

Sunshine Act Meetings

Federal Register

Vol. 56, No. 119

Thursday, June 20, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 25, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employees.

DATE AND TIME: Thursday, June 27, 1991, 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Presidential Primary Matching Fund

Submission and Certification Procedures: Notice of Proposed Rulemaking. (Continued from meeting of June 19, 1991, if necessary). Proposed Letter to Honorable Nicholas F. Brady. (Continued from June 19, 1991, if necessary).

Presidential Primary and General Election Regulations: Final Rules and Explanation and Justification. (Continued from June 19, 1991, if necessary).

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Press Officer.
Telephone: (202) 376-3155.

Delores Harris,

Administrative Assistant, Office of the Secretariat.

[FR Doc. 91-14796 Filed 6-18-91; 11:15 am]

BILLING CODE 6715-01-M

FEDERAL MARITIME COMMISSION

TIME AND DATE: 10:00 a.m., June 26, 1991.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, DC 20573-0001.

STATUS: Part of the meeting will be open to the public.

The rest of the meeting will be closed to the public.

MATTER(S) TO BE CONSIDERED:

Portion Open to the Public

1. Report to the Commission in Fact Finding Investigation No. 19—Passenger Vessel Financial Responsibility Requirements.

Portion Closed to the Public

1. Report on Laws, Rules, Regulations, Policies and Practices of the People's Republic of China Affecting Shipping in the United States/PRC Trade.

CONTACT PERSON FOR MORE

INFORMATION: Joseph C. Polking, Secretary, (202) 523-5725

Joseph C. Polking,

Secretary.

[FR Doc. 91-14868 Filed 6-18-91; 3:31 pm]

BILLING CODE 6730-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday June 26, 1991.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 18, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-14867 Filed 6-18-91; 3:31 pm]

BILLING CODE 6210-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, July 24, 1991.

PLACE: Commission Conference Room, 1333 H Street, N.W., Washington, D.C., 20268-0001.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss and vote on the Postal Rate Commission Budget for FY 1992.

CONTACT PERSON FOR MORE

INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, N.W., Washington, D.C. 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 91-14869 Filed 6-18-91; 3:31 pm]

BILLING CODE 7710-FW-M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF

PREVIOUS ANNOUNCEMENT: [56 FR 27998, June 18, 1991].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W., Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 13, 1991.

CHANGE IN THE MEETING: Additional meeting.

The following item will be considered at a closed meeting on Tuesday, June 18, 1991, at 5:30 p.m.:

Opinion.

Commissioner Fleischman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Edward Pittman at (202) 272-2400.

Dated: June 18, 1991.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-14885 Filed 6-18-91; 4:04 pm]

BILLING CODE 8010-01-M

Federal Register

Thursday
June 20, 1991

Part II

Department of the Interior

Surface Mining Reclamation and
Enforcement Office

30 CFR Part 722, et al.

Surface Coal Mining and Reclamation
Operations; Initial Regulatory Program
and Permanent Regulatory Program;
Service of Documents; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 722, 723, 724, 843, 845, and 846

RIN 1029-AB41

Surface Coal Mining and Reclamation Operations; Initial Regulatory Program and Permanent Regulatory Program; Service of Documents

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) is revising its Initial and Permanent Regulatory Program rules governing service of process to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty and individual civil penalty assessments.

EFFECTIVE DATE: July 22, 1991.

FOR FURTHER INFORMATION CONTACT: George M. Stone, Jr., Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240; telephone (202) 208-2550 (Commercial) or 268-2550 (FTS).

SUPPLEMENTARY INFORMATION:

I. Background

II. Discussion of Final Rule and Comments

III. Procedural Matters

I. Background

Section 521 of the Act provides authority to the Secretary of the Interior and his authorized representatives to issue citations for violations of the Act. The regulations governing the service of process for notices and orders are found at 30 CFR parts 722 and 843. Part 722 contains the Initial Program regulations which were promulgated on December 13, 1977 (42 FR 62639). Part 843 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR 14902), and subsequently revised on August 16, 1982 (47 FR 35620). The regulations governing service of process of proposed civil penalty assessments are found at 30 CFR parts 723 and 845. Part 723 contains the Initial Program regulations which were first promulgated on December 13, 1977 (42 FR 62639) and subsequently revised on September 4, 1980 (45 FR 58780). Part 845 contains the Permanent Program regulations which were first promulgated on March 13, 1979 (44 FR

14902) and subsequently revised on August 16, 1982 (47 FR 35620). The regulations governing service of process of proposed individual civil penalty assessments are found at 30 CFR parts 724 and 846. Parts 724 and 846 contain the Initial and Permanent Program regulations respectively which were promulgated on February 8, 1988 (53 FR 3663).

On September 27, 1990 (55 FR 39580), OSM proposed two sets of revisions to its rules.¹ The first set of revisions at 30 CFR 723.13(b)/845.13(b), 723.15(b)/845.15(b), and 843.14(a) were proposed in order to provide for consistent phraseology within each of the rules by replacing the term "permittee" with the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued".

The second set of revisions at 30 CFR 722.14(a)/843.14(a), 723.17(b)/845.17(b) and 724.17(c)/846.17(c) were proposed in order to provide increased flexibility within each rule and uniformity among the rules regarding the methods of acceptable service of process. The previous versions of these rules all varied in the methods by which their service of process was performed. Sections 722.14/843.14 provided for service by personal delivery or by certified mail. Sections 723.17/845.17 provided for service by only certified mail. Sections 724.17/846.17 provided that service would be sufficient if it satisfies Rule 4 of the Federal Rules of Civil Procedures for service of a summons and complaint (hereinafter Rule 4).

OSM solicited public comments on the proposed revisions. The comment period closed November 27, 1990 with three commenters responding. No request was received for a public hearing and none was held.

After careful review of the comments received, OSM has decided to withdraw from this rulemaking the first set of proposed revisions relating to consistent phraseology. OSM is adopting as final rules both the second set of proposed revisions relating to methods for service of process as well as conforming changes to the service rules relating to refusal of service. These conforming changes will be discussed below at II.B.1.

¹ For ease of reference, the respective Initial Program and Permanent Program sections are cited together in this preamble. For instance, references to 30 CFR 723.13(b) and 845.13(b) will be cited as 30 CFR 723.13(b)/845.13(b).

II. Discussion of Final Rule and Comments

A. Withdrawal of Proposed Revisions to §§ 723.13(b)(3)(ii)(B)/845.13(b)(3)(ii)(B), 723.15(b)(2)/845.15(b)(2), and 843.14(a)(2)(2)—Consistent Phraseology

OSM proposed revisions to these sections which would have changed the term "permittee" to either "person to whom the notice or order was issued" or "person to whom it (the notice or order) was issued." The intent of such changes was to make consistent the phraseology within each section and to more accurately identify those parties with actual on-site capacity to prevent or abate violations.

Each of the three commenters expressed concerns over the proposed revisions. The fundamental concern of two commenters was that the proposed rule improperly expanded the class of persons who may be assessed civil penalties beyond permittees to include operators as well as any other person to whom a notice or order might be issued. One of these commenters stated that such assessments would be contrary to both: (a) The provisions of Section 518(a) of the Act which limits civil penalties to violations committed by permittees, and (b) the principle that civil penalties cannot be assessed against a class of individuals not already subject to enforcement under Section 521(a) which speaks only of permittee violations of permit conditions or the Act.

A related concern was that civil penalty assessments against permittees, operators, and other mine-site parties would allow for "double recover" of penalties, for which no statutory authority was seen to exist.

The same commenter also asserted that OSM had cited no credible evidence of the need for the rulemaking and had failed to document any specific enforcement problem arising from the implementation of the current regulations. The commenter stated that if the purpose of the rule was to ensnare "wildcat" or "contract" operators, OSM had failed to provide any analysis to show why the term "permittee," as defined by 30 CFR 701.5, had not proven sufficiently broad to implement the provisions of Section 518 effectively.

Conversely, another commenter stated that the proposed revisions would appear to authorize a violation or civil penalty assessment not to be issued against a permittee, thereby conflicting with section 521(a) of the Act which holds permittees ultimately responsible for violations on surface coal mining operations.

The final commenter was concerned that the proposed revisions would adversely affect the individual civil penalty protections provided by section 518(f) of the Act and "refine(d)" by the decisions in *United States v. Dix Fork Coal Co.*, 692 F.2d 436 (6th Cir. 1982), and *United States v. Daugherty*, 599 F. Supp. 671 (1984).

In response to the comment that no compelling regulatory need was presented in the proposed rulemaking for replacing the term "permittee" with either the phrase "person to whom the notice or order was issued" or "person to whom it (the notice or order) is issued," OSM would stress that these revisions were only intended to make consistent the phraseology within the affected sections and to more accurately identify those parties with actual on-site capacity to prevent or correct violations. Nonetheless, because of the commenter concerns engendered by the proposed revisions, OSM has decided to withdraw them from the current rulemaking. The longstanding references to "permittee" in the cited sections will remain as they were.

OSM wishes to make clear that the withdrawn revisions were never intended as a means of changing the scope of the agency's enforcement authority. The scope of that authority is established by the enforcement provisions of section 521 of the Act and its implementing regulations at 30 CFR parts 722/843, and not the penalty provisions of section 518 of the Act and its implementing regulations at 30 CFR parts 723/845. It is section 521 and 30 CFR parts 722/843, not section 518 and parts 723/845, which define the class of persons against whom enforcement actions could be taken and, therefore, those who would be subject to civil penalties. Accordingly, the withdrawn revisions to 30 CFR parts 723/845 would have neither limited nor expanded the class of affected persons as asserted by commenters. The withdrawn revisions to 30 CFR part 843 dealt with alternative service of process and would also have neither limited nor expanded the class of persons subject to civil penalty assessments.

With regard to OSM's enforcement scheme, OSM will continue to issue notices of violation under 30 CFR 722.11-12/843.12 to the permittee and any other persons responsible for compliance with performance standards applicable to the operation. As it has in the past, OSM will cite operators when they are deemed responsible for operations. Such has always been the case, for example, with "wildcat" operations and those operations abusing

the two-acre exemption. In those instances when both a permittee and an operator are cited for a single violation, it is the longstanding policy of OSM that both parties are jointly and severally liable for the penalty amount associated with that violation. Under such a policy, there would not be a "double recovery" of the penalty amount.

OSM also wishes to make clear that the withdrawn revisions were never intended to adversely affect the individual civil penalty provisions established by section 518(f) of the Act. The individual civil penalty provisions of section 518(f) are implemented at 30 CFR parts 724/846. Proposed revisions to 30 CFR part 843 and 30 CFR parts 723/845 would not, therefore, have affected those provisions. Neither would the revisions have conflicted with the court decisions cited by the commenter.

B. Sections 722.14/843.14, 723.17/845.17 and 724.17/846.17

1. Service of Process

Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 are adopted as proposed to provide for increased flexibility and uniformity in the methods of service of process for notices of violation, cessation and show cause orders, and proposed civil penalty assessments. Final 30 CFR 722.14/843.14, 723.17/845.17, and 724.17/846.17 combine all of the methods of service of the previous rules to allow service under each section by either personal delivery, certified mail, or any other alternative means consistent with rule 4 of the Federal Rules of Civil Procedure for service of summons and complaint. As will be discussed below, these final rules also include conforming changes to their provisions governing refusal of service.

Three commenters submitted comments on the proposed rule. One commenter stated that the proposed revision to 30 CFR 843.14(a)(2) allowing for alternative service on "any person" did not guarantee that the permittee would be notified in time to correct the violation or request administrative review before the Department of the Interior (emphasis added).

OSM does not agree with this conclusion. The revision to 30 CFR 843.14(a)(2) does not allow for alternative service on any person, but rather on "the person to whom it [the notice or order] is issued or his or her designated agent." Such language is consistent both with that of 30 CFR 843.14(a)(1) and with its Initial Program counterpart at 30 CFR 722.14(a)(2). Moreover, 30 CFR 722.14(a)/843.14(a) both require that citations be served

"promptly"; and under 43 CFR 4.1162(a), a permittee's time for requesting administrative review does not begin to run until service has been effected. Thus, the commenter's concern about delay in service is unfounded.

Another commenter questioned whether the use of "regular" mail without a record of receipt might prove problematic in demonstrating proof of service. Presumably the commenter is referring to the service by first-class mail allowed by Section (c)(1)(C)(ii) of rule 4, since the other service by mail prescribed in this rulemaking is by certified mail.

The use of first-class mail will not create a problem in demonstrating proof of service. Section (c)(2)(C)(ii) of rule 4 requires that an acknowledgement form shall be sent with the service of process. This acknowledgement form is to be returned within 20 days after the date of mailing. If no acknowledgement of service is received by the sender within 20 days after the date of mailing, the above-referenced section specifies that service shall be by the personal delivery provisions of subsections (d)(1) and (d)(3) of rule 4.

A commenter asserted that service of process prescribed under the proposed rules should be limited to methods available under rule 4 so as to both prevent duplication between the "personal service" provided by the prior rules and the "personal service" of rule 4 and to avoid confusion as to the limits of permissible service.

OSM does not agree with the commenter's proposal. Its effect would be to limit the service of process in final 30 CFR parts 722/843, 723/845, and 724/846 to rule 4 procedures previously provided only in part 724/846. Such reliance upon rule 4 procedures would have foreclosed both service certified mail and the personal service previously provided by the parts 722/843 and 723/845.

The personal service provided by the prior rules is not duplicative of rule 4 personal service as asserted by the commenter. For example, under the procedures previously employed by OSM under 30 CFR 722.14(a)(2), and 843.14(a)(2), the personal service of a notice or order issued to a corporate permittee was considered complete, for instance, upon tender of such notice or order to a secretary working in the office of the permittee. Under section (d)(3) of rule 4, personal service to a corporate permittee would be complete upon tender of the notice or order to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of

process. The commenter's proposal limiting service to rule 4 procedures would have required, therefore, the elimination of the personal and certified mail methods of service of process available under prior rules. Such a result works against the flexibility of service intended by this rulemaking.

OSM disagrees with the commenter's contention that this rulemaking will cause confusion as to the limits of permissible service because it allows for service of process by either personal service, certified mail or any other alternative method consistent with rule 4. Each of these methods of service is taken from a prior rule with established limits of permissible service. Methods of service which individually did not prove confusing should not prove confusing when provided for in the alternative.

2. Refusal of Service

In the process of reviewing the proposed rules and comments thereto, OSM determined that conforming changes were also needed to the provisions dealing with refusal of service to provide both consistency within and uniformity among the respective service rules.

Three sets of rules are involved in these conforming changes. Two sets, at 30 CFR 722.14(a)(2)/843.14(a)(2) and 723.17(b)/845.17(b)(1), already have provisions governing the refusal of tendered service documents. These are longstanding provisions of both the Initial and Permanent Program rules and are consistent with the line of cases, including *U.S. v. Pryor Bolton*, 781 F.2d 528 (6th Cir. 1985), which held adequate service to exist even where there was refusal to accept delivery. Conforming changes are needed to the refusal provisions of these two sets of rules to reflect the previously discussed changes made to their methods of service of process. The third set of rules at 30 CFR 724.17(c)/846.17(c) did not have provisions governing the refusal of tendered service documents. Refusal provisions are needed to conform these rules to the other service rules which do contain such provisions.

The last sentence of both previous and proposed 30 CFR 722.14(a)(2)/843.14(a)(2) provided that "[s]ervice shall be complete upon tender of the notice or order or of the mail and shall not be deemed incomplete because of refusal to accept." Under this final rule, it will read "[s]ervice shall be complete upon tender of the notice or order or of the *certified* mail and shall not be deemed incomplete because of refusal to accept." (Emphasis added.) The underlined word "certified" is added not as a substantive change but rather to

conform the quoted passage to other provisions of both prior and proposed Sections 722.14(a)(2)/843.14(a)(2) which provided that service shall be by "certified mail". Under both these rules, refusal of tendered mail constituted service. The "certified" qualifier in the final rules will also serve to distinguish that type of mail service from the First Class mail service now allowed under final Sections 723.14(a)(2)/845.14(a)(2) through alternative Rule 4 procedures. The refusal of First Class mail is not covered by the final rule.

Previous 30 CFR 723.17(b)/845.17(b)(1) provided that "[i]f the mail is tendered * * * and he or she refuses to accept delivery of or to collect such mail, the requirement of this paragraph shall be deemed to have been complied with upon such tender." Final 723.17(b)/845.17(b)(1) will provide that "[i]f a copy of the proposed assessment and work sheet or certified mail is tendered * * * and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender." (Emphasis added.) The underlined phrase "a copy of the proposed assessment and work sheet or certified mail" is added to conform the quoted passage to other provisions of proposed and final 30 CFR 724.17(b) and 845.17(b) which provide that "[t]he Office shall serve a copy of the proposed assessment and of the work sheet * * * on the person to whom the notice or order was issued, by certified mail, or by an alternative means consistent with * * * Rule 4 of the Federal Rules of Civil Procedure * * *". Service of the copy of the proposed assessment and worksheet was not expressly provided for in the refusal of tender sections of the previous rules.

The "certified" qualifier will again serve to distinguish that type of mail service comprehended by the refusal of service provisions of §§ 723.17(b) and 845.17(b)(1) from the First Class mail service also allowed by the final rules under alternative rule 4 procedures. The word "documents" replaces the word "mail" found in both the proposed and final rules and reflects that either a copy of the proposed assessment and work sheet or the certified mail containing the assessment documents may be tendered under specified circumstances to complete service of process.

The last sentence of proposed 30 CFR 724.17(c)/846.17(c) will also be revised in the final rule to more precisely conform to the refusal provisions of the other service rules. The previous version of 30 CFR 724.17(c)/846.17(c) did not contain a refusal of service provision. Proposed 724.17(c)/846.17(c) provided

that "[i]f the mail is tendered at the individual's dwelling or usual place of abode with some person of suitable age and discretion then residing therein and that person refuses to accept delivery, the requirements of this paragraph shall be deemed to have been complied with upon such tender." This passage depicts a scenario not found in the other service rules. Final 724.17(c)/846.17(c) will instead state that "[s]ervice shall be complete upon tender of the notice of proposed assessment and included information or the certified mail and shall not be deemed incomplete because of refusal to accept." This language is modeled on the refusal of service provisions of final 30 CFR 722.14(a)(2)/843.14(a)(2). It is consistent with the refusal of service provisions of final 30 CFR 723.17(b) and 843.17(b)(1), and will contribute to increased uniformity of language among the service rules. Tender of the documents at a person's dwelling or usual place of abode to a person of suitable age and discretion then residing therein will still suffice where such service is authorized by Rule 4(d)(1).

III. Procedural Matters

Effect of the Rule in Federal Program States and on Indian Lands

The rule will apply, through cross-referencing, to the following States with Federal programs: California, Georgia, Idaho, Massachusetts, Michigan, North Carolina, Oregon, Rhode Island, South Dakota, Tennessee, and Washington. The Federal programs for these States appear at 30 CFR parts 905, 910, 912, 921, 922, 933, 937, 939, 941, 942, and 947, respectively. The rule will also apply through cross-referencing to Indian lands under the Federal program for Indian lands as provided in 30 CFR part 750. No comments were received concerning unique conditions in any of these States or on Indian lands which would require changes to the national rules as specific amendments to any or all of the Federal programs.

Effect of the Rule in States With Primacy

Section 518(i) of the Act and the Federal regulations at 30 CFR 840.13(c) require approved State programs to contain procedures the same or similar to the provisions of section 518 of the Act and consistent with those of 30 CFR parts 843, 845, and 846. States which desire more flexibility in their method of service of documents may desire to amend their programs but are not bound to do so.

Federal Paperwork Reduction Act

This rule does not contain collections of information which require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Executive Order 12291

The Department of the Interior has examined the rule according to the criteria of Executive Order 12291 (February 17, 1981) and has determined that it is not major and does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Department of the Interior has also determined, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that the rule will not have a significant economic impact on a substantial number of small entities. The rule merely allows for greater flexibility of service of documents.

National Environmental Policy Act

This rule has been reviewed by OSM and it has been determined to be categorically excluded from the National Environmental Policy Act (NEPA) process in accordance with the Departmental Manual (516 DM 2, Appendix 1.10) and the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR 1507.3).

Author

The principal author of this rule is John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW., Washington, DC 20240; Telephone: (202) 208-2550 (Commercial) or 268-2550 (FTS).

List of Subjects**30 CFR Part 722**

Law enforcement, Public health, Safety, Surface mining, Underground mining.

30 CFR Part 723

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 724

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

30 CFR Part 843

Administrative practice and procedure, Law enforcement, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 845

Administrative practice and procedures, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR Part 846

Administrative practice and procedure, Penalties, Surface mining, Underground mining.

Accordingly, 30 CFR parts 722, 723, 724, 843, 845, and 846 are amended as set forth below:

Dated: May 14, 1991.

Dave O'Neal,

Assistant Secretary, Land and Minerals Management.

Subchapter B—Initial Program Regulations**PART 722—ENFORCEMENT PROCEDURES**

1. The authority citation for Part 722 continues to read as follows:

Authority: Secs. 201, 501, and 502, Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201).

2. Section 722.14 is amended by revising paragraph (a)(2) to read as follows:

§ 722.14 Service of notices of violation, cessation orders, and orders to show cause.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or order by certified mail or by hand to the person to whom it is issued or his or her designated agent, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

* * * * *

PART 723—CIVIL PENALTIES

3. The authority citation for part 723 continues to read as follows:

Authority: Surface Mining Control and Reclamation Act of 1977, Secs. 201, 501, 518 (30 U.S.C. 1211, 1251, 1268) and Pub. L. 100-34.

3a. Section 723.17 is amended by revising paragraph (b) to read as follows:

§ 723.17 Procedures for assessment of civil penalties.

(a) * * * * *

(b) The Office shall serve a copy of the proposed assessment and of the work sheet showing the computation of

the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under Rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order. If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person set forth in the sign required under 30 CFR 715.12(b) or at any address at which that person is in fact located, and he or she refuses to accept delivery or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * * * *

PART 724—INDIVIDUAL CIVIL PENALTIES

4. The authority citation for part 724 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); and Pub. L. 100-34.

5. Section 724.17 is amended by revising paragraph (c) to read as follows:

§ 724.17 Procedure for assessment of individual civil penalty.

* * * * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

Subchapter L—Permanent Program Inspection and Enforcement Procedures**PART 843—FEDERAL ENFORCEMENT**

6. The authority citation for part 843 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*, as amended; and Pub. L. 100-34.

7. Section 843.14 is amended by revising paragraph (a)(2) to read as follows:

§ 843.14 Service of notices of violation, cessation orders, and show cause orders.

(a) * * *

(2) As an alternative to paragraph (a)(1) of this section, service may be made by sending a copy of the notice or

order by certified mail or by hand to the permittee or his or her designated agent, or by any means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice or order or of the certified mail and shall not be deemed incomplete because of refusal to accept.

* * *

PART 845—CIVIL PENALTIES

8. The authority citation for part 845 continues to read as follows:

Authority: Pub. L. 95-87, 30 U.S.C. 1201 *et seq.*, Pub. L. 100-202, and Pub. L. 100-446.

9. Section 845.17 is amended by revising paragraphs (b) introductory text and (b)(1) to read as follows:

§ 845.17 Procedures for assessment of civil penalties.

* * *

(b) The Office shall serve a copy of

the proposed assessment and of the work sheet showing the computation of the proposed assessment on the person to whom the notice or order was issued, by certified mail, or by any alternative means consistent with the rules governing service of a summons or complaint under rule 4 of the Federal Rules of Civil Procedure, within 30 days of the issuance of the notice or order.

(b)(1) If a copy of the proposed assessment and work sheet or the certified mail is tendered at the address of that person required under 30 CFR 816.11, or at any address at which that person is in fact located, and he or she refuses to accept delivery of or to collect such documents, the requirements of this paragraph shall be deemed to have been complied with upon such tender.

* * *

PART 846—INDIVIDUAL CIVIL PENALTIES

10. The authority citation for part 846 continues to read as follows:

Authority: Pub. L. 95-87, 91 Stat. 445 (30 U.S.C. 1201 *et seq.*); Pub. L. 100-34.

11. Section 846.17 is amended by revising paragraph (c) to read as follows:

§ 846.17 Procedure for assessment of individual civil penalty.

* * *

(c) *Service.* For purposes of this section, service shall be performed on the individual to be assessed an individual civil penalty, by certified mail, or by any alternative means consistent with the rules governing service of a summons and complaint under rule 4 of the Federal Rules of Civil Procedure. Service shall be complete upon tender of the notice of proposed assessment and included information or of the certified mail and shall not be deemed incomplete because of refusal to accept.

[FR Doc. 91-14555 Filed 6-19-91; 8:45 am]

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Federal Register

Thursday
June 20, 1991

Part III

Department of Transportation

Coast Guard

33 CFR Part 1

46 CFR Parts 10 and 12

User Fees for Marine Licensing,
Certification of Registry and Merchant
Mariner Documentation; Proposed Rule

DEPARTMENT OF TRANSPORTATION**Coast Guard****33 CFR Part 1****46 CFR Parts 10 and 12****[CGD 91-002]****RIN 2115-AD72****User Fees for Marine Licensing, Certification of Registry and Merchant Mariner Documentation****AGENCY:** Coast Guard, DOT.**ACTION:** Notice of proposed rulemaking.

SUMMARY: In response to recent statutory requirements, the Coast Guard proposes to establish user fees for Coast Guard services related to merchant marine licenses, certificates of registry, and merchant mariner documents. The fees in this proposal are based on the way the Coast Guard presently conducts the merchant marine licensing and documentation activities and current costs of providing these Coast Guard services.

DATES: Comments must be received on or before August 5, 1991.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA-2/3406) (CGD 91-002), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or may be delivered to room 3406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters.

FOR FURTHER INFORMATION CONTACT: LT J.K. Gillespie, Planning Division (G-MP-1), Office of Marine Safety, Security, and Environmental Protection, (202) 267-6923.

SUPPLEMENTARY INFORMATION:**Request for Comments**

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (CGD 91-002) and the specific section of this proposal to which each comment applies, and give a reason for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Marine Safety Council at the address under "ADDRESSES." If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are LT J.K. Gillespie, Project Manager, and C.G. Green, Project Counsel, Office of Chief Counsel.

Background and Purpose

The Omnibus Budget Reconciliation Act of 1990 (the Act) amended section 2110 of title 46, United States Code, to remove long-standing prohibitions against collecting certain user fees. Although, prior to amendment by the Act, section 2110 did not prohibit the Coast Guard from charging fees for merchant mariner documentation services, it did prohibit fees for "licensing of masters, mates, pilots, and engineers." The Coast Guard did not, therefore, exercise its authority to charge only one group of mariners out of all those receiving these Coast Guard services.

Section 2110 now requires the establishment and collection of user fees for Coast Guard services provided under subtitle II of title 46, United States Code. The Coast Guard must establish these fees in accordance with the criteria in section 9701 of title 31, United States Code (General User Fee Statute). The fees would not affect current Coast Guard appropriations. They would "be deposited in the general fund of the U.S. Treasury as offsetting receipts of the department in which the Coast Guard is operating and ascribed to Coast Guard activities."

Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval are program areas in subtitle II for which fees must be established. This proposal would establish user fees only for Coast Guard services relating to the issuance of merchant marine licenses, certificates of registry, and merchant mariner documents. Fees for other Coast Guard services in subtitle II of title 46, United States Code, will be established in separate rulemakings.

General Discussion of the Proposal

Section 2110 requires direct user fees be established for services provided by the Coast Guard under subtitle II of title 46, United States Code. To comply with this mandate, the Coast Guard proposes to amend 46 CFR parts 10 and 12 to establish user fees for specific activities conducted when individuals obtain a license, certificate of registry, or merchant mariner document.

Section 2110 allows adjustments of fees to accommodate changes in the cost of providing the services. The proposed fees are based on current costs and the way the Coast Guard presently conducts the merchant marine licensing and documentation program. The Coast Guard intends to review the fees annually to determine if adjustments or changes to the fees are necessary. The Coast Guard will revise these proposed fees when costs change because of inflation, deflation, or changes in the way the services are provided. New statutes, such as the Oil Pollution Act of 1990, may require the Coast Guard to establish new regulations or make substantive amendments to existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Section 2110 provides that the fee for a service may also include the cost of collecting the fee. The Coast Guard has not yet determined collection procedures for the proposed fees. However, the Coast Guard anticipates that, at a minimum, collecting fees at Regional Examination Centers (REC) will be needed because many licensing services are provided to "walk-in" applicants. This proposal includes estimated collection costs in the fees.

Section 2110 also provides authority to recover "appropriate collection and enforcement costs associated with delinquent payments of the fees." The Coast Guard may employ any government agency (Federal, State, or local) or a private enterprise or business (e.g., collection agency) to recover delinquent fees or civil penalty charges. Since the Coast Guard proposes to collect fees prior to the services being provided, delinquent payments should not occur in most cases.

Section 2110 allows exemption of certain persons from fees, "if in the public interest." While the Coast Guard does not now propose to exercise this authority, we are interested in comments on exemptions that could be in the public interest. One example might be for persons who, while not actively employed aboard vessels, choose to participate in a merchant

marine reserve program and, therefore, would be required to hold a marine license, certificate of registry, or merchant mariner document. Is it in the public interest to have a "pool" of qualified persons available during times of national emergency, and, if so, should exemptions from the proposed fees be established to encourage participation in a merchant marine reserve program? The public is invited to comment on this or similar reasons to establish "public interest" exemptions.

Discussion of fees. In developing the proposed fees, the Coast Guard reviewed all the specific licensing and merchant mariner documentation activities in 46 CFR parts 10 and 12. The process of obtaining a license or certificate of registry under part 10 and of obtaining a merchant mariner document under part 12 are generally similar in that there are three identifiable phases in the overall process: Evaluation of the application, examination of the applicant, and issuance of the license or document. The

Coast Guard chose to separate the process into these three phases for establishing user fees, as some applicants either do not complete the entire process or must repeat certain phases (e.g., examination). The Coast Guard, therefore, proposes that each fee be paid just prior to receiving the service, thus ensuring that applicants are not charged for a service not provided, but that they will be charged appropriate additional fees when a phase is repeated. We have summarized the proposed fees in Figure I.

FIGURE I.—PROPOSED USER FEES FOR MARINE LICENSES, CERTIFICATES OF REGISTRY, AND MERCHANT MARINER DOCUMENT ACTIVITIES

Category	Evaluation fee ¹	Examination fee	Issuance fee	Total ²
License				
Upper Level.....	\$70 (\$17)	³ \$225	\$35	\$330 (\$347)
Lower Level.....	65 (17)	³ 80	35	180 (197)
Radio Officer.....	45 (17)	—	35	80 (97)
Renewals or Endorsements.....	45	55	⁴ 35	135
Certificate of Registry				
Chief Purser, Purser, and Senior Assistant Purser.....	45 (17)	—	35	80 (97)
Junior Assistant Purser, Medical Doctor, and Professional Nurse.....	— (17)	—	35	35 (52)
Merchant Mariner Document (MMD)				
MMD Endorsed with Qualified Rating.....	60 (17)	40	35	135 (152)
MMD without Qualified Rating.....	— (17)	—	35	35 (52)
Other Fees				
Duplicate or Replacement of License, Certificate of Registry, or MMD ⁵	—	—	35	35

¹ An additional \$17 charge for an FBI criminal record check would be added to the evaluation fee if the application is for an original license, original certificate of registry, or original merchant mariner document.

² Maximum totals—without and with an FBI criminal record check.

³ For limited examinations administered for certain licenses, the proposed examination fee is \$55.

⁴ This fee also applies to issuance of a renewal with a continuity endorsement issued under § 10.209(g).

⁵ There is presently a \$10 fee in 33 CFR subpart 1.25 for a duplicate continuous discharge book or copies of certificates of discharge. The Coast Guard proposes to move this fee from 33 CFR subpart 1.25 to a section in 46 CFR part 12.

The proposed fees are based on the cost to the Coast Guard of providing the services. The Coast Guard incurs costs each time an individual is provided a service, regardless of the end result achieved by the individual. Thus, an individual who fails an examination and allowable retests must repeat the examination phase and pay another examination fee.

In 46 CFR parts 10 and 12, the Coast Guard proposes to define the term "evaluation" to make clear that the evaluation phase for which an applicant pays a fee is more than a review of an application form. The evaluation phase begins when the Coast Guard receives the application package. It includes establishing an individual's file, completing paperwork for a Federal Bureau of Investigation (FBI) criminal record check when required, searching through Coast Guard and other government records, making verifications, and conducting follow up phone calls. The evaluation phase is completed when the Coast Guard determines whether or not an applicant meets all the prerequisite requirements.

The evaluation fee would be paid when the individual submits the application package to the Coast Guard.

The next phase is examination. The Coast Guard does not propose to define the term "examination" since its use should be clearly understood within the existing and proposed regulations. The examination phase involves scheduling, proctoring, and grading examination sections, and notifying applicants of results.

The examination fee would be paid when an applicant reserves a place on a scheduled test date for examination sections administered at Regional Examination Centers (REC), or administered at other locations by Coast Guard traveling examination teams. This fee covers the administration of all sections of an examination required for a particular license or endorsement. The Coast Guard does not propose to charge a fee for necessary retests prior to the lapse period required in 46 CFR 10.217(a) (1) and (2). After a required lapse period, an applicant would have to begin the examination phase again and a new examination fee would be

assessed. If the applicant misses taking a scheduled examination, however, the Coast Guard will allow rescheduling of missed examination sections without an additional fee as long as the individual's application remains valid.

The last phase is issuance. The Coast Guard does not propose to define the term "issuance" since its use should be clearly understood within the existing and proposed regulations. The issuance phase includes preparing forms, reviewing, and signing of documents by appropriate REC personnel. The issuance fee would be paid before an individual receives the actual license, certificate of registry, or merchant mariner document.

There are several circumstances when the applicant would not be charged a fee for one or more of the three phases (i.e., evaluation, examination, and issuance). Under the criteria of the General User Fee Statute, it would be inappropriate for the Coast Guard to charge a fee for a service not provided.

An evaluation fee would not be required for all applicants. For example, a person applying for a radar observer

endorsement, who has successfully completed a Coast Guard-approved course, would not be assessed an evaluation fee. The Coast Guard also proposes no evaluation fee for certificates of registry for Junior Assistant Purser, Medical Doctor, or Professional Nurse; or for a merchant mariner document without a qualified rating endorsement. These activities do not require significant amounts of evaluation time. However, the Coast Guard will assess a \$17 fee for an original merchant mariner document or certificate of registry to cover the cost of a required FBI criminal record check.

There are no examination requirements for Radio Officer licenses; certificates of registry; merchant mariner documents not endorsed with a qualified rating; and some license endorsements. An example of an endorsement for which there would be no examination fee is a radar observer endorsement. An applicant who successfully completes a Coast Guard-approved radar observer qualification course is eligible for that endorsement.

If an examination is waived, then no examination fee would be assessed. For example, the Officer in Charge of Marine Inspection may waive the examination requirement for an endorsement to raise or remove horsepower limitations under 46 CFR 10.503(d).

The full examination fee proposed for upper level and lower level licenses would not be appropriate when an applicant needs only a partial or limited examination. Limited examinations have only one or two sections, and their administration is comparable with the time and effort required to administer the open book exercises for renewal of licenses. The Coast Guard, therefore, proposes a lesser fee for limited examinations. This fee would be the same as the examination fee for the open book exercise required in some cases for renewals. A limited examination is referred to in the regulations in 46 CFR 10.412, 10.418, 10.426, 10.429, 10.466 and 10.456. The Coast Guard also considers the examination referred to in 46 CFR 10.427 and 10.454 to be a limited examination.

The Coast Guard proposes to charge an issuance fee for all licenses, including licenses with a continuity endorsement, even though an applicant with this endorsement may not require an evaluation or examination and would not be assessed these other fees. The Coast Guard also proposes to charge an issuance fee for all certificates of registry, and merchant mariner documents (CG Form 2838) including temporary documents (CG Form 2838T).

However, for conversion of the temporary merchant mariner document to a permanent document, there would be no issuance fee. Additionally, consistent with proposed § 10.219 and existing § 12.02-23 of 46 CFR, no fee is proposed for issuance of a duplicate license, certificate of registry, or merchant mariner document when its loss is due to a shipwreck or other casualty described by these sections.

Collection fees and penalties for failure to pay. The Coast Guard is presently reviewing a variety of fee collection procedures in addition to having collection clerks at each REC. The Coast Guard is also considering alternatives to cash payment including checks, money orders, credit cards, and electronic payment procedures. Convenience to the applicant will be an important factor in selecting the procedures to be used. Although these administrative details are not required to be subject to notice and comment, the Coast Guard invites comments on desirable features of a collection system. The Coast Guard will include the collection procedure details in the Final Rule.

The Coast Guard also intends to establish penalties for failure to pay fees. A civil penalty of up to \$5,000 is authorized in 46 U.S.C. 2110. The Coast Guard proposes to treat a check returned due to insufficient funds as a late payment and to recover appropriate collection and enforcement costs in these cases. Multiple checks returned for insufficient funds could be treated as failure to pay and subject to a civil penalty. The Coast Guard also proposes to withhold additional license, certification, or merchant mariner documentation services pending payment of any outstanding fees.

Cost methodology. The Coast Guard developed fees in this proposal using information from workload analysis studies and costs of conducting marine licensing activities at the 17 Coast Guard RECs which provide the licensing and merchant mariner documentation services. The proposed fees are based on three basic costs.

The first cost is for the personnel and associated infrastructure necessary to provide the licensing services. These include, but are not limited to: office space; office equipment and supplies such as telephones, computers, and copiers; special training; and other personnel-related costs. Using information from a workload analysis study, hourly standard rates provided in the Coast Guard Standard Rate Instruction (COMDTINST 7310.1D), and the Coast Guard Staffing Standards Manual (COMDTINST M5312.11A); the

Coast Guard calculated this total cost to be approximately \$5.9 million.

The second cost is associated with collecting fees. Both the General User Fee Statute and 46 U.S.C. 2110 allow this cost to be included in the user fee itself. The Coast Guard is reviewing various collection procedures, and is considering accounting requirements, as well as convenience to the public. Since the Coast Guard does not presently know what collection procedures will be used, a collection cost figure of \$300,000 was estimated for the purpose of this proposed rulemaking. This amount would fund eight persons to supplement existing personnel so that each unit having an REC would have a collection clerk. When the collection procedure is chosen, the Coast Guard will adjust the \$300,000 estimate to reflect the actual cost of the collection procedure, and will adjust the proposed fees if necessary.

The third cost is for an FBI criminal record check conducted on applicants. Approximately 16,000 FBI criminal record checks are now conducted each year. For each criminal record check, the FBI charges the Coast Guard \$17, which results in an annual cost of approximately \$300,000.

The Coast Guard presently requires the FBI criminal record check on applicants for original licenses, certificates of registry, or merchant mariner documents. For each of these applicants, the \$17 charge would be added to the evaluation fee. In 46 CFR part 12, the term "original merchant mariner document" means the first document issued to an individual. An individual already holding an original merchant mariner document would not be charged for an FBI criminal record check when applying for any merchant mariner document subsequent to the original. However, a holder of a merchant mariner document applying for a license will be charged for the required FBI check for the evaluation of an original license.

Fee categories and amounts. The Coast Guard developed the proposed fee amounts using personnel and cost data for each phase of the licensing and documentation activities. The issuance fee for all activities was essentially the same, but examination and evaluation fees for the activities varied substantially. The Coast Guard, therefore, divided the licensing activities into three groups and the certificate of registry and documentation activities into two groups each so that fees could be set for groups of activities based on similarities of costs in each phase.

For the issuance phase, the actual preparation of the document involved

similar amounts of time and the cost of this phase was practically identical for all licenses, certificates of registry, and merchant mariner documents. The issuance fee, therefore, is the same for all categories of licenses, certificates of registry, and merchant mariner documents. The original calculated costs were rounded down to \$35 to reduce confusion and for administrative simplicity.

License fees (part 10). The Coast Guard proposes fees for upper level and lower level license categories and for Radio Officers. The Coast Guard is defining the terms "upper level" and "lower level" in this proposed rule as follows:

Upper level means a category of deck and engineer licenses established for assessment of fees. Upper level licenses are those licenses for which the requirements are listed in §§ 10.404 to 10.407 of subpart D, and §§ 10.510, 10.512, 10.514 and 10.516 of subpart E of 46 CFR part 10. In general, these include all ocean or near coastal deck and engineer licenses for inspected vessels over 1600 gross tons.

Lower level means a category of deck and engineer licenses established for assessment of fees. Lower level licenses are all licenses, other than those defined as upper level, for which the requirements are listed in subparts D, E and G of 46 CFR part 10. These will include original issues or upgrades for all other licenses found in 46 CFR part 10, except Radio Officers. This category also includes First Class Pilots.

The Coast Guard is proposing separate fees for a Radio Officer license. There is no requirement for a Coast Guard examination for this license, so there would be no examination fee. The evaluation fee is lower than the other two license categories because there are no service requirements to review, and part of the evaluation is conducted by the Federal Communications Commission (FCC) prior to submitting an application with the Coast Guard. Applicants for the Radio Officer license are required to present a current first or second class radiotelegraph operator license issued by the FCC. The FCC license is accepted without further evaluation by the Coast Guard. The issuance fee for a Radio Officer license, however, is the same as for other marine licenses.

The Coast Guard proposes identical fees for license renewals and for endorsements added to an existing license. Average costs for conducting evaluation, examination, and issuance phases were similar for renewal and license endorsement activities. The Coast Guard proposes that the same

evaluation, examination, and issuance fees be assessed for all license endorsement applications. If a single application requests more than one endorsement, the Coast Guard will process the application as a single activity.

Certificates of registry (part 10). The Coast Guard has divided the certificates of registry (listed in 46 CFR part 10) into two groups, based on differences in the evaluation required. The evaluation of an applicant for Chief Purser, Purser, and Senior Assistant Purser is similar to the evaluation required for a lower level license applicant. Junior Assistant Purser, Medical Doctor, and Professional Nurse applicants must produce documents required under § 10.807 of 46 CFR part 10 and fill out an application form. The evaluation of these applications is minimal and the Coast Guard proposes to charge no fee for these applicants. However, when an FBI check is required, the Coast Guard will assess a \$17 fee.

Merchant mariner documents (part 12). The Coast Guard proposes no fee for evaluation or for examination for a merchant mariner document not endorsed with a qualified rating. There is minimal processing of the application and no examination requirement prior to issuance of the document. However, when an FBI check is required, the Coast Guard will assess a \$17 fee.

The Coast Guard is proposing a fee of \$60 for evaluation and \$40 for examination for a merchant mariner document endorsed with a qualified rating. The Coast Guard is defining the term "qualified rating" as any category of Able Seaman, Qualified Member of the Engine Department, Lifeboatman, or Tankerman endorsement on a merchant mariner document. Requirements for the qualified rating endorsements are specified in §§ 12.05, 12.07, 12.10, 12.15, 12.17 or 12.20 of part 12. The Coast Guard proposes that the same evaluation, examination, and issuance fees be assessed for all qualified rating endorsement applications. If a single application requests more than one endorsement, the Coast Guard will process the application as a single activity.

Section by Section Analysis

46 CFR part 10

The Coast Guard proposes to update the authority citation and include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110) and a statute (i.e., 46 U.S.C. 7501) which provides authority relating to issuing a duplicate license or certificate of registry.

Section 10.103—The Coast Guard proposes definitions for the terms "evaluation", "upper level" and "lower level."

Section 10.109—Proposed user fees for licensing and certification activities.

Section 10.110—This section is reserved for payment procedures which will provide instructions on how fees are to be paid.

Section 10.111—This section establishes penalties for failure to pay fees.

Section 10.205, § 10.207 and § 10.209—These sections are revised to include a cross-reference to required fees listed in § 10.109.

Section 10.217—The Coast Guard revises this section to establish a requirement for assessing additional examination fees when an applicant repeats the examination phase.

Section 10.219—A fee for reissuance of a license or certificate of registry is referenced. Paragraph (b) is also added to conform with a statute allowing free issuance of these documents if loss is due to shipwreck or other casualty. This section applies the same criteria as 46 CFR 12.02–23 for consistency between 46 CFR parts 10 and 12.

46 CFR part 12

The Coast Guard proposes to revise the authority citation to include statutes related to user fees (i.e., 14 U.S.C. 664, 31 U.S.C. 9701, 46 U.S.C. 2110) and a statute (i.e., 46 U.S.C. 7501) which provides authority relating to issuing a duplicate merchant mariner document.

Section 12.01–6—The Coast Guard proposes definitions for the terms "evaluation", "original document", and "qualified rating."

Section 12.02–18—Proposed user fees for merchant mariner document activities. There is a \$10 fee assessed in 33 CFR subpart 1.25 for a duplicate continuous discharge book or copies of certificates of discharge. The Coast Guard proposes to move this fee from 33 CFR subpart 1.25 to this section, so that all fees for merchant mariner document services will be contained in part 12.

Section 12.02–18—The Coast Guard also proposes to include penalties for failure to pay fees.

Section 12.02–23—This section was amended to reference fees in § 12.02–18 and to delete outdated sections and references to 33 CFR subpart 1.25.

33 CFR Subpart 1.25—The Coast Guard proposes to make conforming amendments to 33 CFR subpart 1.25 and move appropriate merchant mariner documentation fees to 46 CFR 12.02–18.

Regulatory Evaluation

The Act requires the Coast Guard to collect user fees for commercial vessel services provided under subtitle II of title 46 United States Code. These services include: Marine licensing and merchant mariner documentation, vessel documentation, commercial vessel inspections, and vessel plan review and equipment approval. Because these regulations may impact the same individuals or companies, it is necessary to briefly examine the total cost of these regulations combined. Although precise final cost impacts await further study, the total cost of direct user fees under Subtitle II is estimated to be less than \$45 million on an annual basis. The merchant marine licensing and merchant mariner documentation regulation represents only \$6 million out of the maximum estimate of \$45 million. This is well below the \$100 million threshold that would make this a major regulation under Executive Order 12291.

Even though not major, this rulemaking is significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) and a draft Regulatory Evaluation has been prepared. This draft is available in the docket for inspection or copying where indicated under "ADDRESSES." The evaluation focused on the annualized cost of the user fees and compared them to typical salaries of merchant mariners. It also looked at the proposed user fees and compared them to other types of professional license fees. The evaluation concluded that the financial impact on the public, and individuals subject to these direct user fees, would be minimal.

A cost-benefit analysis was not prepared since this regulatory proposal is a deficit-reduction measure of the Act. Benefits to the public affected by this proposal are already captured by the issuance of the marine license, certificate of registry, or merchant mariner document which is currently provided free of charge by the Coast Guard. As such, there will be no additional benefits to the segment of public affected by this proposal. However, the regulatory proposal will have an impact on many individuals since any fee represents an impact, no matter how small.

The cost of the regulations to the individual merchant mariner varies according to the type of license or service being requested. Since licenses are renewed every five years, to estimate the annual cost to an individual the total fee amount for obtaining the license is divided by five. For example,

the proposed total fee for obtaining an original upper level license is \$347. If an upper level license holder held the new license for 5 years, the annualized cost to that person would be approximately \$70. A proposed renewal fee for this license is only \$135, so the annualized cost of a renewed license is \$27.

The U.S. Maritime Administration provided typical salaries to the Coast Guard. Persons having an upper level license and employed in the position of third assistant engineer have a monthly base wage of \$3,283 with overtime of \$2,577 a month. The third mate monthly wages are \$3,105 with overtime of \$2,437. In general persons who are employed in higher grade license positions (e.g., chief mate, chief engineer, master, etc.) earn more than a person with a third assistant engineer or third mate license. The annual user fees stated above represent an insignificant amount compared to the typical salaries of merchant marine officers.

For merchant mariner documents, the fee for obtaining a document endorsed as Able Seaman (example of highest fee item in documentation) is \$152. Currently, renewal of this document is not required. However, under the Oil Pollution Act of 1990, both existing and new merchant mariner documents will be renewed every five years. A merchant mariner may seek an additional endorsement within a few years which would also require payment of fees. If spread out over a five year period, the annualized cost would be approximately \$30. The typical salary of an Able Seaman ranges from \$1,403 (the median monthly wages of an Able Seaman on a U.S. flag deep sea tanker reported by the Bureau of Labor Statistics) to \$1,569 base monthly wages with \$1,232 in overtime. On an annualized basis, the costs to the average employed seaman should represent significantly less than one day's wages. For an active merchant mariner, this regulation will represent a small cost.

In summary, the Coast Guard's position is that the impact of these proposed regulations on the general public will be imperceptible and the impact on maritime industries of the U.S. will also be small. The impact on individual merchant mariners who are active in their trade should be minimal, based on the information collected. However, comprehensive data was not available for certain categories of licensed mariners, such as small passenger vessel operators. The Coast Guard invites public comment or data relating to the impact of the proposed fees on small passenger vessel operators

or for any other category of license holder. The Coast Guard's position is that the proposed user fees will not have a significant impact on inflation, or any one industry, geographic region, or international trade. On the other hand, there are people who have no intention of returning to sea who retain their license or merchant mariner document for convenience or other purposes. As a consequence, some of these individuals may well choose not to renew their licenses or documents. This will benefit the Coast Guard by removing these persons from our records of active mariners; saving record keeping costs and providing a more accurate indication of available merchant mariner reserves.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no additional collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Existing requirements are covered under Office of Management and Budget control numbers OMB 2115-0514 and OMB 2115-0111.

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. Section 2.B.2.1 of that instruction excludes "administrative

actions and procedural regulations and policies which clearly do not have any environmental impacts." A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Freedom of information, Penalties.

46 CFR Part 10

Fees, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 12

Fees, Reporting and recordkeeping requirements, Seamen.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 1 and 46 CFR parts 10 and 12 as follows:

Title 33—[Amended]

Subchapter A—General

PART 1—GENERAL PROVISIONS

1. The authority citation for subpart 1.25 continues to read as follows:

Authority: Sec. 3, 60 Stat. 238, as amended; secs. 632, 633, 63 Stat. 545; sec. 501, 65 Stat. 290; 5 U.S.C. 552; 14 U.S.C. 632, 633; Department of Transportation Order 1100.1 Mar. 31, 1967; 49 CFR 1.4(a)(2).

2. The heading of subpart 1.25 is revised to read as follows:

Subpart 1.25—Fees and Charges for Certain Records and Services

§ 1.25-40 [Amended]

3. In § 1.25-40 paragraph (b) is removed and reserved.

4. Table 1.25-40(b) is removed.

Title 46—[Amended]

Subchapter B—Merchant Marine Officers and Seamen

PART 10—LICENSING OF MARITIME PERSONNEL

5. The authority citation for part 10 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 46 U.S.C. 2103, 2110, 2103; 7101, 7501, 7701, 8105; 49 CFR 1.45; 1.46; section 10.107 also issued under the authority of 44 U.S.C. 3507.

6. Section 10.103 is amended by adding the following definitions in alphabetical order:

§ 10.103 Definitions of terms used in this part.

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Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

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Lower level means a category of deck and engineer licenses established for assessment of fees. Lower level licenses are all licenses, other than those defined as upper level, for which the requirements are listed in subparts D, E and G of this part.

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Upper level means a category of deck and engineer licenses established for assessment of fees. Upper level licenses are those licenses for which the requirements are listed in §§ 10.404 to 10.407 of subpart D of this part and §§ 10.510, 10.512, 10.514 and 10.516 of subpart E of this part.

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7. Section 10.109 is added to read as follows:

§ 10.109 Fees.

(a) The following fees are required for license and registration activities in this part:

(b) For licenses: (1) Upper level:

(i) For evaluation for an original license, \$87.

(ii) For evaluation for a license other than an original, including a raise in grade of a license, \$70.

(iii) For administration of an examination, including allowable retests, \$225.

(iv) For administration of a limited examination required under subpart D of this part, including allowable retests, \$55.

(v) For issuance of a license, \$35.

(2) Lower level:

(i) For evaluation for an original license, \$82.

(ii) For evaluation for a license other than an original, including a raise in grade of a license, \$65.

(iii) For administration of an examination, including allowable retests, \$30.

(iv) For administration of a limited examination required under subpart D of this part, including allowable retests, \$55.

(v) For issuance of a license, \$35.

(3) Radio Officer:

(i) For evaluation for an original license, \$62.

(ii) For evaluation for a license other than an original license, \$45.

(iii) For issuance of a license, \$35.

(c) For endorsements subsequent to the issuance of the license:

(1) For evaluation for single or multiple endorsements, \$45.

(2) For administration of examinations, including allowable retests, \$55.

(3) For issuance of single or multiple endorsements to an existing license, \$35.

(d) For renewal of a license:

(1) For evaluation for renewal of a license, \$45.

(2) For administration of an open-book exercise if required under § 10.209 of this part, \$55.

(3) For issuance of a renewed license, \$35.

(e) For Certificates of Registry:

(1) For Chief Purser, Purser, and Senior Assistant Purser:

(i) For evaluation of an unlicensed applicant for a certificate of registry, \$62.

(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part, \$45.

(iii) For issuance of a certificate of registry, \$35.

(2) For Junior Assistant Purser, Medical Doctor, and Professional Nurse:

(i) For evaluation of an unlicensed applicant for a certificate of registry, \$17.

(ii) For evaluation of an applicant who holds a license or certificate of registry issued under this part, no fee.

(iii) For issuance of a certificate of registry, \$35.

(f) For reissue of a license or certificate of registry issued in this part where a fee is required in § 10.219, \$35.

(g) For endorsements to existing license, a raise in grade of a license, an additional license, or certificate of registry where further evaluations are not required, no evaluation fee.

(h) For endorsements to existing license, a raise in grade of a license, or an additional license where further examinations are not required, no examination fee.

8. Section 10.111 is added to read as follows:

§ 10.111 Penalty for failure to pay fees.

(a) A person that violates this subpart by failing to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation.

(b) The Coast Guard may assess additional charges to a person to recover collection and enforcement costs associated with delinquent payments of or failure to pay a fee. Coast Guard licensing services may also be withheld pending payment of outstanding fees.

9. Section 10.205 is amended by revising paragraph (a) to read as follows:

§ 10.205 Requirements for original licenses and certificates of registry.

(a) *General.* The applicant for an original license or certificate of registry shall present satisfactory documentary evidence of eligibility in respect to the requirements of this section. All applicants shall make written application on a Coast Guard furnished form and submit the evaluation fee set out in § 10.109.

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10. Section 10.207 is amended by revising paragraph (a) to read as follows:

§ 10.207 Requirements for raise of grade of license.

(a) *General.* Before any person is issued a raise of grade of license, the applicant shall present satisfactory documentary evidence of eligibility. All applicants shall make written application on a Coast Guard furnished form and submit the evaluation fee set out in § 10.109.

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11. Section 10.209 is amended by revising paragraph (a) to read as follows:

§ 10.209 Requirements for renewal of license.

(a) *General.* Except as provided in paragraph (g) of this section, applicants for renewal of licenses shall establish that they possess all of the qualifications necessary before they are issued a renewal of license. All applications must be on a Coast Guard furnished form, and accompanied by the evaluation fee set out in § 10.109. The applicant may appear in person at any Regional Examination Center listed in § 10.107 or may renew the license by mail under paragraph (e)(3) of this section. The applicant must submit the license to be renewed or a photocopy of the license. If requested, the old license will be returned to the applicant.

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12. Section 10.217 is amended by revising paragraphs (a) (1) and (2) to read as follows:

§ 10.217 Examination procedures and denial of licenses.

(a)(1) The examinations for all deck and engineer unlimited licenses are administered at periodic intervals. The examination fee in § 10.109 must be paid when the examination is scheduled. If the applicant fails three or more sections of the examination, a complete reexamination must be taken, but may

be taken during any of the scheduled exam periods. On the subsequent exam, if the applicant again fails three or more sections, at least three months must lapse before another complete examination is attempted, and a new examination fee will be required. If an applicant fails one or two sections of an examination, he or she may be retested twice on these sections during the next three months. If the applicant does not successfully complete these sections within the three month period, a complete reexamination must be taken after a lapse of at least three months from the date of the last retest, and a new examination fee will be required. The three month retest period may be extended by the OCMI if the examinee presents discharges documenting sea time which prevented the taking of a retest during the three month period. The retest period may not be extended beyond seven months from the initial examination.

(2) The scheduling of all other deck and engineer license examinations will be at the discretion of the OCMI. The examination fee in § 10.109 must be paid when the examination is scheduled. In the event of a failure, the applicant may be retested twice whenever the examination can be rescheduled with the OCMI. The applicant must be examined in all of the unsatisfactory sections of the preceding examination. If the applicant does not successfully complete all parts of the examination during a three month period from the initial test date, then after a lapse of at least two months from the date of the last retest a complete reexamination must be taken, and a new examination fee will be required.

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13. Section 10.219 is amended by redesignating the existing text as paragraph (a) and adding new paragraphs (b) and (c) to read as follows:

§ 10.219 Issuance of duplicate license or certificate of registry.

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(b) If a person loses a license or certificate of registry by shipwreck or other casualty, a reissue of such license or certificate of registry will be supplied free of charge. The phrase or other casualty as used in this section is interpreted to mean any damage to a ship caused by collision, explosion, tornado, wreck or flooding of the ship, such as a tidal wave or grounding of the ship on a sand bar, or a beaching of the ship on a shore or by fire or other causes in a category with these mentioned.

(c) If a person loses a license or certificate of registry otherwise than by

shipwreck or other casualty, and wants a reissue, he or she will be required to pay the appropriate fee set out in § 10.109.

PART 12—CERTIFICATION OF SEAMEN

14. The citation of authority for part 12 is revised to read as follows:

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 46 U.S.C. 2110, 7301, 7501, 7701, 8105, 10104; 49 CFR 1.46.

15. The table of contents for part 12 is amended by adding entries for §§ 12.01–6 and 12.02–18 to read as follows:

Subpart 12.01—General

Sec.

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12.01–6 Definitions of terms used in this part.

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Subpart 12.02—General Requirements for Certification

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12.02–18 Fees.

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16. Section 12.01–6 is added to read as follows:

§ 12.01–6 Definitions of terms used in this part.

Evaluation means processing an application, from the point of receipt to approval or rejection of the application, including review of all documents and records submitted with an application as well as those obtained from public records and databases.

Original document means the first merchant mariners document issued to any person by the Coast Guard.

Qualified rating means various categories of Able Seaman, Qualified Member of the Engine Department, Lifeboatman, or Tankerman endorsements on merchant mariner documents.

17. Section 12.02–18 is added to read as follows:

§ 12.02–18 Fees.

(a) The following fees are required for merchant mariner document activities in this part:

(1) For evaluation for an original document, (does not apply if applicant holds a license or certificate of registry issued under part 10 of this subchapter), \$17.

(2) For evaluation for a merchant mariner document endorsed with a qualified rating:

(i) For an original merchant mariner document, \$77.

(ii) For a merchant mariner document other than original, \$60.

(3) For administration of examination, \$40.

(4) For issuance of a document, \$35.

(5) For duplicate of a merchant mariner document issued in this part where a fee is required in § 12.02-23, \$35.

(6) For a duplicate continuous discharge book or copies of certificates of discharge, \$10.

(b) [Reserved.]

(c) The following apply to persons failing to pay user fees:

(1) A person violating this subpart by failing to pay a fee or charge established under this subpart is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation.

(2) The Coast Guard may assess additional charges to a person to

recover collection and enforcement costs associated with delinquent payments of or failure to pay a fee. Coast Guard documentation services may also be withheld pending payment of outstanding fees.

18. Section 12.02-23 is amended by revising paragraphs (b) and (c) to read as follows:

§ 12.02-23 Issuance of duplicate documents.

* * * * *

(b) If a seaman loses a continuous discharge book, or merchant mariner's document, or certificate of discharge, otherwise than by shipwreck or other casualty, and wants a reissue, he or she will be required to pay for a reissue at an amount equal to the cost of such

document or certificate to the Coast Guard as prescribed in § 12.02-18 of this part.

(c) A person entitled to duplicate merchant mariner document or record of sea service may obtain the document by applying at the nearest office of the Officer in Charge, Marine Inspection, by

(1) Completing the application form provided by the Coast Guard; and

(2) Paying the fee prescribed in § 12.02-18 of this part.

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Dated: June 13, 1991.

Martin H. Daniell,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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