

users that is intended to meet this requirement.

(3) Acquisition of data

Value Added Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for distribution are being followed.

(4) Quality Management System

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.

(5) Conversion of NOAA ENC® files to other formats

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.

(6) Conversion of NOAA ENC® files to other formats/Software certification

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.

(7) Conversion of NOAA ENC® files to other formats/Error reporting 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.

(8) Conversion of NOAA ENC® files to other formats/Format check

Value Added Distributor asserts that all data shall be checked 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.

(9) Distribution of data/Frequency of distribution

Value Added Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(10) Distribution of data/Distribution report

Value Added Distributor shall provide an example of the distribution report described by this requirement.

(11) Distribution of data/Additional data

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.

(12) Distribution of data/Identification of contents

Value Added Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(13) Format validation software testing

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.

(14) Use of NOAA emblem

Value Added Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in § 995.28.

(15) Limitation on Endorsements

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.

(16) Correspondence and Applications/Requests for Certification

Value Added Distributor acknowledges and agrees to all procedures and requirements described pertaining to the certification process.

(17) Correspondence and Applications/Point of contact

Value Added Distributor agrees to immediately notify the Government of any changes to point of contact information.

(18) Auditing

Value Added Distributor acknowledges that NOAA reserves the right to audit Value Added Distributor to ensure that these requirements are being met.

(19) Termination of certification

Value Added Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in the requirements.

(20) Term of certification

Value Added Distributor acknowledges that the duration of certification is five years from the date of issuance.

(21) Liability

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.

Dated: October 4, 2004.

**Richard W. Spinrad,**

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

[FR Doc. 04–23167 Filed 10–14–04; 8:45 am]

**BILLING CODE 3510-JE-P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 996

[Docket No: 040908256425601]

RIN 0648–AS50

### Quality Assurance and Certification Program for NOAA Hydrographic Products

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

**ACTION:** Proposed rule; request for comments.

**SUMMARY:** The National Oceanic and Atmospheric Administration (NOAA) has been mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. “Hydrographic products” are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. These procedures would be the mandated Quality Assurance Program, and the implementation of the program would be the execution of those procedures for specific hydrographic products.

**DATES:** Comments must be received by November 15, 2004.

**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) 713–4019. Comments by e-mail should be submitted to [HydrographicProducts@noaa.gov](mailto:HydrographicProducts@noaa.gov).

**FOR FURTHER INFORMATION CONTACT:** Mr. David B. Enabnit, Office of Coast Survey, NOAA (N/CSx2), 1315 East-West Highway, Silver Spring, MD, 20910, (voice phone) 301–713–2770 x132, (fax phone) 301–713–4019, (e-mail) [Dave.Enabnit@noaa.gov](mailto:Dave.Enabnit@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

## Background

### Definitions

*Hydrographic products*—any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic data*—information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic services*—hydrographic services means:

- The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- The development of nautical information systems; and
- Related activities.

### The Act

The Hydrographic Services Improvement Act of 1998, as amended by the Hydrographic Services Improvement Act Amendments of 2002 (codified as 33 U.S.C. 892b), directs:

#### 1. IN GENERAL—The Administrator—

A. By not later than 2 years after the date of enactment of the Hydrographic Services Improvement Act Amendments of 2002, shall, subject to the availability of appropriations, develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 303(a)(3) of the Act;

B. May authorize the use of the emblem or any trademark of the Administration on a hydrographic product certified under subparagraph (A); and

C. May charge a fee for such certification and use.

Section 303(a)(3) referenced above states that the Administrator shall “promulgate standards for hydrographic services provided by the administration.”

### Statement of Policy

NOAA will act in accordance with the following policies in fulfilling its Quality Assurance Program

responsibilities under the Hydrographic Services Improvement Act.

1. NOAA interprets the Act as intending to stimulate the development of hydrographic products by the private sector. The intent of NOAA's participation in this private sector activity is to provide the public a measure of confidence in the content, quality, and adherence to published standards of the resulting hydrographic products. NOAA interprets the Act in a broad sense. Therefore, “standards” and “quality assurance program” are considered to be generic terms that apply to any means of satisfying the intent of the Act and the intent of NOAA's participation, and that are within NOAA's authorities.

2. Standards, and quality assurance tests and procedures, will preferably be written in collaboration with those affected, not just written and promulgated by NOAA. In some instances, NOAA may adopt an existing standard or quality assurance program, rather than originate one. NOAA may develop standards and quality assurance tests on its own initiative should, for example, it be deemed beneficial for those standards and tests to be established before the appearance of a particular hydrographic product. This approach may be used to stimulate the production of a product that NOAA anticipates would be beneficial.

3. The level to which standards are developed, and to which quality assurance is performed, may vary for different hydrographic products. For example, certification for manufacturers making exact copies of NOAA products may be implemented in a substantially different manner from the certification of a complex cartographic product. NOAA considers all such “standards” and “certifications” as meeting the intent of the Act.

4. NOAA will work, to the extent practicable, through existing, recognized, standards and certification bodies. This will permit the use of proven methods of developing, documenting, and implementing standards and certification. It will leverage NOAA's resources with those of such bodies. It will provide a more widely accepted result than had NOAA promulgated a standard solely under its own name.

5. NOAA will establish the required Quality Assurance Program for hydrographic products. The Quality Assurance Program will be general procedures that apply to all hydrographic products, and specific tests and procedures that apply to specific hydrographic products. The specific quality assurance tests and

procedures for a particular hydrographic product will be based on the standards identified by NOAA or written collaboratively with the affected parties.

6. Certification of a specific hydrographic product under the Quality Assurance Program will be at the option of NOAA. However, certification will be the goal in cases where NOAA decides to write or adopt standards. Any non-Federal entity will be permitted to submit for certification hydrographic products that it asserts are compliant with the NOAA-adopted standards.

7. Certification of products under the Program will mean that the hydrographic product has been found to be compliant with the NOAA-adopted standards for that particular hydrographic product. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service. NOAA may audit hydrographic products it has certified, and may decertify hydrographic products based on its findings.

8. NOAA does not intend to write standards and perform quality assurance for every hydrographic product submitted by a non-Federal entity. NOAA will select those deemed appropriate for standards and certification by taking into account:

- The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of resources that would be required;
- The breadth of support for standards and certification among all the affected communities;
- The practicality of writing and enforcing an effective standard and compliance tests;
- The availability of suitable, similar products that may already meet the needs of the public;
- NOAA's expertise related to that needed to write an appropriate standard;
- Availability of resources; and
- Other relevant criteria as they become apparent.

In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for

maintaining a single complying product for regulated carriage.

9. Use of the NOAA emblem on certified hydrographic products will require separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency. If the NOAA emblem is used on products that include other data or products, clear indication will be required as to what is NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA.

10. NOAA may charge for its standards and certification activities such sums as may be permitted or required under this Act, or under other statutory authorities.

11. NOAA will operate the Quality Assurance Program in an open and public manner. All standards, tests, and procedures will be publicly available. The public will be given ample public notification of activities under the Quality Assurance Program, and will be given ample opportunity to comment and have their comments heard. This opportunity to participate in the Quality Assurance Program and the opportunity to submit hydrographic products for certification under that Program will be equally available to all.

12. In all matters, NOAA will proceed in a manner that maximizes public safety.

#### *Discussion of Selected Sections of the Policy*

##### Paragraph 1

NOAA interprets the Act as an attempt to increase the richness of the suite of hydrographic products available to the public, and to ensure the safety of those products. In addition, NOAA interprets the Act to include "services" as meeting the definition of "hydrographic products," and may choose to write standards, quality assurance tests and procedures, and to certify appropriate services. Nautical chart updating services, or an electronic navigational chart distribution service, are examples of services that NOAA may consider a "hydrographic product" under the Act.

Other tools within NOAA's authority may be used to meet the purposes of the Act. Depending on the complexity of the hydrographic product, and the amount of risk the public would be exposed to, NOAA reserves the right to select any authorized means of establishing new products and providing a measure of confidence in the content, quality, and adherence to standards for those

products. Thus, for purposes of accountability under the Act, NOAA is interpreting "standards," "quality assurance," and "certification" as generic terms describing an outcome rather than as a specific formalism or document. For example, some non-Federal entities may intend to reproduce exactly NOAA products such as the Tide Tables. In this case, a "standard" may be a simple agreement, in which the manufacturer agrees to certain standards of copy quality. Further, because the complexity is low, self-certification might be used as the means of compliance testing. Other such authorities available to NOAA that may be used include: business licenses, Agent Agreements, no-cost contracts, self-certification, adoption of industry standards, and the use of existing certification organizations.

##### Paragraph 2

Participation by the affected communities in writing standards and compliance tests provides an important guarantee that there is broad need for standards and certification, and that the resulting standard and certification meet the needs of the affected communities. Relevant communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

Participation in the drafting of standards and quality assurance tests and procedures must be substantive and continuing by the designated members of the affected communities. The responsibility will lie with the non-Federal entity submitting a hydrographic product for certification to propose a broadly based group of acknowledged representatives of affected groups, and to secure their participation in the writing of standards and compliance tests.

##### Paragraph 6

The Act leaves the certification of hydrographic products as optional for NOAA. The assumption will be, however, that if NOAA undertakes to write standards, it also intends to offer certification of the resulting hydrographic products. In general, NOAA will not undertake to write standards and compliance tests if it can foresee that certification will not be offered.

The decision to offer certification will be made on a case-by-case basis. Circumstances may arise that cause standards to be written, but certification to not be offered. Such circumstances might include:

- A resulting standard for which NOAA lacks confidence in the safety implications of products that might meet that standard;
- Lack of consensus among the affected organizations writing the standard and compliance tests;
- Failure of adoption of the draft standards by the participating standards-writing body;
- Standards that negatively impact the intent of the Act, such as those that might exclude existing, suitable products; or standards that benefit a single company;
- Adopted standards that are specious; or
- Other relevant reasons as they become apparent.

##### Paragraph 7

NOAA does not intend to certify products as suitable for any specific purpose such as for use as a backdrop in Automated Identification Systems. Certification only means that there is an adopted NOAA standard, documented compliance tests; and that the subject hydrographic product has been through the tests and was determined to be compliant with the standard.

##### Paragraph 8

NOAA does not interpret the Act as merely a way to provide manufacturers with a marketing claim for their product, or as a means for one manufacturer to differentiate his product from the competition, although that might be a resulting effect. Neither does NOAA interpret the Act as intending to result in "private standards" that may only apply to one manufacturer's product.

In addition, NOAA interprets the Act as intending to call forth new products, not substitutes for official ones being provided by the Administration. In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single, official nautical chart or publication where federal regulations mandate carriage, and for not certifying private products for that same purpose. These reasons include:

- Removing any confusion as to what products satisfy the federal regulations;
- Having all vessels making navigation decisions on exactly the same information, particularly in meeting situations or at night;

- Guaranteeing the timeliness and accuracy of updates to official charting products and their distribution;
- Removing ambiguity as to the status of non-certified data that may be included on or with certified private hydrographic products;
- Liability for other information when packaged with a certified “hydrographic product;” and
- The impracticality of NOAA policing all substitute official products—products on which data changes weekly.

Exceptions to this intention might include cases where NOAA specifically prepares a carriage-compliant product for manufacture and distribution by the non-Federal entities.

#### Paragraph 9

The presumption will be that use of the NOAA emblem will be permitted if NOAA proceeds with standards and certification. However, the use of the NOAA emblem will be carefully monitored. In particular, it will be monitored to insure that the use of the emblem is not done in a manner to imply the endorsement of any manufacturer; any other data, service, or product that may be packaged with a certified hydrographic product; or any particular use of a certified hydrographic product, and to monitor that its use not bring discredit upon the Agency or the Department.

#### Classification

##### A. Executive Order 12866

This proposed 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 certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule will not have a significant, negative economic impact on a substantial number of small entities. The purpose of this rule is to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator of NOAA may certify hydrographic products that satisfy standards promulgated by the Administrator. “Hydrographic products” are any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are

proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. NOAA is required to develop this Quality Assurance Program under the authority of 33 U.S.C. 892b.

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 general knowledge of the industry, NOAA believes the majority of the entities affected will be small businesses.

The estimated economic impact to small entities for submitting hydrographic products under this program is not expected to be greater than \$600 per product submitted for labor to prepare the application. In addition, it is expected that there will be an average charge of \$5,000 per product submitted for compliance testing. This proposed rule is voluntary. Only those applicants who wish to submit hydrographic products and have them certified need apply. NOAA does not believe this cost will hurt small companies, and the estimated costs incurred should be offset through the benefits in increased sales of the product because of its “certified” status or else private companies would not choose to submit their products to this voluntary program.

##### C. Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval.

The following requirements have been submitted to OMB for approval: 4 hours to prepare the application to have standards and compliance tests developed; 4 hours to prepare the application to have a specific hydrographic product certified; and 4 hours for an estimated, single request for NOAA to reconsider a decision made under the program. These estimates include the time for reviewing instructions, searching existing data sources, writing the application information and/or request for reconsideration, and for sending the applications to NOAA.

Public comment is sought regarding whether these proposed collections of

information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to Director, Office of Coast Survey, National Ocean Service, NOAA (see **ADDRESSES**) and to David Rostker at the Office of Information and Regulatory Affairs, OMB, by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov) or by fax to (202) 395-7285.

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 proposed rule.

#### List of Subjects in 15 CFR Part 996

Navigation (water), Hydrographic products, Certification requirements.

For the reasons stated in the preamble, NOS proposes to amend 15 CFR chapter IX by adding part 996 to read as follows:

#### **SUBCHAPTER F—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES**

#### **PART 996—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES**

##### **Subpart A—General**

Sec.

- 996.1 Purpose and scope.
- 996.2 Definitions.
- 996.3 Fees.
- 996.4 Liability.
- 996.5 Alterations.

##### **Subpart B—The Quality Assurance Program for Hydrographic Products**

- 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.
- 996.11 Development of standards for a hydrographic product or class.
- 996.12 Development of standards compliance tests for a hydrographic product or class.
- 996.13 Determination of whether to offer certification for a hydrographic product or class.

**Subpart C—Certification of a hydrographic product and decertification.**

- 996.20 Submission of a hydrographic product for certification.
- 996.21 Performance of compliance testing.
- 996.22 Certification.
- 996.23 Audit and decertification of hydrographic products.

**Subpart D—Other Quality Assurance Program Matters**

- 996.30 Use of the NOAA emblem.
- 996.31 Termination of the Quality Assurance Program.
- 996.32 Appeals.
- 996.33 Acceptance of program by non-Federal entities.

**Authority:** 33 U.S.C. 892b.

**Subpart A—General****§ 996.1 Purpose and scope.**

The National Oceanic and Atmospheric Administration (NOAA) has been mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. "Hydrographic products" are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. These procedures would be the mandated Quality Assurance Program, and the implementation of the program would be the execution of those procedures for specific hydrographic products.

**§ 996.2 Definitions.**

*Agency* means the National Oceanic and Atmospheric Administration.

*Applicant* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for certification.

*Certification* means a determination made by NOAA that a hydrographic product submitted by a non-Federal entity has met the requirements established by NOAA for a particular hydrographic product or class.

*Department* means the Department of Commerce.

*Hydrographic data* means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and

current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic product* means any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic product class* means a group of hydrographic products with similar traits, attributes, purposes, or users.

*Hydrographic services* means:

- The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- The development of nautical information systems; and
- Related activities.

*Quality Assurance Program* means a set of procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, and, if suitable, are adopted by NOAA for those products or their product class; and by which certification of individual products may be awarded or denied.

*Quality Assurance Program implementation* means the execution of the Quality Assurance Program procedures for specific hydrographic products.

*Sponsor* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for the development of standards and compliance tests.

**§ 996.3 Fees.**

NOAA may charge for its Quality Assurance Program activities such sums as may be permitted or required under this Act, or under other statutory authorities. Such sums are non-refundable. NOAA will attempt to identify any such charges upon first submission of a hydrographic product. However, the intent to charge and the amounts may change. NOAA will promptly notify the sponsor of any such changes, and permit the sponsor to withdraw hydrographic products from consideration under the Quality Assurance Program should they so choose.

**§ 996.4 Liability.**

The Government of the United States shall not be liable for any negligence by producers of hydrographic products certified under this part.

**§ 996.5 Alterations.**

NOAA reserves the right to change these requirements at any time.

**Subpart B—The Quality Assurance Program for Hydrographic Products****§ 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.**

(a) Any non-Federal entity may submit a hydrographic product to be considered for the development of standards and compliance tests under this Quality Assurance Program.

(b) Submission shall be made to the Quality Assurance Program address below, or to such other address as may be indicated in the future:

Director (N/CS), ATTN: Hydrographic Product Quality Assurance Program, Office of Coast Survey, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

(c) The submission shall include

- (1) Name and description of the proposed hydrographic product.
- (2) The non-Federal entity submitting the product for the development of standards and compliance tests, and contact information for that entity. This non-Federal entity shall be known as the sponsor.

(3) The names and contact information of proposed representatives of the affected communities who have committed to participate substantively in the writing of standards and compliance tests. Affected communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

(4) The names and contact information of the standards setting body, and the compliance testing body under whose authority it is proposed that the standards and compliance tests will be written and adopted.

(5) Information deemed relevant by the sponsor for NOAA to consider in deciding whether to proceed with the development of standards, compliance tests, and certification. Such information should address at a minimum:

(i) The type and magnitude of the public benefits and enhancement of public safety that would be achieved;

(ii) The breadth of support for standards and certification among all the affected communities;

(iii) The practicality of writing and enforcing an effective and appropriate standard;

(iv) The availability of suitable, similar products that may already meet the needs of the public; and

(v) The required expertise needed to write an appropriate standard.

(d) NOAA may, at its option, define a hydrographic product class of which the proposed hydrographic product is a specific instance. Standards and compliance tests may then be prepared for the class rather than for an individual non-Federal entity's specific product.

(e) NOAA shall publicize, in the **Federal Register** or by other appropriate means, the hydrographic product or class in order to solicit comments on the proposal that standards and compliance tests be written and certification be offered for that hydrographic product or class. Comments might include, but are not limited to, general information; statements of interest in participating in the development of standards and compliance tests; or objections to acceptance of the hydrographic product or class into this Quality Assurance Program. Instructions for commenting and the duration of the comment period will be included in the announcement.

(f) NOAA shall decide, if its other obligations permit, within 60 calendar days of the close of the comment period whether to proceed with the development of standards, compliance tests, and certification for the proposed hydrographic product or class. NOAA may request further information, and shall have additional time as required to consider the information once received. NOAA's decision on whether to proceed shall be based on the following criteria.

(1) The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of federal resources that would be required;

(2) The breadth of support for standards and certification among all the affected communities;

(3) The practicality of writing and enforcing an effective and appropriate standard;

(4) The availability of suitable, similar products that may already meet the needs of the public;

(5) NOAA's expertise related to the expertise needed to write an appropriate standard;

(6) Availability of resources; and

(7) Other relevant criteria as they become apparent.

(g) NOAA's decision as to whether the proposed hydrographic product or class is accepted into the Quality Assurance Program shall be publicly announced in the **Federal Register** or by other appropriate means, and a written notification shall be provided to the sponsor. The response shall include NOAA's reason for its decision based on the criteria enumerated above.

(h) Any party, including the sponsor, shall have an opportunity to request reconsideration of NOAA's decision.

Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(i) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

(j) NOAA itself may choose to identify a hydrographic product or class, which may or may not yet exist, but for which it intends to adopt standards, compliance tests, and to offer certification. In such cases, NOAA will be considered the sponsor. The procedures to be followed for NOAA-sponsored hydrographic products or classes shall be the same as for those sponsored by non-Federal entities, including the procedures for announcement, comment, and reconsideration.

#### **§ 996.11 Development of standards for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, standards bodies in the writing and adopting of standards for a hydrographic product or class that NOAA has accepted into this program. It shall be the responsibility of the sponsor to propose an appropriate standards writing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to submit the proposal for writing standards to, and to secure the cooperation of, the selected standards writing body.

(b) Once accepted as a work item by the standards writing body, NOAA shall undertake, jointly with representatives of the affected community, members of the standards body, other governmental representatives, and the sponsor as appropriate, to write standards for the hydrographic product or class according to the practices of the standards body and the technical needs of the product. Participation in the writing of standards shall be determined according to the procedures of the standards writing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the standards body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting standard officially adopted by the standards body according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, standards body should it so choose. Such action might be taken, for example, if there were no appropriate standards body. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish standards for the proposed hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing a standard;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register** or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, the NOAA proposed standard and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available as a standard, the final version of the standard; and

(7) Provide the necessary administrative support.

(e) Alternatively, NOAA may at its option, proceed by writing a standard by itself. Such action might be used, for example, in cases where the standard is obvious. Producing exact copies of existing NOAA products might be one such case. Once written, this NOAA-authored standard shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final standard.

(f) At the conclusion of the standards writing, whether through an existing standards body, by a NOAA-convened working group, or by NOAA itself, NOAA shall consider the resulting standard and either adopt or reject the standard as the NOAA Quality Assurance Program Standard for the particular hydrographic product or class. NOAA's decision shall be

publicly announced in the **Federal Register** or by other appropriate means.

(g) Any party may request NOAA to reconsider its decision to adopt or reject the standards by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

**§ 996.12 Development of standards compliance tests for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, compliance testing bodies in the writing and adopting of compliance tests for a hydrographic product or class. It shall be the responsibility of the sponsor to propose an appropriate compliance testing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to secure the cooperation of the selected compliance testing body.

(b) NOAA shall undertake, jointly with representatives of the affected community, members of the compliance testing body, other governmental representatives, and the sponsor as appropriate, to write compliance tests for the hydrographic product class according to the practices of the compliance testing body and the Quality Assurance Program standard adopted by NOAA. Participation in the writing of compliance tests may be determined according to the procedures of the compliance testing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the compliance testing body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting compliance tests adopted according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, compliance testing body should it so choose. Such action might be taken, for example, if there were no appropriate compliance testing body. In this eventuality, NOAA will adhere to the following general procedure:

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish compliance tests for the hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing compliance tests;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register**, or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, a NOAA proposed final version of the compliance tests and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available the final version of the compliance tests, and

(7) Provide the necessary administrative support.

(e) Alternatively, NOAA may, at its option, proceed by writing compliance tests by itself. Such action might be used, for example, in cases where the tests are obvious. Producing exact copies of existing NOAA products might be one such case. Once written, these NOAA-authored tests shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final compliance tests.

(f) At the conclusion of the compliance test writing, whether through an existing body, by a NOAA-convened working group, or by NOAA itself, NOAA shall consider the resulting compliance tests and either adopt or reject them as the NOAA Quality Assurance Program compliance tests for the particular hydrographic product standard. NOAA's decision shall be publicly announced in the **Federal Register** or by other appropriate means.

(g) Any party may request NOAA to reconsider its decision to adopt or reject the compliance tests by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its

decision upon reconsideration shall be considered final.

**§ 996.13 Determination of whether to offer certification for a hydrographic product or class.**

(a) Certification of a hydrographic product or class shall be at the option of NOAA. NOAA may decide at any time whether or not to offer certification for a product or class. However, it is most likely that a determination will be made only after a non-Federal entity has submitted a specific product for certification. NOAA's decision shall be based on the following criteria:

(1) The suitability of the adopted standards and tests for their intended purpose;

(2) The availability of a qualified entity to perform the compliance tests;

(3) Availability of resources; and

(4) Other relevant criteria as they become apparent.

(b) NOAA's decision as to whether certification for a hydrographic product or class is offered shall be publicly announced in the **Federal Register** or by other appropriate means.

(c) Any entity may request NOAA to reconsider its decision to offer or not offer certification by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(d) NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration, shall be considered final.

**Subpart C—Certification of a Hydrographic Product and Decertification.**

**§ 996.20 Submission of a hydrographic product for certification.**

(a) Upon adoption by NOAA of standards and compliance tests, any non-Federal entity may submit a hydrographic product for certification under a particular standard. This non-Federal entity shall be known as the applicant. Submission shall be made in writing to the Quality Assurance Program address. The submission shall include:

(1) Name and description of the hydrographic product and its product class if any;

(2) Identification and contact information for the non-Federal entity submitting the product for certification.

(3) The identification of the standard and compliance tests adopted by this



Quality Assurance Program under which the hydrographic product is to be certified;

(4) A proposed, qualified, compliance testing body to perform the compliance tests, which NOAA may accept at its discretion, or for which NOAA may select an alternative testing body;

(5) Other information deemed relevant by the sponsor or requested by NOAA.

#### **§ 996.21 Performance of compliance testing.**

(a) NOAA and the applicant shall submit the applicant's hydrographic product to the testing body for performance of the compliance tests. That body shall determine compliance or non-compliance of the hydrographic product with the NOAA-adopted standard, and shall provide to NOAA written documentation stating the results of the compliance tests according to its usual practices.

(b) Alternatively, NOAA may choose, at its option, to perform, have performed by a NOAA-designated entity, or waive the compliance tests for a hydrographic product. This alternative may be used, for example, when there is no qualified entity to perform the compliance tests, where the compliance tests are simple, or when self-certification of compliance would be appropriate.

(c) Items failing the compliance tests may be changed by the applicant and retested. Items passing the compliance test upon retest shall be deemed compliant as if they had passed said tests initially.

#### **§ 996.22 Certification.**

(a) A hydrographic product that has passed the compliance tests shall automatically be considered for certification by NOAA. NOAA shall make its certification determination, if its other obligations permit, within 60 calendar days following receipt of the compliance test results. NOAA shall make a certification determination based upon the following criteria:

(1) The results of the compliance tests;

(2) The potential for the hydrographic product to impair public safety;

(3) Successful completion of any administrative requirements, including the payment of required fees, as may be specified by NOAA;

(4) The potential for certification to cause embarrassment to the Agency or the Department;

(5) Other relevant criteria as they become apparent

(b) Hydrographic products receiving a certification determination in the affirmative shall be designated as

“certified” by NOAA. NOAA shall provide a written document to the sponsor indicating such, and shall announce its determination in the **Federal Register** or by other appropriate means. Certification shall mean that the hydrographic product has been found to be in compliance with the NOAA-adopted standard for that hydrographic product or class. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service.

(c) Certification shall be for a term of 3 years unless otherwise specified by the Administrator.

#### **§ 996.23 Audit and decertification of hydrographic products.**

(a) NOAA may audit hydrographic products it has certified. NOAA may conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

(1) The producing companies as it may affect the certified product;

(2) Certified products;

(3) Processes used in making, distributing, and marketing certified products;

(4) Use of the NOAA emblem;

(5) Examination of manufacturers' public claims about certified hydrographic products;

(6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

(1) The results of an audit indicate that the product no longer meets the standards under which it was certified;

(2) The product has been substantively changed from the product that was tested and certified;

(3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;

(4) The NOAA emblem was improperly or inappropriately displayed;

(5) Other relevant reasons as they become apparent.

(c) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality

Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration.

Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for NOAA to judge the correctness and effectiveness of the corrective action taken.

(d) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the **Federal Register** or by other appropriate means, and the producing entity shall be notified in writing.

(e) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the **Federal Register** or by other appropriate means.

(f) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

#### **Subpart D—Other Quality Assurance Program Matters**

##### **§ 996.30 Use of the NOAA emblem.**

(a) Use of the NOAA emblem on certified hydrographic products requires separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

(1) Name and description of the hydrographic product(s) on which the emblem will be displayed.

(2) Name and contact information for the entity requesting use of the NOAA emblem.



(3) Exact samples of all uses intended for the NOAA emblem including text claims with, within, or associated with the hydrographic product, its packaging, and advertising that a reasonable person might associate with the NOAA emblem.

(4) Proof of NOAA certification.

(5) Other relevant information as may later be specified.

#### **§ 996.31 Termination of the Quality Assurance Program.**

(a) NOAA reserves the right to terminate the Quality Assurance Program for a particular hydrographic product or class at any time before certification is awarded if it is deemed to be in the public interest to do so. NOAA shall give written notification to the sponsor and other interested parties should it decide to exercise this option, and shall state the reasons for its action. Reasons for termination may include, but are not limited to:

(1) The inability of the standards-drafting group to reach a consensus on the content of the standard;

(2) Valid objections to the existence of NOAA-certification of a particular hydrographic product;

(3) A negative impact on public safety should the hydrographic product receive certification;

(4) Other relevant reasons as they become apparent.

(b) The sponsor or other interested parties shall have 30 days to request a reconsideration of the termination action. Said request shall be in writing to the Quality Assurance Program address, and shall include written material supporting the appeal. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(c) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

#### **§ 996.32 Appeals.**

(a) Any entity may appeal a final decision made by the Agency under this Quality Assurance Program. Said appeal shall be submitted in writing to the Quality Assurance Program address, and shall contain at least:

(1) Identification and contact information of the appealing entity;

(2) A statement that this is an appeal to a final decision of the Quality Assurance Program;

(3) A description of what decision is being appealed;

(4) A thorough but concise argument as to why the requestor believes the

Quality Assurance Program decision being appealed should be set aside.

(5) Other information as may later be determined to be relevant.

(b) Appeals shall be arbitrated by the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, using procedures to be established at the time of the appeal, and which shall be appropriate to the nature and circumstances of the appeal. The determination from this arbitration shall be final.

#### **§ 996.33 Acceptance of program by non-Federal entities.**

By their voluntary entrance or participation in this Quality Assurance Program or its activities, all parties acknowledge and accept the procedures established by this program, including the finality of decisions. All parties acknowledge and accept that information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information.

Dated: October 7, 2004.

**Richard W. Spinrad,**

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

[FR Doc. 04-23166 Filed 10-14-04; 8:45 am]

**BILLING CODE 3510-JE-P**

## **DEPARTMENT OF ENERGY**

### **Federal Energy Regulatory Commission**

#### **18 CFR Part 35**

**[Docket No. RM04-14-000]**

### **Reporting Requirement for Changes in Status for Public Utilities With Market-Based Rate Authority**

Issued October 6, 2004.

**AGENCY:** Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission), acting pursuant to section 206 of the Federal Power Act (FPA),<sup>1</sup> is proposing to amend its regulations and to modify the market-based rate authority of current market-based rate sellers to establish a reporting obligation for changes in status that apply to public utilities authorized to make wholesale power sales in interstate commerce at market-based rates. In particular, the

Commission proposes to amend its regulations to establish guidelines concerning the types of events that trigger this reporting obligation and to modify the market-based rate authority of current market-based rate sellers to ensure that all such events are timely reported to the Commission by eliminating the option to delay reporting of such events until submission of a market-based rate seller's updated market power analysis. We propose that this reporting requirement be incorporated into the market-based rate tariff of each entity that is currently authorized to make sales at market-based rates, as well as that of all future applicants. The Commission seeks public comment on its proposal.

**DATES:** Comments are due November 15, 2004.

**ADDRESSES:** Comments may be filed electronically via the eFiling link on the Commission's Web site at <http://www.ferc.gov>. Commenters unable to file comments electronically must send an original and 14 copies of their comments to: Federal Energy Regulatory Commission, Office of the Secretary, 888 First Street, NE., Washington, DC, 20426. Refer to the Comment Procedures section of the preamble for additional information on how to file comments.

#### **FOR FURTHER INFORMATION CONTACT:**

Brandon Johnson, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-6143.

Michelle Barnaby, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 502-8407.

**SUPPLEMENTARY INFORMATION:** Before Commissioners: Pat Wood, III, Chairman; Nora Mead Brownell, Joseph T. Kelliher, and Sudeen G. Kelly.

### **Notice of Proposed Rulemaking**

#### **Introduction**

1. In order to facilitate our oversight of public utilities with market-based rate authority, to ensure that the rates being charged continue to be just and reasonable and to give guidance to market participants to facilitate compliance with the Commission's reporting requirements, this Notice of Proposed Rulemaking proposes to standardize and clarify market-based rate sellers' reporting requirement for changes in status. In previous orders authorizing wholesale power sales in interstate commerce at market-based rates, the Commission has required market-based rate sellers to inform the

<sup>1</sup> 16 U.S.C. 824e (2000).