

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 995****[Docket No: 040608174-5098-03]****RIN 0648-0508****Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products**

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Final rule.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) is promulgating certification requirements with standards for applicants who want to redistribute NOAA Electronic Navigational Charts (NOAA ENC[®]) as official data. Two types of certification are offered. The first type, "Certified NOAA ENC Distributor" (CED), covers NOAA ENC downloading, exact copying, and redistribution of those copies. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), permits reformatting official NOAA ENC[®]s into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. NOAA intends by this action to assure that, though redistributed, quality official NOAA ENC data is offered to the public in support of safe navigation on U.S. waters.

DATES: *Effective Date:* October 6, 2005. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of October 6, 2005.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Written comments may be faxed to (301) 713-4516. Comments by e-mail should be submitted to ECDIS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Captain Jim Gardner, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA, (301) 713-2724, Jim.Gardner@noaa.gov.

SUPPLEMENTARY INFORMATION:**Discussion of Comments Received and Changes Made**

On October 15, 2004, a notice of proposed rulemaking entitled "Certification Requirements for

Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products" was published in the **Federal Register** (69 FR 61165), and comments were solicited. Four sets of comments were received. The substance of the comments and the resulting changes made to the regulation are summarized below.

One set of comments stated that the Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products was an inappropriate activity for NOAA. In response, NOAA cites the Hydrographic Services Improvement Act of 1998, as amended (codified at 33 U.S.C. 892b), under which this program was established. The comments further suggested that a substantial fee structure would be appropriate for the program. Again, NOAA refers to the enabling legislation that limits the fees NOAA may charge.

A second set of comments offered that § 995.8, "Alterations," appeared to permit NOAA to change program regulations without following the Administrative Procedure Act that allows for public comment. NOAA's intent is to follow those procedures in executing this section, but stating so in the rule is redundant with NOAA's obligation under the Administrative Procedure Act. The section was deleted from the regulations to eliminate confusion. The comment also suggested that in § 995.15(a), the first sentence, "NOAA reserves the right to audit certified distributors" be deleted as redundant with § 995.14. NOAA deleted the sentence.

A third set of comments received contained two recommendations. The first was that NOAA should use the ISO 19379 standard to certify privately made Electronic Chart Systems (ECS) databases and the second was that NOAA should eliminate the limitation in the proposed rule that prevents the use of ISO 19379 certified electronic charts for mandated chart carriage. Related to the recommendations was a set of comments.

As to the comment/recommendation that NOAA might adopt an existing standard such as ISO 19379 for certifying privately made ECS databases, NOAA recognizes this opportunity, and acknowledges this possibility in a separate rule, entitled: *Quality Assurance and Certification Program for NOAA Hydrographic Products*, in the **Federal Register** dated January 5, 2005 (70 FR 693). With this rule for distribution of official NOAA ENC[®]s, NOAA does not intend to certify privately made ECS databases, but only

to allow for the redistribution of official NOAA ENC[®]s, while retaining their official status.

As to the comment that NOAA's policy of not certifying privately made ECS databases would deny adequate electronic chart coverage to support the mandatory carriage of electronic charts, which the Coast Guard has been directed to implement, NOAA sees no concern, and this was not the purpose of this rulemaking. NOAA already provides 100 percent coverage of its area of responsibility with official raster navigational charts (one type of electronic chart), 45 percent coverage with official electronic navigational charts (a second type of electronic chart) with completion of the full suite scheduled during 2007, and the U.S. Army Corps of Engineers anticipates completing full coverage of primary and secondary inland river routes with official electronic charts during 2007, thus serving vessels that carry 90 percent of the inland river shipping tonnage. Also, while the Coast Guard must promulgate electronic chart carriage regulations by January 1, 2007, the effective date of those regulations, exactly which vessels are to be covered, and what waivers may be issued is left to their discretion. NOAA, the Corps of Engineers, and the Coast Guard will continue to coordinate closely to ensure that electronic chart carriage is not mandated before official charts are available.

Another comment stated that since the proposed rule did not provide a means to certify privately made ECS databases for meeting chart carriage regulations, it closes the markets to private companies for equipping non-SOLAS, regulated vessels and thus was contrary to the Regulatory Flexibility Act. Such certification is beyond the intent of this rule, which is merely to certify distributors of official NOAA ENC[®]s. Further, the final rule does not take away regulated vessels as a market for privately made electronic charts. Privately made charts have never been accepted as meeting chart carriage regulations, but may be carried as an aid to navigation. This situation will continue under the final rule. In any case, because NOAA provides official electronic charts at no cost, the commercially-viable market for private charts aboard regulated vessels would be small, thus causing little impact on small businesses. Finally, the number of companies that NOAA estimates might be affected is few (approximately 3 to 9), not all of which may be small businesses. Thus, the rule does not appear to rise to the level of causing a significant economic impact on a

substantial number of small businesses. If any impact is made on the industry it would provide a benefit to all participating entities by allowing certified businesses to sell a new product that is considered as having official NOAA ENC data in it, with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials. NOAA appreciates that a nation-wide supply of electronic charts for ECS is important and so, in addition to these requirements, NOAA has promulgated a rule for *Quality Assurance and Certification Program for NOAA Hydrographic Products*, (70 FR 693, Jan. 5, 2005). That program supports companies in making and selling electronic charts into the non-regulated market, which is two orders of magnitude larger than the regulated market and provides additional commercial opportunities for private companies while preserving the safety of navigation.

The last set of comments had twelve recommendations, as follows:

One comment recommended that the title be changed to: "PART 995—Certification Requirements for Distributors of NOAA Electronic Navigational Charts." NOAA is leaving the title in its present wording for the possibility of future products.

One comment recommended that we move and clarify the definition of "Distributor" versus "Value Added Distributor." Each term has a specific definition as it applies to the section where it appears in the regulation. NOAA believes that it is necessary to maintain the difference between the two types of distributors.

One comment recommended a clarification between the certification of a distributor, the certification of a process, and the certification of a product, so that the end user would be able to identify if the product is suitable for navigation and meets Federal chart carriage requirements. For clarification, NOAA is certifying two types of distributors who may redistribute official NOAA ENC data and have it remain as official Federal data, which can be used to meet Federal carriage requirements. While NOAA is not certifying processes the distributors use to produce their end product, the rule requires them to follow accepted industry standards as noted in this rule if the entity wishes to have a product with data in it that complies with Federal carriage requirements. NOAA believes the revised rule clarifies these concerns.

One comment recommended that NOAA revise language where the rule mandates different outcomes for the same procedure simply because of who performed it. NOAA revised a portion of § 995.1(c) to read: "Any entity may continue to download from an official NOAA ENC® Web site and use NOAA ENCs for any purpose. As long as it is not redistributed, that ENC will still be considered as official Federal data. If the NOAA ENC is successfully imported unaltered into a type-approved system, it will comply with Federal nautical chart carriage requirements." NOAA additionally clarified § 995.1 by providing examples illustrating when NOAA ENCs will or will not meet Federal chart carriage regulation.

One comment recommended that the rule should require any commercially redistributed official ENC or derived product from an uncertified entity to notify the user that the product does not meet federal chart carriage requirements. Instead of adding language to the rule, NOAA will add to the Agreement Statement on the NOAA ENC Web site, which the entity must accept in order to download any official NOAA ENCs. The statement will have words to the effect that: "Any entity that is not a certified NOAA ENC distributor, agrees that it will not redistribute NOAA ENCs as official data for the purpose of complying with Federal chart carriage requirements. The certification requirements and application can be found at: (inset hyper link). The final rule as published in **Federal Register** (insert number and page), can be found at (inset hyper link)." A second statement will read, "By clicking on the link below to proceed to download the NOAA ENCs, the user acknowledges having read and agreed to the above terms and conditions."

One comment recommended that NOAA charge fees for all costs incurred in the certification process, including resubmissions of revised requests that were initially unacceptable. NOAA added language in the fee section of the rule to include resubmissions.

One comment recommended that NOAA strike a redundant sentence, in § 995.15 (a), which was done.

One comment recommended that NOAA should reserve the right, to the extent practicable, to require the recall of all redistributed ENCs and derived products that were produced during a period of non-compliance. NOAA does not believe that it is appropriate to require product recall while the distributor is under investigation. However, NOAA revised § 995.15, Termination of certification, to read:

"CED or CEVAD shall notify all recipients of its products that its certification has been revoked and that the product may no longer be valid for use. In addition, the CED or CEVAD shall provide the dates of non-compliance."

One comment stated that NOAA cannot regulate that CEDs or CEVADs ensure that the user (of its products) has a sufficient level of knowledge. NOAA agreed and revised § 995.22 to read: "CED or CEVAD shall provide some form of product training and education materials to the customer to ensure that the end user has a sufficient level of information about the intended use of the derived product and what is needed to properly use it (e.g., requires certain equipment)."

One comment recommended that NOAA strike all of § 995.24 (a)(4) Additional data. NOAA chose not to delete § 995.24(a)(4) for liability reasons.

One comment recommended that NOAA provide an up-to-date listing on the Office of Coast Survey (OCS) Web site of certified ENC distributors and their certified products. NOAA will provide this list.

One comment recommended that NOAA require that a certification statement accompany the NOAA logo when used on hydrographic products. NOAA added in § 995.24 language that the CED/CEVAD should provide documentation to clarify to the user the suitability of use of product, the type and content of the files, when non-NOAA data is included, and any time delays for distribution of the data.

Due to NOAA's re-examination of § 995.15, NOAA determined that the section required changes to best serve and protect the CED/CEVAD throughout the termination process. NOAA revised the termination process to provide the CED/CEVAD with clearer guidelines for responding to a notification of potential termination administrative tracking and response time of its claim, add final action language, and provide an opportunity for the CED or CEVAD to resubmit a request for certification if terminated. One change to § 995.15, added to the information collection associated with the Paperwork Reduction Act. NOAA added that CED's or CEVAD's comments to OCS in response to a notification of potential termination shall contain at least: identification and contact information of the CED or CEVAD; a statement that CED or CEVAD is responding to an initial written notification of potential termination by OCS; and a thorough but concise argument as to why CED or CEVAD believes that its certification should not be terminated.

Electronic Access

A digital copy of this published rule for certification requirements for NOAA ENC redistribution, with application templates, is accessible via the Internet at NOAA's Web site: <http://nauticalcharts.noaa.gov/mcd/enc/index.htm>.

Background

NOAA produces electronic navigational charts (ENCs) as one of its products under its Nautical Charting Program. Official NOAA ENCs, which conform to International Hydrographic Organization (IHO) standards, may be used in a typeapproved display system, such as an Electronic Chart Display and Information System (ECDIS), to comply with Federal nautical chart carriage requirements administered by the Coast Guard. NOAA distributes these official ENCs to the public for free over its Web site on the Internet.

Part 995 in the Code of Federal Regulations establishes the requirements by which entities may be certified to download, redistribute, repack, or in some cases reformat, official NOAA ENCs and retain their official status. No other processes result in redistributed NOAA ENC® products that comply with Federal chart carriage requirements.

NOAA developed these certification requirements under the authority of Section 104 of the Hydrographic Services Improvement Act Amendments of 2002, 33 U.S.C. 892b(b)(1). NOAA also developed these requirements to ensure the quality and content of official NOAA ENCs remains intact throughout the redistribution process.

To obtain a written copy of the certification requirements for NOAA ENC distribution, refer to **ADDRESSES** section or visit the Internet at NOAA's Web site: <http://nauticalcharts.noaa.gov/mcd/enc/index.htm>.

In addition to the rules set forth in the NOAA certification process, if the Value Added Distributor converts NOAA ENC data to other formats, it will need to comply with the IHO Technical Resolution A3.11 published in M-3 Resolutions of the IHO, Chapter A, Section 3. This resolution is available from the IHO Web site: <http://www.iho.shom.fr>. Also, for reference, it is advised that distributors be familiar with the International Electrotechnical Commission (IEC) Publication 61174 and the IHO Special Publication S57 and S58. IEC Publication 61174 is the basis for type-approval specifications related to operational methods of testing

and required test results for an International Maritime Organization (IMO) compliant ECDIS. The IEC Publication 61174 can be ordered from the IEC Web site: <http://www.iec.ch>. The IHO Special Publication S57 includes a description of the data structure and format to be used for the exchange of ENC data, product specification for the production of ENC data, and an updating profile. The IHO Special Publication S58 includes recommended ENC validation checks. The IHO Special Publication S57 and S58 are available at the IHO Web site: <http://www.iho.shom.fr>.

Classification

A. Executive Order 12866

This rule has been determined to be not significant for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to provide the procedures and requirements necessary for an entity to be certified as "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor."

This certification process is voluntary. Only those applicants who wish to redistribute NOAA ENC data as official Federal data with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials need to apply. NOAA developed this certification process under the authority of 33 U.S.C. 892b(b)(1).

The Small Business Administration guideline to separate small from large businesses is \$4 million for Mapmaking firms and \$5 million for Navigational Services to Shipping and Other Support Activities for Water Transportation. NOAA is unable to determine the total number of small entities that will be affected by this rule, as it does not specifically track this type of information. However, based upon knowledge of the nature of the industry, NOAA believes the majority of the entities affected will be small businesses.

Public comments were received that the proposed rule does not certify privately produced electronic nautical charts for use by certain classes of regulated vessels. In response, NOAA reaffirmed that such an action would be beyond the scope of the rule being

promulgated here. NOAA's intent with this rule is only to certify entities that wish to redistribute its NOAA ENCs as official Federal data and for meeting a set of requirements rather than certifying them for a particular use.

One comment stated that the proposed rule's limitation to use electronic charts on ECDIS closes the markets for all non-SOLAS vessels in the United States and thus was contrary to the Regulatory Flexibility Act. Certified official NOAA ENCs are not limited in their use by NOAA, nor does NOAA have the authority to make the determination of suitability of use. The determination of suitability of Federal carriage requirements for certain classes of vessels lies with the Coast Guard. NOAA believes that this rule is in the public interest and that it does not remove a market for privately made electronic charts since they never have been certified for regulatory carriage and do not have that market. Also, because NOAA and the Corps of Engineers give away for free official electronic charts for meeting carriage requirements, it appears that the portion of the market that this rule does not make readily accessible to private charts would be small. Finally, the number of companies that NOAA estimates might be affected is few (approximately 3 to 9), not all of which may be small entities. Thus the rule does not appear to rise to the level of causing a significant, negative economic impact on a substantial number of small businesses, and thus does not violate the Regulatory Flexibility Act. On the contrary, it should provide a benefit to all participating entities. NOAA appreciates that a nation-wide supply of electronic charts for ECS is important and so in union with these requirements, NOAA offers another proposed rule for *Quality Assurance and Certification Program for NOAA Hydrographic Products*, (69 FR 61172, Oct. 15, 2004). That program supports companies in making and selling electronic charts into the non-regulated market, which is two orders of magnitude larger than the regulated market and provides additional commercial opportunities for private companies while preserving the safety of navigation.

The total estimated economic impact to small entities associated with startup costs, software and equipment upgrades, the application process, reporting, recordkeeping, and compliance requirements is not expected to amount to sums greater than \$5,228 per entity annually. However, NOAA does not believe this cost will have a negative impact on small companies, as the

estimated costs incurred should be offset through the benefits in increased sales of the product because of its "certified" status. Also, NOAA requires only bi-annual reporting and recordkeeping, balancing the burden to the distributor, with the assurance of maintaining safe navigation through data quality verification for public safety. And, to lessen the economic impact, the duration of certification will be five years from the date of issuance.

It is anticipated the effects of this rule will be largely positive to small entities, with potential economic benefits. This rule will allow certified businesses to sell a new product that is considered as having official NOAA ENC data in it, with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials. Under this rule, Federal regulation and reporting will be extremely limited, startup costs should be minimal and there is no charge to small businesses for this official product, which they could resell for profit.

C. Paperwork Reduction Act

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following requirements have been approved by OMB under control number 0648-0508:

1. A written request and application for certification.
2. Submission of a registry of customers receiving NOAA ENC data.
3. Notification when the CRC checksum value does not match the value in the CATALOG.031 file.
4. Compression/decompression and encryption/decryption software and documentation for testing.
5. A distribution report describing when NOAA ENC files were downloaded and when they were distributed to end users.
6. A label on products to identify data that are NOAA ENCs.
7. Report of any errors detected during the conversion process that apparently originate in the NOAA ENC files.
8. An application for reconsideration of termination.

The total estimate of burden hours annually for all distributors is 536 hours. The total estimate of burden hours per distributor is approximately 60 hours a year. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, completing and reviewing the collection of information, sending the initial application to OCS to become a

certified distributor, and sending the bi-annual reports to OCS.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this rule.

List of Subjects in 15 CFR Part 995

Administrative practice and procedure, Incorporated by reference, Navigation (water), Navigational charts.

■ For the reasons stated in the preamble, NOS amends 15 CFR chapter IX by adding to subchapter F, part 995 to read as follows:

Subchapter F—Quality Assurance and Certification Requirements for NOAA Hydrographic Products and Services

PART 995—CERTIFICATION REQUIREMENTS FOR DISTRIBUTORS OF NOAA HYDROGRAPHIC PRODUCTS

Subpart A—General

Sec.

- 995.1 Purpose and scope.
- 995.2 Incorporation by reference.
- 995.3 Availability of other publications.
- 995.4 Definitions.
- 995.5 Abbreviations.
- 995.6 Fees.
- 995.7 Liability.

Subpart B—Certification and Procedures

Sec.

- 995.10 Correspondence and applications.
- 995.11 Government review and approval.
- 995.12 Certification designation.
- 995.13 Transfer of certification.
- 995.14 Auditing.
- 995.15 Termination of certification.
- 995.16 Term of certification.

Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products

Sec.

- 995.20 General.
- 995.21 Registry of data users.
- 995.22 Training of data users.
- 995.23 Acquisition of data.
- 995.24 Distribution of data.
- 995.25 Quality management system.
- 995.26 Conversion of NOAA ENC files to other formats.
- 995.27 Format validation software testing.
- 995.28 Use of NOAA emblem.
- 995.29 Limitation on endorsements.

Appendix A To Subpart C of Part 995—Certification Application Templates

Authority: 33 U.S.C. 892b(b)(1).

Subpart A—General

§ 995.1 Purpose and scope.

(a) The National Oceanic and Atmospheric Administration (NOAA) produces electronic navigational charts (ENCs) as one of its products under its Nautical Charting Program. According to Federal regulations, official NOAA ENCs® meet nautical chart carriage requirements when used in a type-approved display system, such as an Electronic Chart Display and Information System (ECDIS). NOAA distributes these official ENCs to the public for free over its Web site on the Internet. This Part establishes the requirements by which entities may be certified to download, redistribute, repack, or in some cases reformat, official NOAA ENCs and retain the NOAA ENC's official status. When a NOAA ENC® retains its official status, it will comply with Federal chart carriage requirements. These requirements for re-distributing NOAA ENC data or incorporating it into value-added navigational products are to ensure the quality and content of official NOAA ENCs remains intact throughout the redistribution process. No other processes result in redistributed NOAA ENC products that comply with Federal chart carriage requirements.

(b) Two types of certification are offered. The first type, "Certified NOAA ENC Distributor" (CED), covers NOAA ENC downloading, exact copying, and redistribution of those copies. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), permits reformatting official NOAA ENCs into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification permit, but do not require, compression, encryption, and packaging with other data. Because NOAA ENC® data is the primary concern of this rule, and it is mandatory for certification that the official NOAA ENCs remain unaltered for positional accuracy and informational content, NOAA is, in effect, certifying that a CED's or CEVAD's products contain official NOAA ENC data, and therefore meets chart carriage requirements.

(c) Any entity may continue to download from an official NOAA ENC® Web site and use NOAA ENCs for any purpose. As long as it is not redistributed, that ENC will still be considered as official Federal data. If the NOAA ENC is successfully imported unaltered into a type-approved system, it will comply with Federal nautical chart carriage requirements. While without certification anyone can

download an official NOAA ENC for any use, if a NOAA ENC® is redistributed by an uncertified entity to another entity, the NOAA ENC is no longer considered as official Federal data and thus does not comply with Federal chart carriage requirements. An example follows.

(1) One example is if an uncertified individual downloads a NOAA ENC and uses it according to Federal requirements, that individual will be meeting Federal chart carriage requirements. If an uncertified tug boat company has 9 boats in its fleet and an individual on one of the boats downloads a NOAA ENC and uses it according to Federal requirements that individual will be meeting Federal chart carriage requirements. However, if that same uncertified tug boat company downloads a NOAA ENC and redistributes it to its 9 boats, the NOAA ENC will not be considered official Federal data and therefore the 9 boats will not be meeting Federal carriage requirements. The company should become a CED or CEVAD under this part in order to be able to redistribute NOAA ENC's and retain the official status of those ENC's.

(2) To reiterate, NOAA ENCs must not be redistributed by an uncertified entity if the end output needs to have official NOAA ENCs in it that will comply with Federal carriage requirements. Any company, entity or individual must be certified if the goal is to redistribute NOAA ENCs and have those NOAA ENCs remain as official Federal data and as such continue to meet Federal carriage requirements administered by the Coast Guard.

§ 995.2 Incorporation by reference.

Certain material listed in this section is incorporated by reference with the approval of the Director of the **Federal Register** under 5 U.S.C. 552(a) and 1 CFR part 51. The materials listed in this section are incorporated by reference in the corresponding sections noted. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the National Archives and Records Administration (NARA) or at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230. For information on the availability of this material at NARA, call (202) 741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(a) The material listed below is available for purchase from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011

MONACO CEDEX; telephone: (377) 93.10.81.00; fax: (377) 93.10.81.40; e-mail: info@ihb.mc. Orders may be submitted by letter, fax, or e-mail.

(1) IHO Technical Resolution A3.11—"ENC/SENC Distribution Option", as published in the "Resolutions of the International Hydrographic Organization" updated June 2005, incorporation by reference approved for § 995.26.

(2) [RESERVED]

(b) [RESERVED]

§ 995.3 Availability of other publications.

(a) For further guidance you may obtain the following:

(1) IEC 61174—The International Electrotechnical Commission identified and described the necessary performance tests and checks for an International Maritime Organization (IMO) compliant ECDIS. The IMO Performance Standards permit National Maritime Safety Administrations to consider ECDIS as the functional equivalent to charts required by Regulation V, Chapter 20 of the 1974 SOLAS Convention. IEC Publication 61174, dated August 1998, can be purchased from the IEC Web site: <http://www.iec.ch>.

(2) IHO Special Publication S57—The IHO Transfer Standard for Hydrographic Data, edition 3.1, dated November 2000, describes the data structure and format to be used for the exchange of ENC data, product specification for the production of ENC data, and an updating profile. IHO S-57 documentation is available for free download at <http://www.iho.shom.fr>. Send written requests to the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: info@ihb.mc.

(3) IHO Special Publication S58—The IHO Validation Checks for Hydrographic Data, edition 2.0, dated October 2003, describes the validation checks to be used on ENC data. This document was formally published as S-57 Appendix B.1, Annex C, but has been renamed to S-58 due to the S-57 publication having been frozen (*i.e.* will not change) for a fixed time period. IHO S-58 documentation is available for free download at <http://www.iho.shom.fr>. Send written requests to the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: info@ihb.mc.

(b) [RESERVED]

§ 995.4 Definitions.

Certified NOAA ENC Distributor (CED) means an entity that is certified as a distributor of NOAA ENC files by

NOAA. This certification indicates that the distributor meets certain requirements (in Subparts A, B, and D of this part) that ensure timely and accurate dissemination of NOAA ENC data.

Certified NOAA ENC Value Added Distributor (CEVAD) means an entity that creates a derived product that has been produced from NOAA ENC files using a process certified by NOAA. This certification indicates that the CEVAD meets certain requirements (in Subparts A, C, and D of this part) that ensure timely and accurate dissemination of NOAA ENC data in a non-ENC format.

Derived product means a navigational product produced by transforming the NOAA ENC files to another format while preserving the content and accuracy. It may contain information from other sources.

Distributor means a person or company that redistributes a NOAA ENC to end users in its original format.

Electronic Chart Display and Information System (ECDIS) means the internationally adopted computer-assisted navigation system which, when complying with all of the required specifications, can be accepted as the up-to-date chart required by V/20 of the 1974 SOLAS Convention.

Electronic Navigational Chart (ENC) means a database, standardized as to content, structure, and format, issued for use with ECDIS on the authority of government authorized hydrographic offices. The ENC contains all the chart information necessary for safe navigation and may contain supplementary information in addition to that contained in the paper chart (*e.g.* sailing directions), which may be considered necessary for safe navigation.

Entity means one person, one person within a company, or one company.

NOAA ENC® means Electronic Navigational Charts produced by the National Oceanic and Atmospheric Administration. NOAA ENC files comply with the IHO S-57 standard, Edition 3.1 and the ENC Product Specification. The phrase "NOAA ENC" is a registered trademark and may not be used without permission.

Redistributed means to distribute again, either as a direct copy or in a different way. A redistributed NOAA ENC is one that has been downloaded from an official NOAA ENC Web site by one entity and provided to another entity.

System Electronic Navigational Chart (SENC) means a database resulting from the transformation of the ENC by ECDIS for appropriate use, updates to the ENC by appropriate means and other data

added by the mariner. It is this database that is actually accessed by ECDIS for the display generation and other navigational functions, and is equivalent to an up-to-date paper chart. The SENC may also contain information from other sources.

Value Added Distributor means a person or company that redistributes a NOAA ENC with additional data included or in a different format to create newly derived products used by end users.

§ 995.5 Abbreviations.

CED Certified NOAA ENC Distributor
 CEVAD Certified NOAA ENC Value Added Distributor
 CRC Cyclical Redundancy Checksum
 ECDIS Electronic Chart Display and Information System
 ENC Electronic Navigational Chart
 IEC International Electrotechnical Commission
 IHO International Hydrographic Organization
 IMO International Maritime Organization
 ISO International Organization for Standardization
 NOAA National Oceanic and Atmospheric Administration
 NOS National Ocean Service
 OCS Office of Coast Survey
 SENC System Electronic Navigational Chart
 SOLAS Safety of Life at Sea
 VAD Value Added Distributor

§ 995.6 Fees.

(a) The Office of Coast Survey, NOAA, may charge a fee for costs incurred to process each request for certification pursuant to 33 U.S.C. 892b(b)(1)(C) and 892b(b)(2). The amount of the fee, if one is charged, will be determined by the Director, Office of Coast Survey, and charged to all Applicants based on the time and effort involved.

(b) If a fee is charged, it will be charged for each application for certification submitted by an Applicant. A fee may also be charged for resubmissions of revised requests that were initially unacceptable and are sent in within 90 days as described in § 995.11(b)(2).

§ 995.7 Liability.

Distributors and value added distributors certified under this part shall indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of certified distributors or value added distributors or their employees, arising out of the use by a distributor or value added distributor, or any party acting on

its behalf or under its authorization, of NOAA data.

Subpart B—Certification and Procedures

§ 995.10 Correspondence and applications.

(a) Distributors or value-added distributors desiring certification from NOAA shall provide a written request and application for certification to the Office of Coast Survey, Attention: Distribution Certification, N/CS, 1315 East West Highway, Silver Spring, Maryland 20910. Such a distributor or value-added distributor is hereafter referred to as Applicant. The Office of Coast Survey (OCS) is the approving office for certification under these requirements.

(b) Applicant shall provide an application for certification that describes how each element in the applicable sections of this part has been met. The application will also contain an acknowledgment, signed by a company principal, of all terms and conditions described in this part.

(c) Applicant shall use the appropriate template provided in Appendix A to subpart C of this part to prepare their request for certification.

(d) Applicant shall provide, with its application, a point of contact with mailing address, phone number, and e-mail address. Applicant shall immediately notify NOAA, through the Office of Coast Survey, of any changes to point of contact information. Failure to do so will be considered a violation of this part and may lead to termination of certification.

§ 995.11 Government review and approval.

(a) An application will be reviewed by NOAA within 90 days of receipt. If all requirements, as defined by this part, are adequately addressed, certification will be granted. If for any reason NOAA will be unable to process the application for certification within the 90-day time frame, Applicant will be notified and a revised date will be provided for a decision on the request.

(b)(1) NOAA will determine if the request for certification is complete and that it demonstrates that Applicant has met all of the applicable requirements described in this part.

(2) In the event that a request is incomplete or does not demonstrate that Applicant has met all of the applicable requirements, NOAA will consider the application unacceptable. NOAA will notify the Applicant of the deficiencies in writing. Applicant may re-submit a revised application within 90 days of receipt of NOAA's denial notice. NOAA

will review applications received within the 90-day resubmission period in the time frame described in paragraph (a) of this section. After the second review, if the application is still unacceptable, Applicant will be again notified of the deficiencies in writing and the process continues as stated in this section.

§ 995.12 Certification designation.

An Applicant that has been certified by NOAA as a CED may use the phrase "Certified NOAA ENC Distributor" on products and marketing materials. An Applicant that has been certified by NOAA as a CEVAD may use the phrase "Certified NOAA ENC Value Added Distributor" on products and marketing materials. Use of these phrases must include labeling to identify the product's contents and suitable use. (See § 995.24(a)(4), (5) and (6) and (b)(3), (4) and (5)). Use of the NOAA emblem is described in § 995.28 and is not automatically granted with certification.

§ 995.13 Transfer of certification.

A CED or CEVAD may not transfer its certification to another entity. If it is transferred the existing certification will be terminated.

(a) If prior to certification it is known that another entity will be assisting the entity applying for certification in the production or redistribution of the data, that other entity must be documented in the application process. Listed entities will be considered as falling under the umbrella of the parent company's certification. The name of the entity and its duties should be included as part of the application.

(b) If, subsequent to certification, a CED or CEVAD wishes to add another entity to assist it, a request in writing with the name of the entity and its duties shall be provided to the Office of Coast Survey, NOAA for acceptance. The Office of Coast Survey, NOAA will provide written notification of acceptance to the CED or CEVAD within 30 days of receipt of the request.

§ 995.14 Auditing.

NOAA reserves the right to audit CED or CEVAD to ensure that the certification requirements are being met. Such an audit may consist of: visits to the production facilities, product testing, confirmation of ISO 9001 certification, or confirmation of type approval for conversion software, and so forth.

§ 995.15 Termination of certification.

(a) In the event that NOAA determines that a CED or CEVAD is not meeting the requirements described in this part, the Office of Coast Survey,

NOAA (OCS) will provide initial written notification of potential termination to the CED or CEVAD. OCS/NOAA will state in its notification to CED or CEVAD that termination of certification is under consideration.

(b) The initial notification of potential termination will be provided in writing by OCS to the CED or CEVAD, and shall state the reason for the potential termination. Reasons for termination may include, but are not limited to:

(1) CED or CEVAD contracts or in any way seeks to transfer the production or redistribution of all or part of the NOAA official data in the product to another entity.

(2) CED or CEVAD fails to, or is unable (in the opinion of NOAA) to carry out its responsibilities as described in this part.

(c) CED or CEVAD may submit written comments to OCS within 30 days of receipt of the OCS's initial written notification of potential termination, explaining why CED or CEVAD's certification should not be terminated.

(1) The written comments shall be submitted to: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910.

(2) The written comments shall contain at least:

(i) Identification and contact information of the CED or CEVAD;

(ii) A statement that CED or CEVAD is responding to an initial written notification of potential termination by OCS; and

(iii) A thorough but concise argument as to why CED or CEVAD believes that its certification should not be terminated.

(d) The Director of OCS will take all timely written comments into account before taking final action, and in no case will the Director take final action until at least 45 days after CED or CEVAD's receipt of the initial written notification. A decision to terminate by the Director of OCS will state the reasons for termination and respond to all timely written comments submitted. Any final action taken by OCS constitutes final agency action on the matter.

(e) CED or CEVAD shall notify all recipients of its products that its certification has been revoked, and that the product may no longer be valid for use. In addition, the CED or CEVAD shall provide the dates of non-compliance.

§ 995.16 Term of certification.

The term of certification is five years from the date of issuance. At the end of the certification term, the process must

be re-certified by the distributor or value added distributor submitting a request for certification as described in § 995.10. It may also be revoked prior to the end of the term under the conditions described in § 995.15.

Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products

§ 995.20 General.

The requirements for certification as a "Certified NOAA ENC Distributor" (CED) and "Certified NOAA ENC Value Added Distributor" (CEVAD) are described in this subpart.

§ 995.21 Registry of data users.

(a) CED or CEVAD shall maintain a registry of customers receiving NOAA ENC data. CED or CEVAD shall provide said registry to NOAA on a biannual basis for internal NOAA planning and product evaluation use. NOAA agrees to treat such information as proprietary (if requested to do so by the CED or CEVAD).

(b)(1) The registry shall include, but not be limited to:

(i) Which NOAA ENC® cells were provided to each customer;

(ii) Edition number of each cell provided;

(iii) Updates provided for each cell;

(iv) Method of distribution for each customer.

(2) The registry may also include information about the type and size of vessel that the NOAA ENC data has been provided for as well as an anonymous unique identifier for the vessel.

§ 995.22 Training of data users.

CED or CEVAD shall provide some form of product training and education materials to the customer to ensure that the end user has a sufficient level of information about the intended use of the derived product and what is needed to properly use it (e.g., requires certain equipment).

§ 995.23 Acquisition of data.

(a) CED or CEVAD shall obtain official NOAA ENC® files only by directly downloading them from an official NOAA ENC site on the Internet.

(b)(1) After downloading NOAA ENC files, CED or CEVAD shall uncompress the files and compute a CRC checksum value for each NOAA ENC file and verify that it matches the CRC checksum value contained in the CATALOG.031 file provided with the NOAA ENC files by NOAA. This is to ensure that no NOAA ENC files have been corrupted during the download process.

(2) In the event that said CRC checksum value does not match that in the CATALOG.031 file, CED or CEVAD agrees to:

(i) Repeat the download process;

(ii) In the event that said CRC checksum value for the repeat download does not match that in the CATALOG.031 file, immediately notify the NOAA ENC Production Manager at enc.chartproduction@noaa.gov, and;

(iii) Not redistribute any NOAA ENC that does not have a valid CRC checksum.

§ 995.24 Distribution of data.

(a) *Distribution of data by CEDs.* (1) *Format of redistributed data.* (i) *General.* Except as listed in paragraphs (a)(1)(ii) and (iii) of this section, CED agrees to redistribute NOAA ENC data only in the original form provided by NOAA after uncompressing and shall not change the file format (S-57 Edition 3.1 ENC or other formats specified by NOAA), or contents, or alter the NOAA ENC data in any way.

(ii) *Compression.* The NOAA ENC files may be compressed using a lossless compression technique provided that CED makes the decompression software available to the end user as part of the redistribution service. Decompressed files must have the same CRC checksum value as the original files. The CED agrees to make the compression/decompression software and documentation available to NOAA for testing.

(iii) *Encryption.* The NOAA ENC files may be encrypted by CED, providing that the encryption/decryption process does not result in any information loss and that CED makes the decryption software available to the end user as part of the redistribution service. Decrypted files must have the same CRC checksum value as the original files. CED shall make the encryption/decryption software and documentation available to NOAA for testing.

(2) *Frequency of distribution.* CED shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA. Documentation shall be provided to the customer concerning any time delays that may occur between official release of a NOAA ENC or update, and CED providing same to end users.

(3) *Distribution report.* CED shall provide a bi-annual report on when NOAA ENC files were downloaded and when they were redistributed to end-users.

(4) *Additional data.* (i) If CED provides other data to customers in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CED shall provide a clear indication to the customer which files are official NOAA ENC data and which files are not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CED.

(5) *Identification of type and contents.* CED shall ensure that NOAA ENC® files provided to an end user are clearly identified as to the type (e.g., direct unaltered copies) and contents (cells, updates, and ancillary files) and authenticity of the exchange set. This may be accomplished through means such as package labeling, notifications in software, or other means.

(6) *Use of product.* CED shall provide a clear indication to the customer the purpose of its products; for example, indicating whether or not the product, and the data contained within it, is suitable for navigation and if it meets Federal chart carriage requirements. If only some of the files meet Federal carriage requirements, CED shall provide clear indication which files do and which files do not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(b) *Distribution of data by CEVADs.*

(1) *Frequency of distribution.* CEVAD shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA. Documentation shall be provided to the customer concerning any time delays that may occur between official release of a NOAA ENC or update, and CED providing same to end users.

(2) *Distribution report.* CEVAD shall provide a bi-annual report to NOAA on when NOAA ENC files were downloaded and when they were redistributed or made available to end users.

(3) *Additional data.* (i) If CEVAD provides products to customers that incorporate other data in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CEVAD shall

provide a clear indication in the product which data are from official NOAA ENC data and which data are not. This shall be done in a way that allows the navigation system to give the end user an automatic notification or warning that particular data elements within the product are not from the official NOAA ENC. Any such data shall not degrade the official NOAA ENC data or information.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CEVAD.

(4) *Identification of type and contents.* CEVAD shall ensure that data provided to an end user clearly identify which NOAA ENC® files are included in the product as to the type (e.g., NOAA ENCs in another form than that provided by NOAA without degradation to positional accuracy or informational content) and the contents (cells, updates, and ancillary files) and authenticity of the NOAA ENC files used. This may be accomplished through means such as package labeling, notifications in software, or other means.

(5) *Use of product.* CEVAD shall provide a clear indication to the customer of the purpose of its products; for example, indicating whether or not the product, and the data contained within it, is suitable for navigation and if it meets Federal chart carriage requirements. If only some of the files meet Federal carriage requirements, CEVAD shall provide clear indication which files do and which files do not. This may be accomplished through means such as package labeling, notifications in software, or other means.

§ 995.25 Quality management system.

(a) *Quality management system for CEVADs.* (1) CEVAD shall operate a quality management system, based on ISO 9001–2000 or equivalent, which embraces all elements of the process used to process and redistribute NOAA ENC files. The minimum requirements for such a quality management system are those defined in this part. The quality management system must ensure that the production process complies with all relevant requirements of this part.

(2) The quality management system must, at a minimum, include an adequate account of:

(i) The quality objectives and the organizational structure, responsibilities, and powers of management with regard to production quality;

(ii) The techniques, processes, and systematic actions that will be used for quality management throughout the production process, including NOAA ENC conversion and the quality of the product being redistributed;

(iii) The examination and tests that will be carried out before, during, and after processes essential for the quality of the product, and the frequency with which they will be carried out;

(iv) The quality records, such as inspection records and test data, qualification reports of personnel concerned resulting from the program specified herein; and

(v) The means for monitoring the achievement of the required quality of the product and the effective operation of the quality management system.

(3) Design and development changes shall be reviewed, verified, and validated as appropriate and approved by the ISO 9001 certification authority (or equivalent if another quality management system is used) before implementation.

(4) If the type approved conversion software is maintained by a third party, CEVAD shall ensure that no changes made to the conversion software render the type approval of the conversion software invalid, and shall evaluate the effects of such changes on the end users of the product.

(5) CEVAD shall analyze both internal information and that received from external parties in order to continually monitor and improve the production process and the product being redistributed.

(6) CEVAD shall ensure that personnel performing work affecting the production process are competent with regard to appropriate education, training, skills, and expertise.

(7) CEVAD shall conduct internal audits at planned intervals to determine whether the quality management system conforms to the requirements of this part and is effectively implemented and maintained. The audit program shall take into consideration the individual processes' importance in relation to the product quality, as well as results of previous audits. Selection of auditors and conducting of audits shall, as far as practicable, insure objectivity and impartiality in the audit process.

(8) CEVAD shall ensure that actions are taken without undue delay to eliminate detected non-conformities and their causes. Follow-up activities shall include the verification of the actions

taken and the reporting of verification results.

(b) [Reserved]

§ 995.26 Conversion of NOAA ENC® files to other formats.

(a) Conversion of NOAA ENC files to other formats. (1) *Content.* CEVAD may provide NOAA ENC data in forms other than that provided by NOAA. However, CEVAD shall not change the information content provided by the NOAA ENC. This means that all features and their associated attribution must be preserved in the CEVADs data files without degradation to positional accuracy or informational content.

(2) *Software certification.* Conversion of NOAA ENC data to other formats must be accomplished within the constraints of IHO Technical Resolution A3.11: "ENC/SENC Distribution Option" (incorporated by reference, see § 995.2)—in particular, paragraph three:

Distributors who are to supply the SENC service must operate under the regulations of the issuing authority. The onshore ENC to SENC conversion must be performed using type-approved software.

(3) *Error reporting.* Any errors detected during the conversion process shall be logged and investigated prior to releasing the data in which the errors occurred. Any errors that apparently originate in the NOAA ENC files shall be immediately reported to NOAA.

(4) *Format check.* CEVAD shall ensure that the converted data conforms to the CEVAD's own format specifications and shall test load the converted data to ensure that it will correctly load and display on the intended equipment.

(b) [Reserved]

§ 995.27 Format validation software testing.

Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification. These tests may be combined with testing of the conversion software.

§ 995.28 Use of NOAA emblem.

(a) Permission for the use of the NOAA emblem must be obtained by formally requesting such permission from NOAA and the Department of Commerce through NOAA's Office of Coast Survey.

(b) Use of the NOAA emblem must satisfy an interest of the Department; the use may not result in embarrassment to the Department; there must be no conflict with any trademark rights, as

stated in § 995.24(a)(4)(ii) and (b)(3)(ii); and there can be no endorsement or favoritism toward the distributor or value added distributor using the emblem, or other appearance of impropriety.

(c) Certification under this part does not automatically grant the distributor or value added distributor the right to use the NOAA logo. Use of the NOAA logo without express permission from NOAA and the Department of Commerce will be considered grounds for denial of an application for certification or termination of certification.

(d) *Emblem use by certified distributors or certified value added distributors of NOAA electronic products.* (1) After receiving separate, written permission from NOAA and the Department of Commerce as described in paragraph (a) of this section, a CED or CEVAD may use the NOAA emblem in product labeling and advertising materials, but only in conjunction with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor," as applicable, and only after receiving separate, written permission from NOAA and the Department of Commerce as described in paragraph (d)(2) of this section.

(2) If the NOAA emblem is used with products that include other data, clear indication must be provided to the customer indicating that the emblem and the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" does not apply to the entire product delivered. Information on the effects of such limitation must be provided to the customer (See § 995.24(a)(4) and (5) and (b)(3) and (4).)

§ 995.29 Limitation on endorsements.

By certifying compliance with this part, NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by distributor or value added distributor or its successors, assignees, or licensees. The distributor or value added distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission from NOAA and the Department of Commerce.

Appendix A To Subpart C of Part 995—Certification Application Templates

Notice to respondents:

This information is being collected by NOAA to ascertain qualifications for certification as an authorized distributor of official NOAA ENC® data. NOAA developed

these certification requirements under the authority of Section 104 of the Hydrographic Services Improvement Act Amendments of 2002, 33 U.S.C. 892b(b)(1).

The information on these forms is not associated with performance of agency functions.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Jim.Gardner@noaa.gov.

Responses to this collection are considered voluntary, though they are required for certification.

The information requested on these forms will not be disseminated to the public or used to support information that will be disseminated to the public. Any disclosure of propriety information will be held in confidentiality as regulated under the Trade Secrets Act. NOAA will not violate that Act's prohibitions against unauthorized agency disclosures of trade secrets or other confidential business information.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to a penalty for failure to, comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. [OMB Control #0648-0508 Expires 05/31/2008]

Application for Certification as "Certified NOAA ENC Distributor"

Company Name
Company Address
Company Phone Number
Company Fax Number
Company E-Mail Address
Point of Contact
Point of Contact Address
Point of Contact Phone Number
Point of Contact Fax Number
Point of Contact E-Mail Address

This is a request for the above named company or individual (hereinafter referred to as Distributor) to be certified as a "Certified NOAA ENC Distributor" (CED). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis on this application correspond to section titles in 15 CFR, chapter IX, Subchapter F, Part 995—Certification requirements for Distributors of NOAA hydrographic products. The numbers after each descriptive title refer to the section number within 15 CFR part 995. The Distributor should use these section numbers to insure that the requirements are being fully understood and met by the Distributor prior to submitting the application.

(1) *Correspondence and applications/requests for certification (995.10 (a)).* Distributor acknowledges and agrees to all procedures and requirements pertaining to

the certification process described in 15 CFR part 995.

(2) *Correspondence and applications/point of contact* (995.10 (d)). Distributor agrees to immediately notify the Government of any changes to point of contact information.

(3) *Transfer of certification* (995.13). Document other entities that will be assisting in the production or redistribution of the derived product. Provide the names and duties of those entities to meet this requirement.

(4) *Auditing* (995.14). Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that all requirements in 15 CFR part 995 are being met.

(5) *Termination of certification* (995.15). Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in this requirement.

(6) *Term of certification* (995.16). Distributor acknowledges that the duration of certification is five years from the date of issuance.

(7) *Registry of data users* (995.21). Include a description of the data user registry, including: (a) What data elements it contains, specifically showing how the required elements are included; (b) A hardcopy sample of the report that will be periodically submitted to NOAA; (c) A short description of how the registry is maintained.

(8) *Training of data users* (995.22). Include a copy of any documentation provided to users that is intended to meet this requirement.

(9) *Acquisition of data* (995.23). Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for redistribution are being followed.

(10) *Distribution of data/general* (995.24(a)(1)(i)). Distributor asserts that all NOAA ENC® data redistributed will be in the format described by this requirement.

(11) *Distribution of data/compression* (995.24(a)(1)(ii)). Distributor shall indicate if data compression techniques are used. If Distributor uses data compression techniques, Distributor asserts that the process meets the necessary regulations described by this requirement.

(12) *Distribution of data/encryption* (995.24(a)(1)(iii)). Distributor shall indicate if data encryption techniques are used. If Distributor uses data encryption techniques, Distributor asserts that the process meets the necessary regulations described by this requirement.

(13) *Distribution of data/frequency of distribution* (995.24(a)(2)). Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(14) *Distribution of data/distribution report* (995.24(a)(3)). Distributor shall provide an example of the distribution report described by this requirement.

(15) *Distribution of data/additional data* (995.24(a)(4)). Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Distributor shall provide examples of how the data users will be informed as to the official and unofficial

contents of the data as described by this requirement.

(16) *Distribution of data/identification of contents* (995.24(a)(5)). Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(17) *Distribution of data/use of product* (995.24(a)(6)). Distributor shall provide examples of how the data users will be informed as to the purpose of its products as described in this requirement.

(18) *Use of NOAA emblem* (995.28). Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in this requirement.

(19) *Limitation on endorsements* (995.29). Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Distributor, its successors, assignees, or licensees. Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(20) *Liability* (995.7). By signing this request for certification, Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Distributor or its employees, arising out of the use by the Distributor, or any Party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Distributor of ALL applicable terms and conditions described in the certification requirements in 15 CFR part 995.

Signed: _____

Title: _____

Date: _____

[OMB Control #0648-0508 Expires 05/31/2008]

Application for Certification as "Certified NOAA ENC Value Added Distributor"

Company Name

Company Address

Company Phone Number

Company Fax Number

Company E-Mail Address

Point of Contact

Point of Contact Address

Point of Contact Phone Number

Point of Contact Fax Number

Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Value Added Distributor) to be certified as a "Certified NOAA ENC Value Added Distributor" (CEVAD). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis on this application correspond to section titles in 15 CFR, chapter IX, Subchapter F, Part 995—Certification requirements for Distributors of NOAA hydrographic products. The numbers after each descriptive title refer to the section number within 15 CFR, part 995. The Distributor should use these section numbers to insure that the requirements are being fully understood and met by the Distributor prior to submitting the application.

(1) *Correspondence and applications/requests for certification* (995.10 (a)). Distributor acknowledges and agrees to all procedures and requirements pertaining to the certification process described in 15 CFR part 995.

(2) *Correspondence and applications/point of contact* (995.10 (d)). Distributor agrees to immediately notify the Government of any changes to point of contact information.

(3) *Transfer of certification* (995.13). Document other entities that will be assisting in the production or redistribution of the derived product. Provide the names and duties of those entities to meet this requirement.

(4) *Auditing* (995.14). Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that all requirements in 15 CFR part 995 are being met.

(5) *Termination of certification* (995.15). Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in this requirement.

(6) *Term of certification* (995.16). Distributor acknowledges that the duration of certification is five years from the date of issuance.

(7) *Registry of data users* (995.21). Include a description of the data user registry, including: (a) What data elements it contains, specifically showing how the required elements are included; (b) A hardcopy sample of the report that will be periodically submitted to NOAA; (c) A short description of how the registry is maintained.

(8) *Training of data users* (995.22). Include a copy of any documentation provided to users that is intended to meet this requirement.

(9) *Acquisition of data* (995.23). Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for redistribution are being followed.

(10) *Distribution of data/frequency of distribution* (995.24(b)(1)). Value Added Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(11) *Distribution of data/distribution report* (995.24(b)(2)). Value Added Distributor shall provide an example of the distribution report described by this requirement.

(12) *Distribution of data/additional data* (995.24(b)(3)). Value Added Distributor shall indicate if additional data is to be distributed with the NOAA ENC data. If so, Value Added Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

(13) *Distribution of data/identification of contents* (995.24(b)(4)). Value Added Distributor shall provide examples of how the contents of the NOAA ENC files will be identified to the users.

(14) *Distribution of data/use of product* (995.24(b)(5)). Distributor shall provide examples of how the data users will be informed as to the purpose of its products as described in this requirement.

(15) *Quality management system* (995.25). Value Added Distributor shall provide a copy

of the ISO 9001–2000 certification or certification of compliance with an equivalent program of quality management that covers the processes described in this section of the requirements.

(16) *Conversion of NOAA ENC files to other formats (995.26(a)(1)).* Value Added Distributor asserts that all NOAA ENC® content and accuracy are preserved during the conversion process as described in this section of the requirements.

(17) *Conversion of NOAA ENC files to other formats/software certification (995.26(a)(2)).* Value Added Distributor shall provide a copy of the type approval certificate for the software used to convert the NOAA ENC files to the Value Added Distributor's format.

(18) *Conversion of NOAA ENC files to other formats/error reporting (995.26(a)(3)).* Value Added Distributor asserts that they shall log and report any errors in the NOAA ENC data detected during the conversion process. Value Added Distributor shall provide an example of the report format that they will use.

(19) *Conversion of NOAA ENC files to other formats/format check (995.26(a)(4)).* Value Added Distributor shall be tested for conformance with Value Added Distributor's own format specifications and shall test load the converted data as described in this section of the requirements.

(20) *Format validation software testing (995.27).* The validation software used by Value Added Distributor shall be tested according to this requirement and the results stated in this section of the request for certification.

(21) *Use of NOAA emblem (995.28).* Value Added Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in this requirement.

(22) *Limitation on endorsements (995.29).* Value Added Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Value Added Distributor, its successors, assignees, or licensees. Value Added Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(23) *Liability (995.7).* By signing this request for certification, Value Added Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Value Added Distributor or its employees, arising out of the use by the Value Added Distributor, or any party acting on its behalf or under its authorization, of NOAA ENC data.

Signature of this request constitutes an acknowledgement by Value Added Distributor of ALL applicable terms and conditions described in the certification requirements.

Signed: _____
Title: _____
Date: _____

Dated: August 9, 2005.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 05–16033 Filed 9–2–05; 8:45 am]

BILLING CODE 3510-JE-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–124–FOR]

Pennsylvania Regulatory Program

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

ACTION: Final rule; clarification.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is clarifying its decision with respect to one section of an amendment to the Pennsylvania regulatory program (Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment concerned revisions to the Pennsylvania Surface Mining Conservation and Reclamation Act (PASMCR) and implementing regulations at 25 Pa. Code Chapters 86–90 with regard to various issues including bonding, re-mining and reclamation, postmining discharges, and water supply protection/replacement. We approved this amendment, with certain exceptions, in a final rule published in the **Federal Register** on May 13, 2005 (70 FR 25472–25491). This clarification supplements a previous finding made in Section III. OSM's Findings. However, it does not change or otherwise affect our decision made in Section V. OSM's Decision.

EFFECTIVE DATE: September 6, 2005.

FOR FURTHER INFORMATION CONTACT:

George Rieger, Director, Pittsburgh Field Division, Telephone: (717) 782–4036, e-mail: grieger@osmre.gov.

SUPPLEMENTARY INFORMATION: In our May 13, 2005, decision, we approved, among other provisions, Section 4(g)(3) of PASMCR, pertaining to Stage 3 bond release (70 FR at 25491). Our finding with respect to Section 4(g)(3) is on page 25474, Col. 2, the first complete paragraph and the ensuing three paragraphs. After publication, a member of the public pointed out a possible ambiguity with respect to our finding in support of approving the phrase, “the remaining portion of the bond could be

released in whole or in part at Stage 3 when the operator has completed successfully all mining and reclamation activities and has made provisions with PADEP for the sound future treatment of any polluttional discharges.”

Accordingly, we decided to clarify our finding in support of the decision in this regard. This clarification is limited to an expansion of this finding only, and does not change or otherwise affect our decision to approve Section 4(g)(3). We are expanding the finding related to Section 4(g)(3) to read:

* * * * *

PASMCR

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Section 4(g)(3) was modified to expressly indicate that the remaining portion of the bond could be released in whole or in part at Stage 3 when the operator has completed successfully all mining and reclamation activities and has made provisions with PADEP for the sound future treatment of any polluttional discharges. That portion of the permit required for post-mining water treatment remains under bond as part of the provisions for future treatment of any polluttional discharges. Therefore, this is a form of partial bond release as provided for in 30 CFR 800.40(c) and can be approved.

The Federal regulations do not allow full bond release until all requirements of the State program and the permit have been met. However, Pennsylvania has made clear in its comments on this amendment that the reference to the “whole” bond that can be released actually refers to the original bond. That original, standard bond can be fully released at Stage 3 where it is replaced by another approved financial instrument, such as a trust fund as a collateral bond that will fully secure the long-term water treatment obligation. This method, which uses a collateral bond, is the “provision” for “sound future of any polluttional discharges.”

Additionally, Pennsylvania's regulations at 25 Pa. Code 86.151(j), which provides that release of bonds does not alleviate the operator's responsibility to treat discharge of mine drainage emanating from, or hydrologically connected to, the site to the standards in the permit, PASMCR, the Clean Stream Law, the Federal Water Pollution Control Act (or Clean Water Act) and the rules and regulations thereunder, provides guidance as to what qualifies as sound future treatment. Based upon Pennsylvania's clarification about long term financial assurance, we construe the references to “release of bonds” in section 86.151(j) to mean the release of the original bond,