they should not have been included on the list of less stringent sections provided in the preamble at 51 FR 16442.

If a section was characterized as less stringent, but was divided into subsections, some more and some less stringent, only the subsections that should have been identified as more stringent will be recharacterized. However, if a section was not divided into subsections, but contained both more and less stringent parts, the entire section will be recharacterized as more stringent.

The following sections and subsections previously and erroneously characterized as less stringent should have been classified as more stringent: 264.115, 264.118(a), 264.143(a)(10), 264.143(b)(4)(ii), 264.143(c)(5), 264.143(d)(8), 264.143(e)(5), 264.145(a)(11), 264.145(b)(4)(ii), 264.145(c)(5), 264.145(d)(9), 264.145(e)(5), 265.112(d)(1), 265.115, 265.118(a), 265.118(e), 265.118(f), 265.143(a)(10), 265.143(b)(4)(ii), 265.143(c)(8), 265.143(d)(5), 265.145(a)(11), 265.145(b)(4)(ii), 265.145(c)(9) and 265.145(d)(5).

States which have not yet modified their regulations for this May 2, 1986 final rule must do so on the basis of today's correction. States which have already modified their regulations to conform to the May 2, 1986 final rule but have chosen to omit the sections erroneously characterized as less stringent, will have to make further program modifications. This correction notice does not alter the time provided for States to revise their programs to reflect the Federal program, including the sections identified today as more stringent. 40 CFR 271.21(e) (51 FR 33722, September 22, 1986) provides for extensions of time at the discretion of the Regional Administrator for States to adopt changes to their regulations and/or statutes to conform to changes in the Federal program.

Application of these extensions to the May 2, 1986 final rule would allow the States until January 1, 1989 to make the appropriate modifications to their program envisioned by this correction notice. In regard to States that have already modified their regulations but have chosen to omit the erroneously characterized sections, the Regional Administrator may grant these extensions where appropriate. In addition, if these recharacterized sections are unable to be adopted by January 1, 1989, the Regional Administrator may further extend the deadlines, taking into account the State's regulatory and/or legislative procedures.

Dated: March 4, 1988.

J.W. McGraw,

Acting Assistant Administrator for Office of Solid Waste and Emergency Response.

The following correction is made in the preamble for [SWH–FRL2891–9] (FR Doc. 86–6368), Standards Applicable to Owners and Operators of Hazardous Waste Treatment, Storage and Disposal Facilities; Closure/Post-Closure and Financial Responsibility Requirements published in the **Federal Register** issue of May 2, 1986 (51 FR 16422).

On page 16442, column three, the third full paragraph, the list of sections containing provisions that are considered less stringent than or a reduction in the scope of the previous Federal requirements is corrected to read as follows: "Those provisions appear in Sections: 264.112(a)(2), 264.112(b)(7), 264.112(d)(1), 264.112(e), 264.113(a), 265.112(a), 265.112(b)(7), 265.112(e), and 265.113(a)."

[FR Doc. 88–5286 Filed 3–9–88; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

41 CFR Part 50–201

General Regulations Under the Walsh-Healey Public Contract Act

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is revising the regulatory provisions regarding the involvement of the Small Business Administration (SBA) in the administrative procedures for determining whether a small business concern qualifies for award of Government supply contracts as either a "manufacturer" or "regular dealer," to whom the award of covered contracts is restricted by the Walsh-Healey Public Contracts Act (PCA). SBA requested revisions to the regulations which would eliminate the provision for SBA to render PCA eligibility determinations in protest cases in which the contracting officer has found a small business bidder to be eligible under the PCA. Additional revisions will streamline the processing of eligibility determination cases between the contracting agencies, SBA, and the DOL and help speed up procurement activities in certain instances.

EFFECTIVE DATE: May 9, 1988.

FOR FURTHER INFORMATION CONTACT: Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 523–8305. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: On March 13, 1987, the Department of Labor (DOL) published in the **Federal Register** (52 FR 7892) proposed changes to 41 CFR 50–201.101(b), containing the administrative procedures to be followed by contracting agencies, SBA, and DOL in determining the eligibility status of business concerns as either "manufacturers" or "regular dealers," as required for award of Government contracts subject to the PCA. Persons interested in the rulemaking were allowed 60 days to submit comments. Four comments were received from Federal agencies. This document provides the text of the final rule and explains any changes from the proposal that were made in response to the comments received.

Background

The PCA provides labor standards for employee working on Federal contracts in excess of $10,000 calling for the manufacturer or furnishing of materials, supplies, articles or equipment. Section 1(a) of the PCA provides that contracts subject to the Act may only be awarded to a manufacturer of or a regular dealer in the materials, supplies, articles, or equipment to be manufactured or used in the performance of the contract. Contracting agencies must determine in the first instance whether a bidder in line for contract award qualified for award according to criteria in DOL regulations (41 CFR Parts 50–201 and 50–206). Such agency determinations are subject to review by DOL. In cases involving small businesses, the Small Business Act, as amended, however, empowers the SBA to overturn, on review, a contracting agency's finding of ineligibility and to certify a small business to be eligible to perform a particular government contract.

As set forth in 41 CFR 50–201.101(b), the present procedures for small businesses require SBA review of all contracting agency findings of ineligibility, as well as all protests which challenge an agency's finding of eligibility. SBA requested revisions to the existing regulations which would eliminate SBA review under the following circumstances: (1) Competitor protest cases which challenge the contracting officer's determination, after review of the protest, that a small business firm is eligible under PCA; (2) Cases involving contracts awarded by agencies which are not subject to the Small Business Act because they are outside the Executive Branch (e.g., contracts with the U.S. Postal Service and District of Columbia Government); and (3) Cases where either the contracting officer or SBA has found that the firm is to be denied award for procurement reasons other than a finding of ineligibility under PCA (e.g., determination of "non-responsibility" where SBA has declined to issue a Certificate of Competency).

SBA also requested revisions to provide that if a firm did not contest the initial finding of ineligibility and submitted no information on its own behalf to SBA, such ineligibility determination would become final and would not be referred by SBA to DOL. However, it was determined upon review that since the language of section 8(b)(7)(B) of the Small Business Act mandates that SBA forward such cases to the Secretary of Labor for final disposition, this part of SBA's request was precluded by law and could not, therefore, be adopted by regulation.

Summary of Comments

SBA suggested that the reference in the proposal to "Administrator of the Small Business Administration" be changed to reflect SBA's current regional operating structure, under which questions as to a small business concern's eligibility are currently referred to the appropriate regional office of SBA for the location of the affected business concern. The regulation will be revised in appropriate places to add "authorized representative," to address SBA's suggestion.

The Defense Logistics Agency (DLA) recommended changes to proposed § 50-201.101(b)(6), pertaining to the award of contracts under emergency conditions prior to receiving an eligibility determination. The proposed section provided that contract awards would be held in abeyance until a final determination is rendered in those cases subject to SBA review. DLA suggested that, in order to be consistent with a pending change in the governmentwide Federal Acquisition Regulation (48 CFR 22.608-4; FAR Case 84-53), award should be held in abeyance in such cases until the contracting officer receives a determination of eligibility from SBA, or notification that SBA has forwarded the case to DOL for review. This would allow SBA the appropriate opportunity for review as provided in the Small Business Act (15 U.S.C. 637(b)(7)(B)), yet not indefinitely delay the award unnecessarily in cases of exigency, where the items are urgently required or a failure to make the award promptly would create substantial hardship for the Government. DLA's suggestion is a constructive one, and it will be adopted.

The General Services Administration (GSA) recommended that the effective date of the final rule be delayed sufficiently to allow the Federal Acquisition Regulation to be modified to conform to this rule, and thus avoid confusion that might be created from conflicting rules. For this reason, the effective date of this rule will be delayed for sixty days following the date of publication in the **Federal Register**, until May 9, 1988.

Although no change was proposed in the regulation concerning the circumstances in which agencies must investigate and affirmatively determine the Walsh-Healey eligibility status of a bidder, GSA recommended that more weight be placed on the self-certification of the offeror in determining eligibility. GSA suggested deleting subparagraph (b)(2)(i), which precludes reliance on the representation of a bidder if that bidder is in line for award and has not previously been awarded a contract subject to the Act by the individual procuring office, and/or if a pre-award investigation or survey of the bidder's operations is otherwise being made to determine the bidder's technical and production capability, plant facilities and equipment, and subcontracting and labor resources.

The language of the Act and its legislative history makes clear Congress' intent that covered contracts are to be awarded only to contractors who are currently capable of qualifying for award under the Act as a bona fide manufacturer or a bona fide regular dealer. If the legislative purposes are to be effectively achieved, the contracting agency must obtain and consider evidence which affirmatively shows that the eligibility standards are, in fact, presently met prior to any award of a contract subject to the Act. To permit otherwise would serve to encourage the very abuses which Congress sought to eliminate. Moreover, there is no adequate remedy available to correct the error after the fact, other than disrupting the procurement, if a firm that is not eligible under PCA is incorrectly awarded a contract subject to the Act. The only possible recourse is for the Government to exercise its right to terminate the contract and enter into other contracts or make open market purchases, as provided in 41 CFR 50-201.101(a)(3)(i)(B), when a bidder does not act in good faith and misrepresents its PCA eligibility status.

For these reasons, the existing regulations have long provided that a bidder's mere representation or affirmation that it qualifies under the Act is insufficient (*see* 41 CFR 50-206.51(d)), and, further, that a bidder's eligibility status on a previous PCA contract or its performance as a subcontactor on PCA contracts are not determinative of the bidder's present eligibility status (*see* 41 CFR 50-206.51(g)). On balance, when viewed in the context of the Act's legislative intent, the Department does not believe that sufficient justification has been presented to warrant deleting, as GSA proposes, the longstanding criteria in 41 CFR 50-201.101(b)(2)(i) for when to conduct preaward investigations of a bidder's PCA qualifications. Accordingly, the current policies will be maintained.

Classification—Executive Order 12291

This rule is procedural in character. It is not classified as a "major rule" under Executive Order 12291 on Federal Regulation because it is not likely to result in: (1) An annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Final Regulatory Flexibility Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Department included an Initial Regulatory Flexibility Analysis in its Notice of Proposed Rulemaking published on March 13, 1987 (52 FR 7893). That analysis concluded that the revised rule would not, if adopted, have a "significant economic impact on a substantial number of small entities" within the meaning of the Regulatory Flexibility Act. No comments were received on any aspect of this analysis. Accordingly, the Initial Analysis is being adopted as the Final Regulatory Flexibility Analysis, without change. Members of the public may obtain copies of the analysis from the **Federal Register** of March 13, 1987 (52 FR 7893-94), or by contacting the Wage and Hour Division at the address and telephone number listed above under **FOR FURTHER INFORMATION CONTACT**.

Paperwork Reduction Act

This rule is not subject to section 3504(h) of the Paperwork Reduction Act, 44 U.S.C. 3504(h), since it does not involve the collection of information from the public.

This document was prepared under the direction and control of Paula V. Smith, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

List of Subjects in 41 CFR Part 50–201

Administrative practice and procedure, Child labor, Government contracts, Government procurement, Minimum wages, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, for the reasons set out in the preamble, 41 CFR 50–201.101(b) is revised as set forth below.

Signed at Washington, DC, this 4th day of March 1988.

Fred W. Alvarez,

Assistant Secretary for Employment Standards.

Paula V. Smith,

Administrator, Wage and Hour Division.

41 CFR Part 50–201 is amended as follows:

PART 50-201—GENERAL REGULATIONS

1. The authority citation for Part 50–201 continues to read as follows:

Authority: Sec. 4, 49 Stat. 2038; 41 U.S.C. 38. Interpret or apply sec. 6, 49 Stat. 2038, as amended; 41 U.S.C. 40.

2. In § 50–201.101, paragraph (b) is revised to read as follows:

§ 50-201.101 Manufacturer or regular dealer.

* * * * *

(b) *Determination of eligibility.* (1) The responsibility for applying the stated eligibility requirements to determine before award whether a bidder qualifies as a manufacturer or regular dealer rests in the first instance with the contracting agency pursuant to authority delegated by the Secretary of Labor in accordance with section 4 of the Act. (Circular Letter 8–61.) Contracting agencies shall obtain and consider all available factual evidence essential to eligibility determinations for all bidders in line for award of contracts subject to the Act. Any decision of the contracting agency is subject to review by the Department of Labor according to the procedures outlined below. The Department of Labor shall give great weight to the technical knowledge and expertise of the contracting agencies and shall uphold the contracting agencies' initial determinations unless the determinations are found to be arbitrary, capricious or otherwise not in accordance with the evidence presented or with the law. The decision of the Department of Labor shall be final with respect to the procurement or procurements at issue. The Department of Labor may determine the qualifications of a bidder in the first instance in the absence of any decision by the contracting agency.

(2) The contracting agency shall investigate and determine the Walsh Healey eligibility status of a bidder and shall not merely rely on the representation or affirmation of a bidder in at least the following circumstances:

(i) Where the bidder (or bidders) in line for contract award has not previously been awarded a contract subject to the Act by the individual procuring office and/or where a preaward investigation or survey of such bidder's operations is otherwise made to determine the technical and production capability, plant facilities and equipment, subcontracting and labor resources of such bidder (or bidders).

(ii) Where there is a protest of a bidder's eligibility; and

(iii) Where a contracting officer has reason to question a bidder's eligibility, such as where the proposed place of contract performance and shipment is other than the location of the bidder's place of business.

(3) If the contracting officer determines that an apparently successful bidder or offeror that is *not* a small business concern is ineligible, the contracting officer shall (i) promptly notify the bidder or offeror in writing that:

(A) It does not meet the eligibility requirements, and the specific reason therefor; and

(B) It may protest such determination by submitting any evidence concerning its eligibility to the contracting officer within a reasonable time as set by the contracting officer.

(ii) If, after review of the evidence submitted by the bidder or offeror, the contracting officer does not reverse the decision, the contracting officer shall notify the bidder or offeror of the determination and the reasons therefor.

(iii) If the bidder or offeror still disagrees with the finding, the bidder's or offeror's protest, together with all pertinent evidence, will be forwarded to the Administrator of the Wage and Hour Division of the Department of Labor for a final determination, and the bidder or offeror will be so notified.

(iv) If a bidder has been conclusively denied award for procurement reasons other than a finding of ineligibility under the Walsh-Healey Act (e.g., a finding of nonresponsibility), the Walsh-Healey eligibility status becomes moot and the case need not be processed further, regardless of whether the contracting officer rendered an initial finding of ineligibility under Walsh-Healey.

(4) In the case of a small business concern, the notification and protest procedures in paragraph (b)(3) of this section, shall be followed except that any finding of ineligibility rendered by an agency of the executive branch subject to the requirements of the Small Business Act (15 U.S.C. 637c.) shall be forwarded with all pertinent evidence to the Administrator of the Small Business Administration, or authorized representative, whether or not the small business concern protests the determination, and the bidder or offeror shall be so notified. The Administrator of the Small Business Administration, or authorized representative, shall review the finding of the contracting officer and shall either dismiss it and certify the small business concern to be eligible for the contract award in question, or if it concurs in the finding, forward the matter to the Administrator of the Wage and Hour Division for a final determination, in which case the Small Business Administration may certify the small business concern only if the Wage and Hour Division finds the small business concern to be eligible. The Small Business Administration is bound by the regulations and interpretations of the Department of Labor in making its determinations of eligibility under the Walsh-Healey Act.

(5) When another bidder or offeror challenges the eligibility of the apparently successful bidder or offeror prior to award, the contracting officer shall promptly notify the protestor and the apparently successful bidder or offeror in writing that:

(i) They may submit evidence concerning the matter to the contracting officer within a reasonable time as set by the contracting officer; and

(ii) After review of such evidence the contracting officer will direct a preaward survey, if necessary, and reach a decision on all the evidence and notify the protestor and successful bidder of his/her finding. If either party disagrees with the finding, the contracting officer shall notify the parties and then forward the decision and entire record to the Administrator of the Wage and Hour Division for a final determination. However, if the apparently successful bidder or offeror is a small business concern and the contracting officer has found the small business concern to be ineligible, the protest and all pertinent evidence will be forwarded to the authorized representative of the Administrator of the Small Business Administration, and the procedures set forth in § 50-201.101(b)(4) shall be followed.

(6)(i) If the contracting officer forwards the case to the Small Business Administration for review of eligibility under the Act pursuant to § 50-201.101(b) (4) or (5), award will be held in abeyance until the contracting officer receives a determination of eligibility from the Small Business Administration or notification that the Small Business Administration has forwarded the case to the Department of Labor. (ii) If the contracting officer or the Small Business Administration forwards a case to the Department of Labor for review of eligibility under the Act, award will be held in abeyance until the contracting officer receives a final determination from the Department of Labor, unless the contracting officer finds that award should be made immediately because:

(A) The items to be procured are ungently required; or

(B) Delay of delivery or performance by failure to make the award promptly will result in substantial hardship to the Government.

(iii) If the contracting officer decides to proceed with the award, the contracting officer shall give written notice of the decision to proceed to the protester, the Department of Labor and to other concerned parties.

(iv) If an award is made under paragraph (b)(6)(ii) of this section, the contracting officer shall submit to the Department of Labor documentation explaining the need for making an award prior to the receipt of a final determination from the Administrator of the Wage and Hour Division.

(7) A protest received after award, but before final completion of the contract, shall be investigated and processed under the provisions outlined in paragraph (b)(5) of this section and forwarded to the Department of Labor, and the protestor shall be so notified.

(8) If the contract has been completed before receipt of the protest, the protester shall be notified that no action will be taken on the protest.

[FR Doc. 88-5230 Filed 3-9-88; 8:45 am]

BILLING CODE 4510-27-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 12

Surplus Real Property—Use for Facilities To Assist the Homeless

AGENCY: Department of Health and Human Services.

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services amends its regulations at 45 CFR Part 12, "Disposal and Utilization of Surplus Real Property for Public Health Services," to permit the lease of surplus Federal real property to assist the homeless. These amendments allow the implementation of Title V of the Stewart B. McKinney Homeless Assistance Act.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Wyman Williams (202) 245-7426.

SUPPLEMENTARY INFORMATION: On July 22, 1987, the President signed Pub. L. 100-77, the "Stewart B. McKinney Homeless Assistance Act." Title V of that Act provides for the identification and use of surplus Federal property for facilities to assist the homeless. Section 501(d)(2) of that Act directs the Secretary of Health and Human Services to issue regulations permitting leases of surplus Federal buildings and other real property for use for facilities to assist the homeless. That section further provides that the use of such property is to be included as a permissible use in the protection of public health within the meaning of section 203(k) of the Federal Property and Administrative Services Act of 1949.

This Department's regulations under the Federal Property and Administrative Services Act of 1949 are found at 45 CFR Part 12. Based on the requirements of the Act referred to above, we are amending these regulations to permit the lease of surplus Federal real property for facilities to assist the homeless. Section 12.3(e) is amended to identify the provision of assistance to the homeless as one of the purposes for which property may be provided under the Federal Property and Administrative Services Act of 1949. In addition, the table set forth as Exhibit A to 45 CFR Part 12 is amended to permit a public benefit allowance of 100 percent for leases of property to assist the homeless. This amendment permits the leases to be executed without a requirement of payment to the Federal government by the organization providing assistance to the homeless.

The regulation is further amended to permit, for purposes of leases within the scope of Title V of Pub. L. 100-77, the lease of surplus Federal real property to nonprofit organizations, whether or not they are tax-exempt organizations under section 501(c)(3) of the Internal Revenue Code. While the tax-exempt requirement normally applies to entities seeking the use of surplus property under Part 12, because section 501(c) of Pub. L. 100-77 identifies eligible applicants as "private nonprofit organizations, units of local government, and States," the Department has concluded that Congress intended that any nonprofit organization be eligible to obtain a lease for purposes of assisting the homeless. Accordingly, we are amending section 12.1(j) and section 12.3(b) to permit leases for purposes of assisting the homeless to any nonprofit organization.

Waiver of Proposed Rulemaking and of Delayed Effective Date

Because the amendments set forth below simply incorporate into existing regulations the statutory provisions of Pub. L. 100-77, and because the speedy implementation of this program of assistance to the homeless will benefit the intended beneficiaries of this legislation, the Secretary has determined that proposed rulemaking is unnecessary and not in the public interest and that there is good cause for waiving such requirement. On the same basis, the Secretary has determined that there is good cause for making these regulations effective upon publication.

The Department will monitor the implementation of this program and, should matters arise where further amendment to these regulations with respect to the homeless assistance program is needed, we will undertake further rulemaking as appropriate.

E.O. 12291

This rule does not require a Regulatory Impact Analysis because it is not a "major rule" as defined in Executive Order 12291, dated February 17, 1981. It is unlikely to result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

I certify under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizations and small local governments. Therefore, a regulatory flexibility analysis is not required by 5 U.S.C. 603.

Reporting and Recordkeeping Requirements

The information collection requirements contained in this regulation have been approved by the Office of Management and Budget under control number 0990–0148.

List of Subjects in 45 CFR Part 12

Public health, reporting and recordkeeping requirements, surplus government property.

Dated: February 10, 1988.

Otis R. Bowen,

Secretary.

PART 12—[AMENDED]

Accordingly, 45 CFR Part 12 is amended as follows:

1. The Authority citation for 45 CFR Part 12 is amended by removing the period and adding:

Authority: * * *; sec. 501 of Pub. L. 100–77, 101 Stat. 509–10, 42 USC 11411.

§ 12.1 [Amended]

2. 45 CFR 12.1(j) is revised to read as follows:

* * * * *

(j) "Nonprofit institution" means any institution, organization, or association, whether incorporated or unincorporated, no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual, and (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100–77) which has been held to be tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

* * * * *

§ 12.3 [Amended]

3. 45 CFR 12.3(b) is revised to read as follows:

* * * * *

(b) Transfers may be made only to States, their political subdivisions and instrumentalities, tax-supported public health institutions, and nonprofit public health institutions which (except for institutions which lease property to assist the homeless under Title V of Pub. L. 100–77) have been held tax-exempt under section 501(c)(3) of the Internal Revenue Code of 1954.

* * * * *

4. 45 CFR 12.3(e) is revised to read as follows:

* * * * *

(e) Organizations which may be eligible include those which provide care and training for the physically and mentally ill, including medical care of the aged and infirm, clinical services, other public health services (including water and sewer), or similar services devoted primarily to the promotion and protection of public health. In addition, organizations which provide assistance to the homeless may be eligible for leases under Title V of Pub. L. 100–77. Except for services to the homeless, services which have as their principal purpose the providing of custodial or domiciliary care are not eligible. The property applied for must be for a purpose which the eligible organization is authorized to carry out.

* * * * *

Exhibit A—Public Benefit Allowance for Transfer of Real Property for Health Purposes [Amended]

5. Exhibit A to 45 CFR Part 12 is amended by adding at the bottom of the "Classification" column "Assistance to the Homeless" and in the corresponding locations at the bottom of the "Basic public benefit allowance" and "maximum public benefit allowance" columns " [2]100".

[FR Doc. 88–5297 Filed 3–9–88; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193

[CGD 84–044]

Hazardous Materials Used as Ships' Stores On Board Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the rules for hazardous materials used as ships' stores on board vessels. Except for minor amendments, the present rules have remained unchanged since January 18, 1941. Many of the citations, terms, and definitions have become outdated. This revision updates the text and replaces lengthy tables by cross referencing existing Department of Transportation Hazardous Materials regulations and Consumer Product Safety Commission labeling regulations. It also eliminates the requirement for hazardous materials to be certified for use as ships' stores on board vessels to reduce the paperwork burden for industry and the Coast Guard, while maintaining the current level of safety. Materials presently listed which are no longer used as ships' stores are removed.

DATES: This rule is effective on April 11, 1988.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 11, 1988.

FOR FURTHER INFORMATION CONTACT: Mr. Carl Rivkin, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION: On July 7, 1987, a notice of proposed rulemaking, entitled "Hazardous Materials Used as Ships' Stores Aboard Vessels", was published in the **Federal Register** (52 FR 25409). The Coast Guard received two written comments on this proposed rulemaking. A public hearing was not requested and one was not held.

Drafting Information

The principal persons involved in drafting this rule are Mr. Carl Rivkin, Project Manager, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Related Projects

On March 22, 1984, the Coast Guard published a notice of proposed rulemaking in the **Federal Register,** entitled "Carriage and Use of Liquefied and Non-liquefied Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire" (57 FR 10685), which would allow the use of liquefied petroleum gas (LPG) and compressed natural gas (CNG) as fuel for cooking on passenger vessels (CGD 83–013). The requirements in this rule (CGD 84–044) relating to cooking fuels (§ 147.50) restate the previous regulations. This section will be amended, if necessary, to conform to CGD 83–013, above, when that rulemaking is published as a final rule.

Under a separate rulemaking project, entitled "Revision of the Regulations on Outer Continental Shelf Activities" (CGD 84–098), the Coast Guard plans to propose that the hazardous ships' stores regulations be made applicable to OCS facilities. The hazards associated with the use of these materials on OCS facilities is comparable to those on vessels. Comments on this project should reference docket number CGD 84-098.

Discussion of Comments Received

One comment requested that cylinders manufactured in foreign countries that are not Department of Transportation (DOT) approved be permitted for use in containing compressed gases for use as ships' stores on U.S. vessels when cylinders that meet DOT specifications are not available. Because there are no international standards for the manufacture of cylinders, the Coast Guard cannot give an alternate requirement for foreign cylinders. The use of foreign cylinders will be considered under the general waiver provision (§ 147.9). Therefore, the requirement in § 147.60(a)(2) that DOT specification cylinders be used was not changed.

One comment questioned the need for volume limitations for the carriage of acetylene and oxygen in the previous and proposed rules. It stated that those limitations are impracticable for vessels involved in industrial operations (e.g. pipe laying, diving, and offshore drilling) and should be removed for those vessels. Sections 147.70 and 147.85 in the final rule do not have acetylene and oxygen volume limitations for vessels engaged in industrial operations. This lifting of the volume limitation for vessels engaged in industrial operations is made with the qualification that they meet the safety requirements for acetylene and oxygen carried as packaged cargo. Though this qualification will allow vessels engaged in industrial activities to carry more acetylene and oxygen than the previous or proposed rules provide, it will ensure that an acceptable level of safety can be maintained without hindering industrial operations.

Discussion of Changes to the Notice

1. The limits in the proposed §§ 147.70 and 147.85 for acetylene and oxygen on board vessels for use as ships' stores were dropped for vessels engaged in industrial operations, as discussed in the "Discussion of Comments Received" section.

2. Under the notice of proposed rulemaking, hazardous materials not listed by name in proposed § 147.27 would have to be certified by the Coast Guard under proposed § 147.22 before they could be carried on board vessels as ships' stores. Under proposed § 147.30, both materials listed by name and materials certified for carriage would have to meet basically the same labeling requirements. The only exception was for "consumer commodities", as defined in § 147.3. Consumer commodities would not have to be listed by name or be certified but would be permitted on board if they were labeled under § 147.30 or under the Federal Hazardous Substance Act regulations in 16 CFR Part 1500.

After reconsidering this process, the Coast Guard has determined that it can ensure the same level of safety without certifying hazardous materials as ships' stores and has therefore, eliminated the certification requirements in the final rule. The end result would be that a "hazardous material" (as defined in § 147.3 and 49 CFR 171.8) may be carried on board a vessel for use as ships' stores if it meets the labeling requirements of § 147.30 and the stowage and special requirements, listed in Subpart B. With the elimination of certification, all existing certificates are null and void (§ 147.1(c)).

In addition to reducing the administrative and paperwork burden on industry and the Coast Guard, deletion of the certification process will also eliminate the confusion surrounding the certification program. Frequently, purchasers of certified products are led to believe by vendors that "certified by the Coast Guard" meant that the Coast Guard had approved the product as being effective for its intended purpose, as well as eligible to be carried on board a vessel as ships' stores. Approval of the product's effectiveness was never intended by the Coast Guard.

3. New § 147.40 is added to require Coast Guard approval before Class A Explosives, Class A poisons, forbidden materials listed in 49 CFR 172.101, and flammable gases not specifically named in Subpart B of Part 147 are permitted on board vessels as ships' stores. These materials are unusually dangerous and will likely require that special precautions be followed to be permitted on board vessels as ships' stores. Coast Guard approval of these materials as ships' stores is effectively the same as certification under the previous and proposed rules. Therefore, no new burdens are imposed by this provision.

4. The final rule contains a new requirement (§ 147.60(a)(1)) that compressed gas cylinders be used only for the materials for which the cylinders are authorized. The absence of this requirement in the notice was an oversight. The intent and common understanding of these regulations, as well as the previous regulations, has always been that compressed gases must be put in cylinders for which they are authorized. The correction of this oversight is a clerical change and not an extension of the requirements stated in the notice.

5. In § 147.100 on radioactive materials, the phrase "used as radioactive tracers or sealed sources" was inserted in the proposal to give examples of the radioactive materials being addressed. Because it can be misconstrued as limiting the materials addressed to those used as tracers or sealed sources, the phrase is deleted in the final rule. It is intended that all radioactive materials on board meet the Nuclear Regulatory Commission's regulations.

6. In proposed § 147.65(c) on carbon dioxide and halon fire extinguishing systems, the cross reference to § 147.60(a)(2) for re-marking and retesting requirements was incorrect. The final rule substitutes the correct references (§ 147.60 (a)(3) and (a)(4)). Paragraph (a)(2) concerns construction, not re-marking and testing.

7. In § 147.95(c), the container requirements for ships' signals and emergency equipment were overly stringent and were changed to give more latitude in the choice of containers.

Incorporation by Reference

The following material has been approved for incorporation by reference by the Director of the Federal Register under 5 U.S.C. 552 and 1 CFR Part 51:

American Boat and Yacht Council, Inc. (ABYC)
- ABYC H-25-81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.

American Society of Heating, Refrigerating, and Air-Conditioning Engineers, Inc. (ASHRAE)
- ANSI/ASHRAE 34-78—Number Designation of Refrigerants, approved 1978.

Public Health Service, Department of Health and Human Services (DHHS)
- DHHS Publication No. (PHS) 84-2024—The Ships' Medicine Chest and Medical Aid at Sea, revised 1984.

Underwriters Laboratories, Inc. (UL):
- UL 30—Standard for Metal Safety Cans, 7th Ed. March 11, 1985, revised March 12, 1985 and March 3, 1987.
- UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.
- UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.
- UL 1314—Standard for Special-Purpose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

The material incorporated by reference is on file at the Library of the Office of the Federal Register, Room 8301, 1100 L Street NW., Washington, DC 20408 and is available for inspection or copying at Coast Guard Headquarters, Hazardous Materials Branch, Room 1214, 2100 Second Street SW., Washington, DC 20593-0001. Copies of the material may be purchased at the addresses listed in § 147.7(c).

If substantive changes are made by the publisher to the materials incorporated, those changes may be considered for incorporation. However, before taking final action, the Coast Guard will publish a separate notice in the **Federal Register** for public comment.

Regulatory Evaluation

These regulations are considered to be non-major under Executive Order 12291 and nonsignificant under the Department of Transportation (DOT) regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of these regulations has been found to be so minimal that further evaluation is unnecessary.

The principal objectives of this rule are to simplify previous requirements and to update the regulations to take into account changes in laws and related regulations. This rule does not increase costs already imposed by the previous regulations but reduces overall costs for both industry and the Coast Guard.

Under the previous regulations, manufacturers of hazardous products intended for use as ships' stores had to apply first to the Coast Guard in writing to obtain a ships' stores certificate for their product. This rule eliminates the need for Coast Guard certification of hazardous ships' stores and saves the applicants approximately $347.00 per application. For the approximately 40 new applications received each year, the industry wide savings will be approximately $13,880.00. In addition, the Coast Guard will save the approximately 120 manhours ($1744.00) required annually to process these applications. This reduction in paperwork costs to industry and the Coast Guard is twice the amount stated in the notice. The reason for this increase in savings is due to the fact that, of the approximately 40 applications received each year, the proposal would have eliminated only about 20; whereas, with the complete removal of certification, all 40 applications would be eliminated.

Also, this rule eliminates the need to have certificates renewed every three years (existing 46 CFR 147.03-9). This change will save industry approximately $28.00 per renewal for the approximately 48 certificates due for renewal each year and save the Coast Guard approximately 72 manhours per year or $946.40.

In the notice of proposed rulemaking, certain classes of hazardous materials, i.e., flammable gases not named in the regulations, Class A Explosives, Class A Poisons, and forbidden materials listed in 49 CFR Part 172.101, would require certification to be used as ships' stores. In the final rule, these classes of materials require Commandant (G-MTH) approval to be used as ships' stores aboard vessels and a list of approved materials will be maintained by Commandant (G-MTH). There have been no requests for certification of any material that falls into these classes for use as ships' stores. Therefore, there probably will be few, if any, requests for Commandant (G-MTH) approval and little, if any, resulting paperwork burden.

Coast Guard inspections of vessels to determine compliance with Part 147 are conducted at the same time as other planned or routine inspections. This rule does not require added manpower.

In conclusion, this rule creates no new costs, but reduces applicant and Coast Guard costs and simplifies the regulations for the maritime industry.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this rule is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

As described in the Regulatory Evaluation section above, the effect of this rule is to reduce Coast Guard and industry costs. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains information collection requirements in the following sections: §§ 147.9, 147.30, 147.40, and 147.60(c)(2). These items have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been approved by OMB. Part 147 has been assigned OMB Control Number 2115-0139.

Environmental Assessment

The Coast Guard has considered the environmental impact of this rule and concluded that, under section 2.B.2.1. of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule revises existing regulations to improve formatting and readability and to remove materials no longer used as ships' stores.

List of Subjects

46 CFR Part 2

Fire protection, Law enforcement, Marine safety, Penalties, Vessels.

46 CFR Part 31

Barges, Flammable materials, Law enforcement, Marine safety, Tank vessels.

46 CFR Part 34

Barges, Fire prevention, Marine safety, Tank vessels.

46 CFR Part 58

Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 71

Foreign trade, Law enforcement, Marine safety, Passenger vessels, Reporting requirements.

46 CFR Part 76

Marine safety, Passenger vessels.

46 CFR Part 91

Cargo vessels, Law enforcement, Marine safety, Reporting requirements.

46 CFR Part 95

Cargo vessels, Fire prevention, Marine safety.

46 CFR Part 107

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 108

Continental shelf, Fire prevention, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Vessels.

46 CFR Part 109

Continental shelf, Incorporation by reference, Marine resources, Marine safety, Oil and gas exploration, Reporting requirements, Vessels.

46 CFR Part 146

Arms and munitions, Hazardous materials transportation, Labeling, Marine safety, Packaging and containers, Reporting requirements.

46 CFR Part 147

Arms and munitions, Explosives, Hazardous materials transportation, Incorporation by reference, Marine safety, Radioactive materials, Reporting requirements.

46 CFR Part 167

Fire prevention, Marine safety, Reporting requirements.

46 CFR Part 176

Marine safety, Passenger vessels.

46 CFR Part 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 189

Marine safety, Oceanographic vessels.

46 CFR Part 193

Fire prevention, Marine safety, Oceanographic vessels.

For the reasons set out in the preamble, Title 46, Parts 2, 31, 34, 58, 71, 76, 91, 95, 107, 108, 109, 146, 147, 167, 176, 181, 189, and 193 of the Code of Federal Regulations are amended as follows:

PART 2—VESSEL INSPECTIONS

1. The authority citation for Part 2 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

2. By revising § 2.75–60 to read as follows:

§ 2.75–60 Hazardous ships' stores.

Hazardous ships' stores, as defined in § 147.3 of this chapter, must not be brought on board or used on any vessel unless they meet the requirements of Part 147 of this chapter.

PART 31—INSPECTION AND CERTIFICATION

3. The authority citation for Part 31 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

4. In § 31.10–18, by revising Table 31.10–18(b), footnote 1, and Table 31.10–18(c), footnote 1, to read as follows:

§ 31.10–18 Fire fighting equipment: General — TB/ALL.

* * * * *

(b) * * *

TABLE 31.10–18(b)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(c) * * *

TABLE 31.10–18(c)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 34—FIRE FIGHTING EQUIPMENT

5. The authority citation for Part 34 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

6. In § 34.15–20, by revising paragraph (i) to read as follows:

§ 34.15–20 Carbon dioxide storage—T/ALL.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 58—MAIN AND AUXILIARY MACHINERY AND RELATED SYSTEMS

7. The authority citation for Part 58 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

8. In § 58.20–5, by revising paragraph (b) to read as follows:

§ 58.20–5 Design.

* * * * *

(b) For refrigeration systems other than those for reliquefaction of cargo, only those refrigerants under § 147.90 of this chapter are allowed.

PART 71—INSPECTION AND CERTIFICATION

9. The authority citation for Part 71 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

10. In § 71.25–20, by revising Table 71.25–20(a)(1), footnote 1, and Table 71.25–20(a)(2), footnote 1, to read as follows:

§ 71.25–20 Fire detecting and extinguishing equipment.

(a) * * *

(1) * * *

TABLE 71.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 71.25–20(a)(2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 76—FIRE PROTECTION EQUIPMENT

11. The authority citation for Part 76 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

12. In § 76.15–20, by revising paragraph (i) to read as follows:

§ 76.15–20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 91—INSPECTION AND CERTIFICATION

13. The authority citation for Part 91 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

14. In § 91.25–20, by revising Table 91.25–20(a)(1), footnote 1, and Table 95.25–20(a)(2), footnote 1, to read as follows:

§ 91.25–20 Fire extinguishing equipment.

(a) * * *

(1) * * *

TABLE 91.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 91.25–20(a)(2)

* * * * *

[1] Cylinders must be tested and marked, and all flexible connections on fixed carbon dioxide systems must be tested or renewed, as required by §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 95—FIRE PROTECTION EQUIPMENT

15. The authority citation for Part 95 is revised to read as follows:

Authority: 43 U.S.C. 3306; 49 CFR 1.46.

16. In § 95.15-20, by revising paragraph (i) to read as follows:

§ 95.15-20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 107—INSPECTION AND CERTIFICATION

17. The authority citation for Part 107 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46 Section 107.05 also issued under 44 U.S.C. 3507; 49 CFR 1.45.

18. In § 107.235, by revising the note following paragraph (b)(3) to read as follows:

§ 107.235 Servicing of hand portable fire extinguishers, semi-portable fire extinguishers and fixed fire-extinguishing systems.

* * * * *

(b) * * *

(3) * * *

* * * * *

Note.—All carbon dioxide cylinders and discharge hoses of semi-portable carbon dioxide and halon extinguishers must be tested and marked in accordance with §§ 147.60 and 147.65 of this chapter.

PART 108—DESIGN AND EQUIPMENT

19. The authority citation for Part 108 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46.

20. In § 108.431, by revising the section heading and adding a new paragraph (c) to read as follows:

§ 108.431 Carbon dioxide systems: General.

* * * * *

(c) Each carbon dioxide system cylinder must be fabricated, tested, and marked in accordance with § 147.60 and 147.65 of this chapter.

§ 108.451 [Amended]

21. In § 108.451, by removing paragraph (h).

PART 109—OPERATIONS

22. The authority citation for Part 109 is revised to read as follows and all other authority citations are removed:

Authority: 43 U.S.C. 1333; 46 U.S.C. 3306; 46 App. U.S.C. 86; 49 CFR 1.46. Sections 109.411 and 109.413 also issued under 46 U.S.C. 6101. Section 109.431 also issued under 46 U.S.C. 10104.

23. By revising § 109.558 to read as follows:

§ 109.558 Hazardous ships' stores.

The master or person in charge shall ensure that hazardous ships' stores, as the term is defined in § 147.3 of this chapter, which are on board a unit are labeled, stowed, and used only in accordance with Part 147 of this chapter.

PART 146—TRANSPORTATION OR STORAGE OF MILITARY EXPLOSIVES ON BOARD VESSELS

24. The authority citation for Part 146 is revised to read as follows and all other authority citations are removed:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

25. In § 146.01-5, by revising paragraph (b) to read as follows:

§ 146.01-5 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) *Display.*

Subchapter N part or section where identified or described	Current OMB Control No.
§ 146.02-20	2115-0054
§ 146.29-13	2115-0013
Part 147	2115-0139

26. By revising Part 147 to read as follows:

PART 147—HAZARDOUS SHIPS' STORES

Subpart A—General Provisions

Subpart B—Stowage and Other Special Requirements for Particular Materials

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

Subpart A—General Provisions

§ 147.1 Purpose and applicability.

(a) This part prescribes regulations designating what hazardous materials may be on board vessels as ships' stores and prescribes requirements for the labeling, stowage, and use of those materials.

(b) This part applies to all vessels listed in 46 U.S.C. 3301 as subject to inspection under Part B of 46 U.S.C. Subtitle II. On foreign vessels in the navigable waters of the United States, the Captain of the Port or District Commander may prohibit the unsafe use or stowage of hazardous ships' stores under 33 CFR 160.109.

(c) All certifications previously issued by the Coast Guard under this part permitting the use of particular materials or products as ships' stores are null and void.

§ 147.3 Definitions.

As used in this part:

"Accommodation, control, or service spaces" means living quarters, including walkways, dining rooms, galleys, pantries, lounges, lavatories, cabins, staterooms, offices, hospitals, cinemas, and game and hobby rooms; areas containing controls for equipment and navigation; workshops, other than those forming part of machinery spaces; and store rooms adjacent to these spaces.

"Combustible liquid" means "combustible liquid" as the term is defined in 49 CFR 173.115(b).

"Compressed gas" means "compressed gas" as the term is defined in 49 CFR 173.300.

"Consumer commodity" means a commodity, such as a polish, insecticide, cleaning compound, or distillate, that is packaged and distributed in a form and quantity intended for sale through retail sales establishments.

"Flammable liquid" means "flammable liquid" as the term is defined in 49 CFR 173.115(a).

"Hazardous material" means "hazardous material" as the term is defined in 49 CFR 171.8.

"Hazardous ships' stores" means ships' stores that are hazardous materials.

"Proper shipping name" means the name of the hazardous ships' stores shown in Roman print (not in italics) in 49 CFR 172.101.

"Ships' stores" means materials which are on board a vessel for the upkeep, maintenance, safety, operation, or navigation of the vessel (except for fumigants under Part 147A of this chapter, for fuel and compressed air used for the vessel's primary propulsion machinery, or for fixed auxiliary equipment) or for the safety or comfort of the vessel's passengers or crew.

"Technical name" means the recognized chemical name used in scientific or technical publications.

§ 147.5 Commandant (G-MTH); address.

Commandant (G–MTH) is the Marine Technical and Hazardous Materials Division of the Coast Guard Office of Marine Safety, Security and Environmental Protection. The address is Commandant (G–MTH–1), U.S. Coast Guard Headquarters, Washington, DC 20593–0001, and the telephone number is (202) 267–1577.

§147.7 Incorporation by reference.

(a) In this part, portions or the entire text of certain standards and specifications are incorporated by reference as the governing requirements for materials, equipment, tests, or procedures to be followed. These standards and specification requirements specifically referred to in this part are the governing requirements for the subject matters covered, unless specifically limited, modified, or replaced by the regulations.

(b) These materials are incorporated by reference into this part under 5 U.S.C. 552(a) with the approval of the Director of the Federal Register. The Office of the Federal Register publishes a table, "Material Approved for Incorporation by Reference," which appears in the Finding Aids section of this volume. To enforce any edition other than the one listed in paragraph (c) of this section, notice of the change must be published in the **Federal Register** and the material made available. All approved material is on file at the Office of the Federal Register Information Center, Room 8301, 1100 L Street, NW., Washington, DC 20408 and at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Copies may be obtained from the sources indicated in paragraph (c) of this section.

(c) The materials approved for incorporation by reference in this part are:

American Boat and Yacht Council, Inc. (ABYC), P.O. Box 806, Amityville, NY 11701
- ABYC H–25–81—Portable Fuel Systems and Portable Containers for Flammable Liquids, May 12, 1981.

American Society of Heating, Referigerating, and Air-Conditioning Engineers, Inc. (ASHRAE).
- Publication Sales Department, 1791 Tullie Circle, NE, Atlanta, GA 30329
- ANSI/ASHRAE 34–78—Number Designation of Refrigerants, approved 1978.

Public Health Service, Department of Health and Human Services (DHHS).
- Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402
- DHHS Publication No. (PHS) 84–2024—The Ship's Medicine Chest and Medical Aid at Sea, revised 1984.

Underwriters Laboratories, Inc. (UL), Publications Stock, 333 Pfingsten Road, Northbrook, IL 60062
- UL 30—Standard for Metal Safety Cans, 7th Ed., March 11, 1985, revised March 12, 1985 and March 3, 1987.
- UL 1185—Standard for Portable Marine Fuel Tanks, Second Edition, March 13, 1978, revised July 6, 1984.
- UL 1313—Standard for Nonmetallic Safety Cans for Petroleum Products, 1st Ed., March 15, 1982, revised January 3, 1984 and March 22, 1985.
- UL 1314—Standard for Special-Propose Containers, 1st Ed., July 7, 1983, revised February 7, 1984 and September 23, 1986.

§ 147.9 Waivers.

(a) Any requirement in this part may be waived on a case by case basis if it is determined by Commandant (G–MTH) that the requirement is impracticable under the circumstances and that an acceptable level of safety can be maintained.

(b) Requests for issuance of a waiver must be in writing and contain a detailed explanation of—

(1) Why the requirement is impracticable; and

(2) What measures will be taken to maintain an acceptable or equivalent level of safety.

§ 147.15 Hazardous ships' stores permitted on board vessels.

Unless prohibited under Subpart B of this part, any hazardous material may be on board a vessel as ships' stores if the material—

(a) Is labeled according to § 147.30; and

(b) Meets the requirements, if any, in Subpart B of this part applicable to the material.

§ 147.30 Labeling.

(a) Except as provided in paragraph (b) of this section, all immediate receptacles, containers, or packages containing hazardous ships' stores must be labeled in English with the following information concerning the contents:

(1) Technical name or proper shipping name.

(2) For hazardous ships' stores other than liquid fuels, manufacturer's or supplier's name and address.

(3) Hazard classification under 49 CFR 172.101 and 173.2.

(4) For hazardous ships' stores other than liquid fuels, step by step procedures for proper use.

(5) First aid instructions in the event of personnel contact, including antidotes in the event of ingestion.

(6) Stowage and segregation requirements.

(b) Hazardous ships' stores that are consumer commodities labeled in accordance with the Federal Hazardous Substances Act Regulations in 16 CFR Part 1500 need not be labeled as specified in paragraph (a) of this section.

Subpart B—Stowage and Other Special Requirements for Particular Materials

§147.35 Purpose of subpart.

This subpart prescribes special requirements applicable to particular, named materials. These requirements are in addition to the general requirements in Subpart A applicable to those materials.

§ 147.40 Materials requiring Commandant (G-MTH) approval.

(a) Commandant (G–MTH) approval is required before the following hazardous materials may be on board a vessel as ships' stores:

(1) Class A poisons.

(2) Class A explosives.

(3) Flammable gases, other than those addressed specifically in this subpart.

(4) Forbidden materials listed in 49 CFR 172.101.

(b) Request for approval must be submitted to the Commandant (G–MTH), identify the material, and explain the need for its use.

(c) Upon approval, the material is added to the list of materials approved under this section. A copy of this list is available from the Commandant (G–MTH) at the address in § 147.5.

§ 147.45 Flammable and combustible liquids.

(a) This section applies to the stowage and transfer of flammable and combustible liquids (including gasoline and diesel oil), other than liquids used as fuel for cooking, heating, and lighting under § 147.50.

(b) No flammable or combustible liquids may be stowed in any accommodation, control, or service space (other than a paint locker).

(c) No more than 19 liters (five gallons) of flammable liquids may be stowed in any machinery space. The flammable liquids must be in containers of 3.8 liters (one gallon) or less.

(d) No more than 208 liters (55 gallons) of combustible liquids may be stowed in any machinery space.

(e) An aggregate of more than 7.6 liters (two gallons) of flammable or combustible liquids stowed outside of an accommodation, control, or service, space (other than a paint locker) or outside of a machinery space must be stowed in a paint locker that is marked with a warning sign indicating flammable or combustible liquid storage.

(f) Flammable and combustible liquids used as fuel for portable auxiliary equipment must be stored in—

(1) Integral tanks that form part of the vessel's structure;

(2) An independent tank meeting the requirements of Subpart 58.50 of Part 58 of this chapter;

(3) A container meeting the requirements of Subpart D of 49 CFR 173.119 for the storage of flammable or combustible liquids;

(4) A protable outboard fuel tank meeting the specifications of ABYC H-25-81 or one identified by Underwriters Laboratories as meeting the specifications of UL 1185;

(5) A portable safety container identified by Underwriters Laboratories as meeting the specifications of UL 30 or UL 1313; or

(6) A portable safety container identified by Underwriters Laboratories as meeting the requirements of UL 1314.

(g) Each portable container of flammable or combustible liquid used for portable auxiliary equipment must be stowed in a paint locker or an open location designated by the master.

(h) Fuel tanks for portable auxiliary equipment using flammable or combustible liquids may only be refilled on a vessel—

(1) By using a container described in paragraphs (f)(2), (f)(4), or (f)(5) of this section which has a capacity not exceeding 23 liters (6 gallons); or

(2) In the case of portable outboard fuel tanks described in paragraph (f)(3) of this section, in accordance with paragraph (i) of this section.

(i) Portable containers or portable outboard fuel tanks may be refilled from a larger container of flammable or combustible liquid on the weather deck of a vessel, other than a small passenger vessel subject to Subchapter T of this chapter, provided that—

(1) A drip pan of adequate size is used to collect any drippings; and

(2) At least one Coast Guard approved Type B, Size I, fire extinguisher is within three meters (9.75 feet) of the refilling location.

§ 147.50 Fuel for cooking, heating, and lighting.

(a) Flammable and combustible liquids and gases not listed in this section are prohibited for cooking, heating, or lighting on any vessel, with the exception of combustible liquids on cargo vessels.

(b) Fluid alcohol is prohibited for cooking, heating, or lighting on ferry vessels. Fluid alcohol burners, where wet primed, must have a catch pan not less than ¾ of an inch deep secured inside of the frame of the stove or have the metal protection under the stove flanged up ¾ of an inch to form a pan.

(c) Containers of solidified alcohol must be secured on a fixed base.

(d) Liquefied or non-liquefied gas is prohibited for cooking, heating, or lighting on ferry and passenger vessels but may be used on other inspected vessels, if the system in which it is used meets the requirements of Subpart 58.16 of Part 58 of this Chapter or is approved by the Commandant (G-MTH).

(e) Kerosene and commercial standard fuel oil No. 1, No. 2, and No. 3 are prohibited for cooking, heating, or lighting on ferry or passenger vessels, unless the following conditions are met:

(1) Pressure or gravity feed must be used.

(2) Where wet priming is used in a cooking device, the device must have a catch pan not less than three fourths of an inch deep secured inside the frame of the device or a metal protector under the device with a least a three fourths inch flange to form a pan.

(3) Where wet priming is used, a non-flammable priming liquid must be used.

(4) Fuel tanks for fixed stoves must be separated from the stove and mounted in a location open to the atmosphere or mounted inside a compartment with an outside fill and vent.

(5) Fuel lines must have an easily accessible shut-off valve at the tank.

(6) If the fuel tank is outside of a stove compartment, a shut-off valve must be fitted at the stove.

§ 147.60 Compressed gases.

(a) *Cylinder requirements.* Cylinders used for containing hazardous ships' stores that are compressed gases must be—

(1) Authorized for the proper shipping name of the gas in accordance with 49 CFR 172.101 and 49 CFR Part 173;

(2) Constructed in accordance with Subpart C of 49 CFR Part 178 or exempted under 49 CFR Part 107;

(3) Filled, marked, and inspected in accordance with 49 CFR 173.301 through 173.308; and

(4) Except as provided in § 147.65, maintained and retested in accordance with 49 CFR 173.34

(b) *Stowage and care of cylinders.* (1) Cylinders must always be secured and, when not in use, they must be stowed in a rack in an upright position, with the valve protection cap in place.

(2) Lockers or housings must be vented to the open air near the top and bottom for positive circulation of vapors.

(3) Cylinders must be protected from all sources of heat which may cause the cylinders to be heated to a temperature higher than 130°F.

(c) *Pressure vessels other than cylinders.* Pressure vessels, other than cylinders subject to paragraph (a) of this section, used for containing ships' stores that are compressed gases must—

(1) Be constructed and inspected in acordance with Part 54 of this chapter; and

(2) Carry only nitrogen or air, unless permission is granted by Commandant (G-MTH) to do otherwise.

§ 147.65 Carbon dioxide and halon fire extinguishing systems.

(a) Carbon dioxide or halon cylinders forming part of a fixed fire extinguishing system must be retested, at least, every 12 years. If a cylinder is discharged and more than five years have elapsed since the last test, it must be retested before recharging.

(b) Carbon dioxide or halon cylinders must be rejected for further service when they—

(1) Leak;

(2) Are dented, bulging, severely corroded, or otherwise in a weakened condition;

(3) Have lost more than five percent of their tare weight; or

(4) Have been involved in a fire.

(c) Cylinders which have contained carbon dioxide or halon and have not been tested within five years must not be used to contain another compressed gas on board a vessel, unless the cylinder is retested and re-marked in accordance with § 147.60 (a)(3) and (a)(4).

(d) Flexible connections between cylinders and distribution piping of semi-portable or fixed carbon dioxide fire extinguishing systems and discharge hoses in semi-portable carbon dioxide fire extinguishing systems must be renewed or tested at a pressure of 6.9 MPa (1000 psig). At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

(e) Flexible connections between cylinders and distribution piping of fixed halon fire extinguishing systems must be tested at a pressure of one and one-half times the cylinder service pressure as marked on the cylinder. At test pressure, the pressure must not drop at a rate greater than 1.03 MPa (150 psi) per minute for a two minute period. The test must be performed when the cylinders are retested.

§ 147.70 Acetylene.

(a) Seventeen cubic meters (600 standard cubic feet) or less of acetylene may be stowed on or below decks on any vessel.

(b) More than 17 m^3 (600 standard cubic feet) of acetylene may be on board a vessel engaged in industrial operations, if it is stowed on deck.

§ 147.85 Oxygen.

(a) Eighty five cubic meters (3000 standard cubic feet) or less of oxygen may be on board any vessel.

(b) More than 85 m^3 (3000 standard cubic feet) of oxygen may be on board a vessel engaged in industrial operations, if it is stowed on deck or in a well ventilated space.

§ 147.90 Refrigerants.

(a) Only refrigerants listed in ANSI/ASHRAE 34–78 may be carried as ships' stores.

(b) Refrigerants contained in a vessel's operating system are not considered as being carried as ship's stores.

§ 147.95 Explosives.

(a) *Explosives—general.* Except as provided for elsewhere in this subchapter, explosives, as defined in 49 CFR 173.50, which are hazardous ships' stores must be stowed in a magazine which is constructed and located in accordance with 49 CFR 176.135 through 176.159.

(b) *Small arms ammunition.* (1) No person shall bring, have in their possession, or use on board a vessel any small arms ammunition, except by express permission of the matter of the vessel.

(2) All small arms ammunition must be stowed in a locked metal magazine or locker. The key to the locker must be kept in the possession of the master or a person designated by the master.

(c) *Ships' signals and emergency equipment.* (1) Explosive ships' signals and emergency equipment, including pyrotechnic distress signals and line throwing equipment, must be stowed in watertight containers or wood lined magazine chests.

(2) All pyrotechnic distress signals, rockets, and line throwing guns must be stowed in accordance with the requirements of 49 CFR 176.83.

§ 147.100 Radioactive materials.

(a) Radioactive materials must not be brought on board, used in any manner, or stored on the vessel, unless the use of the materials is authorized by a current license issued by the Nuclear Regulatory Commission (NRC) under 10 CFR Parts 30 and 34.

(b) Stowage of radioactive materials must conform to the requirements of the NRC license.

§ 147.105 Anesthetics, drugs, and medicines.

Anesthetics, drugs, and medicines must be stowed and dispensed in accordance with the DHHS Publication No. (PHS) 84–2024.

PART 167—PUBLIC NAUTICAL SCHOOL SHIPS

27. The authority citation for Part 167 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

28. In § 167.45–1, by revising the section heading and paragraph (a)(8) to read as follows:

§ 167.45-1 Steam, carbon dioxide, and halon fire extinguishing systems.

(a) * * *

(8) Carbon dioxide and halon cylinders carried on board nautical school ships must be tested and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 176—INSPECTION AND CERTIFICATION

29. The authority citation for Part 176 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

30. In § 176.25–25, by revising the introductory text of paragraph (c) and the introductory text of the note following paragraph (c)(3) to read as follows:

§ 176.25-25 Fire extinguishing equipment.

* * * * *

(c) In addition to the other requirements of this section, §§ 147.60 and 147.65 of this chapter requires that—

* * * * *

(3) * * *

Note: Section 147.65 of this chapter includes a requirement that the cylinder must be retested and re-marked under the following conditions:

* * * * *

PART 181—FIRE PROTECTION EQUIPMENT

31. The authority citation for Part 181 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

32. In § 181.20–30, by revising paragraph (c) to read as follows:

§ 181.20-30 Cylinders.

* * * * *

(c) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 189—INSPECTION AND CERTIFICATION

33. The authority citation for Part 189 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

34. In § 189.25–20, by revising footnote 1 to Table 189.25–20(a)(1) and footnote 1 to Table 189.25–20(a)(2) and removing the Note after footnote 1 to Table 189.25–20(a)(2) as follows:

§ 189.25-20 Fire extinguishing equipment.

(a) * * *

(1) * * *

TABLE 189.25–20(a)(1)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections and discharge hoses of semiportable carbon dioxide and halon extinguishers must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

(2) * * *

TABLE 189.25–20(a)(2)

* * * * *

[1] Cylinders must be tested and marked and all flexible connections on fixed carbon dioxide and halon systems must be tested or renewed as required in §§ 147.60 and 147.65 of this chapter.

* * * * *

PART 193—FIRE PROTECTION EQUIPMENT

35. The authority citation for Part 193 is revised to read as follows:

Authority: 46 U.S.C. 3306; 49 CFR 1.46.

36. In § 193.15–20, by revising paragraph (i) to read as follows:

§ 193.15-20 Carbon dioxide storage.

* * * * *

(i) All cylinders used for storing carbon dioxide must be fabricated, tested, and marked in accordance with the requirements of §§ 147.60 and 147.65 of this chapter.

Dated: March 7, 1988.

J.W. Kime,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety Security and Environmental Protection.

[FR Doc. 88-5283 Filed 3-9-88; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 81-893; FCC 88-3]

Procedures for Implementing the Detariffing of Customer Premises Equipment and Enhanced Services; Second Computer Inquiry

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This action determines the regulatory classification of the Bell Operating Companies embedded customer premises equipment (CPE) remaining under regulated and tariffed service. Embedded digital network channel terminating equipment (NCTE) is detariffed, while other types of embedded CPE owned by the BOC's remains under tariffed service. The BOCs are required to follow the detariffing procedures for digital NCTE set forth in the *AT&T CPE Detariffing Order* (48 FR 57168, Dec. 28, 1983) as modified in the *Fourth Notice* (50 FR 43735, Oct. 29, 1985) and in this Order.

EFFECTIVE DATE: March 10, 1988.

FOR FURTHER INFORMATION CONTACT: Rose Crellin, Common Carrier Bureau, (202) 632-9342.

SUPPLEMENTARY INFORMATION: This is a summary of the Common Carrier Bureau's Eighth Report and Order in CC Docket 81-893 adopted January 6, 1988 and released January 29, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The full text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Washington, DC 20037.

Summary of Order

1. In the *Fourth Notice*, in this proceeding, the Commission sought to address the regulatory treatment of the narrow classes of embedded CPE that remained with the BOCs at divestiture. The Commission was persuaded by the record in this proceeding, consistent with the earlier recommendation of AT&T and the decision of the Divestiture Court in approving the Plan of Reorganization for AT&T, that the majority of this CPE should remain with the BOCs. In response to the *Fourth Notice* in this proceeding, the BOCs identified a multitude of problems regarding detariffing of this embedded CPE. These problems derive from the fact that the equipment is now largely obsolete, of minimal value, no competitive market exists for this CPE, and it is difficult and expensive to transfer to the customer. Thus, the Commission was persuaded that the interests of the users of this equipment would be better protected if it remained subject to regulation. Accordingly, in this Order, the Commission concluded that embedded CPE owned by the BOCs, except digital NCTE CPE, should remain in the regulated equipment category and may be tariffed in the appropriate jurisdiction. The Commission concluded that many of the problems identified with respect to detariffing the CPE it proposed to detariff in the *Fourth Notice* do not exist with respect to embedded digital NCTE. Because these factors do not apply, and a competitive market does exist that can provide choice to customers, the Commission concluded that embedded digital NCTE CPE should be deregulated and must be detariffed.

2. Thus, the Commission concluded that the final treatment of the subject BOC embedded CPE generally includes: (1) Permitting relevant state commissions to decide the appropriate treatment of CPE located at Public Service Answering Points used in connection with 911 emergency service; (2) continuing the current treatment, *i.e.*, retaining pay telephone, official services equipment, extensions to pay telephone, 101 electronic switching system (ESS) switches, identifiers, Centrex CPE and other remaining embedded BOC CPE in the regulated equipment category; and (3) requiring the BOCs to detariff embedded digital NCTE.

3. The Commission requires the BOCs to follow the detariffing procedures set forth in the *AT&T CPE Detariffing Order* as modified in the *Fourth Notice* and this Order for detariffing digital NCTE. In the *Fourth Notice*, the Commission proposed to require the BOCs to follow generally the procedures described in the *AT&T CPE Detariffing Order* for the deregulation of multi-line CPE owned by AT&T with some modifications. The Commission proposed to require the BOCs to offer embedded CPE for sale to subscribers during a two-year transition period after detariffing. The detariffing process described in the *Fourth Notice* provided for detariffing on a national basis since there are few BOCs, their operations are familiar and they tend to own standard types of equipment which were acquired when they were part of the Bell System. Although we proposed in the *Fourth Notice* to retain the bulk of the detariffing procedures of the *AT&T CPE Detariffing Order*, we presented modifications to those procedures that would require the BOCs to: (1) Offer the embedded CPE for sale at prices that do not exceed net book value plus reasonable transaction costs in the aggregate for each category of equipment; (2) maintain fixed sale prices throughout the transition period; (3) adjust month-to-month lease rates, if applicable, only at eight-month intervals to reflect increases in the Consumer Price Index (CPI). The Commission also proposed to incorporate additional requirements specified in the *AT&T CPE Detariffing Order*. Those requirements included: (1) A 90 day warranty for the equipment sold to customers; (2) a one year notification to the customer prior to a CPE phase-out; (3) the use of net book value in the aggregate by type of CPE as the valuation standard for transfer of the embedded CPE to the unregulated category; (4) nationwide lease rates set at 70% of the highest state tariff in a category of equipment, or the statistical median of such state tariffs; (5) filing a monthly report of number of sales, net book value and revenues with this Commission, during the price predictability period; (6) providing a detailed statement of the items included in transaction costs to this Commission; and (7) establishing a regional sales program.

4. In the *Fourth Notice*, the Commission also proposed to require the BOCs to follow the procedures in the *AT&T CPE Detariffing Order* that pertain to restrictions on the transfer and reformating of customer proprietary information, the continuation of maintenance and support of the embedded CPE during the transition period, and the transfer to CPE subsidiaries of deferred tax reserve accounts and investment tax credits. Moreover, the Commission observed that in addition to the CPE to be transferred, the BOCs may have supporting assets that must also be