.203 is amended by revising the fourth sentence to read as follows:

§ 15.203 Antenna requirement.

* * * This requirement does not apply to carrier current devices or to devices operated under the provisions of §§ 15.211, 15.213, 15.217, 15.219, or 15.221.* * *

3. Section 15.247 is amended by revising paragraphs (a)(1), (b) and (c) and by adding new paragraphs (d), (e), and (f), to read as follows:

§ 15.247 Operation within the bands 902–928 MHz, 2400–2483.5 MHz, and 5725–5850 MHz.

(a) * * *

(1) Frequency hopping systems shall have hopping channel carrier frequencies separated by a minimum of 25 kHz or the 20 dB bandwidth of the hopping channel, whichever is greater. The system shall hop to channel frequencies that are selected at the system hopping rate from a pseudorandomly ordered list of hopping frequencies. Each frequency must be used equally on the average by each transmitter. The system receivers shall have input bandwidths that match the hopping channel bandwidths of their corresponding transmitters and shall shift frequencies in synchronization with the transmitted signals.

(i) Frequency hopping systems operating in the 902–928 MHz band shall use at least 50 hopping frequencies. The maximum allowed 20 dB bandwidth of the hopping channel is 500 kHz. The average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 20 second period.

(ii) Frequency hopping systems operating in the 2400–2483.5 MHz and 5725–5850 MHz bands shall use at least 75 hopping frequencies. The maximum 20 dB bandwidth of the hopping channel is 1 MHz. The average time of occupancy on any frequency shall not be greater than 0.4 seconds within a 30 second period.

* * * * *

(b) The maximum peak output power of the transmitter shall not exceed 1 Watt. If transmitting antennas of directional gain greater than 6 dBi are used, the power shall be reduced by the amount in dB that the directional gain of the antenna exceeds 6 dBi.

(c) If any 100 kHz bandwidth outside these frequency bands, the radio frequency power that is produced by the modulation products of the spreading sequence, the information sequence and the carrier frequency shall be either at least 20 dB below that in any 100 kHz bandwidth within the band that contains the highest level of the desired power or shall not exceed the general levels specified in § 15.209(a), whichever results in the lesser attenuation. All other emissions outside these bands shall not exceed the general radiated emission limits specified in § 15.209(a).

(d) For direct sequence systems, the transmitted power density averaged over any 1 second interval shall not be greater than 8 dBm in any 3 kHz bandwidth within these bands.

(e) The processing gain of a direct sequence system shall be at least 10 dB. The processing gain shall be determined from the ratio in dB of the signal to noise ratio with the system spreading code turned off to the signal to noise ratio with the system spreading code turned on, as measured at the demodulated output of the receiver.

(f) Hybrid systems that employ a combination of both direct sequence and frequency hopping modulation techniques shall achieve a processing gain of at least 17 dB from the combined techniques. The frequency hopping operation of the hybrid system, with the direct sequence operation turned off, shall have an average time of occupancy on any frequency not to exceed 0.4 seconds within a time period in seconds equal to the number of hopping frequencies employed multiplied by 0.4. The direct sequence operation of the hybrid system, with the frequency hopping operation turned off, shall comply with the power density requirements of paragraph (d) of this section.

* * * * *

Federal Communications Commission.

Donna Searcy,

Secretary.

[FR Doc. 90–16339 Filed 7–12–90; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 68

[CC Docket No. 87–124; FCC 90–133]

Telephones for Use by Hearing Impaired

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Hearing Aid Compatibility Act of 1988 amends section 710 of the Communications Act of 1934 to require, among other things, that nearly all telephones manufactured in, or imported for use in, the United States after August 16, 1989, be hearing aid compatible. Accordingly, the FCC issued its First Report and Order (Order) in the matter of Access to Telecommunications Equipment by the Hearing Impaired and Other Disabled Persons, CC Docket 87–124, FCC 89–137, 4 FCC Rcd 4596 (1989), changing language in portions of its rules (part 68 of title 47 of the Code of Federal Regulations, 47 CFR part 68) to conform to the statutory requirements. Several parties (collectively Petitioners) have filed a petition for partial reconsideration of the Order. In ruling on the petition, the FCC, on April 12, 1990, adopted a combined Memorandum Opinion and Order (MO&O) and Further Notice of Proposed Rulemaking (Further NPRM), FCC 90–133, CC Docket 87–124. This MO&O portion of that action amends the rules relating to "hearing aid compatible telephones," the effect being to fulfill the goals of Congress to expand access to telephone service for the hearing impaired and other disabled persons. A companion document relating to the Further NPRM portion of the item is published elsewhere in this issue.

EFFECTIVE DATE: September 11, 1990.

FOR FURTHER INFORMATION CONTACT: Jim Ferris, Domestic Services Branch, Common Carrier Bureau, (202) 634–1830.

SUPPLEMENTARY INFORMATION: This is a summary of the FCC's MO&O in CC Docket 87–124, FCC 90–133, adopted April 12, 1990, and released June 7, 1990. The complete document, as well as comments and reply comments, may be inspected and copied during the weekday hours (excluding Federal holidays) of 9 a.m. to 4:30 p.m. in the FCC's Public Reference room, room 239,

1919 M St., NW., Washington, DC; or transcripts may be purchased from the FCC's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

1. The Telecommunications for the Disabled Act of 1982, Public Law No. 97-410, 96 Stat. 2043, amended section 710 of the Communications Act of 1934, 47 U.S.C. 610, to require, among other things, that all telephones deemed "essential" be compatible with hearing aids. In response to that directive, the FCC on December 1, 1983, adopted rules designed to improve the availability of telecommunications equipment and services for the hearing impaired and other disabled persons. Report & Order, CC Docket 83-427, 49 FR 1352, modified, 49 FR 19666 (1984), further modified, Memorandum Opinion and Order, FCC 84-382 (released August 13, 1984).

2. After the rules had been in effect for about three years, the FCC initiated a proceeding to examine their effectiveness, particularly in the wake of recent technological and other changes. Notice of Inquiry in CC Docket 87-124, FCC 87-150, 2 FCC Rcd 2836, 52 FR 19198 (1987).

3. After careful analysis of all relevant and timely comments filed in response to the Notice of Inquiry, the FCC adopted a Notice Proposed Rulemaking (NPRM) and Further Notice of Inquiry (NOI) in CC Docket 87-124, FCC 88-123, 3 FCC Rcd 1982 (1988). In the NPRM portion, the FCC proposed to expand the definition of "essential" telephones to include all workplace telephones located in common areas and all credit card telephones. In the NOI portion, comment was sought on other issues involved in ensuring reasonable access to telephone service for the hearing impaired and other disabled persons.

4. On August 16, 1988, the President signed into law the Hearing Aid Compatibility Act of 1988 (HAC Act), Public Law No. 100-394, 102 Stat. 976 (1988), which amends section 710 of the Communications Act of 1934, as amended, 47 U.S.C. 610. The new law directs the FCC to "establish such regulations as are necessary to ensure reasonable access to telephone service by persons with impaired hearing," 47 U.S.C. 610. Moreover, the HAC Act requires that most telephones manufactured in, or imported for use in, the United States after August 16, 1989 be hearing aid compatible. In compliance with that directive, the FCC initiated a further proceeding which tailored proposed rule changes to the HAC Act. Further Notice of Proposed Rulemaking in CC Docket 87-124, FCC 89-55, 4 FCC Rcd 2250 (1989). The FCC thereafter adopted its Order which amended rule § 68.3, revised §§ 68.4 and 68.224, and added § 68.5 to part 68 of the rules. First Report and Order in CC Docket 87-124, FCC 89-137, 4 FCC Rcd 4596 (1989). In that Order, the FCC decided that because Congress had enacted a law requiring nearly all future telephones to be compatible with hearing aids, redefining "essential" telephones to include workplace telephones in common areas was unwarranted. With regard to credit card telephones, the FCC observed that under existing FCC rules, telephones must be HAC unless a HAC coin operated telephone is "nearby and readily available." 47 CFR 68.112(c)(1). It noted also that the HAC Act did not require it to expand the definition of "essential" telephones to include credit card-operated units.

Reconsideration

5. Petitioners seeking partial reconsideration of the Order content that the FCC erred, and ask that it reconsider its decision not to expand the definition of "essential" telephones to include workplace telephones in common areas and all credit card operated telephones, as initially proposed. Petitioners ask also that the FCC require that (1) all workplace telephones be hearing aid compatible, (2) all hospital, hotel and motel telephones be hearing aid compatible, and (3) that the minimal acceptable field strength of HAC telephones be increased.

6. Upon reconsidering the matter, the FCC finds that the Order did not fully consider certain requirements of the HAC Act consistent with potential benefits to the hearing impaired. In this MO&O, the FCC (1) grants petitioners' request that all credit card and common area telephones be made hearing aid compatible, and (2) grants petitioners' request that we go beyond the initial proposal to reach all workplace, hospital, hotel and motel telephones to the extent we propose to adopt a rule that would treat nearly all "essential" telephones as emergency (the effect being to advance the time at which these telephones will be HAC).

Final Regulatory Flexibility Analysis

Need and Purpose of the MO&O

The regulations affected by this MO&O were required by the Hearing Aid Compatibility Act of 1988. On reexamination of the rules adopted pursuant to that Act, the Commission finds that certain amendments are necessary to fulfill the goals established by Congress.

Ordering Clause for MO&O

It is ordered, pursuant to sections 1, 4(i) and 710 of the Communications Act, as amended, 47 U.S.C. 151, 154(i) and 610, that part 68 of the Commission's Rules and Regulations is amended as set forth below. The rule amendments adopted herein shall become effective 60 days after publication in the **Federal Register.**

It is further ordered, that the petition for partial reconsideration filed by Petitioners is granted in part, to the extent indicated herein, but is otherwise denied.

List of Subjects in 47 CFR Part 68

Hearing aid-compatible telephones; Hearing aid-compatibility; Telephone.

Memorandum Opinion and Order

Part 68 of the Commission's Rules and Regulations (Chapter 1 of title 47 of the Code of Federal Regulations, part 68) is amended as follows:

1. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

2. Section 68.4(a)(2) is revised to read as follows:

§ 68.4 Hearing aid-compatible telephones.

(a) * * *

(2) Unless otherwise stated and except as provided in § 68.112(c)(3), every telephone installed on or after January 1, 1985, which is subject to § 68.112 must be hearing aid-compatible.

* * * * *

3. Section 68.112 is amended by removing paragraph (c)(1); redesignating paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) as (1), (2), (3) and (4); adding paragraph (b)(4) and revising current paragraph (b)(1) and republishing the introductory text of paragraph (b) to read as follows:

§ 68.112 Hearing aid compatibility.

* * * * *

(b) *Emergency use telephones.* Telephones "provided for emergency use" include the following:

(1) Telephones in places where a person with impaired hearing might be isolated in an emergency, including, but not limited to, elevators, automobile, railroad or subway tunnels, highways and common areas of the workplace, including libraries, reception areas, and similar locations where employees are reasonably expected to congregate. Telephones located in common areas of the workplace are required to be hearing aid-compatible no later than May 1, 1991.

* * * * *

(4) All credit card operated telephones, whether located on public

property or in a semipublic location (e.g. drugstore, gas station, private club), unless a hearing aid-compatible coin-operated telephone providing similar services is nearby and readily available. However, regardless of coin-operated telephone availability, all credit card operated telephones must be made hearing aid compatible when replaced, or by May 1, 1991, which ever comes sooner.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90-16336 Filed 7-12-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

RIN 1018-AB16

Incidental Take of Marine Mammals; Definition of Citizen of the United States

AGENCIES: U.S. Fish and Wildlife Service, Interior; National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: Regulations are issued to modify the definition of " 'Citizen of the United States' and 'U.S. citizen' " in 50 CFR 18.27(c) and 228.3 by deleting the requirement that corporations and similar entities be controlled by individuals who are citizens of the United States. Limiting the definition to organizations "controlled by U.S. citizens" was incorporated without explanation when regulations implementing section 101(a)(5) of the Marine Mammal Protection Act were promulgated in 1982. Without this change, Federal revenues from offshore leasing bonus bids could be reduced by up to several hundred million dollars annually.

EFFECTIVE DATE: August 13, 1990.

FOR FURTHER INFORMATION CONTACT: Robert A. Peoples, Jr., Division of Fish and Wildlife Management Assistance, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop—820 Arlington Square, 18th and C Streets, NW., Washington, DC 20240, (703) 358-1718, or Patricia Montanio, Protected Species Management Division, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910, (301) 427-2322.

SUPPLEMENTARY INFORMATION: This revision of 50 CFR 18.27 and part 228 allows Letters of Authorization to take small numbers of marine mammals incidental to a specific activity pursuant to section 101(a)(5) of the Marine Mammal Protection Act of 1972 (Act, 16 U.S.C. *et seq.*) to be granted to corporations and similar entities organized under laws of the United States or any State law, even though not controlled by citizens of the United States. Limiting the definition to organizations "controlled by U.S. citizens" was incorporated without explanation when regulations implementing section 101(a)(5) of the Act were promulgated by the National Marine Fisheries Service in 1982. The requirement that corporations and similar entities be organized under United States or any State law, and therefore subject to United States jurisdiction, will be retained to ensure these entities are accountable for their actions and to maintain consistency with the Act.

The Act prohibits all taking of marine mammals, including harassment, unless specifically allowed under provisions of the Act. In 1981, the Act was amended to add section 101(a)(5) authorizing the Secretaries of Commerce and the Interior to allow "citizens of the United States" to engage in specified activities (other than commercial fishing) within specific geographic regions during periods of not more than 5 consecutive years that result in the incidental, but not intentional, taking of small numbers of non-depleted marine mammals.

In early 1982, the National Marine Fisheries Service proposed "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR part 228) to implement the new provisions of the Act (47 FR 9027). In response to comments, a definition of " 'Citizen of the United States' and 'U.S. citizen' " was added without explanation or opportunity for comment in the final regulations published in May 1982 (47 FR 21248). "Regulations Governing Small Takes of Marine Mammals Incidental to Specified Activities" (50 CFR 18.27) virtually identical to those adopted by the National Marine Fisheries Service were promulgated by the U.S. Fish and Wildlife Service in July 1983 (48 FR 31220).

Both sets of regulations established standards and procedures for determining whether the taking of small numbers of non-depleted marine mammals incidental to specified activities (other than commercial fishing) should be allowed and included the following definition:

> "Citizens of the United States" and "U.S. citizens" means individual U.S. citizens or any partnership, corporation, association, or similar entity if it is organized under the laws of the United States or any governmental unit defined in 16 U.S.C. 1362(13) and controlled by individuals who are U.S. citizens. U.S. Federal, State, and local government agencies shall also constitute citizens of the United States for purposes of this section.

Under this definition, foreign controlled corporations and similar entities, including their subsidiaries, cannot obtain Letters of Authorization necessary to proceed with specific activities that may result in the incidental taking of marine mammals under United States jurisdiction.

The U.S. Fish and Wildlife Service and the National Marine Fisheries Service jointly proposed to amend the incidental take framework regulations on March 15, 1988 (53 FR 8473). That rule, which did not address the definition of citizen of the United States, was proposed to implement amendments to section 101(a)(5) of the Act adopted in 1986. The 1986 amendments authorized the issuance of specific regulations for the incidental take of depleted, as well as non-depleted, marine mammals.

In commenting on the proposed rule, the American Petroleum Institute, Minerals Management Service and several other entities stated that the existing definition of citizen of the United States as applied to a corporation is unduly restrictive since it requires control by American citizens. The commenters also noted that the definition of citizen of the United States in the marine mammal incidental take regulations is inconsistent with regulatory practice under the Outer Continental Shelf Lands Act which requires only that a corporation be organized under the laws of the United States (i.e., be subject to United States jurisdiction). They believe that the Congress intended that all holders of offshore leases be permitted to receive Letters of Authorization under the Act and, therefore, that the definition in the marine mammal regulations should be consistent with Outer Continental Shelf Lands Act regulatory practice.