

conditions (when the river gauge indicates 5.9 feet or less), the proposed extended periods when the bridges need not open for the passage of vessels will apply to both commercial and noncommercial vessels.

Regulatory Evaluation

This proposal is not a significant action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Most waterway traffic can be accommodated by the alternate fixed span channel. For the benefit of commercial vessels, the proposed rule would revert to its previous, less-restrictive form when the vertical clearance under the alternate fixed span was less than 52 feet.

Small Entities

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

Federalism

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

Environment

The Coast Guard considered the environmental impact of this proposed regulation and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B (as revised by 59

FR 38654; July 29, 1994), this proposed regulation is categorically excluded from further environmental documentation. An environmental checklist and categorical exclusion determination have been completed for this proposed action and have been included in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

For the reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.869, paragraph (a) is revised to read as follows:

§ 117.869 Columbia River.

(a) The draws of the Interstate 5 highway bridge, mile 106.5, between Portland, OR, and Vancouver, WA, shall open on signal, except that:

(1) When the river gauge at the bridge indicates 6.0 feet, or more, as determined by the drawtender on duty, the draws need not open for the passage of commercial vessels from 6:30 a.m. to 8:00 a.m. and from 3:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays, and for all other vessels the draws need not open from 5:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays.

(2) When the river gauge at the bridge indicates 5.9 feet, or less, as determined by the drawtender on duty, the draws need not open for the passage of any vessels from 5:30 a.m. to 9:00 a.m. and from 2:30 p.m. to 6:00 p.m. Monday through Friday, except Federal holidays.

* * * * *

Dated: February 28, 1995.

John A. Pierson,

Captain, U.S. Coast Guard, Commander, 13th Coast Guard District, Acting.

[FR Doc. 95–6152 Filed 3–13–95; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

Department of the Army

Corp of Engineers

33 CFR Parts 320, 325 and 333

Wetland Delineator Certification Program

AGENCY: Army Corps of Engineers, DOD.
ACTION: Proposed rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is establishing a program for the training and certification of individuals as wetland delineators. The intent of the Wetland Delineator Certification Program (WDCP) is: (1) To improve the quality and consistency of wetland delineations submitted to the Corps, and (2) to streamline the regulatory process by developing procedures for expediting review and consideration of delineations submitted by certified delineators. We are publishing this proposed rule today to provide the public the opportunity to assist us in the development of the WDCP.

DATES: Written comments must be submitted on or before April 13, 1995.

ADDRESSES: Written comments must be submitted to: The Chief of Engineers, United States Army Corps of Engineers. ATTN: Ms. Karen Kochenbach, CECW–OR, Washington, DC 20314–1000.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Kochenbach or Mr. Sam Collinson at the Office of the Chief of Engineers at (202) 272–0199.

SUPPLEMENTARY INFORMATION:

Background

The Corps regulates activities involving the discharge of dredged or fill material into waters of the United States, including wetlands, pursuant to Section 404 of the Clean Water Act (CWA). In accordance with Section 307(e) of the Water Resources Development Act of 1990 (WRDA 90), the Corps is establishing the WDCP. Section 307 (e) of WRDA 90 authorizes the Secretary of the Army to establish a program for the training and certification of individuals as wetland delineators. Pursuant to this authority, the Corps conducted demonstration projects in the Baltimore, Jacksonville, and Seattle districts.

The Wetland Delineator Certification Program (WDCP) was initially announced in the **Federal Register** on December 30, 1992 (57 FR 62312). This notice introduced the WDCP and provided specifics on participation in the three demonstration projects. On

April 16, 1993, we published a second announcement in the **Federal Register** (58 FR 19806) concerning the availability of draft training materials developed for the WDCP. Corps districts nationwide issued public notices concurrently with these notices, and numerous publications chose to include brief articles in their professional journals on the WDCP.

The concept of providing expedited acceptance of wetland delineations by consultants and contractors similar to the goals of the WDCP has previously been informally implemented by a few Corps districts on a limited basis. In those cases, the Corps districts established informal procedures for expeditious review and acceptance of wetland delineations performed by qualified individuals. Like those informal approaches, there will be no requirement for wetland delineators to be certified under the WDCP in order to submit wetland delineations to the Corps; however, the Corps will handle wetland delineations performed by wetland delineators it has certified more expeditiously. Corps districts will retain discretion regarding the acceptance of wetland delineations, including those accomplished by certified delineators. The WDCP will affect the Corps', U.S. Environmental Protection Agency's (EPA), or U.S. Department of Agriculture Natural Resources Conservation Service's (NRCS, formerly the Soil Conservation Service (SCS)) authority to determine jurisdiction for purposes of Section 404 of the CWA, but is intended to provide expedited service to the public, while improving the accuracy and consistency of wetland delineations submitted to the Corps by consultants and contractors. The development of this program is also a component of the Administration's August 24, 1993 Wetlands Plan entitled "Protecting America's Wetlands: A Fair, Flexible, and Effective Approach."

Wetland Delineation Manual

The four Federal agencies responsible for making wetland delineations (i.e., the Corps, EPA, NRCS, and the U.S. Department of Interior Fish and Wildlife Service (FWS)) currently utilize the 1987 Corps of Engineers Wetland Delineation Manual (1987 Manual) for identifying and delineating wetlands for purposes of Section 404 of the CWA. As noted in the Administration's Wetlands Plan, the agencies will continue to use the 1987 Manual pending completion of an ongoing study of the National Academy of Sciences (NAS) Committee on Wetlands Characterization. The four Federal agencies noted above will review the results of the NAS study, which is

scheduled for completion at the end of 1994, and determine if modifications to the 1987 Manual are necessary. Certification under the WDCP will be based on demonstrated abilities for delineating wetlands using the current Federal wetland delineation methodology in use at the time of certification.

Copies of the 1987 Manual are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Attn: Order Department, Springfield, Virginia 22171. Document #ADA 176 734, Phone #(703) 487-4650. Copies of the supplemental guidance issued by the Corps concerning use of the 1987 Manual (i.e., the October 7, 1991, Questions and Answers, and the March 6, 1992, Clarification and Interpretation memorandum) as well as the Administration's Wetlands Plan of August 24, 1993, may be obtained by contacting the Regulatory Branch of your local Corps district, the EPA Wetlands Hotline at (800) 832-7828, or the Regulatory Branch of Corps Headquarters (Office of the Chief of Engineers) at (202) 272-0199.

Current Practices/Past Problems

On the average, the Corps makes a total of 30,000 jurisdictional determinations a year, many of which involve wetlands subject to regulation under Section 404 of the CWA. Jurisdictional determinations are determinations that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or Sections 9 and 10 of the Rivers and Harbors Act of 1899. While the Corps will conduct a wetland delineation if requested to do so, many applicants choose to hire the services of a consulting firm to perform wetland delineations on their behalf. Because of delineation backlogs in many Corps districts, this approach can expedite the wetland delineation review process. However, the Corps routinely receives inaccurate and inconsistent wetland delineations from applicants and/or their representatives which necessitate modification(s) or redelineation(s). When this occurs, the Corps must spend a greater amount of time in making a determination of wetlands jurisdiction. By relying more on private sector delineations the Corps will be able to more efficiently utilize its limited staff for permit evaluations and compliance.

Although many districts have internal procedures currently in use to determine competent wetland delineators, the Corps has not had one uniform process for evaluating the demonstrated competence of wetland delineators during its review of wetland

delineations. It has been our experience that wetland delineators who are properly trained and experienced in the current Federal wetland delineation methodology perform wetland delineations that are more accurate and consistent. Consequently, these delineations require the Corps to spend less time reviewing them for accuracy. These time savings are vital because Corps districts spend a considerable amount of resources reviewing and performing wetland delineations, whether delineations are made on-site (based on a site visit) or off-site (based on an office determination utilizing existing available information, such as National Wetlands Inventory maps and aerial photography).

We are aware that application of any wetland delineation methodology by persons who lack the requisite scientific and technical knowledge, has the potential to result in inaccurate or inconsistent wetland delineations. However, we anticipate that wetland delineations performed by certified delineators will be of higher quality and greater consistency, thereby allowing for an expedited wetland delineation review process.

Other organizations have or will be developing certification programs in wetland science (e.g., the Society of Wetland Scientists), and several States are also considering implementing certification programs related to wetlands. The WDCP is a separate and distinct program for wetland delineators who perform and submit wetland delineations to the Corps, and has no relationship to, nor reciprocity with, other certification programs currently in existence.

Federal Government Certification

The four Federal agencies primarily involved in wetland delineations and Section 404 of the CWA (i.e., Corps, EPA, FWS, and NRCS) have participated in interagency wetland delineation training since 1989. The Corps manages this training, and experienced delineators from the four agencies serve as instructors. The course is continuously revised as necessary to ensure that Federal agency personnel are presented with the current Federal wetland delineation methodologies. Additionally, Corps, EPA, FWS, and NRCS wetland delineators receive on-the-job training and gain valuable field experience during the daily implementation of their wetland programs. The agencies recognize the need to ensure that employees who perform and/or verify wetland delineation possess the necessary training experience. To facilitate the

goal of consistency in the identification and delineation of wetlands, the Corps continues to work with EPA, NRCS, and FWS to improve its training programs and field staff capabilities, as included in the Administration's Wetlands Plan. The Corps, based on these proposed regulations, will require completion of the interagency wetland delineation training course (i.e., Regulatory IV), in addition to two (2) years experience and an internal evaluation of knowledge and abilities of its field staff responsible for making jurisdictional determinations in wetlands, equivalent to the requirements of certified delineators. Consistent with the intent of the WDCP, Federal agencies which submit wetland delineations to the Corps (e.g., the Federal Highway Administration), may benefit from being certified by the Corps through the WDCP.

Demonstration Program

The purpose of the demonstration program of the WDCP was to determine the appropriate level of wetland delineation capabilities which should be required of individuals in order to receive expedited review and consideration of their wetland delineations by the Corps. In addition, the demonstration program was used to test draft written tests and field practicums, assess individuals' wetland delineation capabilities, and receive feedback on the training package designed for use by certified wetland delineators in the training of others in the current Federal wetland delineation methodologies. Provisional certification was awarded to those WDCP participants successfully completing the two-part test, pending the adoption of final regulations that will result from the evaluation of comments received on the regulation proposed today.

The WDCP demonstration program involved projects in three Corps districts, and began in March, 1993. The WDCP was initially announced December 30, 1992 in the **Federal Register**, in addition to district public notices. The projects took place in the States of: Washington, Maryland, and Florida, administered by the Seattle, Baltimore, and Jacksonville Districts, respectively, although participation was not limited to applicants within the districts' boundaries. Applications for provisional certification are no longer

being accepted; districts have completed the testing and evaluation of over 200 WDCP applicants. There were no prerequisites nor fees charged for participation in the demonstration projects. Because we believe that provisionally certified individuals have demonstrated adequate wetland delineation knowledge and ability, it is our intention to consider provisionally certified individuals as certified wetland delineators under the final WDCP, pending adoption of these regulations. The provisional certifications will remain valid until a final rule is adopted for the WDCP.

Written Test

The written tests used by the three demonstration districts were developed from the pool of questions used in the Federal interagency wetland delineation training (Regulatory IV), and are based on the current Federal wetland delineation methodology (i.e., the 1987 Manual), related technical guidance, and other wetland concepts covered in the Regulatory IV training (e.g., soil taxonomy). Each demonstration district prepared a written test from the pool of these multiple choice questions. Over the years, the Corps has added, deleted, and/or modified questions in the pool used in its wetland delineation training to remain consistent with the current Federal wetland delineation methodology. The passing score for the written exam administered during the demonstration projects was 80%. We believe that proper training is essential to the competency of wetland delineators, and the Corps tests are designed to evaluate such training. We invite comments on this testing approach, as well as comments on the tests, from those who have participated in the demonstration program. We intend to standardize the written tests for administration nationwide in the final WDCP.

Field Practicum

A field practicum was also administered by the demonstration districts to those who successfully completed the written test. Like the written test, the field practicum required WDCP applicants to have an understanding of the three parameters used in wetlands delineation (i.e., hydrophytic vegetation, hydric soils,

and wetland hydrology), and the procedures utilized to assess these characteristics consistent with the 1987 Manual. During the field practicums, participants were required to document the presence or absence of field indicators for each of the three parameters by using data sheets to record field observations, and by providing written explanations supporting their conclusions. Eighty percent (80%) was also the passing score for the field practicum. We believe that WDCP field practicums must be procedurally and fundamentally the same from Corps district to Corps district, and will standardize the practicum used during the demonstration phase prior to nationwide implementation.

Administration of the field practicum during the demonstration program was influenced to some degree by the weather (e.g., snow in Baltimore in March). We welcome comments on the consideration of limiting these tests to the time period as determined by appropriate by the districts, for example, the local growing season. Comments on the field practicum are requested from those individuals who participated in the demonstration program, and any recommendations for modifications or other procedures that can be consistently administered in all districts will be considered.

Results

Results of the demonstration program are provided in Table 1 below. Overall, more than 3,000 WDCP information/application packages were mailed to prospective applicants by the three demonstration districts in response to public requests. Over 1500 applications were submitted, and all were provided the opportunity to take the written exam. Of the more than 900 that did so, fewer than 400 WDCP applicants passed the written test. All of the individuals who passed the written test took the field practicum, and over 85% passed. Currently there are almost 350 provisionally certified wetland delineators nationwide. Until certification is defined through the adoption of final regulations, and individuals are certified under the final WDCP, the names of provisionally certified individuals will not be released by the Corps.

TABLE 1.—SUMMARY OF WDCP DEMONSTRATION PROGRAM RESULTS

No. of individuals	Baltimore	Jacksonville	Seattle	Totals
Applied for participation	496	501	642	1,639
Took written test	386	347	174	907
Passed written test	184 (48%)	148 (43%)	61 (35%)	393 (43%)

TABLE 1.—SUMMARY OF WDCP DEMONSTRATION PROGRAM RESULTS—Continued

No. of individuals	Baltimore	Jacksonville	Seattle	Totals
Took field practicum	184	148	61	393
Passed field practicum	152 (82%)	148 (100%)	49 (80%)	349 (88%)
Provisionally certified	152	148	49	349 (38%)

Training

A certificate of training in the current Federal wetland delineation methodology, signed by a certified wetland delineator, would be a mandatory prerequisite for all WDCP applicants. Prior to the adoption of final regulations based on today's proposal, individuals may satisfy this future prerequisite by obtaining a certificate verifying completion of wetland delineation training in the current Federal wetland delineation methodology from an instructor utilizing the Corps 1993 WDCP draft training package. The availability of the draft training package developed for the WDCP, was announced in the **Federal Register** on April 16, 1993 (58 FR 19806). Copies were distributed free of charge by the Corps Wetlands Research and Technology Center (WRTC) at the Waterways Experiment Station (WES) in Vicksburg, MS. A limited number of copies may still be available by calling the WRTC at (601) 634-4217. An evaluation of the draft WDCP training package is being conducted by the Corps, and a revised training package will be developed for future use.

A list of potential training sources available to the public through private and academic institutions, is available from the Regulatory Branch of your local Corps district office or the Office of the Chief of Engineers in Washington, D.C. A certificate of completion of the WDCP wetland delineation training would be issued by the training source and required by the Corps for participation in the final WDCP. At this time, training may be provided by individuals who have received the training materials, regardless of whether or not they are provisionally certified by the Corps. However, after the adoption of final regulations for the WDCP, all training intended to meet this prerequisite must be provided by a wetland delineator certified under the final WDCP. It is the responsibility of the individual seeking certification by the Corps under the WDCP to ensure that the training meets the training prerequisite (i.e., that the training is provided by a certified wetland delineator).

The Corps will keep certified delineators and trainers abreast of

modifications and updates to the training materials, and will provide lists of training sources offering the WDCP training. After a final WDCP is adopted, all districts will maintain lists of both certified wetland delineators as well as those who provide the requisite training, and will make these lists available to the public, as proposed in these regulations.

The Wetland Delineation Certification Program (WDCP)

The WDCP would require applicants to: (1) satisfy certain prerequisites and (2) pass a two-part test.

Prerequisites

Prerequisites for entrance into the WDCP would consist of: (1) Training in the current Federal wetland delineation methodology, and (2) two (2) years of professional experience in wetlands delineation. We feel training should consist of a combination of classroom and field training specifically in the current Federal wetland delineation methodology. Training must be conducted by an individual certified by the Corp, and should consist of a minimum of 36 hours of instruction, consistent with the training required of Corps, EPA, NRCS (formerly the SCS), and FWS Federal agency staff who delineate wetlands for purposes of Section 404 of the Clean Water Act. Comments are requested on alternative training mechanisms which provide greater flexibility to potential WDCP applicants. For example, comment is solicited in the use of videotape or at-home study for the delivery of the training material. One such alternative would allow individuals to study course materials at home, and then spend one or two days at a training program facility to receive hands-on instruction and to take the course exam. This alternative would help to reduce travel expenses, may lower tuition costs, and would reduce the time that a trainee would have to miss work. The Corps is concerned, however, that non-classroom oriented instructional methods may not provide training of a quality equivalent to classroom instruction. Comments on the impact of quality resulting from the alternative training methods taking into account the requirement for hands-on training, course test, and third party

exam, are specifically sought as a part of this proposal. To satisfy the experience requirement, WDCP applicants should have a minimum of 2 years experience delineating wetlands for Federal, State, tribal or local governments, or the private sector. The WDCP applicant would have to supply references of employers, including telephone numbers for verification purposes, of references who can attest as to the WDCP applicant's assertions regarding experience. The Corps reserves the right to check a WDCP applicant's documented prerequisites. We welcome comments on alternative approaches of satisfying the experience requirement, such as documentation that a minimum number of wetland delineations were accepted by the Corps prior to certification. Acceptance into the WDCP (i.e., meeting all prerequisites) does not guarantee certification. Applications for certification must be accompanied by documentation (e.g., training certificate) that an individual meets all prerequisites. We welcome comments on the proposed prerequisites, as well as suggestions for other options.

Tests

Generally, WDCP applicants would submit a WDCP application form (to be developed for the final WDCP) to the appropriate district, where it would be considered in accordance with the final regulations. Qualified WDCP applicants would be notified of the next available test date. Testing will include a standardized written examination for nationwide use, which must be passed before applicants proceed to the field practicum. Based on the response to the demonstration projects, we are proposing to offer the national written test sessions in all Corps districts on the same date each month for the first three months of nationwide implementation of the WDCP and quarterly thereafter. Field practicums will be scheduled based on need (i.e., the number of WDCP applicants which have first passed the written test). The field practicums may vary slightly between divisions (the proposed geographic limits of the validity of certifications made at the district level), based on regional differences such as growing season, wetland type, and some field

indicators, however, the field practicum procedure will be identical nationwide. Comments on the appropriate procedures and frequency of the field testing, particularly from individuals who participated in the demonstration program, would be helpful. We are proposing to limit the number of opportunities to retake the tests without the benefit of additional training. WDCP applicants who fail either the written or the field test are encouraged to obtain additional training and/or experience prior to retesting.

Certification

Upon successful completion of the prerequisites and testing requirements, the district would award a certification to the applicant by mail. Certified wetland delineators would be required to include a signed statement with all wetland delineations submitted to the Corps, verifying that the information has been developed in accordance with the current Federal wetland delineation methodology, and is subject to legal penalties related to false information as provided for in 18 U.S.C. Section 1001 (18 U.S.C. Section 1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statements or entry, shall be fined not more than \$10,000 or imprisoned not more than five years, or both.) Certified wetland delineators would be contacted by the Corps as to the completeness and accuracy of the wetland delineation submitted within 30 days if submitted in conjunction with a permit application, or 60 days if not (see 325.2(c)). Expedited review associated with wetland delineations submitted by certified wetland delineators does not guarantee shorter permit processing times, which will be the subject of a future rulemaking action related to the Administration's Plan. The issuance of a certification does not create or grant any property interest or right for the certified wetland delineator, nor does it create any rights for an individual relying upon a wetland delineation made by a certified wetland delineator, but is intended to facilitate the determination of jurisdiction by the Corps.

Validity of Certifications

Comments are requested on our intention to consider provisional

certifications issued by the demonstration districts valid as final certifications after the WDCP is implemented nationwide. Comments are also requested on the option of considering certifications (provisional as well as final) valid in a broader geographic area than the administering district's regulatory boundaries. While we are proposing that certifications be issued by districts and considered valid within the Corps Division in which the district exists, we invite comments on other options (e.g., nationwide). In addition, we invite comments on the need to further limit the validity of certifications in exceptional situations involving unique geographic areas. For example, it may be determined appropriate for certifications within Divisions which include entities such as Alaska, Hawaii, Puerto Rico, and America Samoa, etc., to limit the validity of certification to a smaller geographic area. Certifications would remain valid for a period of five (5) years; therefore recertification would generally be necessary once every 5 years. Certifications would be subject to suspension or revocation procedures (see Section 333.7) based on repeated poor performance and/or submittal of inaccurate wetland delineations by certified wetland delineators.

Costs

During the early years of the WDCP, costs to the Corps of administering the program will likely exceed the savings in reduced staffing needs associated with verifying wetland delineations. These costs were monitored during the demonstration program to assess the effect on budget and manpower allowances. The costs incurred by the demonstration districts were, as expected, greater than the costs anticipated during nationwide implementation due to the WDCP developmental responsibilities required of these districts.

Although the WDCP require the expenditure of a portion of the regulatory budget for several years, we are not proposing to assess a fee for certification. WDCP applicants will have incurred some costs associated with satisfaction of the training prerequisites of the program. In addition, it will be necessary for certified wetland delineators to keep certifications current with the most recent Federal wetland delineation methodology. Nonetheless, comments are requested on the issue of fees associated with the WDCP, such as where fees should be charged and why, and what should be the basis for such fees. Although we expect Federal costs

associated with nationwide implementation of the WDCP to be higher initially, we are confident that Federal labor costs will be reduced over the life of the program.

Benefits

The Corps, permit applicants, and the public will benefit from the improved quality and consistency of wetland delineations the Corps receives from certified wetland delineators. The public will benefit from the expedited review and consideration of wetland delineations by certified wetland delineators by the Corps. We believe that the program will result in better service to the public by both the Corps and private sector wetland delineators. It is anticipated that both the Corps and the public will have greater certainty in consultants' or contractors' wetland delineations as a result of the WDCP. Benefits are expected to increase each year.

Proposed Changes

33 CFR 320.3(p)—Related Laws

We are proposing to add Section 307(e) of the Water Resources Development Act of 1990 authorizing the WDCP to the related laws section.

33 CFR 325.2(c)—Wetland Delineations Submitted by Certified Delineators

We are proposing procedures, requirements, and timeframes to provide for expedited review of wetland delineations submitted by certified delineators as required by Section 307(e) of the Water Resources Development Act of 1990.

33 CFR 333—Wetland Delineator Certification Program

We are adding a new part to implement the WDCP. Section 333.1 Purpose and Section 333.2 General provide a statement of purpose and an overview of the WDCP.

Section 333.3 *Definitions* provides definitions of common terms used in the WDCP. The proposed terms are "accuracy determination", "wetland delineation", "wetland determination", "jurisdictional determination", "certification", "certified wetland delineator", "expedited review", "suspension", "revocation", "substantial inaccuracies", and "history of substantial inaccuracies". We request comments on these terms and the need to define additional terms.

Section 333.4 *Certification Process* describes the procedures and requirements necessary to be certified under the WDCP. This section includes a discussion of the mandatory prerequisites and tests we are proposing

to require of wetland delineators in order to be certified by the Corps.

Section 333.5 Validity of Certifications provides for the geographic limits of where a certification would be considered valid in order to receive expedited review by the Corps.

Section 333.6 Recertification discusses the requirement for an individual to keep the certification current in order to receive expedited review by the Corps. We believe that certifications should not be valid indefinitely and are proposing a five (5) year limit.

Section 333.7 Suspension or revocation discusses the ability of the Corps to suspend or revoke an individual's certification, if appropriate, after an opportunity has been provided by the Corps for the certified delineator to respond in writing to the District Engineer's reasons for suspending or revoking the certification.

Environmental Documentation

We have made a preliminary determination that this action does not constitute a major Federal action significantly affecting the quality of the human environment. The WDCP is intended to improve the quality and consistency of wetland delineations reviewed by the Corps, and to expedite decisions regarding these delineations, but will have no effect on the outcome of the jurisdictional determination. Furthermore, appropriate environmental documentation is prepared for all permit decisions on a case-by-case basis.

Executive Order 12866

The Department of the Army has made a preliminary determination that these regulations do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12866. The Office of Management and Budget has concurred. In addition, there has been, and will continue to be, substantial interagency coordination on the WDCP to ensure that the interests of other Federal agencies are considered in the finalization of regulations for the WDCP.

The Regulatory Flexibility Act

The Department of the Army, pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, has made a preliminary determination that these proposed regulations will not have a significant impact on a substantial number of small entities. Implementation of the WDCP has the potential to be labor intensive for the Corps, as was the case during the demonstration projects. While costs to

the Corps of administering the program during the early years of the WDCP will likely exceed the savings in reduced manpower needs associated with verifying wetland jurisdictional determinations, we are confident that labor costs will be reduced over the life of the program. These costs were monitored during the demonstration program to assess the effect on budget and manpower allowances, and costs varies among the three participating Districts. Although the WDCP will require the expenditure of a portion of the regulatory budget for several years, we do not intend to assess a fee for certification. WDCP applicants will already have incurred expenses to obtain the necessary training as needed to meet the prerequisites of the program. In addition, it will be necessary for certified wetland delineators to keep certifications current with the most recent Federal wetland delineation methodology. We have taken steps, however, to minimize labor requirements on Corps districts in the implementation of the final WDCP. For example, field practicums will be standardized and necessary training provided to the districts, thereby eliminating the time-consuming developmental process experienced by the demonstration districts. Although we expect costs associated with nationwide implementation of the WDCP to be higher initially, we are confident that Federal labor costs will be deduced over the life of the program.

Benefits

The Corps, permit applicants, and the public will benefit from the improved quality and consistency of wetland delineations the Corps receives from certified wetland delineators. The public will benefit from the expedited review and consideration of wetland delineations submitted by certified wetland delineators by the Corps. We believe that the program will result in better service to the public by both the Corps and private sector wetland delineators. It is anticipated that both the Corps and the public will have greater certainty in consultants' or contractors' wetland delineations as a result of the WDCP. Benefits are expected to increase each year.

Note: (1) The terms "district engineer" or "division engineer" should be considered to be interchangeable until decisions are made as to the appropriate level of authority for decisions regarding the WDCP, as set forth in the final regulations.

List of Subjects

33 CFR Part 320

Environmental Protection, Intergovernmental relations, Navigation, Water pollution control, Waterways.

33 CFR Part 325

Administrative practice and procedure, Intergovernmental relations, Environmental protection, Navigation, Water pollution control, Waterways.

33 CFR Part 333

Waterways, Training programs, Consultants, Reporting and record keeping requirements.

Dated: March 3, 1995.

John H. Zirschky,

Acting Assistant Secretary of the Army (Civil Works), Department of the Army.

For the reasons set out in the preamble, 33 CFR Parts 320 and 325 are proposed to be amended, and Part 333 is added to read as follows:

33 CFR CHAPTER I—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 320—GENERAL REGULATORY POLICIES

1. The authority citation for Part 320 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Section 320.3 is amended by adding a new paragraph (p) at the end that reads as follows:

§ 320.3 Related laws.

* * * * *

(p) *Water Resources Development Act of 1990.* Pursuant to Section 307(e) of the Water Resources Development Act of 1990 (Pub. L. 101-640), the Secretary of the Army has established a program for the training and certification of individuals as wetland delineators for purposes of submitting wetland delineations to the Corps. The Wetland Delineator Certification Program also includes procedures for expediting review and consideration of wetland delineations submitted by wetland delineators it has certified.

PART 325—PROCESSING DEPARTMENT OF THE ARMY PERMITS

3. The authority citation of part 325 continues to read as follows:

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

4. Paragraph (c) is added to read as follows:

§ 325.2 Processing of applications.

* * * * *

(c) Wetland delineations submitted by certified wetland delineators—(1) *General.* The Corps intends to give expedited review to wetland delineations submitted by certified wetland delineators, as part of a request for wetland jurisdictional determinations.

(2) *Contents of wetland delineations.* Certified wetland delineators will submit wetland delineations to the appropriate Corps regulatory office using the following format.

(i) The wetland delineation submittal will include:

(A)(i) A copy of the wetland delineator's certification.

B(i) Drawings, plans and/or surveys, to scale, showing the acreage and boundaries of the wetland in the project area, and

(C) Completed data sheets in support of the documented wetland boundary.

(ii) In addition, submittals by certified wetland delineators will include the name, address and telephone number of the person designated to receive the results of the Corps' accuracy determination for Corps' acceptance of the wetland delineation.

(3) *Corps approval.* District Engineers will strive to make a determination of completeness and accuracy of wetland delineations submitted by certified wetland delineators within thirty (30) calendar days of receipt if they are accompanied by a permit application, and sixty (60) calendar days if they are not.

(i) The district engineer's determination of completeness and accuracy of the wetland delineation submitted by a certified wetland delineator will be made in writing and will consist of:

(A) Request for additional information or corrections needed for the Corps to make a determination of the accuracy of the wetland delineation.

(B) Acceptance of the wetland delineation by the Corps as submitted, or

(C) Acceptance with minor modifications identified and made by the Corps.

(ii) The Corps final acceptance of a certified wetland delineator's submittal will represent the wetland delineation used in making the jurisdictional determination, and will remain valid for a specified period of time consistent with Corps guidance as provided in the final acceptance document. Resubmittal of corrected wetland delineations by certified wetland delineators after an earlier submission has been determined to have been incomplete or inaccurate

will be subject to the same time frames as the initial submittal.

* * * * *

PART 333—WETLAND DELINEATOR CERTIFICATION PROGRAM

5. Part 333 is added to read as follows:

PART 333—WETLAND DELINEATOR CERTIFICATION PROGRAM

333.1. Purpose.

333.2. General.

333.3. Definitions.

333.4. Certification Process.

333.5. Validity of certifications.

333.6. Recertification.

333.7. Suspension or revocation of certifications.

333.8. Maintenance of lists.

Authority: 33 U.S.C. 1344.

§ 333.1 Purpose.

This section prescribes the policies, procedures, and guidance for administration of the Wetland Delineator Certification Program (WDCP). The purposes of the WDCP are:

(a) To improve the quality and consistency of wetland delineations submitted to the Corps either alone or in conjunction with a permit application seeking to discharge dredge or fill material into waters of the United States, and.

(b) To streamline the regulatory process through the submittal of wetland delineations which can be approved by the Corps in an expedited manner (see 33 CFR 325.2(c) for a discussion of the expedited review and consideration of delineators submitted by certified wetland delineators).

§ 333.2 General.

The WDCP is a training and certification program for wetland delineators who submit wetland delineations to the Corps. The Corps has developed a training package for use by the others (e.g., the private sector, the academic community, States) in the current Federal wetland identification and delineation methodologies. WDCP applicants receive training from sources utilizing certified wetland delineators and the current training materials developed and provided to them for that purpose by the Corps for the WDCP. In addition, the Corps has developed a process to certify that wetland delineators have met certain minimum standards (see § 333.4 below). Furthermore, the Corps has established a process to expedite decisions on wetland delineators submitted by certified delineators (see § 325.2(c)).

§ 333.3 Definitions.

For purposes of this regulation these terms are defined as follows:

(a) The term *accuracy determination* refers to the process whereby the District Engineer determines that a wetland delineation submitted by a certified wetland delineator is consistent with the current Federal wetland delineation methodology. Such delineations may include some flaws which the Corps determines are minor and that can be easily corrected.

(b) The term *wetland delineation* means a final Corps of Engineers delineation, or verification by the Corps of a delineation submitted by an applicant or an applicant's representative, indicating the acreage and boundaries of a subject property that is wetland in accordance with the current Federal wetland delineation methodology. Additionally, the term includes reverification of expired wetland delineations and reverification of wetland delineation where new information has become available that may effect the final wetland delineation.

(c) The term *wetland determination* means a preliminary Corps of Engineers determination as to whether or not wetlands exist on a subject property.

(d) The term *jurisdictional determination* means a final Corps of Engineers determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act or a final Corps determination that a waterbody is subject to regulatory jurisdiction under Sections 9 and 10 of the Rivers and Harbors Act of 1899. Additionally, the term includes reverification of expired jurisdictional determinations and reverification of jurisdictional determinations where new information has become available that may effect the final determination.

(e) The term *certification* refers to the Corps' official recognition that an individual has successfully demonstrated that he or she is capable of performing wetland delineations consistent with the current Federal wetland delineation methodology in use at the time of certification.

(f) The term *certified wetland delineator* means an individual who has met all prerequisites and testing requirements of the Corps of Engineers wetland delineator certification program. The certified wetland delineator is able to submit wetland delineations to the Corps and receive expedited review and decisions as to the completeness and accuracy of the delineation.

(g) The term *expedited review* means that, to the maximum extent possible,

District Engineers will make all determinations as to the completeness and accuracy of wetland delineations submitted by certified wetland delineators within thirty (30) calendar days of receipt in the case of wetland delineation requests not associated with a permit application.

(h) The term *suspension* means the temporary removal of a wetland delineator's Corps certification, pending a decision by the District Engineer on whether a certification should be revoked.

(i) The term *revocation* means the removal of a delineator's certification with an optional ban on recertification for a prescribed revocation period.

(j) The term *substantial inaccuracies* means non-minor inaccuracies that, in the District Engineer's judgment, have materially affected the completeness and accuracy of the delineation and/or have caused substantial delays to the District in its review of the delineation. Substantial inaccuracies may include, but are not limited to: the inaccurate application of one or more of the field indicators for vegetation, soils, or hydrology; the failure to follow appropriate field sampling protocol or techniques; the submission of inaccurate or incomplete data forms; or the reach of erroneous conclusions about the presence and/or extent of wetlands at a site.

(k) The term *history of substantial inaccuracies* means 2 or more substantial inaccuracies in wetland delineations submitted to the Corps by the same certified wetland delineator within the same District, or 3 or more substantial inaccuracies the Corps has documented in different Districts, with at least one of these inaccuracies recorded in the District contemplating a revocation action.

§ 333.4 Certification process.

(a) **Prerequisites:** The certification process is designed to identify those individuals who possess the requisite knowledge and skills necessary to conduct and appropriately document wetland delineations consistent with the current Federal wetland delineation methodology in use at the time of certification. The certification process, which will be administered by Corps district offices, involves two steps: meeting all prerequisites, and passing all tests.

(1) The prerequisites will consist of written documentation demonstrating that the WDCP applicant has:

(i) At least two (2) years experience in delineating wetlands for any Federal, State, or local governments, or the private sector, and

(ii) Completed wetland delineation training as set forth in the Corps training materials developed for the WDCP.

(2) The training package will be made available only to training sources for instruction by a WDCP certified wetland delineator.

(b) **Testing:** The WDCP involves two (2) types of tests: a national written test, and a regional field practicum. WDCP applicants meeting all prerequisites will be scheduled for the written test. A minimum score of 80% will be required to successfully complete the written test. WDCP applicants will be permitted to retake the written test a maximum of three (3) times, or the field practicum a maximum of two (2) times, unless the WDCP applicant can provide documentation that the required training has been repeated since the last practicum. During the practicum, WDCP applicants will be asked to collect data and document conclusions. A minimum score of 80% on the field test will be required. WDCP applicants who pass both the written test and field practicum will receive documentation of certification by the applicable Corps district.

(c) **Certification.** In order to receive expedited review and consideration by the Corps, certified wetland delineators will be required to submit a copy of their certification, in addition to other required documentation, to the Corps in conjunction with each request for a verification of a wetland delineation. Wetland delineations conducted in whole or in part by an uncertified individual may receive expedited review and consideration if it is reviewed, adopted, and signed by a Corps-certified wetland delineator. The certified wetland delineator must state that he or she has personally reviewed and concurred with the wetland delineation and has found the documentation to be satisfactory. By signature and submittal, certified wetland delineators accept responsibility for the completeness and accuracy of the wetland delineation, and are subject to the suspension or revocation procedures described in § 333.7, and legal penalties regarding false information.

§ 333.5 Validity of certifications.

Generally, certifications made pursuant to these regulations will be valid within the Corps division boundaries of the certifying district. However, due to the unique features of wetland characteristics in some districts (e.g., Alaska), Corps divisions may confine the validity of certain certifications to a district or set of districts. Certifications will remain valid

for a period of five (5) years, at which time recertification will be necessary.

§ 333.6 Recertification.

(a) Recertification through the WDCP will be required every five (5) years, unless otherwise required by the Corps. WDCP applicants for recertification may be expected to complete the testing requirements (written, field, or both, as determined by the district) which have been adopted for the final WDCP. If the Corps adopts use of a new wetland delineation methodology, or events beyond the Corps' control nullify the original certification of a wetland delineator made by the Corps, recertification may be required at a greater frequency.

(b) Minor changes in the Corps wetland delineation policy and/or procedures will typically not require recertification. The Corps will notify certified individuals of minor modifications by mail. The extent of the modification will dictate the need for recertification (e.g., a new wetland delineation manual may require recertification while use of a new data form may not). Once notified, certified wetland delineators will be expected to incorporate these modifications into all future wetland delineations they submit. Failure to do so maybe grounds for suspension of an individual's certification.

§ 333.7 Suspension or revocation of certifications.

(a) A District Engineer may suspend or revoke a delineator's certification if the District Engineer determines that the wetland delineations submitted by the certified wetland delineator exhibit a history of substantial inaccuracies. Revocation will result in removal of an individual from lists provided to the public, while suspension will not. This will ensure that the list of certified wetland delineators given to the public does not contain certified wetland delineators that repeatedly perform and/or submit inaccurate wetland delineations and thus delay, rather than expedite, the Corps acceptance of wetland delineations.

(b) **Procedures—(1) Records.** Districts will maintain accurate records on all substantial inaccuracies identified in wetland delineations submitted by certified wetland delineators. Whenever any District identifies such an inaccuracy, the District will notify the certified wetland delineator and allow the delineator to write a letter explaining the inaccuracy. Such letter will be maintained in the delineator's file. If the District discovers that a certified wetland delineator has

submitted 2 or more substantially inaccurate delineations to the District, or 1 substantially inaccurate delineation to the District and 2 or more delineations to other Districts, and the Chief of the Regulatory office believes that these inaccuracies warrant revocation, than the Chief of the Regulatory office should prepare, with the advice of counsel, a report for the District Engineer substantiating these inaccuracies along with a recommendation to revoke the delineator's certification.

(2) *Notification.* If the District Engineer agrees that revocation may be warranted. The District Engineer shall send a letter to the delineator explaining:

(i) That the District Engineer is considering whether to revoke the delineator's certification.

(ii) That the delineator's certification is suspended pending the District Engineer's decision.

(iii) The causes for the potential revocation, including the substantial inaccuracies identified, and

(iv) That the delineator has 30 days from receipt of the District Engineer's letter to send a response letter providing mitigating or extenuating circumstances, or stating a defense against the causes for revocation.

(3) *Delineator response.* In the response letter, the delineator should include a complete explanation of any mitigating or extenuating circumstances demonstrating that revocation is unwarranted. The delineator should also provide any defenses to the stated causes for revocation, including any assertion that he or she may choose to make that no substantial inaccuracies occurred.

(4) *Review and decision.* The District Engineer must consider any certified wetland delineator response letter submitted. If a letter raises any genuine issues of fact, the District Engineer, exercising appropriate discretion, may decide to meet with the delineator to discuss these issues. After considering all information gathered by the District and submitted by the delineator, the District Engineer should make the decision, based on a preponderance of the evidence, as to whether or not to revoke the delineator's certification.

(5) *Notification of decision to delineator.* Absent extenuating circumstances, the District Engineer shall decide whether to revoke a certification within 30 days of receiving the delineator's response letter or any meeting with the delineator, whichever is later. A letter stating the District Engineer's decision shall be sent to the

delineator by certified mail, return receipt requested.

(6) *Notification to other corps districts.* If the District Engineer's decision is to revoke a certification, the District shall notify all other Corps Districts that the delineator is no longer certified, and the individual's name will be removed from the list of certified wetland delineators given to the public.

(c) *Revocation period.* Revocation periods are measured from the beginning of the suspension. The District Engineer should assign a revocation period commensurate with the seriousness of the causes for revocation, but no longer than 2 years. The District Engineer may reduce the length of the revocation period after it is assigned, if new information or other appropriate reasons develop. Delineators can apply for recertification only after the revocation period has ended.

(d) *Scope of revocation.* (1) A revocation only applies to the certification of the person who signed the delineations identified as inaccurate. Thus, a revocation cannot be imputed to other certified delineator in the same consulting firm as a decertified delineator.

(2) The revocation shall apply nationwide.

(e) *Appeal.* A revocation may be appealed in writing to the Division Engineer setting forth matters in extenuation, mitigation, or disagreement with the revocation. After reviewing both the appeal letter and the administrative record, the Division Engineer will reverse the District Engineer's decision to revoke the delineator's certification only if the determination is found to be arbitrary or capricious. The Division Engineer must notify both the delineator and the District Engineer of the decision. Only after the conclusion of this appeal process may a delineator seek redress in Federal court.

§ 333.8 Maintenance of lists.

The Corps will maintain two (2) lists for the WDCP. The first will be a list of individuals within a Division who have been certified by one of its Districts through the final WDCP. The second will be the list of training sources providing the prerequisite training. All training intended to meet the mandatory prerequisite will be conducted by a certified wetland delineator as an instructor. Both lists will be available to the public.

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DEPARTMENT OF INTERIOR

National Park Service

36 CFR Part 7

RIN 1024-AC26

Oregon Caves National Monument; Special Regulations

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) proposes to revise the current regulation concerning admission to Oregon Caves National Monument found at 36 CFR 7.49 that prohibits access to children under the age of six years from entering Oregon Caves in Oregon Caves National Monument. This proposed revision to the existing regulation would allow children to enter the Caves, regardless of age. The existing age restriction is not necessary to provide safe and quality interpretive tours in the Caves. The effect of this proposed revision is to establish a more equitable criterion for allowing children access to the caves. If necessary, the park will manage access to the Caves through the Superintendent's Compendium.

DATES: Written comments will be accepted through May 15, 1995.

ADDRESSES: Comments should be addressed to: Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523.

FOR FURTHER INFORMATION CONTACT: Craig W. Ackerman, Superintendent, Oregon Caves National Monument, 19000 Caves Highway, Cave Junction, OR 97523.

SUPPLEMENTARY INFORMATION:

Background

This proposed revision addresses a specific management problem involving access to the only public tour route in Oregon Caves. The present restriction, 36 CFR 7.49, states that "Children under the age of 6 are not permitted to enter the caves." A search of historical records has failed to find any extensive discussion of or justification for this particular age limit. No other Park Service cave, open for public tours, has a similar regulatory limit for general tours.

Employees who give the cave tours or sell tickets for the tours generally make the determination as to whether a child wanting to enter the caves is under six years of age. Since most parents do not carry documentation of the age of a child, verification of age is usually not possible. Some parents become upset