

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 Assistant 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator 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 commentator also alleges that the Department engaged in criminal activity. These allegations appear mainly to be based on the commentator'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 commentator 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 commentator 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:

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

2. A new § 165.T0549 is added to read as follows:

§ 165.T0549 Safety Zone: Patapsco River, East Channel, Baltimore, Maryland

(a) *Location:* The following area is a safety zone: The waters of the Patapsco River, East Channel, bounded by the arc of a circle with a radius of 1,000 feet around its center located at Fort McHenry Range Front Light.

(b) *Effective Date:* This regulation becomes effective on September 13, 1992, at 6 p.m. and terminates that same day at 11 p.m., unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

(c) *Regulation:*

(1) In accordance with the general regulations in § 165.23, entry into the safety zone is prohibited unless authorized by the Captain of the Port or his designated representative.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section, but may not block a navigable channel.

(d) *Definitions.* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Baltimore, Maryland to act on his behalf.

(1) The Captain of the Port and the Duty Officer at the Marine Safety Office, Baltimore, Maryland can be contacted at telephone number (410) 962-5105.

(2) The Coast Guard Patrol Commander and each Coast Guard vessel enforcing the safety zone can be contacted on VHF-FM channels 13 and 16.

Dated: July 31, 1992.

R.L. Edmiston,

Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 92-19079 Filed 8-10-92; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF DEFENSE

Corps of Engineers

Department of the Army

33 CFR Part 222

[ER 1110-2-240]

Engineering and Design; Water Control Management

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

ACTION: Final rule.

SUMMARY: The Army Corps of Engineers is revising 33 CFR 222.7(g)(2) to expand the Corps requirements for public meetings and public involvement in water control issues. Recent Federal statutes relating to public involvement have created a need for updating this regulation.

EFFECTIVE DATE: September 10, 1992.

ADDRESS: HQ, USACE (CECW-EH-W) WASH, DC 20314-1000.

FOR FURTHER INFORMATION CONTACT: Mr. Charles H. Sullivan, Chief, Water Control/Water Quality Section (202 272-8509).

SUPPLEMENTARY INFORMATION: This final rule updates paragraph (g)(2) of § 222.7, Water Control Management (ER 1110-2-240). The addendum to paragraph (g)(2) delineates the Army Corps of Engineers responsibilities concerning public involvement in developing of modifying water control manuals, especially those parts subject to section 310(b) of the Water Resources Development Act of 1990 (Pub. L. 101-640, 104 Stat. 4639).

Section 310(b) uses the term "reservoir operating manuals." An Army Corps of Engineers water control manual for a given reservoir has two components, one of which is used to operate the reservoir, and the other is administratively or informational in nature. The reservoir operating chapter referred to as the "water control plan" contains the guidelines by which the agency regulates the storage and release of water under all hydrologic conditions ranging from flood to drought. The administrative and informational chapters provide background such as the project's authorization, history, watershed characteristics, pertinent data about project features, the climatic and hydrologic setting of the drainage basin, and chain of command of personnel positions with phone numbers and similar type of non-regulatory information. Changes to the former component of a water control manual that involve "proposed management decisions for operating reservoirs"

pursuant to section 310(b) require public participation, but changes to the latter component do not require public participation. Section 310(b) uses the term "public hearing." Conducting public meetings is consistent with the intent of the law to "provide significant public participation."

1. This part is not a major rule within the meaning of E.O. 12291 requiring preparation of a regulatory impact analysis because it will not result in an annual effect on the economy of \$100 million or more and it will not result in a major increase in costs or prices.

2. Pursuant to 5 U.S.C. 605(b), I hereby certify that this regulation will not have a significant economic impact on a substantial number of entities.

3. We have determined that a notice of proposed rulemaking in this matter is unnecessary since it involves general statements of policy and agency practice and procedures.

List of Subjects in 33 CFR Part 222

Bridges, Dams, Water Resources, Reservoir, Transportation, Rivers, Fish, Wildlife, Records.

For the reasons set out in the preamble, 33 CFR part 222 is amended as follows:

PART 222—ENGINEERING AND DESIGN

1. The authority citation for 33 CFR part 222 is established to read as follows and authority citations following each section are removed.

Authority: 23 U.S.C. 116(d); delegation in 49 CFR 1.45(b); 33 U.S.C. 467 et seq; 33 U.S.C. 701, 701b, and 701c-1 and specific legislative authorization Acts and Public Laws listed in appendix E of § 222.7.

2. Section 222.7(g)(2) is revised to read as follows:

§ 222.7 Water Control Management (ER 1110-2-240).

• • • • •
(g) • • •

(2) *Public involvement and information—(i) Public meeting and public involvement.* The Corps of Engineers will sponsor public involvement activities, as appropriate, to appraise the general public of the water control plan. In developing or modifying water control manuals, the following criteria is applicable.

(A) Conditions that require public involvement and public meetings include: Development of a new water control manual that includes a water control plan; or revision or update of a water control manual that changes the water control plan.

(B) Revisions to water control manuals that are administratively or informational in nature and that do not change the water control plan do not require public meetings.

(C) For those conditions described in paragraph (g)(2)(i)(A) of this section, the Corps will provide information to the public concerning proposed water control management decisions at least 30 days in advance of a public meeting. In so doing, a separate document(s) should be prepared that explains the recommended water control plan or change, and provides technical information explaining the basis for the recommendation. It should include a description of its impacts (both monetary and nonmonetary) for various purposes, and the comparisons with alternative plans or changes and their effects. The plan or manual will be prepared only after the public involvement process associated with its development or change is complete.

(D) For those conditions described in paragraph (g)(2)(i)(A) of this section, the responsible division office will send each proposed water control manual to the Army Corps of Engineers Headquarters, Attn: CECW-EH-W for review and comments prior to approval by the responsible division office.

(ii) *Information availability.* The water control manual will be made available for examination by the general public upon request at the appropriate office of the Corps of Engineers. Public notice shall be given in the event of occurring or anticipated significant changes in reservoir storage or flow releases. The method of conveying this information shall be commensurate with the urgency of the situation and the lead time available.

Kenneth L. Denton,
Army Federal Register Liaison Officer.

[FR Doc. 92-18976 Filed 8-10-92; 8:45 am]

BILLING CODE 3710-08-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA-12-13-5502; FRL-4153-1]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision

In the matter of Bay Area Air Quality Management District; Kern County Air Pollution Control District; San Joaquin Valley Unified Air Pollution Control District; South Coast Air Quality Management District; Ventura County Air Pollution Control District.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the *Federal Register* on March 5, 1992 (57 FR 7900) and on March 6, 1992 (57 FR 8104). The revisions concern rules from the following districts: the Bay Area Air Quality Management District (BAAQMD), the Kern County Air Pollution Control District (KCAPCD), the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), the South Coast Air Quality Management District (SCAQMD), and the Ventura County Air Pollution Control District (VCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended (CAA or the Act). The revised rules control VOC emissions from several different industries. Both Federal Registers 57 FR 7900 and 57 FR 8104 provided 30-day public comment periods, and EPA received one minor comment on its proposals to approve these revisions. Thus, EPA is finalizing the approval of these revisions into the California SIP under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA.

EFFECTIVE DATE: This action is effective September 10, 1992.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105
Environmental Protection Agency, Public Information Reference Unit, 401 M Street, SW., Washington, DC 20460
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1219 K Street, Sacramento, CA 95814
Bay Area Air Quality Management District, 939 Ellis Street, San Francisco, CA 94109
Kern County Air Pollution Control District, 2700 M Street, Suite 275, Bakersfield, CA 93301
San Joaquin Valley Unified Air Pollution Control District, 1745 West Shaw, Suite 104, Fresno, CA 93711
South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765-4182
Ventura County Air Pollution Control District, 702 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Doris Lo, Northern California, Nevada and Hawaii Rulemaking Section (A-5-4), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Telephone: (415) 744-1202

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1992 in 57 FR 7900, EPA proposed to approve the following rules into the California SIP: SJVUAPCD's Rule 460.2, Motor Vehicle and Mobile Equipment Refinishing Operations, and KCAPCD's Rule 410.4A, Motor Vehicle and Mobile Equipment Refinishing Operations. Rule 460.2 was adopted by SJVUAPCD on April 11, 1991, and Rule 410.4A was adopted by KCAPCD on May 6, 1991. Both rules were submitted by the California Air Resources Board (CARB) to EPA on May 30, 1991.

On March 6, 1992 in 57 FR 8104, EPA proposed to approve the following rules into the California SIP: BAAQMD's Rule 8-37, Natural Gas and Crude Oil Production Facilities; SCAQMD's Rule 465, Vacuum Producing Devices or Systems; SCAQMD's Rule 1123, Refinery Process Turnarounds; and VCAPCD's Rule 71, Crude Oil and Reactive Organic Compound Liquids. Rule 8-37 was adopted by BAAQMD on October 17, 1990; Rules 465 and 1123 were adopted by SCAQMD on December 7, 1990; and Rule 71 was adopted by VCAPCD on September 11, 1990. VCAPCD's Rule 71 was submitted by CARB to EPA on April 5, 1991, and the other three rules were submitted by CARB to EPA on May 13, 1991.

These rules were submitted in response to EPA's 1988 SIP-Call and the section 182(a)(2)(A) RACT fix-up requirement of the CAA. Both EPA's 1988 SIP-Call and the section 182(a)(2)(A) required nonattainment areas to fix their deficient reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amended Act. Section 182(a)(2)(A) also established a deadline of May 15, 1991 for states to submit corrections of those deficiencies. A detailed discussion of the background for each of the above rules and nonattainment areas is provided in 57 FR 7900 and 57 FR 8104.

EPA has evaluated all of the above rules for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in 57 FR 7900 and 57 FR 8104.