Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

Presidential Documents

Title 3—

The President

Presidential Determination No. 93-16 of March 20, 1993

Delegation of Authority To Modify or Terminate Title VII Trade Action Taken Against the European Community

Memorandum for the United States Trade Representative

By the authority vested in me by the Constitution and laws of the United States, including 3 U.S.C. section 301, I hereby delegate to the United States Trade Representative the powers granted the President:

(1) in section 305(g)(2) of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2515(g)(2)) (the Act), to modify or restrict the application of the sanctions which were imposed upon the European Community by Presidential Determination 92-22 of April 22, 1992; and

(2) in section 305(g)(3) of the Act to terminate such sanctions and remove the European Community from the report under section 305(d)(1) of the Act at such time as he determines that the European Community has eliminated the discrimination identified in Presidential Determination 92-22.

You are authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 20, 1993.

[FR Doc. 93-7155
Filed 3-24-93; 2:39 pm]
Billing code 3190-01-M

Rules and Regulations

Federal Register
Vol. 58, No. 57
Friday, March 26, 1993

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ANE-17; Amendment 39-8483; AD 93-01-09]

Airworthiness Directives; Hartzell Model HC-B4TN-5( )L/LT10282( )( )-5.3R Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Hartzell Model HC-B4TN-5( )L/LT10282( )( )-5.3R propellers installed on Mitsubishi MU-2 series aircraft. This action requires initial and repetitive inspections of propeller blades for fatigue cracks, and replacement of propeller blades, or rework of the radiused end of the blade bearing bore, as necessary. This action also requires installation of propeller blades modified to a new configuration as a terminating action to the inspection requirements. This amendment is prompted by reports of propeller blade separation that resulted from fatigue cracks. The actions specified in this AD are intended to prevent propeller blade fatigue cracks progressing to the point of propeller blade separation.

DATES: Effective on April 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 1993.

Comments for inclusion in the Rules Docket must be received on or before May 25, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 92-ANE-17, 12 New England Executive Park, Burlington, Massachusetts 01803-5299.

The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Smyth, Aerospace Engineer, Chicago Aircraft Certification Office, Propulsion Branch, ACE-140C, Small Airplane Certification Directorate, Aircraft Certification Service, FAA, 2300 East Devon Avenue, Des Plaines, Illinois 60018; telephone (312) 694-7130; fax (312) 694-7834.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has received three reports of propeller blades separating from Hartzell Model HC-B4TN-5( )L/LT10282( )( )-5.3R propellers installed on Mitsubishi MU-2 series aircraft. The manu§ facturer's investigation of the failed blades revealed fatigue cracks at the smaller internal bearing bore. Although the specific cause of crack initiation has not been identified, corrosion or other damage could create increased localized stresses in this critical area, which may result in fatigue cracks. This condition, if not corrected, can result in propeller blade fatigue cracks progressing to the point of propeller blade separation.

The FAA has reviewed and approved the technical contents of Hartzell Service Bulletin (SB) No. 136F, dated August 10, 1990; and Hartzell SB No. 136G, dated November 15, 1991. These SB's describe procedures for initial and repetitive inspections for propeller blade fatigue cracks, and replacement of blades or rework of the radiused end of the blade bearing bore, as necessary.

Since an unsafe condition has been identified that is likely to exist or develop on other propellers of the same type design, this AD is being issued to prevent propeller blade separation. This AD requires an initial and subsequent repetitive inspections for propeller blade fatigue cracks, and replacement of propeller blades or rework of the radiused end of the blade bearing bore, as necessary. All affected propeller blades showing evidence of cracks or propeller blades not meeting the rework criteria of the service bulletin must be replaced with serviceable blades prior to further flight. The actions are required to be accomplished in accordance with the service bulletin described previously.

Additionally, the AD requires installation of propeller blades modified to the "N" configuration into the propeller assembly within 15 months after the effective date of this AD, or the next overhaul, whichever occurs first. Propeller blades modified to the "N" configuration have design improvements in the internal bearing radius that reduce the susceptibility to corrosion and localized stresses. The modified blades also have additional thickness added to the blade inboard stations to reduce operating stresses. The FAA has determined that long term continued operational safety will be better assured by actual modification of the propeller to remove the source of the problem, rather than by repetitive inspections. Therefore, the installation of propeller blades modified to the "N" configuration constitutes a terminating action to the inspection requirements of this AD.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–ANE–17." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–01–09 Hartzell: Amendment 39–8463. Docket 92–ANE–17.

Applicability: Hartzell Model HC–B4TN–5( )L/LT10282( ) ( ) –5.3R propellers installed on Mitsubishi MU–2 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent propeller blade fatigue cracks from progressing to the point of propeller blade separation, accomplish the following:

(a) Initially inspect the propeller blade bearing bore area for cracks in accordance with the following:

Propeller blade time in service (TIS) on the effective date of this AD	Compliance time after the effective date of this AD
Greater than 400 hours TIS since the last inspection accomplished in accordance with Hartzell Service Bulletin (SB) No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991; or greater than 400 hours TIS since new, if never inspected.	Within 100 hours TIS or the next annual inspection, whichever occurs first.
Less than or equal to 400 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G; dated November 15, 1991; or less than or equal to 400 hours TIS since new.	Prior to the accumulation of 500 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991; or 500 hours TIS since new, if never inspected.

(b) Thereafter, inspect the propeller blade bearing bore area for cracks in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991, at intervals not to exceed 500 hours TIS since the last inspection accomplished in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(c) Prior to further flight, rework or replace propeller blades in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991, based on the inspection results of paragraphs (a) or (b) of this AD, as follows:

(1) Replace with a serviceable propeller blade any cracked blades or blades not meeting the rework criteria of Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(2) Rework the radiused end of the blade bearing bore on propeller blades meeting the rework criteria in accordance with Hartzell SB No. 136F, dated August 10, 1990, or Hartzell SB No. 136G, dated November 15, 1991.

(d) Within 15 months after the effective date of this AD, or at the next overhaul, whichever occurs first, replace Hartzell HC–B4TN–5( )L/LTLT10282( )( )–5.3R propeller blades with new Hartzell HC–B4TN–5( )L/LT10282N( )( )–5.3R propeller blades. Installation of all "N" suffixed blades in a propeller assembly constitutes a terminating action to the inspection requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Chicago Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The inspections, replacement, and rework shall be done in accordance with:

Document No.	Page No.	Date
Hartzell SB No. 136F. Total pages: 18.	1–18	Aug. 19, 1990.
Hartzell SB No. 136G. Total pages: 18.	1–18	Nov. 15, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356–2634. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on April 20, 1993. Issued in Burlington, Massachusetts, on February 25, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93-6895 Filed 3-25-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 141 and 178

[T.D. 93-21]

Elimination of Special Summary Steel Invoice

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

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to eliminate the Special Summary Steel Invoice (SSSI). The SSSI was originally designed for use in administering the trigger price mechanism as an enforcement procedure under the Antidumping Act of 1921, as amended. This amendment is being made because the trigger price mechanism is no longer being used and the SSSI is not needed for any other purpose.

EFFECTIVE DATE: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Crowe, Textiles & Metals Branch, Trade Programs Division, Office of Trade Operations (202) 927-0162.

SUPPLEMENTARY INFORMATION:

Background

Treasury Decision 78-53, published in the **Federal Register** on February 13, 1978 (43 FR 6065), amended § 141.89, Customs Regulations (19 CFR 141.89), by adding a new paragraph (b) to require that a special invoice be presented to Customs for each shipment of certain steel articles having an aggregate purchase price of a minimum dollar amount. The information provided by this special invoice, designated the Special Summary Steel Invoice (SSSI), Customs Form 5520, was originally used to implement the so-called trigger price mechanism. Under this procedure, trigger prices for certain steel mill products were established as the basis upon which imports of such products could be monitored for purposes of determining whether investigations under the Antidumping Act of 1921, as amended, were appropriate.

The value-based trigger price mechanism was replaced by a series of quantitative restrictions on steel imports, the last of which expired on March 31, 1992. Therefore, the SSSI no longer has any use. Elimination of the Special Summary Steel Invoice will provide monetary and manpower savings both for the Federal Government and for the trade community. Accordingly, § 141.89 is being amended by removing paragraph (b). In addition, a conforming change is being made to § 178.2, Customs Regulations (19 CFR 178.2), to reflect the removal of this information collection requirement.

Inapplicability of Public Notice and Comment Procedures

Because this amendment reduces the regulatory paperwork burden on the public, pursuant to 5 U.S.C. 553(b)(B), notice and public procedures are unnecessary and contrary to the public interest.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required by 5 U.S.C. 553(b) or any other law, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12291

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

Drafting Information

The principal author of this document was James A. Seal, Metals and Machinery Classification Branch, Office of Regulations and Rulings, U.S. Customs Service.

List of Subjects

19 CFR Part 141

Customs duties and inspection, Imports, Invoice requirements.

19 CFR Part 178

Reporting and recordkeeping requirements, Paperwork requirements, Collection of information.

Amendment to the Regulations

Parts 141 and 178, Customs Regulations (19 CFR parts 141 and 178), are amended as set forth below:

PART 141—ENTRY OF MERCHANDISE

1. The authority citation for part 141 continues to read in part as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Subpart F also issued under 19 U.S.C. 1481;

* * * * *

§ 141.89 [Amended]

2. Section 141.89 is amended by removing paragraph (b).

PART 178—APPROVAL OF INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 178 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 1624, 44 U.S.C. 3501 *et seq.*

§ 178.2 [Amended]

2. Section 178.2 is amended by removing the listing for § 141.89(b).

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: February 9, 1993

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93-6927 Filed 3-25-93; 8:45 am]

BILLING CODE 4820-02-M

Internal Revenue Service

26 CFR Part 1

[T.D. 8462]

RIN 1545-AH09

Definition of Affiliated Group; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to Treasury Decision 8462, which was published in the **Federal Register** for Tuesday, December 29, 1992 (57 FR 61797). The final regulations set forth circumstances under which warrants, options, obligations convertible into stock, and other similar interests are treated as exercised for purposes of determining whether a corporation is a member of an affiliated group.

FOR FURTHER INFORMATION CONTACT: Ken Cohen, (202) 622-7790 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction provide rules under section 1504(a) of the Internal Revenue Code.

Need for Correction

As published, T.D. 8462 contains an error which may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of final regulations (T.D. 8462), which was the subject of FR Doc. 92–31058, is corrected as follows:

On page 61800, column 2, in the preamble, the **Special Analyses** paragraph is corrected to read as follows:

Special Analyses

It has been determined that these rules are not major rules as defined in Executive Order 12291. Therefore, a Regulatory Impact Analysis is not required. I has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a final Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking for the regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–6912 Filed 3–25–93; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Kentucky Revised Statutes Passed by the 1992 Kentucky General Assembly

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

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with one exception, of a proposed program amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment filed by Kentucky on July 30, 1992, (Administrative Record No. KY–1171) consists of seven bills affecting Kentucky Revised Statutes (KRS) chapter 350 that were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Kentucky Program

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of Amendment

By letter of July 30, 1992, (Administrative Record No. KY–1171) Kentucky submitted a proposed program amendment containing seven bills affecting Kentucky Revised Statutes (KRS) Chapter 350 which were enacted by the 1992 Regular Session of the Kentucky General Assembly and signed into law by the Governor. The proposed amendment consists of House Bill 844, and Senate Bills 189, 190, 191, 298, 318 and 381. As submitted on July 30, 1992, the amendment included Senate Joint Resolution (S.J.R.) 108 which covers the same general subject area as Senate Bill 381. Since the resolution does not have any direct effect on Kentucky's program, no further action will be taken on S.J.R. 108 in this rulemaking.

OSM announced receipt of the proposed amendment in the September 23, 1992, **Federal Register** (57 FR 43952), and in the same notice opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on October 23, 1992.

Two of the bills included in the proposed amendment filed on July 30, 1992, refer to areas of Kentucky's program which are the subject of separate program amendments filed recently by Kentucky, and which are currently under review by OSM. Therefore, these two bills are being separated from this final rulemaking and will be considered separately. Senate Bill 191, which makes several amendments to KRS Chapter 350 for consistency with SMCRA as amended by Public Law 101–508, the "Abandoned Mine Reclamation Act of 1990", will be consolidated with the proposed amendment filed by Kentucky on June 24, 1992, (Administrative Records Number K–63) which involves modifications to Kentucky's Abandoned Mine Reclamation Plan. Senate Bill 318, which relates to conferences, hearings, civil penalties, and appeals, will be consolidated with the proposed amendment filed by Kentucky on July 28, 1992 (Administrative Record Number KY–1170) which involves revisions to Kentucky's Administrative Regulations at 405 KAR 7:001, 7:091, 7:092, 8:001, 10:001, 12:001, 12:020, 16:001, 18:001, 20:001, and 24:001.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the Kentucky program.

Revisions not specifically discussed below concern nonsubstantive wording changes, or revised cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. House Bill (H.B.) 844

Section 1 of H.B. 844 creates a new section in KRS Chapter 350 which requires that, prior to the issuance of a permit, if the operation will disturb any roads used as access to an oil or gas well or other oil and gas facility, the permit applicant shall certify that he has met and conferred with, or offered to meet and confer with, the well operator as to the disturbance. While there is no corresponding Federal rule, the Director finds that the proposal is not inconsistent with the requirements of SMCRA and the Federal regulations.

B. Senate Bill (S.B.) 189

S.B. 189 raises the annual production limit for a "small coal operator" from 200,000 tons per year to 300,000 tons per year. This limit is revised at KRS 350.260 where it determines eligibility for several members of the Small Coal Operators Advisory Council; at KRS 350.450(4)(c) where it sets aside 20 percent of abandoned mine land reclamation work for small operators; and at KRS 350.705(1) (b) and (c) where it determines eligibility for several members of the Kentucky Bond Pool Commission.

This limit is applicable only for these specific purposes under Kentucky law, and is not related to Kentucky's implementation under KRS 350.465(f) and 405 Kentucky Administrative Regulations (KAR) 7:080 of the Federal Small Operator Assistance Program at Section 507(c) of SMCRA. While there are no corresponding Federal rules, the Director finds that the proposals contained in S.B. 189 are not inconsistent with the requirements of SMCRA and the Federal regulations.

C. Senate Bill (S.B.) 190

1. Section 1 of S.B. 190 amends KRS 350.010 to exclude from the definition of "surface coal mining operations" the extraction of 25 to 250 tons of coal as an incidental part of privately financed construction where the coal is donated to a charitable or educational organization for noncommercial use or noncommercial distribution. Since 701(13) of SMCRA effectively provides that SMCRA applies only to those persons who remove or intend to remove more than 250 tons of coal and, the Federal regulations at 30 CFR 700.11 provide that the regulations promulgated under SMCRA do not apply to the extraction of 250 tons of coal or less by a person conducting a surface coal mining and reclamation operation, the Director finds that the revised State definition remains no less stringent than SMCRA and no less effective than the Federal regulations.

2. Section 1 of S.B. 190 amends KRS 350.010 by deleting the definition of "fill bench". The term is not used anywhere in KRS Chapter 350 or the regulations issued pursuant thereto. Therefore, the Director finds that the deletion of the definition will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

3. Section 2 of S.B. 190 amends KRS 350.130(1) by deleting a cross-reference to KRS 350.130(2) which is no longer relevant as a result of a revision to the payment provisions of subsection (2) which was made in 1988. Since the reference which is being deleted is meaningless, the Director finds that the deletion will not render Kentucky's rules inconsistent with SMCRA and the Federal regulations.

4. Section 3 of S.B. 190 contains a verbatim listing of KRS 350.990 as currently contained in the Kentucky Surface Mining Law. As submitted, KRS 350.990(8) provides that "except as permitted by law, any person who willfully and knowingly resists, prevents, impedes or interferes with the secretary or other personnel of the cabinet in the performance of duties pursuant to this chapter shall, upon conviction, be fined not more than $5,000 or imprisoned for not more than 1 year, or both." This rule was previously considered by OSM in a program amendment filed by Kentucky on May 8, 1990. At that time, the Director stated, in Findings 12 (d) and (e), 56 FR 4726 (February 6, 1991), "[I]n addressing the protection of government employees at section 704, SMCRA contains only the element of 'willfully'. The addition by Kentucky of a second element, 'knowingly,' requires an additional element of proof, rendering the statute more difficult to use successfully against persons so interfering. Therefore, as the Director finds the amendment to SB-141 section 1(8) that modifies KRS 350.990 to be less stringent than section 704 of SMCRA, he is not approving the amendment of the word 'knowingly'." Inasmuch as the rule, as set forth in S.B. 190 continues to include the term "knowingly", the Director restates his position that the inclusion of this element is not in accordance with section 704 of SMCRA and cannot be approved.

5. Section 4 of S.B. 190 repeals KRS 350.0281, Moratorium on regulations—Exceptions. This moratorium, under its own terms, was effective for only a two year period which ended on July 15, 1988. Therefore, the Director finds that the repeal of KRS 350.0281 will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

D. Senate Bill (S.B.) 298

1. Section 1 of S.B. 298 revises KRS 350.010 by amending the definition of "operator", and adding definitions for "permit applicant" or "applicant", and "permittee".

—Kentucky is revising its statutory definition of "operator" by limiting its application to those instances where more than 25 tons of coal are removed or are intended to be removed from the earth by coal mining within twelve (12) consecutive calendar months in any one (1) location. While the Federal definition at section 701(13) of SMCRA refers to removal of more than 250 tons of coal, the 25 ton limitation used by Kentucky is consistent with the limitation contained in the previously approved definition of "surface coal mining operations" (56 FR 4722, February 6, 1991). Therefore, the Director finds the proposed statutory definition of "operator" is no less stringent than its Federal counterpart.

By letter dated November 13, 1992 (Administrative Record Number KY-1198), OSM pointed out to Kentucky that its program did not include the "removal of coal from coal refuse piles" in its definition of operator, as contained in the Federal regulatory definition of operator at 30 CFR 701.5. OSM asked Kentucky for clarification as to whether the State interpreted the term "surface coal mining operations", as contained in the proposed definition of operator, to include removal of coal from coal refuse piles. In its response dated February 8, 1993 (Administrative Record Number KY-1209), Kentucky stated that it believes the definition of "surface coal mining operations" at KRS 350.010 was broad enough to permit the interpretation that it includes removal of coal from coal refuse piles. Kentucky also stated that it was preferable to expressly state this in the statute in order to insure consistency with federal requirements, and it intends to support 1994 legislation to revise the definition of "surface mining operations" accordingly.

—"Permit applicant" or "applicant" is defined to mean a person applying for a permit. "Permittee" is defined as a person holding a permit to conduct surface coal mining and reclamation operations. These definitions are substantively identical to the Federal definitions at sections 701 (16) and (18) of SMCRA. Therefore, the Director finds Kentucky's definitions are no less stringent than the Federal counterparts.

2. Section 17 of S.B. 298 revises KRS 350.130(1) by adding a provision whereby the bonding company, or financial institution providing the bond, may, at any stage of the reclamation process, pay the remaining encumbered balance of the bond and thereby discharge its obligation under the bond. Although there is no direct Federal counterpart to this provision, it is not in conflict with any Federal requirement. As provided by 30 CFR 800.50(d)(1), only the operator or permittee is liable for reclamation costs in excess of the amount of the bond. Therefore, the Director finds that the addition of this provision does not render the Kentucky program less stringent than SMCRA or less effective than the Federal regulations.

3. In numerous sections of S.B. 298, the use of the terms "applicant", "permit applicant", "permittee", "person", and "operator" is revised in order to achieve consistency in use of the terms and to more clearly identify

the entities that are intended to be subject to the particular statutory requirements involved. The Director finds that the revisions add clarity to Kentucky's rules and do not render those rules inconsistent with the requirements of SMCRA. The sections of S.B. 298, and the specific sections of KRS Chapter 350 which are revised, are listed below.

S.B. 298

Section	KRS chapter 350 section
2	350.028(3).
3	350.050(4).
4	350.055(4) and (5).
5	350.060(1)(a), (3), (5) (11), (14)(c) and 14(d).
6	350.062(5) and (6).
7	350.064(1).
8	350.070(2) and (3).
9	350.080.
10	350.090(1), (2) and (3).
11	350.093(2)(a), (3), (4)(a), (4)(b) and (4)(c).
12	350.095.
13	350.100(1) and (2).
14	350.113(1) and (2).
15	350.117.
16	350.120.
17	350.130(1) and (3).
18	350.135(3).
19	350.150(3).
20	350.151(2).
21	350.230.
22	350.255(2).
23	350.405.
24	350.410.
25	350.415.
26	350.420.
27	350.421(2).
28	350.425.
29	350.430.
30	350.435.
31	350.440.
32	350.445.
33	350.455.
34	350.465(3)(d), (e) and (f).
35	350.990(1), (2), (3), (4), (5), (7), (8) and (11).

E. Senate Bill (S.B.) 381

1. Section 1 of S.B. 381 adds a new section to KRS Chapter 350 that requires the Cabinet to allow the use of a soil test or other simplified procedures to determine if soil productivity on mined prime farmlands has been restored to levels that would allow average crop yields to equal or exceed the average yield of the reference crops, provided the methods are approved by OSM. The Federal regulations at 30 CFR 823.15 require, as the measure of soil productivity, and prior to the release of the operator's performance bond, the actual growth of crops for at least a three-year period. In adopting these regulations, the Secretary pointed out that "OSM has determined that cropping is the only method currently available to test the restoration of the productivity of prime farmland soils because insufficient research has been published that demonstrates the reliability of any other method" (48 FR 21458, May 12, 1983). OSM's position has been supported by the courts in *NWF* v. *Hodel*, U.S. Court of Appeals for the District of Columbia Circuit. Inasmuch as Kentucky's proposal is contingent upon OSM approval and OSM, to date, has only approved actual crop yields, the Director finds that the proposal will not render Kentucky's rules inconsistent with the requirements of SMCRA and the Federal regulations.

2. Section 2 of S.B. 381 adds a new section to KRS Chapter 350 that requires the Cabinet to encourage research and data collection to determine the validity of using a soil test or other simplified procedure to determine if mined prime farmland soils will meet yield requirements. As stated in (a) above, currently the only method accepted by OSM to prove restoration of soil productivity of prime farmland is the actual growing of crops for a minimum of three years. However, the Director finds that Kentucky's proposal to encourage research into the validity of other methods that might ultimately be acceptable to OSM will not render Kentucky's rules inconsistent with the requirement of SMCRA and the Federal regulations.

IV. Summary and Disposition of Comments

Public Comments

The public comment period and opportunity to request a public hearing was announced in the September 23, 1992, **Federal Register** (57 FR 43952). The public comment period closed on October 23, 1992. No one requested an opportunity to testify at the scheduled public hearing so no hearing was held. On October 26, 1992, the Kentucky Resources Council (KRC) filed comments in response to the proposed rule. Those comments are discussed below.

House Bill 844: KRC stated that it was unclear what effect the amendment to KRS 353.200(1) would have on Kentucky's permanent regulatory program. That provision states, "[t]he department shall exercise supervision over all mining operations in close proximity to any well". The Director has determined that only Section 1 of H.B. 844 pertains to the State surface mining law. The other sections of this legislation apply only to oil and gas drilling operations, which are not regulated under SMCRA. Therefore, they should not be considered part of this amendment, and no OSM review or approval is required.

However, in a letter to OSM dated February 8, 1993 (Administrative Record Number KY-1209), Kentucky pointed out that while it couldn't be guaranteed that the responsibilities of the two departments would never conflict, such conflicts should be resolved consistent with the requirements of SMCRA.

Senate Bill 190: Revised KRS 350.010 Section 1(1) provides an exclusion from the definition of "surface coal mining operations" for the extraction of 25 to 250 tons of coal incidental to privately financed construction where the coal is donated to charitable or educational organizations. KRS requested clarification by Kentucky that the applicant has the burden of demonstrating exemption under the Act. The Director, in approving the revision made by S.B. 190, determined that Kentucky's statutory provisions are no less effective than the Federal requirements set forth at 30 CFR 700.11. The Director does not believe any further clarification by Kentucky is required.

Senate Bill 298: KRC requested clarification of the provisions of Section 17 of the Bill regarding discharging of the obligation of a surety who pays the remaining encumbered balanced of the bond. KRC was concerned about the surety being relieved or responsibility arising from violations created by the surety during reclamation. In response to a request for clarification from OSM (Administrative Record Number KY-1198), Kentucky stated "if the surety itself creates additional violations while working on the site, the surety cannot escape its responsibility for those additional violations by then paying over the bond." The Director believes this response answers KRC's concerns, and, as set forth in Finding D.2. herein, he finds that this provision will not render Kentucky's program less stringent than SMCRA or less effective than the Federal regulations.

Senate Bill 381: KRC indicated its lack of any objections to this bill, while reserving technical concerns until Kentucky actually proposes a specific soil test as a program amendment. No action is required regarding this comment.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the Kentucky program. The Mine Safety and Health Administration, the U.S. Forest Service, the Bureau of Land Management, and the Bureau of Mines all generally supported the amendment or had no substantive comments.

V. Director's Decision

Based on the above findings, the Director is approving, with the exception of the issue discussed in Finding C.4, the program amendment as submitted by Kentucky on July 30, 1992, excluding Senate Bills 191 and 318 which have been separated in order to be considered separately by OSM.

The Federal regulations at 30 CFR part 917 codifying decisions concerning the Kentucky program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

Environmental Protection Agency (EPA) Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

VI. Procedural Determination

Executive Order 12291

On July 12, 1984, the Office of Management and Budget (OMB) granted OSM an exemption from sections 3, 4, 7 and 8 of Executive Order 12291 for actions related to approval or conditional approval of State regulatory programs, actions and program amendments. Therefore, preparation of a regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731 and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 5, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 917.15, is amended by adding a new paragraph (qq) to read as follows:

§917.15 Approval of regulatory program amendments.

* * * * *

(qq) The following amendments to the Kentucky Revised Statutes (KRS) submitted to OSM on July 30, 1992, are approved, with the exception noted herein, effective March 26, 1993. Amendments to KRS Chapter 350 as contained in House Bill 844; amendments to KRS Chapter 350 §§ 350.260, 350.450(4)(c), and 350.705(1) (b) and (c) as contained in Senate Bill 189; amendments to KRS Chapter 350 §§ 350.010, 350.130(1), and 350.0281, as contained in Senate Bill 190; amendments to KRS Chapter 350 §§ 350.010, 350.130(1), and numerous other sections revised to achieve consistency in the use of the terms "applicant", "permit applicant", "permittee", "person", and "operator", as contained in Senate Bill 298; and amendments to KRS Chapter 350 as contained in Senate Bill 381.

[FR Doc. 93–6979 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 948

West Virginia Abandoned Mine Land Program; Expanded Eligibility Criteria, Acid Mine Drainage Treatment and Abatement Program

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

ACTION: Final rule; approval of amendments.

SUMMARY: OSM is announcing the approval, with exceptions, of proposed program amendments to the West Virginia Abandoned Mine Land Reclamation Plan (hereinafter referred to as the West Virginia AMLR Plan), and the West Virginia Abandoned Mine Lands and Reclamation Act (AMLRA), under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendments were filed in response to changes to SMCRA made by the Abandoned Mine Land (AML) Reclamation Act of 1990 (Pub. L. 101–508) which was enacted on November 5,

1990, and became effective October 1, 1991. The amendments are intended to revise West Virginia's AMLR Plan and Sections 2 and 4 of the AMLRA to be consistent with the changes to SMCRA.

EFFECTIVE DATE: March 26, 1993.

FOR FURTHER INFORMATION CONTACT:
James C. Blankenship, Jr., Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 603 Morris Street, Charleston, West Virginia 25301, Telephone (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program.
II. Submission of Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the West Virginia Program.

The Secretary of the Interior approved the West Virginia AMLR plan on February 23, 1981. Information pertinent to the general background, revisions, and amendments to the initial submission, as well as the Secretary's findings and the disposition of comments can be found in the January 23, 1981, **Federal Register** (46 FR 7324–7327). Subsequent actions taken with regard to the West Virginia AMLR plan can be found in 30 CFR 948.20 and 948.25.

II. Submission of Amendment.

By letter dated October 25, 1991 (Administrative Record Number WVAML–146), West Virginia submitted a proposed amendment to its AMLR plan. The amendment consists of new narratives to be added to the approved West Virginia AMLR plan as provided for by 30 CFR 884.13.

OSM announced receipt of the proposed amendment in the April 13, 1992, **Federal Register** (57 FR 12790), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on May 13, 1992.

By letter dated September 17, 1991 (Administrative Record Number WVAML–145), West Virginia submitted an amendment to the AMLRA, consisting of House Bill (H.B.) 2492 which was passed by the West Virginia Legislature and became effective on March 9, 1991. The receipt of this amendment was not announced in the April 13, 1992, **Federal Register** notice (57 FR 12790).

OSM announced receipt of the proposed amendment to the AMLR plan and the proposed amendment to the AMLRA in the October 29, 1992, **Federal Register** (57 FR 49052), and in the same notice, reopened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendments. The comment period closed on November 30, 1992.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR Part 884, and 30 CFR 732.15 and 732.17 are the Director's findings concerning the proposed amendment to the West Virginia AMLR Plan and AMLRA. Any minor revisions not specifically discussed below are found to be no less stringent than SMCRA and no less effective than the Federal regulations. Revisions not specifically discussed below contain language similar to the corresponding Federal rules, concern nonsubstantive wording changes, or revise cross-references and paragraph notations to reflect organizational changes resulting from this amendment.

A. Revisions to West Virginia's AMLR Plan

On October 25, 1991, West Virginia submitted proposed revisions to its AMLR Plan consisting of two new sections (Expanded Eligibility Criteria and Acid Mine Drainage Treatment and Abatement Program). The State subsequently submitted minor changes to the proposed revisions on June 18, 1992, July 21, 1992, and December 15, 1992 (Administrative Record Numbers WVAML–164, WVAML–167, and WVAML–171, respectively), in response to requests for clarification from OSM. The proposed revisions, as adjusted, consist of the following provisions:

1. Expanded Eligibility Criteria

West Virginia is proposing, in this section, to expand eligibility for AML funding to include Priority One or Two sites (as defined in Sections 403 (a)(1) and (a)(2) of SMCRA) abandoned between (a) August 4, 1977 and January 21, 1981 (known as interim program sites), where bonds, other forms of financial guarantees, or any other sources of funding are not sufficient to provide for adequate reclamation or abatement; or (b) August 4, 1977 and November 5, 1990, (known as "surety failure sites") where the surety of the mining operator became insolvent during such period, and funds immediately available from proceedings relating to such insolvency, or from any financial guarantee or other source, are not sufficient to provide for adequate reclamation or abatement. On July 21, 1992 (Administrative Record Number WVAML–167), West Virginia responded to a request for clarification from OSM dated July 9, 1992 (Administrative Record Number WVAL–166), as to whether or not the State's Special Reclamation Fund would be considered an "other source" of funding and would, therefore, be used to reclaim sites covered by the new revisions prior to the expenditure of any AML money. The State responded that "(I)n the case of reclamation of priority one or two surety failures, AML money will be used. In the case of lower priority surety failures, Special Reclamation money will be used to reclaim the site equal to the original bond."

Section 402(g)(4)(B)(i) of SMCRA provides for the use of AML funds in connection with "interim sites" where funds available pursuant to a bond or other form of financial guarantee or from any other source are not sufficient to provide for adequate reclamation or abatement at the site. Section 402(g)(4)(B)(ii) provides for the use of AML funds in connection with "surety failure sites" where funds immediately available from proceedings relating to the insolvency of the surety, or from any financial guarantee or other sources are not sufficient to provide for adequate reclamation or abatement at the site. Pursuant to chapter 22A, article 3, section 11, subsection (g) of the West Virginia Code, West Virginia's regulatory authority is authorized to expend moneys from the special reclamation fund "for the reclamation and rehabilitation of lands which were subjected to permitted surface mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven * * *." Because moneys from the fund are, by law, available for sites described in section 402(g)(4)(B) of SMCRA, AML money may not be used to reclaim these sites until and unless Special Reclamation Fund moneys are not actually available. Therefore, the Director has determined that SMCRA requires the use of funds from West Virginia's Special Reclamation Fund to reclaim "interim" or "surety failure" sites to the extent that such funds are available. Since an actuarial study is currently being conducted to determine the question of the solvency of the Special Reclamation Fund, the Director is deferring further action on that portion of the proposed revision to West Virginia's AMLR Plan which is entitled "Expanded Eligibility Criteria" pending the results of that study.

2. Acid Mine Drainage Treatment and Abatement Program

This proposed new section of West Virginia's AMLR Plan allows for the Expenditure of up to 10% of all AML money received annually, as part of the State share pursuant to section 402(g)(1) of SMCRA and historic coal distribution under section 402(g)(5) of SMCRA, to address acid mine drainage problems on a hydrologic unit basis. The hydrologic units must be significantly affected by acid mine drainage from coal mining practices which adversely impact biological resources. It further provides that the impacts must be created by acid mine drainage from mines eligible for reclamation with AML money (sites must be priority one, two or three, as defined in sections 403 (a)(1), (a)(2) and (a)(3) of SMCRA), and bond forfeiture money or other state funding sources. The State may reclaim certain areas that are severely impacted by acid mine drainage after consultation with the Soil Conservation Service. The proposal points out that the Secretary of the Interior will ask the Director of the Bureau of Mines to comment on each proposed hydrologic unit reclamation plan. Finally, the proposal sets forth a minimum requirement consisting of seven items of information to be included in each hydrologic unit reclamation plan, which are identical to the items identified in section 402(g)(7)(B) of SMCRA. The Director finds that the proposed addition to West Virginia's AMLR Plan identified as "Acid Mine Drainage Treatment and Abatement Program", is consistent with the requirements of the Federal program as set forth at section 402(g) (6) and (7).

B. House Bill (H.B.) 2492 Revisions to the Code of West Virginia

1. H.B. 2492 revises chapter 22, article 3, section 2 of the West Virginia Code by extending the period for collection of the fees on coal produced from surface and underground mine operations until September 30, 1995. This revision is substantively identical to its Federal counterpart at section 402(b) of SMCRA and, therefore, the Director finds it to be no less stringent than its Federal counterpart.

2. H.B. 2492 revises chapter 22, article 3, section 4, subsection (b), by adding paragraphs (2) and (3) which provide as follows:

(a) Paragraph (2) allows the State to expend up to 15% of annual grants made under section 402(g)(1) and (5) of Public Law 95–87 for water supply projects if the State finds that the adverse effects on water supplies are due predominantly to effects of mining processes undertaken prior to August 3, 1977. The Director finds that these provisions are substantively identical to the Federal provisions found in section 403(b)(1) and (2) of SMCRA (which authorize expenditure of up to 30% of 402(g)(1) and (5) grants), except for the state's reference to Public Law (P.L.) 95–87. The changes to the Federal rules, which the State is incorporating in its rules by these revisions, result from revisions to SMCRA contained in Public Law 101–508. Therefore, the Director is approving the addition of paragraph (2) except for the erroneous reference and is requiring the State to amend its rules by referring to the Surface Mining Control and Reclamation Act, rather than a specific public law.

In addition, the reference to "subdivision (3) of this subsection", found in paragraph (2)(B), should read "subsection (c)", and the Director is requiring the State to amend its rules to correct this reference.

(b) Paragraph (3) provides for the State to receive and retain up to 10% of the annual grants made under section 404(g)(1) and (5) of Public Law 95–87, to be expended for administrative and personnel expenses and to achieve the priorities in Chapter 22, Article 3, Section 4(b)(1) of the Code of West Virginia, after September 30, 1995; or, for administrative and personnel expenses and to implement acid mine drainage (AMD) abatement and treatment plans which provide for abatement of the causes and treatment of the effects of AMD within qualified hydrologic units affected by coal mining practices.

The Director finds that these provisions are similar to the Federal rules found in section 402(g)(6) of SMCRA except for the reference to Public Law 95–87 (see discussion in (a) above), and the reference to section 404(g)(1) and (5), which should be 402(g)(1) and (5). Therefore, the Director is approving the addition of paragraph (3) except for the erroneous references and is requiring West Virginia to amend its rules to reflect the correct references. In addition, the Director is requiring the State to amend its rules to clarify references to "administrative and personnel expenses" by restricting these expenses to costs associated with the respective accounts.

3. H.B. 2492 revises section 4(c) to provide for the use of funds allocated under sections 402(g)(1) and (5) of Public Law 95–87 for the reclamation or drainage abatement of a site where (1) the surface mining operation occurred between August 4, 1977 and January 21, 1981 and funds available pursuant to bond or other financial guarantee, or from any other source, are not sufficient to provide adequate reclamation or abatement; or (2) the operations occurred between August 4, 1977 and October 1, 1991, and the surety of such operations became insolvent during that period and as of October 1, 1991, funds immediately available from proceedings relating to such insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation. For the reasons set forth in Finding A.1. herein, the Director is deferring action of this portion of H.B. 2492 pending completion of an actuarial study of West Virginia's Special Reclamation Fund.

Although the Director is deferring action at this time on this portion of H.B. 2492, the following items will have to be corrected before any final action is ultimately taken on this proposal.

—The correct time frame for "surety failure sites" is August 4, 1977 to November 5, 1990, rather than August 4, 1977 to October 1, 1991 as used in H.B. 2492.

—For the same reasons set forth in Finding B.2.(a) above, the reference to P.L. 95.87 must be revised.

—The reference, in West Virginia's proposal, to "paragraphs (A) and (B), subdivision (1), subsection (a) of this section", should read "paragraphs (A) and (B), subdivision (1), subsection (b) of this section."

—The reference to concurrence of the "secretary" should be clarified to show that this is the secretary of the U.S. Department of the Interior.

IV. Summary and Disposition of Comments

Public Comments

The public comment periods and opportunities to request a public hearing were announced as follows: (1) For the submission dated October 25, 1991 (Administrative Record Number WVAML–146), in the April 13, 1992, **Federal Register** (57 FR 12790); and (2) For the submission dated September 17, 1991 (Administrative Record Number WVAML–145), in the October 29, 1992, **Federal Register** (57 FR 49052). The comment periods closed on May 13, 1992, and November 30, 1992, respectively. No comments were received and no one requested an opportunity to testify at the scheduled public hearings so no hearings were held.

Agency Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations of 30 CFR 732.17(h)(11)(i), comments were solicited from various government agencies with an actual or potential interest in the West Virginia program. The Mine Safety and Health Administration, Bureau of Mines, Soil Conservation Service, and the Army Corps of Engineers acknowledged receipt of the proposed amendment and offered no comments. The Fish and Wildlife Service recommended (1) stronger language to insure that funds are expended to address acid mine drainage problems, and (2) a requirement that the Fish and Wildlife Service and the appropriate state resource agency be solicited for comments for each hydrologic unit reclamation plan. As discussed in Findings A.2. and B.2.(b), the Director finds that the proposed amendment, in the areas discussed by the Fish and Wildlife Service, is consistent with Federal requirements and that no changes are required unless, and until, either SMCRA or the Federal rules are revised in a manner consistent with the recommendations.

V. Director's Decision

Based on the above findings, the Director is approving, with the exception discussed in Finding A.1., the amendments to the West Virginia Abandoned Mine Land Reclamation Plan, as submitted on October 25, 1991 and revised on June 18, July 21 and December 15, 1992; and, with the exceptions discussed in Findings B.2. and B.3., the revisions to the AMLRA, as submitted on September 17, 1991.

The Federal rules at 30 CFR part 948 codifying decisions concerning the West Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage the State to conform its program with the Federal standards without delay. Consistency of State and Federal standards is required by SMCRA.

EPA Concurrence

Under 30 CFR 731.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Air Act (42 U.S.C. 7401 *et seq.*) or the Clean Water Act (33 U.S.C. 1251 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In his oversight of the West Virginia program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by West Virginia of only such provisions.

VI. Procedural Determinations

Executive Order 12291

On March 30, 1992, the Office of Management and Budget (OMB) granted the Office of Surface Mining Reclamation and Enforcement (OSM) an exemption from sections 3, 4, 7, and 8 of Executive Order 12291 for actions related to approval and disapproval of State and Tribal abandoned mine land reclamation plans and revisions thereof. Therefore, preparation of a regulatory impact analysis is not necessary and OMB regulatory review is not required.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State and Tribal abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and adopted by a specific State or Tribe, not by OSM. Decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof submitted by a State or Tribe are based on a determination of whether the submittal meets the requirements of Title IV of the Surface Mining Control and Reclamation Act (SMCRA) (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State and Tribal abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analysis for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining, Abandoned mine land reclamation.

Dated: February 4, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set forth in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 948—WEST VIRGINIA

1. The authority citation for part 948 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. 30 CFR 948.25, is amended by adding new paragraphs (c) and (d) to read as follows:

§ 948.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(c) The amendments to the West Virginia Abandoned Mine Lands and Reclamation Act contained in House Bill 2492, submitted to OSM on

September 17, 1991, are approved effective March 26, 1993, except for certain erroneous cross-references in section 4(b) and except for section 4(c), which is being deferred pending completion of an ongoing actuarial study of West Virginia's Special Reclamation Fund.

(d) The revisions to West Virginia's Abandoned Mine Land Reclamation Plan submitted to OSM on October 25, 1991, and revised on June 18, 1992, July 19, 1992, and December 15, 1992, are approved effective March 26, 1993, except for the section entitled "Expanded Eligibility Criteria", which is being deferred pending completion of an ongoing actuarial study of West Virginia's Special Reclamation Fund.

(3) Section 948.26 is being added to read as follows:

§ 948.26 Required abandoned mine land reclamation program/plan amendments.

(a) By March 15, 1994, West Virginia shall submit proposed revisions to its Abandoned Mine Lands and Reclamation Act to effect the following changes:

1. In section 4(b)(2)(A), change reference to "Public Law 95–87" to read "Surface Mining Control and Reclamation Act".
2. In section 4(b)(2)(B), change reference to "subdivision (3) of this subsection" to read "subsection (c)".
3. In section 4(b)(3), change reference to "section 404 of Public Law 95–87" to read "section 402 of the Surface Mining Control and Reclamation Act".
4. In section 4(b)(3)(A) and (B), clarify the references to "administrative and personnel expenses" by restricting those expenses to costs associated with the respective accounts.

[FR Doc. 93–6980 Filed 3–25–93; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–92–81]

Special Local Regulations for Marine Events; Pony Penning Swim, Assateague Channel, Chincoteague, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the annual Pony Penning Swim held at Chincoteague, Virginia. These special local regulations are necessary to control vessel traffic in the immediate vicinity of this event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and participants.

EFFECTIVE DATE: This regulation becomes effective 30 days from the date of publication in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Stephen L. Phillips, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, (804) 398–6204, or Commander, Coast Guard Group Eastern Shore, (804) 336–2891.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking concerning this regulation in the **Federal Register** on November 25, 1992 (57 FR 55492). Interested persons were requested to submit comments and none were received.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and LT John B. Gately, project attorney, Fifth Coast Guard District Legal Staff.

Background and Purpose

The Pony Penning Swim across Assateague Channel is an annual event sponsored by the Chincoteague Volunteer Fire Company. As part of the application, the Chincoteague Volunteer Fire Company requested that the Coast Guard provide control of the large spectator fleet in the area of the swim.

Discussion of Regulations

This regulation will regulate the area surrounding the Pony Penning Swim. The swim is an annual event held the last Wednesday in July. Ponies swim across Assateague Channel to Chincoteague, Virginia, and the next Friday swim back across the channel to Assateague Island. To provide for the safety of participants, spectators, and vessels transiting the area, the Coast Guard will restrict vessel movement in the regulated area during the times the ponies are in the water. Temporary buoys will mark the regulated area.

Regulatory Evaluation

This regulation is not considered major under Executive Order 12291 and not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This regulation will only be in effect for several hours each day of the event, and the impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small Entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since the impact of this regulation on non-participating small entities is expected to be minimal, the Coast Guard will certify under 5 U.S.C. 605(b), that this regulation will not have a significant economic impact on a substantial number of small entities.

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 this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This regulation has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and been placed in the rulemaking docket, and is available for inspection or copying where indicated under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.519 is added to read as follows:

§ 100.519 Assateague Channel, Chincoteague, Virginia.

(a) Definitions: (1) *Regulated area.* The waters of Assateague Channel from shoreline to shoreline, bounded to the east by a line drawn from latitude 37°55′01″ North, longitude 75°22′40″ West, to latitude 37°54′50″ North, longitude 75°22′46″ West, and to the west by a line drawn from latitude 37°54′54.0″ North, longitude 75°23′00″ West, to latitude 37°54′49″ North, longitude 75°22′49″ West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Coast Guard Group Eastern Shore.

(b) *Special local regulations.* (1) Except for participants in the Pony Penning Swim and vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area without the permission of the Patrol Commander.

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

(i) Stop the vessel immediately when 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) The Coast Guard Patrol Commander may allow vessels to transit the regulated area up until the ponies are ready to enter the water.

(4) Vessel operators are advised to remain clear of the advisory area during the effective periods of this regulation.

(c) *Effective periods:* This regulation will be effective from 7 a.m. to 2 p.m. on the last Wednesday of July and from 7 a.m. to 2 p.m. the following Friday, unless otherwise specified in the Coast Guard Local Notice to Mariners and a Federal Register Notice.

Dated: March 3, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93-7017 Filed 3-25-93; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AF80

Claims Based on Exposure to Ionizing Radiation

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning diseases claimed to be the result of exposure to ionizing radiation. This amendment is necessary to implement a recommendation by the Veterans Advisory Committee on Environmental Hazards (VACEH) that ovarian cancer and parathyroid adenoma be considered "radiogenic", and to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation. The intended effect of this amendment is to add ovarian cancer and parathyroid adenoma to the list of radiogenic diseases, and to clarify the other provisions under which service connection may be established for injury or disease claimed to be the result of exposure to ionizing radiation.

EFFECTIVE DATE: This amendment is effective March 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.311b(h) to clarify when service connection can be established based upon exposure to ionizing radiation, and to amend § 3.311b(b)(2) to include ovarian cancer as a radiogenic disease, in the **Federal Register** of March 26, 1992 (57 FR 10449-50). Interested persons were invited to submit written comments, suggestions or objections on or before April 27, 1992. We received one comment from the Disabled American Veterans. VA also published a proposal to amend § 3.311b(b)(2) to include parathyroid adenoma as a radiogenic disease in the **Federal Register** of March 31, 1992 (57 FR 10853) under RIN 2900-AF73. Interested persons were invited to submit written comments, suggestions or objections on or before April 30, 1992. Since we received no comments concerning this proposal, and since we find no good cause to make recognition of these two additional radiogenic diseases effective on separate dates, we have combined publication of the final rule proposed under RIN 2900-AF73 with the final rule under RIN 2900-AF80.

The commenter objected to the proposed amendment to § 3.311b(h) contending that the proposed regulatory language would restrict application of the basic principles of service connection in a manner which Congress did not intend when it enacted the Veterans' Dioxin and Radiation Exposure Compensation Standards Act (Pub. L. 98-542, 98 STAT. 2735 (1984)) by eliminating the possibility of direct service connection under the provisions of 38 CFR 3.303 (a) and (d), as well as precluding application of the reasonable doubt provisions of § 3.102 when VA adjudicates claims based upon exposure to ionizing radiation. The commenter believes that the proposed amendment to § 3.311b(h) exceeds the Secretary's authority to adopt regulations under 38 U.S.C. 501(a), since, in his opinion, it violates the intent of Public Law 98-542.

VA does not concur. 38 CFR 3.311b(b)(2) is meant to be an exclusive list of radiogenic conditions for which service connection may be granted under the provisions of Public Law 98-542. The previous wording of § 3.311b(h) might have been misinterpreted to mean that a veteran, rather than VA, may establish that a disease not included in § 3.311b(b)(2) resulted from exposure to ionizing radiation and should therefore be service-connected based on "sound scientific or medical evidence." Such an interpretation of § 3.311b(h) would be contrary to section 5(b)(2) of Public Law 98-542 which clearly stipulates that VA, after receiving the advice and recommendation of the VACEH, will publish regulations which list each disease for which it finds sound scientific or medical evidence of a connection to ionizing radiation.

Service connection may be established for any condition, regardless of cause, shown to have been incurred or aggravated during active service by applying the provisions of 38 CFR 3.303, 3.304, or 3.306. For certain conditions which manifest themselves within specified periods following a veteran's discharge from active military service, service connection may be established under the provisions of 38 CFR 3.307. Under each of these regulations, service connection is established not by what caused the condition, but by when it becomes manifest, i.e., service connection is established by the appearance of a combination of signs and symptoms sufficient to identify the condition during, or within a specified period following, the veteran's active military service. Service connection for disabilities or deaths alleged to be the result of exposure to ionizing radiation which first manifest themselves after the periods specified in § 3.307, however, must be established under the provisions of 38 CFR 3.311b unless service connection may be established either by applying the presumptions established by Congress in Public Law 100-321 (38 CFR 3.309(d)), or because the condition is proximately due to or the result of a service-connected disease or injury (38 CFR 3.310(a)).

By enacting Public Law 98–542, Congress clearly intended to establish an avenue for VA to compensate veterans for disabilities or deaths caused by ionizing radiation exposure, since existing statutes and regulations had proven inadequate for that purpose. Just as clearly, 38 CFR 3.311b(h), which implements the radiation provisions of Public Law 98–542, does not preclude awards of service connection under §§ 3.303, 3.304, 3.306, or 3.307, since it is applied only after service connection under those regulations has already been precluded because a condition manifested itself beyond the time frames they impose.

As to the commenter's concern that this amendment would preclude application of the reasonable doubt provisions of § 3.102, we believe those concerns are unfounded because the reasonable doubt provisions are applied at several stages throughout the adjudication of ionizing radiation claims. The initial application of the provisions of § 3.102 occurs when the Secretary, after receiving the advice of the VACEH, determines whether it is at least as likely as not that a significant statistical association exists between a specific condition and exposure to ionizing radiation (38 CFR 1.17 (d) and (f)). When the ionizing radiation dose estimates provided by the Department of Defense are reported as a range of doses to which the veteran may have been exposed, VA applies the provisions of § 3.102 again by using the highest estimated level as the basis for subsequent determinations. VA applies the benefit of doubt provisions of § 3.102 yet again when the Under Secretary for Health renders an opinion as to whether it is as likely as not that a veteran's radiogenic disease resulted from the level of ionizing radiation to which he or she was exposed during military service.

For the reasons set forth above, VA believes that the proposed amendment to § 3.311b(h) is not only consistent with the Secretary's authority under 38 U.S.C. 501(a), but also with the provisions of Public Law 98–542.

VA appreciates the comment submitted in response to both proposed rules, which are now combined and adopted with minor technical amendments.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

2. In § 3.311b(b)(2)(xvi), remove the word "and"; in § 3.311b(b)(2)(xvii), remove the mark ".", and add, in its place, the mark ";".

3. In § 3.311b, add paragraphs (b)(2)(xviii) and (b)(2)(xix), and revise paragraph (h) to read as follows:

§ 3.311b Claims based on exposure to ionizing radiation.

* * * * *

(b) * * *

(2) * * *

(xviii) Ovarian cancer; and

(xix) Parathyroid adenoma.

* * * * *

(h) *Service connection under other provisions.*

Nothing in this section will be construed to prevent the establishment of service connection for any disease or injury shown to have been incurred or aggravated during active service in accordance with §§ 3.304, 3.306, 3.307, or 3.309. However, service connection will not be established under this section, or any other section except for §§ 3.309(d) or 3.310(a), on the basis of exposure to ionizing radiation and the subsequent development of any disease not specified in paragraph (b)(2) of this section.

[FR Doc. 93–6928 Filed 3–25–93; 8:45 am]

BILLING CODE 8320-01-U

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38 CFR Part 3

RIN 2900–AF81

Procedural Due Process and Appellate Rights

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) has amended its adjudication regulations concerning procedural due process and appellate rights. This amendment is necessary because the previous regulations limit locations at which VA may hold claimant hearings. The intended effect of this amendment is to allow the Veterans Benefits Administration (VBA) greater flexibility in providing hearing locations for claimants desiring a hearing.

EFFECTIVE DATE: This amendment is effective March 26, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: VA published a proposal to amend 38 CFR 3.103(c)(1) to allow VBA greater flexibility in providing hearing locations for claimants desiring a hearing in the **Federal Register** of June 30, 1992 (57 FR 29052–53). Interested persons were invited to submit written comments, suggestions or objections on or before July 30, 1992. We received one comment from the Paralyzed Veterans of America.

The commenter, while agreeing that the proposed amendment to hold hearings at additional sites would be a convenience to certain claimants, suggested that the practice could be detrimental to the claimant's interest if the services of his or her representative or veterans service organization would be unavailable. For this reason, the commenter recommended that VA's notice of the place of the hearing include notice as to the availability of the appointed representative and of an alternate site that may be more agreeable to both the claimant and his or her representative.

This amendment to § 3.103(c)(1) allows VA the flexibility to provide hearings at any VA facility or other federal building at which suitable hearing facilities are available, at the option of VA and subject to available resources. The claimant would always have the option to request that the hearing be conducted at the VA regional office having jurisdiction over the claim or at the VA regional office nearest the claimant's home.

VA will exercise its option to offer a hearing at a site other than a VA regional office only after assessing the circumstances and the availability of resources, which may vary significantly from office to office. Hearings will most likely be offered at locations where concentrations of claimants have requested hearings, and service organizations may elect to send a representative to those sites. VA policy is to notify the claimant and his or her representative (38 CFR 1.525(d)) of the date, time and location of the hearing, and whether the claimant's representative will be available is best determined by the claimant and his or her representative after they have been notified of a hearing at an alternate site. While we do not object to notifying claimants that the hearing may be held at the regional office, we believe it is more appropriate to handle this matter procedurally rather than by regulation.

In order to more clearly emphasize that hearings at remote sites will be offered solely at VA's option, we have slightly modified the regulatory language. VA appreciates the comment submitted in response to the proposed rule, which is now adopted with the described amendment.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this regulatory amendment is non-major for the following reasons:

(1) It will not have an annual effect on the economy of $100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109 and 64.110.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: March 3, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 3 is amended as set forth below:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A, continues to read as follows:

Authority: 105 Stat. 386; 38 U.S.C. 501(a), unless otherwise noted.

§ 3.103 [Amended]

2. In § 3.103(c)(1), the first sentence, remove the numbers "19.174", and add, in their place, the numbers "20.1304".

3. In § 3.103(c)(1), the second sentence, after the words "claimant's home having adjudicative functions," add the words "or, subject to available resources and solely at the option of VA, at any other VA facility or federal building at which suitable hearing facilities are available." Remove the words "and will provide VA personnel" and add, in their place, the words "VA will provide personnel".

[FR Doc. 93–6929 Filed 3–25–93; 8:45 am]

BILLING CODE 8320-01-U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 91–280; FCC 93–29]

Low-Earth Orbit Satellites Below 1 GHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Report and Order allocates VHF and UHF radio spectrum for mobile-satellite services (MSS) using low-Earth satellites (LEOs). This action responds to decisions made at the 1992 World Administrative Radio Conference (WARC–92) and to petitions for Rule Making filed by Orbital Communications Corporation (ORBCOMM), STARSYS Inc. (STARSYS), and Volunteers in Technical Assistance (VITA). This allocation will be used to provide data messaging and position determination services using non-voice non-geostationary satellites. Provision of such services using LEOs is expected to be cost effective compared to providing comparable services using geostationary satellites.

DATES: April 26, 1993.

FOR FURTHER INFORMATION CONTACT: Ray LaForge, Office of Engineering and Technology, telephone (202) 653–8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in ET Docket No. 91–280 adopted on January 14, 1993, and released on February 5, 1993. The complete text of this Report and Order is available for inspection and copying during normal business hours in the FCC Public Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this Report and Order also may be purchased from the Commission's duplication contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington DC 20036, (202) 857–3800.

Summary of Report and Order

1. The Commission concludes that demand warrants allocation of spectrum in the VHF/UHF bands for provision of data messaging and position determination services using LEOs. For these purposes the Commission allocates for LEP–MSS the 137–137.025, 137.175–137.825, and 400.15–401 MHz bands (space-to-Earth) on a primary basis; the 137.025–137.175 and 137.825–138 MHz bands (space-to-Earth) on a secondary basis; and the 148–150.05 and 399.9–400.05 MHz bands (Earth-to-space) on a primary basis. Allocation of these bands is consistent with international frequency allocations made at the World Administrative Radio Conference in March, 1992 (WARC–92). The Commission also adopts specific conditions governing use of these bands for LEO–MSS to avoid interference to existing users. Further, the Commission awards a pioneer's preference to VITA.

2. Parties to this proceeding argue that there is significant demand for data messaging and position determination services and that demand can be met using small portable transceivers at substantial cost savings using LEOs than using existing geostationary satellite. The projected savings are attributed to the low power requirements of LEO space stations and their associated portable transceivers and to advances in launch vehicle technology. In considering the relative advantages and disadvantages of allocating spectrum for LEO satellite systems, we conclude that the possible cost savings using LEOs may be significant.

3. The bands allocated are suitable for LEO–MSS and should lead to LEO services that are both economical and reliable. Although these bands currently are used by government operations, after consultations with government users through the Inter-Departmental Radio Advisory Committee (IRAC), we are convinced that sharing is possible and that no displacement of existing users will be required.

4. The Commission grants a pioneer's preference to VITA based on pioneering work it performed to develop and demonstrate the utility of a small LEO satellite system using VHF frequencies for civilian communications purposes. The requests for pioneer's preference submitted by ORBCOMM and STARSYS are denied because their requests do not demonstrate innovation beyond existing communications technology and VITA's work demonstrating the ability to use these frequencies for data communications purposes significantly predated the work of ORBCOMM and STARSYS.

5. Finally, in accordance with the Regulatory Flexibility Act of 1980, in the Notice we invited comment on the impact of the proposed rule change on small entities. No comments were received that specifically responded to our analysis of this allocation.

6. *Accordingly, it is ordered*, That part 2 of the Commission's Rules and Regulations is amended as specified in the attached Final Rules, effective 30 days after publication in the **Federal Register**. This action is taken pursuant to sections 4(i), 303 (c), (f), (g), and (r), and 309(a) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 303 (c), (f), (g), and (r).

Further, it is ordered, That a pioneer's preference is awarded VITA for a license to construct a LEO-MSS satellite system in the bands allocated in this proceeding.

List of Subjects in 47 CFR Part 2

Frequency allocation, General rules and regulations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

I. Part 2 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in part 2 continues to read:

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

2. Section 2.106, the Table of Frequency Allocations, is amended as follows:

§ 2.106 Table of Frequency Allocations.

a. In the band 137–138 MHz add new footnote 599A; in the bands 137–138, 148–149.9, 149.9–150.05, and 400.15–401 MHz add the footnote 599B; in the band 148–149.9 add the footnotes 608A and 608C; in band 149.9–150.05 MHz add the footnote 608B; and in the 400.15–401 MHz band, add the footnotes 647A and 647B (for columns 1, 2, 3, 4, and 5). Also, in the band 149.9–150.05 MHz add the footnote 609B (columns 1, 2, and 3).

b. In the band 137–138 MHz add a new footnote US318 to columns 4 and 5.

c. In the bands 137–138, 148–149.9, 399.9–400.05, and 400.15–401 MHz add a new footnote US319 to columns 4 and 5.

d. In the bands 137–138, 148–149.9, and 400.15–401 MHz add a new footnote US320 to columns 4 and 5.

e. In the bands 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, and 400.15–401 MHz bands, add a reference to mobile-satellite to columns 4 and 5 as shown in the attached tables.

f. In the 149.9–150.05 MHz band add a new footnote US322 to columns 4 and 5.

g. In the band 148–149.9 MHz add a new footnote US323 to columns 4 and 5.

h. In the band 400.15–401 MHz add a new footnote US324 to columns 4 and 5.

i. In the band 148–149.9 MHz add a new footnote US325 to columns 4 and 5.

j. In the band 399.9–400.05 MHz add a new footnote US326 to columns 4 and 5.

BILLING CODE 6712–01–M

§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz (1)	Region 2 Allocation MHz (2)	Region 3 Allocation MHz (3)	Government Allocation MHz (4)	Non-Government Allocation MHz (5)	Rule Part(s) (6)	Special-Use Frequencies (7)

* * * * *

International Table (Regions 1, 2 and 3)	Government Allocation	Non-Government Allocation	Rule Part(s)	Special-Use Frequencies
137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile(R). 596 597 598 599 599A	137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320. 599A	137.0-137.025 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile (R). 596 597 598 599 599A			137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	137.025-137.175 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz (1)	Region 2 Allocation MHz (2)	Region 3 Allocation MHz (3)	Government Allocation MHz (4)	Non-Government Allocation MHz (5)	Rule Part(s) (6)	Special-Use Frequencies (7)

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International Table (1)–(3)	Government (4)	Non-Government (5)	Rule Part(s) (6)	Special-Use Frequencies (7)
137.175-137.825 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile(R). 596 597 598 599 599A	137.175-137.825 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320. 599A	137.175-137.825 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). MOBILE-SATELLITE (space-to-Earth) 599B US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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International Table (Regions 1–3)	Government	Non-Government	Rule Part(s)	Special-Use Frequencies
137.825-138 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B. Fixed. Mobile except aeronautical mobile (R). 596 597 598 599 599A	137.825-138 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	137.825-138 SPACE OPERATION (space-to-Earth). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth). Mobile-Satellite (space-to-Earth) 599B US318 US319 US320. 599A	SATELLITE COMMUNICATION (25).	

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§ 2.106 Table of Frequency Allocations.

International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)
*	*		*	*		*
148-149.9 FIXED. MOBILE except aeronautical mobile (R). MOBILE-SATELLITE (Earth-to-space) 599B. 608 608A 608C	148-149.9 FIXED. MOBILE. MOBILE-SATELLITE (Earth-to-space) 599B. 608 608A 608C		148-149.9 FIXED. MOBILE. MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325. 608 608A US10 G30	148-149.9 MOBILE-SATELLITE (Earth-to-space) 599B US319 US320 US323 US325. 608 608A US10	SATELLITE COMMUNICATION (25).	
149.9-150.05 RADIONAVIGATION-SATELLITE. LAND MOBILE-SATELLITE (Earth-to-space) 599B 609B. 608B 609 609A			149.9-150.05 RADIONAVIGATION-SATELLITE MOBILE-SATELLITE (Earth-to-space) 599B US319 US322. 608B 609A	RADIONAVIGATION-SATELLITE MOBILE-SATELLITE (Earth-to-space) 599B US319 US322. 608B 609A		
*	*		*	*		*

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)

* * * * *

399.9-400.05 RADIONAVIGATION-SATELLITE. 609 645B			399.9-400.05 RADIONAVIGATION-SATELLITE. MOBILE-SATELLITE (Earth-to-space) US319 US326. 645B	399.9-400.05 RADIONAVIGATION-SATELLITE. MOBILE-SATELLITE (Earth-to-space) US319 US326. 645B		

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§ 2.106 Table of Frequency Allocations.

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International Table			United States Table		FCC use designators	
Region 1 Allocation MHz	Region 2 Allocation MHz	Region 3 Allocation MHz	Government Allocation MHz	Non-Government Allocation MHz	Rule Part(s)	Special-Use Frequencies
(1)	(2)	(3)	(4)	(5)	(6)	(7)

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Region 1–3 (1)–(3)	Government (4)	Non-Government (5)	Rule Part(s) (6)	Special-Use Frequencies (7)
400.15-401 METEOROLOGICAL AIDS METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth) 647A. MOBILE-SATELLITE (space-to-Earth) 599B. Space Operation (space-to-Earth). 647 647B	400.15-401 METEOROLOGICAL AIDS (radiosonde). METEOROLOGICAL-SATELLITE (space-to-Earth). SPACE RESEARCH (space-to-Earth) 647A. MOBILE-SATELLITE (space-to-Earth) 599B US319 US320 US324. Space Operation (space-to-Earth). 647 647B US70	400.15-401 METEOROLOGICAL AIDS (radiosonde). SPACE RESEARCH (space-to-Earth). 647A. MOBILE-SATELLITE (space-to-Earth). 599B US319 US320 US324. Space Operation (space-to-Earth). 647 647B US70	SATELLITE COMMUNICATION (25).	

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BILLING CODE 6712-01-C

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International Footnotes

599A The use of the band 137–138 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds −125 dB(W/m²/4 kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the 150.05–153 MHz band from harmful interference from unwanted emissions.

599B The use of the bands 137–138 MHz, 148–149.9 MHz and 400.15–401 MHz by the mobile-satellite service and the band 149.9–150.05 MHz by the land mobile-satellite service is limited to non-geostationary-satellite systems.

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606A The use of the band 148–149.9 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). The mobile-satellite service shall not constrain the development and use of fixed, mobile and space operation services in the band 148–149.9 MHz. Mobile earth stations in the mobile-satellite service shall not produce a power flux-density in excess of −150 dB(W/m²/4 kHz) outside national boundaries.

608B The use of the band 149.9–150.05 MHz by the land mobile-satellite service is subject to the application of the coordination and notification procedures set forth in RES46 (WARC–92). The land mobile-satellite service shall not constrain the development and use of the radionavigation-satellite service in the band 149.9–150.05 MHz. Mobile earth stations of the mobile-satellite service shall not produce a power flux-density in excess of −150 dB(W/m²/4 kHz) outside a national boundaries.

608C Stations of the mobile-satellite service in the band 148–149.9 MHz shall not cause harmful interference to, or claim protection from stations of the fixed or mobile services in the following countries: Algeria, the Federal Republic of Germany, Saudi Arabia, Australia, Austria, Bangladesh, Belarus, Belgium, Brunei Darussalem, Bulgaria, Cameroon, Canada, Cyprus, Colombia, Congo, Cuba, Denmark, Egypt, the United Arab Emirates, Ecuador, Spain, Ethiopia, the Russian Federation, Finland, France, Ghana, Greece, Honduras, Hungary, Iran, Ireland, Iceland, Israel, Italy, Japan, Jordan, Kenya, Libya, Liechtensteinn, Luxembourg, Malaysia, Mali, Malta, Mauritania, Mozambique, Namibia, New Zealand, Norway, Oman, Pakistan, Panama, Papua New Guinea, the Netherlands, Philippines, Poland, Portugal, Qatar, Syria, Romania, the United Kingdom, Singapore, Sri Lanka, Sweden, Switzerland, Suriname, Swaziland, Tanzania, Chad, the Czech and Slovak Federal Republic, Thailand, Tunisia, Turkey, Ukraine, Yemen and Yugoslavia that operate in accordance with the Table of Frequency Allocations.

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609B In the band 149.9–150.05 MHz, the allocation to the land mobile-satellite service shall be on a secondary basis until 1 January 1997.

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647A The band 400.15–401 MHz is also allocated to the space research service in the space-to-space direction for communications with manned space vehicles. In this application, the space research service will not be regarded as a safety service.

647B The use of the band 400.15–401 MHz by the mobile-satellite service is subject to the application of the coordination and notification procedures set forth in Resolution 46 (WARC–92). However, coordination of a space station of the mobile-satellite service with respect to terrestrial services is required only if the power flux-density produced by the station exceeds −125 dB(W/m²/4kHz) at the Earth's surface. The above power flux-density limit shall apply until such time as a competent world administrative radio conference revises it. In making assignments to the space stations in the mobile-satellite service in the above band, administrations shall take all practicable steps to protect the radio astronomy service in the band 406.1–410 MHz from harmful interference from unwanted emissions.

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United States (US) Footnotes

US318 Until January 1, 2000, the use of the 137–138 MHz band by the mobile-satellite service will be secondary to Government satellite operations in the subbands: 137.333–137.367, 137.485–137.515, 137.605–137.635 and 137.753–137.787 MHz.

US319 In the 137–138, 148–149.9, 149.9–150.05, 399.9–400.05, and 400.15–401 MHz bands, Government stations in the mobile-satellite service shall be limited to earth stations operating with non-Government satellites.

US320 Use of the 137–138, 148–149.9, and 400.15–401 MHz bands by the mobile-satellite service is limited to non-voice, non-geostationary satellite systems and may include satellite links between land earth stations at fixed locations.

US322 The 149.9–150.05 MHz band is allocated to the mobile-satellite service (Earth-to-space) on a primary basis after 1 January 1997 and shall be limited to non-voice, non-geostationary satellite systems, including satellite links between land earth stations. Before 1 January 1997 use of this band on a secondary basis for the mobile satellite service is allowed for land earth stations at fixed locations.

US323 In the 148–149.9 MHz band, no individual mobile earth station shall transmit, on the same frequency being actively used by fixed and mobile stations and shall transmit no more than 1% of the time during any 15 minute period; except, individual mobile earth stations in this band that do not avoid frequencies actively being used by the fixed and mobile services shall not exceed a power density of −16 dBW/4kHz and shall transmit no more than 0.25% of the time during any 15 minute period. Any single transmission from any individual mobile earth station operating in this band shall not exceed 450 ms in duration and consecutive transmissions from a single mobile earth station on the same frequency shall be separated by at least 15 seconds. Land earth stations in this band shall be subject to electromagnetic compatibility analysis and coordination with terrestrial fixed and mobile stations.

US324 Government and non-Government satellite systems in the 400.15–401 MHz band shall be subject to electromagnetic compatibility analysis and coordination.

US325 In the band 148–149.9 MHz fixed and mobile stations shall not claim protection from land earth stations in the mobile-satellite service that have been previously coordinated; Government fixed and mobile stations exceeding 27 dBW EIRP, or an emission bandwidth greater than 38 kHz, will be coordinated with existing mobile-satellite service space stations.

US326 The 399.9–400.05 MHz band is allocated to the mobile-satellite service (Earth-to-space) on a primary basis after January 1, 1997 and shall be limited to non-voice, non-geostationary satellite systems, including satellite links between land earth stations.

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[FR Doc. 93–6765 Filed 3–25–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 227

[Docket No. 920937–3028]

Threatened Fish and Wildlife; Steller Sea Lions

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: With few exceptions, vessel entry within 3 nautical mile (nm) of listed Steller sea lion rookery sites in the Bering Sea, Aleutian islands, and Gulf of Alaska is currently prohibited. This prohibition was established concurrent with the listing of the Steller sea lion (*Eumetopias jubatus*) as a threatened species under the Endangered Species Act to aid the species' recovery. NMFS is amending existing regulations to authorize vessel transit through the Steller sea lion rookery buffer zones at Cape Morgan, Akutan Island, Clubbing Rocks, and Outer Island. NMFS has determined that: (1) these navigational routes have

been used traditionally by vessels; (2) vessels transiting these routes that maintain a minimum distance of 1 nm from sea lion rockery boundaries and remain in continuous transit, are not likely to have a significant adverse affect on Steller sea lions; and (3) there are no reasonable and acceptable alternatives for navigation in the vicinity of these locations.

EFFECTIVE DATE: This rule is effective on April 3, 1993.

ADDRESSES: A copy of the Environmental Assessment is available from Protected Resources Management Division, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Colleen Coogan, NMFS Alaska Region, Protected Resources management Division, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Background

By emergency interim rule (55 FR 12645, April 5, 1990), NMFS listed the Steller (northern) sea lion as a threatened species under the Endangered Species Act (ESA) (16 U.S.C. 1531–1543). Coincident with the listing, NMFS, to aid the species' recovery, established the following protective regulations:

(1) Prohibited, with limited exceptions, vessel entry within 3 nm of listed Steller sea lion rookeries;

(2) prohibited shooting at or near Steller sea lions; and

(3) reduced the allowable level of take incidental to commercial fisheries in Alaskan waters (50 CFR 227.12).

The emergency rule included an exception for transit through rookery buffer zones at 12 listed straits, passes, and narrows. During the comment period on the interim rule, one commenter objected to this navigational transit exception and recommended that advanced approval and a showing of necessity should be required. NMFS responded to the comment in the proposed rule (55 FR 29792, July 20, 1990), and proposed to exclude the navigational transit exception from the final rule. This decision was based on the presumed availability of alternative routes and the buffer zone exception for emergency situations. No comments were received on this portion of the proposed rule, and the final rule did not include an exception for navigational routes (55 FR 49204, November 26, 1990).

Subsequent to these actions, NMFS promulgated additional protection measures for Steller sea lions. Under the Magnuson Fishery Conservation and Management Act, NMFS has prohibited groundfish trawling within 10 nm of listed Steller sea lion rookeries during the Bering Sea and Aleutian Islands winter pollock roe fishery (57 FR 2683, January 23, 1992).

During the North Pacific Fishery Management Council's January 1992 meeting, a representative of the fishing industry testified that the 3-nm no-entry zone around the Akutan/Cape Morgan sea lion rookery created a significant safety hazard to fishing vessels. In a subsequent letter to the Alaska Regional Director, the same representative requested that NMFS reevaluate the specific navigational routes contained in the emergency interim rule.

In response to this request, NMFS evaluated the need for, and the likely effects of, reestablishing navigational routes. Based on a review of the available information, NMFS preliminarily determined that exceptions for the purposes of navigational transit were warranted at Akutan Pass and in the vicinity of Clubbing Rocks. For this reason, as authorized under 50 CFR 227.12(b)(5), the Director, Alaska Region, NMFS, granted an immediate temporary exemption for navigational transit at these two locations on October 15, 1992 (57 FR 47276). In addition, NMFS proposed to permanently amend existing regulations to reflect this exception to the buffer zones (57 FR 53312, November 9, 1992). To provide adequate protection to Steller sea lions, under the temporary exemption, transitting vessels are required to maintain a minimum of 1 nm from the rookery boundaries and are prohibited from all other non-passage activities within the buffer zones, e.g., fishing or anchorage.

Comments on the Proposed Rule

NMFS received four comments in response to the November 9, 1992, notice of proposed rulemaking. Two comments were from private individuals and two comments were from fishing industry representatives. Two commenters expressed support for the proposed transit zones at Akutan Pass and Clubbing Rocks. Three commenters requested additional transit zones; one of these requests was for transit through a buffer zone not created under the ESA for Steller sea lions. These comments are discussed below:

One of the commenters requested permission to operate a vessel within the Sugarloaf Island buffer zone to conduct birding tours and supply a research camp at East Amatuli Island. NMFS' purpose in amending the existing regulations is to allow for safe passage through buffer zones where other routes are not available or are more hazardous. Under the proposed exception, vessels are allowed to transit continuously through the buffer zone, but all other activities, such as anchorage and fishing, are prohibited. The commenter's request is not for transit through a buffer zone for navigational purposes, but to pursue tour activities within a buffer zone. NMFS has previously denied this request (57 FR 26649, June 15, 1992), and maintains that seabird viewing can be accomplished at other locations outside of the sea lion protection areas. Since NMFS has granted an individual exemption for the seabird research being conducted at East Amatuli Island (58 FR 4156, January 13, 1993), an additional exception for this activity is not necessary. Therefore, NMFS has determined that creation of a transit zone within the Sugarloaf Island buffer zone is not warranted.

Another commenter requested a transit zone be established through Wildcat Pass, which runs between Rabbit Island and Ragged Island about 1.5 statute miles north of the Outer Island Steller sea lion rookery. This proposed route would provide a shorter and more protected passage for vessels travelling to and from Seward and points west during severe weather conditions. Since there is an island between Outer Island and this proposed passageway and the route is greater than 1 nm from the rookery, it is unlikely that Steller sea lions would be adversely affected by allowing vessels to transit through this pass. A transit zone through Wildcat Pass is therefore included in this final rule.

Two other commenters both wrote in support of a permanent exception for navigational transit through Akutan Pass and in the vicinity of Clubbing Rocks as proposed in the November 9, 1992, notice of proposed rulemaking. One of these commenters requested that a transit zone be established through the 12-nm buffer zone around the Round Island walrus haulout. This protection area was established under the Magnuson Fishery Conservation and Management Act for walruses, and therefore, is beyond the scope of the action being considered under this rulemaking.

Determination

NMFS has determined that allowing navigational transit through buffer zones around the Cape Morgan-Akutan Island, Clubbing Rocks, and Outer Island Steller sea lion rookeries is warranted, and that existing regulations at 50 CFR 227.12 should be amended to reflect this exception to the buffer zone restrictions. Vessel traffic has occurred traditionally through waters encompassed by these three buffer zones, particularly by vessels operating out of Dutch Harbor, Sand Point, King Cove, and Seward. Vessels will be required to maintain a minimum distance of 1 nm from the rookery boundaries, and may only engage in continuous navigational transit through the buffer zones. A limited exception to allow transit through these three areas under these conditions is not anticipated to cause significant disruption to sea lion behavior. Alternative routes entail significantly increased safety hazards for vessel operators and crew, and are viewed by NMFS as not being acceptable alternatives. Therefore, NMFS amends the existing regulations at 50 CFR 227.12(b) to provide navigational transit routes through the buffer zones at Cape Morgan-Akutan Island, Clubbing Rocks, and Outer Island.

Classification

Based on an environmental assessment (EA) prepared by NMFS, the Assistant Administrator for Fisheries, NOAA (Assistant Administrator) has determined that implementation of this final rule will not have a significant impact on the environment. As a result of this determination, an environmental impact statement was not prepared. A copy of the EA is available (see ADDRESSES).

NMFS has determined that the final rule is likely to cause only minimal disruption in normal sea lion behavior and is not likely to imperil the survival or impede the recovery of Steller sea lions. NMFS has conducted a consultation under section 7 of the ESA that concluded that implementation of this exemption for navigation through the buffer zones in these locations is not likely to jeopardize the continued existence of Steller sea lions. The maintenance of a 1-nm minimum approach within the navigational routes, in conjunction with other existing regulations, is expected to provide adequate protection for Steller sea lions.

The Assistant Administrator has determined that this final rule is not a "major rule" that requires a regulatory impact analysis under E.O. 12291. The final rule is expected to reduce economic costs to a sector of the public.

The General Counsel for the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant impact on a substantial number of small entities since the rule will result in reduced economic costs for vessel operators. As a result, a regulatory flexibility analysis was not prepared.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: March 22, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries.

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

PART 227—THREATENED FISH AND WILDLIFE

1. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

2. In § 227.12, a new paragraph (b)(6) is added to read as follows:

§ 227.12 Steller sea lion.

* * * * *

(b) * * *

(6) *Navigational transit.* Paragraph (a)(2) of this section does not prohibit a vessel in transit from passing through a strait, narrows, or passageway listed in this paragraph if the vessel proceeds in continuous transit and maintains a minimum of 1 nautical mile from the rookery site. The listing of a strait, narrows, or passageway does not indicate that the area is safe for navigation. The listed straits, narrows, or passageways include the following:

Rookery	Straits, narrows, or pass
Akutan Island.	Akutan Pass between Cape Morgan and Unalga Island.
Clubbing Rocks.	Between Clubbing Rocks and Chernl Island.
Outer Island	Wildcat Pass between Rabbit and Ragged Islands.

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[FR Doc. 93-6959 Filed 3-25-93; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 641

[Docket No. 921192-2352]

RIN 0648-AE91

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NMFS increases the annual commercial quota for red snapper in the Gulf of Mexico reef fish fishery from 2.04 to 3.06 million pounds (0.93 to 1.39 million kg) in accordance with the framework procedure of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The intended effect is to protect the red snapper resource from overfishing and continue the stock rebuilding program while still allowing catches in the commercial and recreational fisheries for red snapper.

EFFECTIVE DATE: March 23, 1993.

FOR FURTHER INFORMATION CONTACT: Robert A. Sadler, 813-893-3161.

SUPPLEMENTARY INFORMATION: The background and rationale for the changes were contained in the proposed rule (57 FR 57129, December 3, 1992) and are not repeated here. The reef fish fishery of the Gulf of Mexico is managed under the FMP, which is prepared and amended by the Gulf of Mexico Fishery Management Council (Council). The FMP is under authority of the Magnuson Fishery Conservation and Management Act; its implementing regulations are at 50 CFR part 641.

In accordance with the FMP's framework procedure for adjustment of management measures, the Council proposed for red snapper an increase in the total allowable catch (TAC) from 4.0 to 6.0 million pounds (1.8 to 2.7 million kg) and a change in the target date for achieving a 20 percent spawning potential ratio from January 1, 2007, to January 1, 2009. Under the established commercial/recreational allocation ratio of 51/49, a TAC of 6.0 million pounds (2.7 million kg) would provide a commercial quota of 3.06 million pounds (1.39 milion kg), upon attainment of which the commercial fishery would be closed. A recreational allocation of 2.94 million pounds (1.33 million kg) is proposed, which would equate to a daily recreational bag limit of 7 fish, the current bag limit.

Comments and Responses

One individual provided remarks on various topics, including the 1993 TAC proposed by the Council. A marine conservation organization objected to