

[region8/water/stormwater/downloads.html](#).

**SUPPLEMENTARY INFORMATION:** When the general permit is issued, it will be published by reference in the **Federal Register**. The general permit will be effective on the date specified in the **Federal Register** with an expiration five years from such date. Region VIII is not issuing NPDES General Permits for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems (MS4s) located in Indian country. No MS4s in Indian country have been determined to require small MS4 permit coverage at this time.

**Administrative Record:** The proposed general permit and other related documents in the administrative record are on file in the EPA Region VIII NPDES file room and may be inspected upon request any time between 8 a.m. and 4 p.m., Monday through Friday, excluding legal holidays, at the address provided in the **ADDRESSES** section above. Requests to view these files in the Region VIII NPDES file room should be sent to Greg Davis by phone at 303-312-6082, or by e-mail at [davis.gregory@epa.gov](mailto:davis.gregory@epa.gov).

#### Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

OMB has waived review of NPDES general permits under the terms of Executive Order 12866.

#### Regulatory Flexibility Act

Issuance of an NPDES general permit is not subject to rulemaking requirements, including the requirement for a general notice of proposed

rulemaking, under APA section 553 or any other law, and is thus not subject to the RFA requirement to prepare an IRFA.

The APA defines two broad, mutually exclusive categories of agency action—"rules" and "orders." Its definition of "rule" encompasses "an agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of an agency \* \* \* APA section 551(4). Its definition of "order" is residual: "a final disposition \* \* \* of an agency in a matter other than rule making but including licensing." APA section 551(6) (emphasis added). The APA defines "license" to "include \* \* \* an agency permit \* \* \* APA section 551(8). The APA thus categorizes a permit as an order, which by the APA's definition is not a rule. Section 553 of the APA establishes "rule making" requirements. The APA defines "rule making" as "the agency process for formulating, amending, or repealing a rule." APA section 551(5). By its terms, then, section 553 applies only to "rules" and not also to "orders," which include permits.

#### Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104-4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, e.g., UMRA section 201, "Each agency shall \* \* \* assess the effects of Federal regulatory actions \* \* \* (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of [the Administrative Procedure Act (APA)], or any other law. \* \* \*"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so

pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

**Authority:** Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: February 14, 2003.

**Stephen S. Tuber,**

*Acting Assistant Regional Administrator,  
Office of Partnerships and Regulatory Assistance.*

[FR Doc. 03-4521 Filed 2-25-03; 8:45 am]

**BILLING CODE 6560-50-P**

## FEDERAL MARITIME COMMISSION

### Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

*Agreement No.:* 200866-002.

*Title:* Broward-King Ocean Marine Terminal Agreement.

*Parties:* Broward County, Board of County Commissioners, King Ocean Service de Venezuela, S.A.

*Synopsis:* The proposed amendment revises the minimum use standards and the charges covered by the agreement. It also adapts the language of the agreement to comply with current state and county law and regulations.

By Order of the Federal Maritime Commission.

Dated: February 21, 2003.

**Bryant L. VanBrakle,**

*Secretary.*

[FR Doc. 03-4558 Filed 2-25-03; 8:45 am]

**BILLING CODE 6730-01-P**

## FEDERAL RESERVE SYSTEM

### Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or