import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of for less profitable, non-canning uses under the supervision of the inspection service or exported.

Based on available information, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information available it is found that this action, as set forth below, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good, cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to implementing this action, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This relaxation provides importers the opportunity to import additional supplies of olives to meet market needs for limited use styles; (2) no useful purpose would be served by providing preliminary notice before implementation; and (3) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives and Oranges.

PART 944—FRUITS: IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

2. Section 944.401 is amended by revising paragraph (b)(12) to read as follows:

Note: This section will appear in the annual code of Federal Regulations.

§ 944.401 Olive Regulation 1.

* * * * *

(b) * * *

(12) Imported bulk olives when used in the production of canned ripe olives must be inspected and certified as prescribed in this section. Imported bulk olives which do not meet the applicable minimum size requirements specified in paragraphs (b)(2) through (b)(11) of this section may be imported during the period August 1, 1992, through July 31, 1993, for limited use, but any such olives so used shall not be smaller than the following applicable minimum size:

(i) Whole ripe olives of Variety Group 1, except the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/105 pound (4.3 grams) each.

(ii) Whole ripe olives of Variety Group 1 of the Ascolano, Barouni, or St. Agostino varieties, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(iii) Whole ripe olives of Variety Group 2, except the Obliza variety, of a size that not more than 35 percent of the olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

(iv) Whole ripe olives of Variety Group 2 of the Obliza variety of a size that not more than 35 percent of the olives, by count, may be smaller than 1/180 pound (2.5 grams) each.

(v) Whole ripe olives not identifiable as the variety or variety group of size that not more than 35 percent of olives, by count, may be smaller than 1/205 pound (2.2 grams) each.

Dated: August 5, 1992.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 92–19028 Filed 8–10–92; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 903

[Docket No. 920663–2163]

Public Information

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule.

SUMMARY: NOAA is revising its regulations at 15 CFR part 903 to remove superseded regulations regarding the public's access to NOAA information materials under the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, and instead reference the regulations followed by NOAA—the applicable Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. The intended effect of this action is to update NOAA's FOIA regulations.

EFFECTIVE DATE: August 11, 1992.

FOR FURTHER INFORMATION CONTACT: Marie Marks, Chief, Paperwork Management Branch, National Oceanic and Atmospheric Administration, 6020 Executive Blvd., room 714, Rockville, MD 20852, (301–443–8967).

SUPPLEMENTARY INFORMATION: The NOAA FOIA regulations at 15 CFR part 903 have been superseded by Department of Commerce-wide regulations governing the public's access to information under FOIA found at 15 CFR part 4. Furthermore, the NOAA regulations have not been updated to reflect amendments to the FOIA that have been incorporated in the Department-wide regulations. 15 CFR part 4 provides an updated explanation of the scope, purpose, policies, and guidelines for making certain records publicly available pursuant to the FOIA. As an agency of the Department of Commerce, NOAA follows 15 CFR part 4. Accordingly, NOAA is revising 15 CFR part 903 to state that the rules and procedures regarding public access to NOAA records are found at 15 CFR part 4.

NOAA finds for good cause that it is unnecessary to provide notice and comment and a delayed effective date under section 553 of the Administrative Procedure Act (APA), 5 U.S.C. 553, for this rule. These APA requirements are unnecessary because NOAA merely is removing superseded regulations and instead referencing the applicable existing regulations.

Because a notice of proposed rulemaking is not required by section 553 of the APA or by any other law, a regulatory flexibility analysis is not required pursuant to the Regulatory Flexibility Act, 5 U.S.C. 603(a), 604(a).

List of Subjects in 15 CFR Part 903

Freedom of information, Organization and functions (Government Agencies).

D.E. Humpries,

Deputy Director, Office of Administration.

For the reasons set forth in the preamble, 15 CFR part 903 is revised to read as follows:

PART 903—PUBLIC INFORMATION

Authority: 5 U.S.C. 552 as amended by Pub. L. 93–502; 5 U.S.C. 553; Reorg. Plan No. 2 of 1965, 15 U.S.C. 311 note; 32 FR 9734, 31 FR 10752.

§ 903.1 Access to information.

The rules and procedures regarding public access to the records of the National Oceanic and Atmospheric Administration are found at 15 CFR part 4.

[FR Doc. 92-18736 Filed 8-10-92; 8:45 am]
BILLING CODE 3510-22-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 4

[T.D. 92-74]

Unlading of Foreign Vessels Allowed Prior to Entry at U.S. Ports Subsequent to Initial U.S. Port of Arrival

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to provide that it is within the discretion of the district director to issue a permit to unlade to allow a foreign vessel that has already made formal entry at its first port of arrival in the U.S. to unlade foreign residue cargo at subsequent coastwise ports without the necessity of making preliminary entry and prior to the vessel making formal entry at those ports. If the district director deems it necessary, however, before allowing unlading prior to the vessel's formal entry, he may require the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to a Customs officer who boards the vessel and require delivery of the manifest prior to issuing the permit to unlade. All foreign vessels are still required to report arrival and make formal entry at all coastwise ports. This amendment will expedite the discharge of cargo without diminishing Customs enforcement effectiveness.

EFFECTIVE DATE: September 10, 1992.

FOR FURTHER INFORMATION CONTACT: Leo Morris, Office of Inspection and Control (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1992, a document was published in the **Federal Register** (57 FR 2859) soliciting comments regarding a Customs proposal to amend the Customs Regulations regarding preliminary entry.

Customs proposed to amend § 4.8, Customs Regulations (19 CFR 4.8) to clarify that preliminary entry is required for both U.S. and foreign vessels arriving from a foreign port or place that wish to discharge cargo, passengers or baggage or take on cargo, passengers or baggage before the vessel has been formally entered. Further, the document proposed to amend § 4.30, Customs Regulations (19 CFR 4.30) to provide that permits to unlade or lade may be issued by the district director to a foreign vessel arriving at a U.S. port from another U.S. port prior to formal entry and without the vessel having to make preliminary entry at the second port and to a U.S. vessel arriving at a U.S. port from another U.S. port without requirement of entry at the second port. If he deems it necessary, the document proposed, the district director may require the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest to a Customs officer who boards the vessel prior to issuing the permit.

Conforming amendments were also proposed to §§ 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87, Customs Regulations (19 CFR 4.1, 4.7, 4.10, 4.13, 4.81, 4.85 and 4.87) to reflect the changes proposed to §§ 4.8 and 4.30.

The reason for these proposed amendments is that Customs believes that by easing the requirement that preliminary entry be made before a foreign vessel may be issued a permit to lade or unlade when arriving from another U.S. port, but by retaining the right to board and examine manifests if necessary, Customs efficiency regarding the discharge of cargo, passengers and baggage will be improved without a diminution in enforcement effectiveness.

Discussion of Comments

Nine comments were received in response to the proposal. While five commenters fully supported the proposal, certain concerns were raised. A discussion of specific comments follows.

Comment: The regulations should be clarified to state that the district director need not grant preliminary entry whenever it is requested.

Response: Customs totally agrees with the commenter that it is within the district director's discretion to determine whether to allow preliminary entry when it is requested. Section 4.1(b), Customs Regulations is accordingly amended.

Comment: The regulations should list various scenarios when preliminary entry is not required.

Response: Customs disagrees. Regulations are not the proper forum for listing every permutation of vessel arrival and cargo lading or unlading. The different scenarios can be examined individually using these and other regulations and the relevant statutes as guidelines. If preliminary entry is not required, but is requested, the district director should instruct the requesting carrier that preliminary entry is not necessary prior to the lading or unlading of passengers, cargo or baggage.

Comment: The regulations should include a provision that carriers who are not participants in the Automated Manifest System must present their cargo manifest to Customs 24 hours prior to arrival.

Response: Customs disagrees. The statute that discusses the delivery of the manifest to Customs, 19 U.S.C. 1439, requires the manifest to be delivered immediately upon arrival of the vessel. The statute does not support requiring the manifest in advance.

Comment: Do these amendments alter manifest discrepancy reporting requirements?

Response: No. These regulations do not affect or address manifest discrepancy reporting requirements.

Comment: The proposed amendments are in violation of 19 U.S.C. 1447, 1448 and 1449 which require a vessel carrying merchandise, persons or baggage originating in a foreign place to make entry prior to unlading. This will adversely affect Customs enforcement efforts.

Response: Customs disagrees with the commenter's interpretation of these statutes. Two of the cited statutes, 19 U.S.C. 1447 and 1449, are not the statutory authority for these amendments. Nor do they say what this commenter alleges them to say. These statutes address where entry and unlading may take place and under what conditions exceptions may be granted. They do not address the authority to unlade or lade cargo or make preliminary entry.

The statute that covers preliminary entry and unlading or lading of vessels is 19 U.S.C. 1448. The commenter interprets the language in this statute to imply preliminary entry is required if a vessel wishes to discharge cargo originating in a foreign place. However, the statute clearly addresses the entry and origin of the vessel and not the cargo.

Customs already permits U.S. vessels to unlade merchandise, passengers or baggage at coastwise ports without an entry because the statute requiring entry of U.S. vessels, 19 U.S.C. 1434, and the statute addressing unlading only requires entry when arriving from foreign ports. Foreign vessels are required to make entry at each port under 19 U.S.C. 1435, but once again, the unlading statute only requires preliminary entry of vessels arriving

from a foreign port that wish to discharge cargo prior to formal entry.

These amendments do not adversely affect any of Customs enforcement actions. Customs still has the authority to board any vessels when it believes it necessary. The statutes and regulations giving Customs the authority to board and search vessels and review ships' documents are not affected by these amendments.

Comment: These amendments will not benefit West Coast vessel arrivals because the amendments will require Customs to board two to three times more vessels.

Response: Customs disagrees. The obvious result of these amendments will be to reduce the number of ship arrivals that will require preliminary entry and, therefore, a boarding. There will certainly not be a twofold or threefold increase in vessel boardings.

Conclusion

After careful consideration of all the comments received and further review of the matter, it has been determined that the amendments, with the modification discussed above, should be adopted.

Executive Order 12291

This document does not meet the criteria for a major rule as specified in E.O. 12291. Accordingly, no regulatory impact analysis has been prepared.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, they are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

Drafting Information

The principal author of this document was Harold M. Singer, Regulations and Disclosure Law Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

List of Subjects in 19 CFR Part 4

Carrier, release of merchandise, Vessels.

Amendments to the Regulations

Part 4, Customs Regulations, 19 CFR Part 4 is amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for Part 4 and the specific authority citations for §§ 4.7, 4.8, 4.10, 4.81 and 4.85 continue to read as follows and the relevant specific authority citations for §§ 4.1 and 4.30 are revised to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3;

§ 4.1 also issued under 19 U.S.C. 1581(a), 46 U.S.C. App. 158, 163;

* * * * *

§ 4.7 also issued under 19 U.S.C. 1431, 1439, 1465, 1581(a), 1583; 46 U.S.C. App. 883a, 883b;

§ 4.8 also issued under 19 U.S.C. 1448, 1486;

* * * * *

§ 4.10 also issued under 19 U.S.C. 1448, 1451;

* * * * *

§ 4.30 also issued under 19 U.S.C. 288, 1433, 1446, 1448, 1450–1454, 1490;

* * * * *

§ 4.81 also issued under 19 U.S.C. 1433, 1439, 1442, 1443, 1444, 1486; 46 U.S.C. App. 251, 313, 314, 883;

* * * * *

§ 4.85 also issued under 19 U.S.C. 1439, 1442, 1443, 1444, 1623;

* * * * *

2. Section 4.1(b) is revised to read as follows:

§ 4.1 Boarding of vessels; cutter and dock passes.

* * * * *

(b) Every vessel arriving within a Customs district directly from a point outside the Customs territory of the United States shall be boarded and shall be subject to such supervision while in port as the district director deems necessary. Boarding is required also whenever there is a preliminary entry. When he deems it desirable, the district director may detail Customs officers to remain on board a vessel to secure the enforcement of this part. Except as provided in paragraph (a) of this section, boarding of a vessel arriving within a Customs district directly from another port in the United States shall not be required.

* * * * *

3. Footnote 16 from Part 4 is removed.

4. Section 4.7 is amended by revising the second sentence of paragraph (b) and paragraph (d)(3) to read as follows:

§ 4.7 Inward foreign manifest; production on demand; contents and form.

* * * * *

(b) * * * The master shall deliver the original and one copy of the manifest to the Customs officer who shall first demand it. * * *

* * * * *

(d) * * *

(3) The declaration shall be ready for production on demand for inspection and shall be presented as part of the original manifest when formal entry of the vessel is made.

5. Footnote 18 is removed from Part 4.

6. Section 4.8 is revised to read as follows:

§ 4.8 Preliminary entry.

Preliminary entry allows a U.S. or foreign vessel arriving from a foreign port or place to discharge cargo, passengers or baggage or take on additional cargo, passengers or baggage prior to making formal entry at the customhouse by allowing the master to make an oath or affirmation to the truth of statements contained in the vessel's manifest and deliver the manifest to the customs officer who boards the vessel. Customs officers are required to board a vessel before preliminary entry is permitted. Preliminary entry shall be made by compliance with § 4.30 and execution by the master of the Master's Certificate on Preliminary Entry on Customs Form 1300.

7. Section 4.10 is amended by revising the first sentence to read as follows:

§ 4.10 Request for overtime services.

Request for overtime services in connection with entry or clearance of a vessel, including the boarding of a vessel in accordance with § 4.1 shall be made on Customs Form 3171.

* * * * *

8. Footnote 22 is removed from Part 4.

9. Section 4.13(a) is amended by revising the first sentence to read as follows:

§ 4.13 Alcoholic liquors on vessels of not over 500 net tons.

(a) When a vessel of not over 500 net tons which arrives from a foreign port or a hovering vessel has on board any alcoholic liquors, a certificate respecting the importation of any spirits, wines, or other alcoholic liquors on board, other than sea stores, shall be delivered to the appropriate Customs officer with the inward foreign manifest. * * *

* * * * *

9a. Footnote 25 is removed from Part 4.

10. Section 4.30 is amended by revising paragraphs (a) and (d) to read as follows:

§ 4.30 Permits and special licenses for unlading and lading.

(a) Except as prescribed in paragraph (f), (g), or (k) of this section or in § 123.8 of this chapter and except in the case of a vessel exempt from entry or clearance under 19 U.S.C. 288, no passengers, cargo, baggage or other article shall be unladen from a vessel which arrives directly from any port outside the

Customs territory of the United States or from a vessel which transits the Panama Canal and no cargo, baggage, or other article shall be laden on a vessel destined to a port or a place outside the Customs territory of the United States if Customs supervision of such lading is required until the district director shall have issued a permit or special license therefore on Customs Form 3171.

(1) U.S. and foreign vessels arriving at a U.S. port directly from a foreign port or place are required to make entry, whether it be formal or, as provided in § 4.8, preliminary, before the district director may issue a permit or special license to lade or unlade.

(2) U.S. vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to unlade or lade without having to make either preliminary or formal entry at the second and subsequent ports. Foreign vessels arriving at a U.S. port from another U.S. port at which formal entry was made may be issued a permit or special license to lade or unlade at the second and subsequent ports prior to formal entry without the necessity of making preliminary entry. In these circumstances, after the master has reported arrival of the vessel, the district director may issue the permit or special license or may, in his discretion, require the vessel to be boarded, the master to make an oath or affirmation to the truth of the statements contained in the vessel's manifest to the Customs officer who boards the vessel, and require delivery of the manifest prior to issuing the permit.

* * * * *

(d) Except as prescribed in paragraph (f) or (g) of this section, a separate application for a permit or special license shall be filed in the case of each arrival.

* * * * *

11. Footnotes 55 through 58 are removed from Part 4.

12. Section 4.81 (d) and (e) are amended by removing the words "the boarding officer" where they appear and inserting in their place the words "the appropriate Customs officer" and by removing the words "the Customs boarding officer" in § 4.81(e) and inserting in their place the words "the appropriate Customs officer".

13. Section 4.85 is amended by removing the words "the Customs boarding officer" appearing in the last sentence of paragraph (b) and inserting in their place the words "the appropriate Customs officer" and by revising paragraph (d) to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(d) If boarding is required before the district director will issue a permit or special license to lade or unlade, the abstract manifest described in paragraph (c) of this section shall be ready for presentation to the boarding officer.

* * * * *

14. Section 4.87(c) is amended by removing the words "the Customs boarding officer" and inserting in their place the words "the appropriate Customs officer".

Carol Hallett,

Commissioner of Customs.

Approved: June 22, 1992.

Nancy L. Worthington,

Acting Assistance Secretary of the Treasury.

[FR Doc. 92-18851 Filed 8-10-92; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN 1215-AA67

Claims for Compensation Under the Federal Employees' Compensation Act, as Amended

AGENCY: Office of Workers' Compensation Programs, Labor.

ACTION: Final rule.

SUMMARY: On December 26, 1991, the Secretary of Labor published notice of a rule proposing to change the way lump sum payments of compensation under the Federal Employees' Compensation Act (FECA) are considered. Lump sum payments of wage-loss compensation benefits would no longer be made and new standards for considering lump sum payments of schedule awards were announced. The comment period closed February 10, 1992, and the comments received during that period have been considered. The rule is now published in final substantively unchanged from the proposed rule. The rule sets forth the Secretary's determination that, in the exercise of discretion afforded the Secretary in section 8135(a), lump sum payments of compensation benefits will no longer be made except for payments of schedule awards. In making this determination, the Secretary has considered a number of factors, including the fact that FECA is intended as income replacement and lump-sum payments are not a fiscally responsible method of fulfilling the government's obligations under the FECA for wage-loss compensation. The rule also indicates that it will generally not be in the best interest of the claimant to make lump-sum payment of schedule award benefits where the schedule award is a substitute for lost wages.

EFFECTIVE DATE: The rule is effective on September 10, 1992, and will apply to all pending cases.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S-3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; telephone (202) 523-7552.

SUPPLEMENTARY INFORMATION:

Introduction

The preamble to the proposed rule published December 26, 1991 (56 FR 66817), set forth the basis for the Secretary's determination that lump sum payments of wage-loss benefits under the Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101, *et seq.*, will no longer be considered. None of the comments received undercuts the validity of the Secretary's reasoning and therefore such rationale is incorporated in this document.

The FECA, which is the workers' compensation law for Federal employees, provides a range of benefits for covered work-related injuries, including payment of wage loss compensation, schedule awards for permanent loss or loss of use of specified members of the body, and related medical costs. Under section 8135 of the FECA, the wage-loss and schedule award obligations of the government may be met through a lump sum payment of benefits, an amount determined by multiplying the yearly benefits by the number of years the beneficiary is expected to live and discounting at four percent. The decision to make a lump sum payment is completely at the discretion of the Secretary of Labor, who has delegated this authority to the Director of the Office of Workers' Compensation Programs (OWCP).

The discretion is twofold: First, whether or not to fulfill the government's obligation through a lump sum payment, since the statute only authorizes but does not require that such a form of payment be made; and second (if it is determined that a lump sum payment may be made) whether or not the payment may be made in the individual case. The statute does not

limit the Secretary's discretion in the first instance, but in the second, it limits the Secretary's authority to make such payments to only three situations: Where the monthly payment is less than $50; where the individual is about to become a nonresident of the United States; or where the Secretary determines that it is for the best interest of the beneficiary.

Over the life of the program, lump sum payments have rarely been made and, until now, the initial determination of whether or not to fulfill the government's obligation through a lump sum has been made on a case-by-case basis. Effective with this rule, however, lump sum payments will not be substituted for periodic wage-loss benefits under any circumstances. Where lump sum payment of compensation is required by statute pursuant to section 8135(b) (that is, where a surviving spouse entitled to compensation remarries before age 55), such payment shall be made. The Secretary has determined that a request for a lump sum payment for a schedule award will still be considered on a case-by-case basis, using the statutory criterion of whether the payment would be in the best interest of the claimant. It will generally not be considered in the claimant's best interest to grant a lump sum payment where the individual depends on the schedule award as a substitute for wage-loss.

The Secretary has made the determination that lump sum payments will not be made in cases involving periodic wage loss benefits based on several factors. Foremost among these is that regular periodic payments, providing for cost-of-living increases safe from speculation or economic fluctuations and free from creditors, generally more nearly provide the measure of security that the Act was designed to afford, and more closely approximates the lost wages that the Act is designed to replace. Lump sum payments are not in any way required in order to fulfill the purposes of the Act. In addition, periodic payments are also consistent with government accounting and budgeting practices, while lump sum payments are directly counter to those practices. This rule also represents sound fiscal policy, since the cost of lump sum payments is generally greater than periodic payments where interest rates are above four percent and the claimant does not live longer than the life tables project.

As noted, section 8135(a) merely authorizes lump sum payments and gives the Secretary broad discretion to determine whether to grant a request for lump sum payments. While the Secretary has until now chosen to exercise that discretion by deciding that each individual request should be reviewed, the proposed rule pointed out that such discretion can be exercised by deciding that no lump sum payments will be made. Since the Secretary has now determined that the government will fulfill its obligation for wage-loss benefits only by means of periodic rather than lump sum payments, there is no need to exercise further discretion in an individual case. See *International Union, UAW* v. *Dole*, 919 F.2d 753 (D.C. Cir. 1990). The administrative resources of the Secretary will thus be conserved, as the increasing number of lump sum requests may be dealt with on the basis of the regulation instead of on a case-by-case basis which required factual and medical development of each individual case.

Analysis of Comments

Eight comments were received: Three from Federal employing agencies, two from Federal employee unions, two from individuals and one from an association of injured workers. Two of the agency comments (both from the same agency) supported the rule, and a third noted that periodic payments most closely resemble the wages the compensation is designed to replace and stressed the adverse affect which a large jump in the FECA chargeback bills have on agencies' ability to meet their salary and expense obligations.

The two employee unions opposed the change. One stated that the rule would nullify the intent of Congress that lump sum payments should be considered, characterized the action as arrogant since it assumes that all applications so lack merit as to warrant summary rejection, and stressed that the interpretation of the discretionary authority upon which this rule is based was too broad, and could set a precedent in other areas of the FECA which are discretionary. The other union characterized this action as an abuse of the discretionary authority granted by Congress. Both unions urged the Department to continue considering such requests on a case-by-case basis.

The Department believes that the concerns expressed by the unions were anticipated and fully addressed in the preamble to the proposed rule. There, the Department carefully considered the legislative history surrounding the lump sum provision, described how the lump sum authority has been acted upon since 1916, and discussed in detail the scope of the discretionary authority granted the Secretary. The Department also carefully considered the option of continuing to consider such applications on a case-by-case basis, but rejected it, noting in part that the current practice has led many individuals to incur considerable expense in the hopes of getting a lump sum payment. The limited resources of the Department to accomplish its mission of adjudicating claims and administering the program are increasingly strained by more lump sum requests. The adverse effect of the expenditure of administrative resources on this discretionary function now far outweighs the benefit of continuing to consider each lump sum request on a case-by-case basis.

Two individuals also commented. A former assistant secretary for the Department, opposed the change because it was unnecessary given "the longstanding policy of not approving lump sum benefit payments * * *." The costs associated with case-by-case consideration, it is argued, are worth it in the interests of justice. The commentor also points out that the rule limits the authority given the Department by Congress and questions why the Department would choose to do so. The Department has stated the basis for this rule and believes that the benefits to both the claimants and the government far outweigh the advantage while continuing to exercise that discretion on a case-by-case basis affords.

Another individual termed the rule presumptuous because it assumes workers are not able to handle large sums of money, and questioned whether lump sum payments are a burden to employing agencies. That individual also noted that a detailed cost/benefit analysis had not been performed. The Department does not presume that every individual would be unable to properly invest large sums of money to ensure an adequate income in the future. The rule is not predicated on that basis, although a statement from an annual report of the Employment Compensation Commission was quoted which contains language to this effect. Instead, the Department points to the fact that periodic payments most closely resemble the wages which are lost because of an injury and that benefits are not intended to enrich an individual. The Department believes that its analysis of the costs and benefits of borrowing funds to make lump sum payments versus making periodic payments is sufficiently detailed.

The final comment came from an association of injured workers. In general, these comments contained the following arguments:

1. The General Accounting Office, at the request of the House Education and Labor Committee, is conducting a comprehensive study of the FECA and OWCP's administration, and that any decision on this rule should await the outcome of the study;

2. The proposed rule was unethical and illegal because it failed to cite the Employees' Compensation Appeals Board (ECAB) decisions in *Billy G. Reeder* (Docket No. 91–699), and thus was misleading; the rule ignores ECAB precedent (including *Reeder*), undermining another section of the Secretary's regulations (20 CFR 10.150);

3. The rule sets an unfortunate precedent for the rest of those sections of the FECA which give discretion to the Secretary; the rule violates the due process rights of claimants.

Each of these arguments will be addressed in turn. First, the commentor contends that the GAO audit should be completed before this rule is made final. The GAO has begun its study of the FECA and its administration by OWCP. While the scope of the study is broad, no aspect of the study requires OWCP to suspend its normal operations or, more particularly, its consideration of the instant regulation. The Department notes, however, that in 1987–88, the GAO conducted a study entitled "Federal Employees' Compensation Act Cost Growth and Workplace Safety", GAO/GGD–89–4 (October 1988). While noting that OWCP maintained no data on lump sum payments, the GAO report expressed some concern that such payments may be "Another reason for the real increase in FECA costs." The final rule in no way conflicts with past GAO findings and there is no indication that lump sum payments are currently being examined by GAO. Therefore, there is no basis for the postponing of this rule until the GAO audit is complete.

Secondly, the commentor attacks the failure of the Department to discuss the Employees' Compensation Appeals Board (ECAB or the Board) decisions in *Billy G. Reeder*. In discussing *Reeder*, the commentor argues first that the Director erred in not referring to the Board's decisions in *Reeder* and that this omission was both unethical and illegal. The second contention is more complex, but (briefly stated) asserts that since the proposed rule is in conflict with the Board's ruling, and the Secretary's regulations at 20 CFR 10.150(b) provide that the Director follow the principles of workers' compensation law as determined by the Board, then proposing rules which are in conflict with Board law *de facto* modified an existing rule in violation of the Administrative Procedures Act. Both contentions are without merit. The comments fail to recognize that at the time the proposed rule was published, the *Reeder* case was still being considered by the Board. Furthermore, the interpretation of the decisions assigned by the commentor is erroneous.

In the first *Reeder* decision, issued July 19, 1991, the Board found that the Director had abused his discretion in denying the lump sum application and remanded the case to the office for a *de novo* decision. The Director filed a timely petition for reconsideration with the Board, which by decision dated November 13, 1991, granted the petition and modified its prior decision. The Director then timely filed another petition for reconsideration, which was not responded to until January 15, 1992. Although the second petition for reconsideration was eventually denied by the Board, at the time the proposed rule was published on December 26, 1991, the Board was still considering the petition for reconsideration in *Reeder*. Discussion in proposed rules of a particular case still pending before the Board would have been inadvisable, and so the Department was silent on this case.

The Department believes that the final rule is fully consistent with the Board's decision in *Reeder*. In *Reeder*, the ECAB held that the Office could not consider factors such as cost to the government and extraordinary circumstances in deciding whether a lump sum payment was in the claimant's best interest. In its Order Denying Petition For Reconsideration, the Board noted that the Office could consider such factors when it was considering, in the first instance, whether to consider the application. See Billy G. Reeder, Docket No. 91–699 (issued July 18, 1991; Order Granting Petition For Reconsideration & Modifying Prior Decision (issued November 13, 1991); Order Denying Petition For Reconsideration (issued January 15, 1992). In a decision issued subsequent to Reeder, the Board stated that the Director was not required by statute, regulation, or Board case law to undertake any development of any application for a lump sum payment or to make any determination on an applicant's best interest merely upon application. See Thelma R. Bushnell, Docket No. 91–1764 (issued April 3, 1992). Promulgating this regulation in no way conflicts with these holdings of the Board.

The commentor also alleges that the Department engaged in criminal activity. These allegations appear mainly to be based on the commentor's belief that the *Reeder* cases were deliberately concealed and thus the proposed rules constituted a fraudulent misrepresentation to the public via an official government publication. As the Department has explained its position that a discussion of the case in the **Federal Register** at a time when a petition for reconsideration was under consideration by the ECAB would have been inadvisable, no further comment on these allegations is necessary.

The third contention made by this commentor is similar to that made by employee unions: that the enactment of this rule would set a "dangerous precedent" for the exercise of discretion granted in other parts of the FECA which would "virtually dismantle" the FECA. As noted earlier, the Department believes that the authority for this action is clear, and has fully explained why this action is appropriate in this matter.

The commentor further contends that the Secretary's failure to exercise discretion under section 8135 is a violation of due process. As previously stated, the Department believes that the promulgation of this regulation constitutes a proper exercise of discretion in describing the manner of payment of compensation benefits.

Conclusion

Based on the reasons set out in the preamble to the proposed rule, as amplified and clarified above in addressing the comments received, the Department has determined to adopt the proposed rule as final. This rule will apply to all pending cases.

Cost Benefit Analysis

The rule should bring no additional costs to the government. The benefits prescribed by the FECA must be paid where appropriate. By making clear that lump sum payment of wage loss benefits will not be considered, considerable administrative savings may be expected.

Classification—Executive Order 12291

The Department of Labor has concluded that the regulatory proposal does not constitute a "major rule" under Executive Order 12291, because it is unlikely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in cost or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. The rule applies only to Federal employees, their

families and the Federal agencies which employ them. Accordingly, no regulatory analysis is required.

Paperwork Reduction Act

None.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act, Public Law 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). The proposed regulations apply primarily to Federal agencies and their employees. No additional burdens are being imposed on small entities. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory impact analysis is required.

List of Subject in 20 CFR Part 10

Administrative practice and procedure, Claims, Courts, Fraud, Government employees, Health care, Health professions, Law enforcement officers, Peace Corps, Penalties, Reporting and recordkeeping requirements, Volunteers, Wages, Workers' compensation.

For the reasons set out in the preamble, part 10 of chapter I of title 20 of the Code of Federal Regulations is amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for 20 CFR part 10 continues to read as follows:

Authority: 5 U.S.C. 301, Reorg. Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263, 5 U.S.C. 8145, 8149; Secretary's Order 1–89; Employment Standards Order 90–02.

2. Section 10.311 is revised to read as follows:

§ 10.311 Lump-sum awards.

(a) (1) In exercise of the discretion afforded by section 8135(a), the Director has determined that lump-sum payments will no longer be made to individuals whose injury in the performance of duty as a federal employee has resulted in a loss of wage-earning capacity. This determination is based on, among other factors:

(i) The fact that FECA is intended as a wage-loss replacement program;

(ii) The general advisability that such benefits be provided on a periodic basis; and

(iii) The high cost associated with the long-term borrowing that is necessary to pay out large lump sums.

(2) Accordingly, where applications for lump-sum payments for wage-loss benefits under section 8105 and 8106 are received, the Director will not exercise further discretion in the matter.

(b) Notwithstanding the determination set forth in paragraph (a) of this section, a lump sum payment may be made to a claimant whose injury entitles him or her to a schedule award under section 8107. Even under these circumstances, a claimant possesses no absolute right to a lump-sum payment of benefits payable under section 8107, and such a payment may be granted only where the Director determines, acting within his or her discretion, that such a payment is in the claimant's best interest. Lump-sum payments of schedule awards generally will not be considered in the claimant's best interest where the compensation payments are relied upon by the claimant as a substitute for lost wages.

(c) On remarriage before age 55, a surviving spouse entitled to compensation under 5 U.S.C. 8133, shall be paid a lump sum equal to 24 times the monthly compensation payment (excluding compensation payable on account of another individual) to which the surviving spouse was entitled immediately before the remarriage.

Signed at Washington, DC, this 4th day of August 1992.

Lynn Martin,

Secretary of Labor.

[FR Doc. 92–18796 Filed 8–10–92; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 191

The DoD Civilian Equal Employment Opportunity Program

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Department of Defense is changing the name of the DoD Handicapped Individuals Program to "the DoD Program for People with Disabilities." In addition, the language in the regulation establishing the DoD Civilian Equal Employment Opportunity Program is being updated to reflect the current usage preference of the disability community. The term "handicap" is being changed to "disability" throughout, except in proper names and titles. Similarly, the term "handicapped individuals" is being changed to "people with disabilities," and the term "handicapped employees" is being changed to "employees with disabilities".

EFFECTIVE DATE: April 17, 1992.

FOR FURTHER INFORMATION CONTACT: Judith C. Gilliom, Office of the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity), The Pentagon, Washington, DC 20301–4000. Telephone 703–697–8661.

SUPPLEMENTARY INFORMATION:

This document is not a major rule as defined by E.O. 12291. Its only effect is to update language and citations in the existing regulation. There is effect on the economy, prices, or related matters such as competition and productivity. There is no effect on small entities within the meaning of Public Law 96–354. There are no new information requirements within the meaning of Public Law 96–511. None of the changes are substantive.

List of Subjects in 32 CFR Part 191

Aged, Equal employment opportunity, Government employees, Handicapped, Religious discrimination, Sex discrimination.

Accordingly, 32 CFR part 191 is amended as follows:

PART 191—THE DOD CIVILIAN EQUAL EMPLOYMENT OPPORTUNITY (EEO) PROGRAM

1. The authority citation for part 191 continues to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 113.

§ 191.1 [Amended]

2. Section 191.1 is amended in paragraph (a) by revising "Order ADM 5420.71" to read "Order ADM 5420.71A" and in paragraph (c) by revising "Handicapped Individuals Program (HIP)" to read "Program for People with Disabilities (PPD)."

3. In § 191.3, the definition *Discrimination* is amended by revising "handicap" to read "disability"; by revising the term *Handicapped individual* to read *People with disabilities*, and placing it in alphabetical order and revising the first sentence of the introductory text of that definition; and in the definition *Special Emphasis Program (SEPs)* by revising "handicapped persons" to read "people with disabilities."

§ 191.3 Definitions.

* * * * *

People with disabilities. People who have physical or mental impairments that substantially limits one or more major life activities, has a record of such

impairment, or is regarded as having such an impairment. * * *

* * * * * *

§ 191.4 [Amended]

4. Section 191.4 is amended in paragraphs (b), (c), and (f) by revising "handicapped individuals" to read "people with disabilities" and paragraph (e) by revising "handicap" to read "disability."

§ 191.5 [Amended]

5. Section 191.5 is amended in paragraph (a)(14) by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A"; in paragraphs (a)(6), (a)(11), (b)(2), (b)(9), (b)(10), and (b)(13) by revising "handicapped individuals" to read "people with disabilities"; and in paragraph (b)(5) by revising "HIP" to read "PPD."

§ 191.6 [Amended]

6. Section 191.6 is amended in paragraphs (b)(2), (b)(5), (b)(9), (b)(10), (b)(12), and (b)(14) by revising "handicapped individuals" to read "people with disabilities"; paragraphs (b)(3) and (b)(9) by revising "HIP" to read "PPD"; paragraph (b)(12) by revising "National Employ the Handicapped Week" to read "National Disability Employment Awareness Month"; paragraph (b)(13) by revising "handicap" to read "disability"; and paragraph (b)(15) by revising "handicapped employees" to read "employees with disabilities" and by revising "Interagency Committee for Computer Support of Handicapped Employees" to read "Council on Accessible Technology" and "Order ADM 5420.71" to read "Order ADM 5420.71A."

§§ 191.8 and 191.9 [Amended]

7. Sections 191.8(a) and 191.9(b)(2) are amended by revising "handicapped individuals" to read "people with disabilities."

§ 191.9 [Amended]

8. Section 191.9(b)(3) is amended by revising "handicapped employees" to read "employees with disabilities."

Dated: August 5, 1992.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 92-19034 Filed 8-10-92; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Baltimore Regulation 92-05-26]

Safety Zone Regulation: Patapsco River, East Channel, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Marine Safety Office Baltimore is establishing a safety zone for the 178th Annual Defenders Day Celebration. A shore based artillery unit will be firing mock bombardment charges out over the Patapsco River. Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. The safety zone is necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Entry into the safety zone is prohibited unless otherwise authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m.

FOR FURTHER INFORMATION CONTACT: LT Cynthia L. Stowe, U.S.C.G. Marine Safety Office Baltimore, U.S. Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (410) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, A notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of **Federal Register** publication. Specifically, the sponsor's application to hold the event was not received until July 13, 1992, leaving insufficient time to publish a NPRM in advance of the event. Publishing a NPRM and delaying its effective date would be contrary to the public interest. Immediate action is needed to prevent vessel damage and bodily injury as a result of the fireworks explosives and any concussion injury associated with mock artillery charges.

Drafting Information

The drafters of this regulation are LT Cynthia L. Stowe, project officer for the Captain of the Port, Baltimore, Maryland, and LT Kathleen A. Duignan, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The circumstances requiring this regulation arose on July 13, 1992, when the National Park Service submitted an application to hold a mock bombardment and fireworks display, to take place on September 13, 1992. As part of their application, the National Park Service requested that the Coast Guard provide control of spectator and commercial vessel traffic.

Fireworks will be launched from a barge anchored approximately 300 feet east of Fort McHenry Range Front Light, Patapsco River, East Channel, Baltimore, Maryland. A shore based artillery unit will fire out over the river along the southeast grounds of Fort McHenry. The Safety Zone will consist of a circle, with a radius of 1,000 feet having its center located at Fort McHenry Range Front Light. The safety zone will provide for the safety of life and property during the fireworks display and protect individuals from concussion injury associated with the mock bombardment charges. A portion of the East Channel will be closed during the fireworks display. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Regulatory Evaluation

This regulation is issued pursuant to 33 U.S.C. 1225 and 1231 as set out in the authority citation for all of part 165. This regulation is considered not major under Executive Order 12291 and non-significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the emergency rule does not raise sufficient federalism implications to warrant the preparation of a Federal Assessment. This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

List of Subjects in 33 CFR Part 165

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

Regulation

In conclusion of the foregoing, subpart F 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: