

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION****29 CFR Part 1601****Procedural Regulations: Notices To Be Posted**

**AGENCY:** Equal Employment Opportunity Commission (EEOC).

**ACTION:** Final rule.

**SUMMARY:** The Equal Employment Opportunity Commission is revising its regulation concerning the posting of notices as required by section 711 of Civil Rights Act of 1964, as amended. The streamlined language of the newly revised regulation will conform with language of our procedural regulation concerning notice of posting under the Age Discrimination in Employment Act. The streamlined language will necessitate fewer revisions of this regulation in order to keep its information current and accurate.

**DATE:** February 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Nicholas M. Inzeo, Assistant Legal Counsel, Advice and External Litigation Division, or Stephanie Garner Thompson, Staff Attorney, at (202) 663-4669.

**SUPPLEMENTARY INFORMATION:** The Commission is revising its title VII notice posting regulation in order to obviate the need for frequent revisions to keep the information it contains current and to bring the language and format into conformance with § 1627.10

For the Commission.

Clarence Thomas,  
Chairman.

**PART 1601—PROCEDURAL REGULATIONS**

1. The authority citation for part 1601 continues to read as follows:

Authority: 42 U.S.C. 2000e to 2000e-17.

2. Section 1601.30 is amended by revising paragraph (a), by removing paragraph (b), and by redesignating paragraph (c) as (b) to read as follows:

**§ 1601.30 Notices to be posted.**

(a) Every employer, employment agency, labor organization, and joint labor-management committee controlling an apprenticeship or other training program which has an obligation under title VII of the Civil Rights Act of 1964, as amended, shall post and keep posted in conspicuous places upon its premises the notice pertaining to the applicability of the Act prescribed by the Commission or its authorized representative. Such notice must be posted in prominent and

accessible places where notices to employees, applicants and members are customarily maintained.

[FR Doc. 90-1522 Filed 1-24-90; 8:45 am]

BILLING CODE 6750-06-M

**ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD****36 CFR Part 1120****Public Availability of Information**

**AGENCY:** United States Architectural and Transportation Barriers Compliance Board (ATBCB).

**ACTION:** Final rule.

**SUMMARY:** On December 8, 1980, the Architectural and Transportation Barriers Compliance Board published in final form its regulations at 36 CFR part 1120, Public Availability of Information (45 FR 10012), which provide to the public procedures for obtaining information from the Board. Section 1803 of the Freedom of Information Reform Act of 1986 required each Federal agency to establish a schedule and system for collecting fees to recover certain direct costs associated with responding to Freedom of Information Act (FOIA) requests for information. Guidelines were issued by the Office of Budget and Management on March 27, 1987 (52 FR 10012) regarding standard government-wide definitions and administrative provisions for assessing and collecting FOIA fees. On November 10, 1987, the Architectural and Transportation Barriers Compliance Board issued an interim final rule amending its Public Availability of Information Procedures to incorporate the OMB guidelines regarding fee setting and collection procedures. This notice contains the final revision of the regulations setting forth the standards to be used in making fee waiver determinations according to the Freedom of Information Act ("FOIA"), 5 U.S.C. 552(a)(4)(A)(i), which requires that individual agency FOIA regulations contain "procedures and guidelines for determining when FOIA fees shall be waived or reduced." The fee waiver provisions conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Fee Guidelines").

**EFFECTIVE DATE:** January 25, 1990.

**FOR FURTHER INFORMATION CONTACT:** James Raggio, General Counsel, ATBCB, 1111 18th Street, NW., Suite 501,

Washington, DC 20036, (202) 653-7834 (v/TDD). This is not a toll-free number. This final rule is available on cassette at the above address for persons with visual impairments.

**SUPPLEMENTARY INFORMATION:****Background**

On October 28, 1986, Congress enacted omnibus drug enforcement legislation which included amendments to the Freedom of Information Act (5 U.S.C. 552, as amended; Freedom of Information Reform Act of 1986, Public Law 99-570.) The revisions, among other things, required agencies to charge standard reasonable fees for the direct costs they incur in responding to FOIA requests. Further, the amendments required OMB to issue a uniform FOIA fee schedule for all agencies in order to ensure the consistent application of fees government-wide. On March 27, 1987, OMB issued its "Uniform Freedom of Information Act Fee Schedule and Guidelines." (52 FR 10012)

In responding to the statute's directive, OMB interpreted the direct cost provision of the legislation to mean the costs each agency incurs in operating its FOIA program. Therefore, since the costs of operating a FOIA program may vary from agency to agency, OMB determined that it was not feasible to establish a single set of FOIA fees, but rather that it was more appropriate to establish a standard set of criteria upon which agencies could establish individual fee schedules to assess actual charges for FOIA services.

On November 10, 1987, the Architectural and Transportation Barriers Compliance Board published an interim final rule which incorporated the standard criteria developed by OMB and established a fee schedule for FOIA requests to the ATBCB. Comments on the interim final rule were invited, with the comment period time extending to December 10, 1987.

Only one comment was received which was from the United States Department of Justice, Office of Legal Policy, regarding the absence of fee waiver provisions contained in the interim final rule and urging the ATBCB to amend its interim regulation to set forth detailed procedures and guidelines to be used in making fee waiver determinations. After review, fee waiver provisions have been incorporated in the Final Rule at subpart E, § 1120.53(e). Additionally, § 1120.23 was amended to reflect the new address of the ATBCB.

**Provisions of the Final Rule***Subpart A, Section 1120.2*

This section is amended to incorporate the standard definitions provided in OMB's guidelines. Definitions of the terms "direct costs," "document search," "duplication," and "review," clarify the nature of services to be provided. Definitions of the terms "commercial use requestor," "educational institution and non-commercial scientific institution," and "representative of the news media" provide criteria for classifying requestors.

*Subpart D, Section 1120.23*

This section is amended to reflect the new address of the ATBCB.

*Subpart D, Section 1120.25*

This section was amended in the interim rule to correct an inaccurate reference regarding fee estimates and assurance of payments. In addition, it was amended to revise the dollar amount which establishes (in accordance with the dollar limitation specified in 5 U.S.C. 552) when such estimate/assurance will be required. These changes are adopted as final without change.

*Subpart E, Section 1120.51*

Changes in this section amend subpart E, § 1120.51 and specifically amend paragraph (a) which states ATBCB policy with respect to assessing and collecting the full direct costs the agency incurs in responding to FOIA requests; redesignate paragraph (b) as paragraph (e); remove paragraphs (e) (1), (3) and (4); redesignate paragraph (e)(2) as paragraph (e)(3) and paragraphs (e) (5) through (8) as (e) (4) through (7) and add new paragraphs (e) (1) and (2) to provide that no charge shall be made if the costs of routine collection and processing of the fee equal or exceed the amount of the fee; or for the first two hours of search time and the first 100 pages of duplication for individuals or groups falling into categories listed at § 1120.51(b) excepting commercial use requests. Additionally, paragraph (c) is redesignated as paragraph (f).

Further, new paragraphs (b) and (c) are added to incorporate OMB guidelines regarding categories of requestors and levels of fees appropriate for each category. Paragraph (b) lists the four categories of requestors—commercial use requestor; educational and non-commercial scientific institution requestor; requestors who are representatives of the news media; and, all other requestors. Paragraph (c) sets forth the levels of fees for each category

of requestor defined in paragraph (b). Further, a new paragraph (d) is added which sets forth the schedule of FOIA fees for records search, document review and duplication of documents.

*Subpart E, Section 1120.51(b)*

The revisions found in this section classify four distinct categories of requestors.

*Subpart E, Section 1120.51(c) (1) through (4)*

The revisions found in this section reiterate the four categories of requestors and contain specific provisions for recovering costs in connection with researching, reviewing, and duplicating information provided by the ATBCB.

*Subpart E, Section 1120.51(g)*

This section is added to advise requestors that the ATBCB will aggregate requests if there is reason to believe a requestor has broken down a request to avoid fee assessments.

*Subpart E, Section 1120.53*

This section is amended by redesignating paragraph (b) as paragraph (c); amending and redesignating paragraph (c) as paragraph (e), and adding paragraphs (b) and (d). Paragraph (b) advises requestors that the ATBCB will charge interest on overdue payments. Amended paragraph (c) advises requestors that advance payment or assurance of payment may be required if the amount due is likely to exceed \$250.00 (an amount established by Congress). Further, if a requestor fails to make timely payments, the agency may not process further or pending requests until the debt is cleared. Paragraph (d) advises requestors that the ATBCB will employ the remedies afforded in the Debt Collection Act of 1982 to collect any overdue fees. Paragraph (e) is amended to provide certain criteria for determining proper circumstances under which fees may be waived or reduced.

**Other Information**

The ATBCB has determined, as required by the National Environmental Policy Act of 1969, 42 U.S.C. 4332, that the rule will not have any significant impact on the environment. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations.

Pursuant to the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the ATBCB certifies that this rule will not have a significant economic impact

on a substantial number of small entities.

Accordingly, 36 CFR part 1120 is amended as set forth below.

By vote of the Board on March 15, 1989,  
Stanley W. Smith,  
Chair.

Accordingly, the interim rule amending 36 CFR part 1120 which was published at 52 FR 43193 (November 10, 1987) is adopted as a final rule with the following changes:

**PART 1120—PUBLIC AVAILABILITY OF INFORMATION**

1. The authority citation for part 1120 continues to read as follows:

Authority: 5 U.S.C. 552.

2. Section 1120.2 is amended by revising paragraphs (h) through (o) to read as follows:

**§ 1120.2 Definitions.**

(h) "Direct Costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requestors, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 18 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

(i) "Search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see paragraph (k) of this section). Searches may be done manually or by computer using existing programming.

(j) "Duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual

materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

(k) "Review" refers to the process of examining documents located in response to a request that is for a commercial use (see paragraph (l) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(l) "Commercial Use Request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

(m) "Educational Institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

(n) "Non-Commercial Scientific Institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (l) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

(o) "Representative of the News Media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators

of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive.

Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

#### § 1120.23 [Amended]

3. Section 1120.23 is amended by (1) deleting the following language "Room 1010, 330 C Street SW., Washington, DC 20201" and (2) inserting the language "Suite 501, 1111 18th Street NW., Washington, DC 20036".

4. Section 1120.51 is revised to read as follows:

#### § 1120.51 Charges for services, generally.

(a) It shall be the policy of the ATBCB to comply with requests for documents made under the FOIA using the most efficient and least costly methods available. Requesters will be charged fees, in accordance with the administrative provisions and fee schedule set forth below, for searching for, reviewing (in the case of commercial use requesters only), and duplicating requested records.

(b) *Categories of requesters.* For the purpose of standard FOIA fee assessment, the four categories of requesters are: Commercial use requesters; educational and non-commercial scientific institution requesters; requesters who are representatives of the news media; and, all other requesters (see § 1120.2 (l) through (o), Definitions).

(c) *Levels of fees.* Levels of fees prescribed for each category of requester are as follows:

(1) Commercial Use Requesters—When the ATBCB receives a request for documents which appears to be a request for commercial use, the Board may assess charges in accordance with the fee schedule set forth below, which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Costs for time spent reviewing records to determine whether they are exempt from mandatory disclosure applies to the initial review only. No fees will be

assessed for reviewing records, at the administrative appeal level, of the exemptions already applied.

(2) Educational and Non-Commercial Scientific Institution Requesters—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(i) To be eligible for inclusion in this category, requesters must demonstrate the request is being made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research.

(ii) Requesters eligible for free search must reasonably describe the records sought.

(3) Requesters Who Are Representatives of the News Media—The ATBCB shall provide documents to requesters in this category for the cost of reproduction alone, in accordance with the fee schedule set forth below, excluding charges for the first 100 pages of reproduced documents.

(4) All Other Requesters—The ATBCB shall charge requesters who do not fit into any of the categories described above, fees which recover the full direct cost of searching for and reproducing records that are responsive to the request, except that the first two hours of search time and the first 100 pages of reproduction shall be furnished without charge.

(d) Schedule of FOIA fees.

(1) Record search (ATBCB employees)—\$14.00 per hour

(2) Document review (ATBCB employees)—\$20.00 per hour

(3) Duplication of documents (paper copy of paper original)—\$.20 per page

(e) No charge shall be made:

(1) If the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee;

(2) For any request made by an individual or group of individuals falling into the categories listed at § 1120.51(b) and described in paragraph 1120.51(c) (excepting commercial use requests) the first two hours of search time and first 100 pages of duplication;

(3) For the cost of preparing or reviewing letters of response to a request or appeal;

(4) For responding to a request for one copy of the official personnel record of the requestor;

(5) For furnishing records requested by either House of Congress, or by duly authorized committee or subcommittee or Congress, unless the records are requested for the benefit of an individual Member of Congress or for a constituent;

(6) For furnishing records requested by and for the official use of other Federal agencies; or

(7) For furnishing records needed by an A&TBCB contractor or grantee to perform the work required by the A&TBCB contract or grant.

(f) Requestors may be charged for unsuccessful or unproductive searches or for searches when records located are determined to be exempt from disclosure.

(g) Where the ATBCB reasonably believes that a requestor or group of requestors is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the ATBCB shall aggregate any such requests and charge accordingly.

5. § 1120.53 is amended by revising paragraphs (b)—(e) to read as follows:

**§ 1120.53 Payment of fees.**

(b) *Charging interest.* The ATBCB may charge interest to those requestors failing to pay fees assessed in accordance with the procedures described in § 1120.51. Interest charges, computed at the rate prescribed in § 3717 of title 31 U.S.C.A., will be assessed on the full amount billed starting on the 31st day following the day on which the bill was sent.

(c) Advance payment or assurance of payment.

(1) When an ATBCB office determines or estimates that the allowable charges a requestor may be required to pay are likely to exceed \$250.00, the ATBCB may require the requestor to make an advance payment or arrangements to pay the entire fee before continuing to process the request. The ATBCB shall promptly inform the requestor (by telephone, if practicable) of the need to make an advance payment or arrangements to pay the fee. That office need not search for, review, duplicate, or disclose records in response to any request by that requestor until he or she pays, or makes acceptable arrangements to pay, the total amount of fees due (or estimated to become due) under this subpart.

(2) Where a requestor has previously failed to pay a fee charged in a timely fashion, the ATBCB may require the requestor to pay the full amount owed, plus any applicable interest, as provided in § 1120.53(b) of this section, and to

make an advance payment of the full amount of the estimated fee before any new or pending requests will be processed from that requestor.

(3) In those instances described in paragraphs (1) and (2) above, the administrative time limits prescribed in § 1120.33(d) will begin only after the ATBCB has received all fee payments due or acceptable arrangements have been made to pay all fee payments due.

(d) Effect of the Debt Collection Act of 1982 (Pub. L. 97-365). Requestors are advised that the ATBCB shall use the authorities of the Debt Collection Act of 1982, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment of debts arising from freedom of information act requests.

(e) Waiver or reduction of fees.

(1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (d) of § 1120.51 where the Freedom of Information Officer determines, based upon information provided by a requestor in support of a fee waiver request or otherwise made known to the Freedom of Information Officer, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requestor. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—i.e., that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—Freedom of Information Officer shall consider the following four factors in sequence:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government." The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities. The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increase public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding." The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requestor or a narrow segment of interested persons. A requestor's identity and qualifications—e.g., expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in § 1120.2(o)) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requestors who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requestors to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities. The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Freedom of Information Officer shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—i.e., that disclosure of the requested information is not primarily in the commercial interest of the requestor—the Freedom of Information Officer shall consider the following two factors in sequence:

(i) The existence and magnitude of a commercial interest: Whether the requestor has a commercial interest that would be furthered by the requested disclosure. The Freedom of Information Officer shall consider all commercial interests of the requestor (with reference to the definition of "commercial use" in § 1120.2(1)) or any person on whose behalf the requestor may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requestors shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requestor is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requestor." A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (e)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requestor's commercial interest in disclosure. The Freedom of Information Officer shall ordinarily presume that where a news media requestor has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requestor. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (e) (2) and (3) of this section, as they apply to each record request. One hundred pages

of reproduction shall be furnished without charge.

(6) A request for reduction or waiver of fees shall be addressed to the Freedom of Information Officer at the address shown in § 1120.23. The AT/COB office which is responding to the request for records shall initially determine whether the fee shall be reduced or waived and shall so inform the requestor. The initial determination may be appealed by letter addressed to the address shown in § 1120.23. The General Counsel or his or her designee shall decide such appeals.

Stanley W. Smith,  
Chair.

[FR Doc. 90-1828 Filed 1-24-90; 8:45 am]

BILLING CODE 6020-99-M

## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Parts 90 and 91

[CGD 82-004a]

RIN 2115-AC88

#### Alternative Provisions for Reinspection of Offshore Supply Vessels in Foreign Ports

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

**SUMMARY:** The Coast Guard is establishing an alternative to have Coast Guard personnel conduct the required midperiod reinspection of Offshore Supply Vessels (OSVs). The alternative reinspection program will be open to OSVs, except Liftboats, of less than 400 gross tons operating in foreign ports. Overseas inspections of OSVs result in a less than optimum allocation of Coast Guard resources. Further, OSV owners must reimburse the Coast Guard for the expenses of marine inspectors conducting overseas inspections, and occasionally bear the cost of relocating vessels to certain ports to facilitate required inspections. The benefits of the alternative reinspection program will include flexibility and financial savings to the OSV industry, and more effective use of limited Coast Guard resources.

**EFFECTIVE DATE:** February 26, 1990.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Commander W.C. Bennett, Project Manager, (202) 267-1181.

**SUPPLEMENTARY INFORMATION:** On May 17, 1988 a Notice of Proposed Rulemaking (NPRM) was published in the Federal Register (53 FR 17477). Comments on the NPRM were requested to be submitted on or before August 15,

1988. A public hearing was not requested or held.

#### Drafting Information

The principal persons involved in drafting this proposal are Lieutenant Commander W.C. Bennett, Project Manager, Merchant Vessel Inspection Division, Office of Marine Safety, Security and Environmental Protection and Lieutenant Commander Don M. Wrye, Project Counsel, Office of Chief Counsel.

#### Background

OSVs are inspected for certification every two years. They are required to be reinspected once between the tenth and fourteenth month of the period of validity of the certificate of inspection. The rules allow an alternative to having Coast Guard personnel conduct the examination required for the reinspection of OSVs that are continuously employed outside of the United States.

In 46 U.S.C. 2101(19) an OSV is defined as a motor vessel of more than 15 gross tons but less than 500 gross tons that regularly carries goods, supplies, or equipment in support of exploration, exploitation, or production of offshore mineral or energy resources and is not a small passenger vessel.

While a large number of OSVs operate in areas where Coast Guard inspectors are reasonably available, an increasing number are based overseas due to a decline in the domestic offshore exploration and production industry since 1962. Some have been based in remote locations. Most do not normally return to the United States for long periods of time.

Reinspection required by 46 CFR subpart 91.27 are necessary to promote and maintain marine safety. In the past, Coast Guard marine inspectors have performed OSV reinspections overseas. However, overseas reinspections of these vessels results in less than optimum allocation of Coast Guard resources. Also, under 46 U.S.C 3317(b), vessel owners or operators must reimburse the Coast Guard for marine inspector travel and per diem costs incurred to conduct inspections in foreign ports. Additional matters of concern are the official status and personal security of marine inspectors assigned to temporary duty overseas in remote locations where OSVs operate.

This rulemaking concerns only who may perform the alternative midperiod examinations and how the examination reports will be evaluated. In place of the reinspection process currently required, the Coast Guard is permitting Officers in

Charge, Marine Inspection (OCMIs) to authorize alternative midperiod examinations of OSVs by the masters of the vessels or by persons retained or employed by the owner/operator, provided the master and the person performing the examination verifies the accuracy of the examination report. Coast Guard marine inspectors will continue to conduct inspections for certification every two years and two drydock examinations in any five year period.

The vessel's master will be required to perform the alternative midperiod examination and submit the report or review the results of an examination by another representative of the owner/operator for completeness and accuracy on the basis of personal knowledge. The report will be forwarded to the Coast Guard via the owner or operator of the vessel. The owner or operator must certify that the report is true and complete. False statements are subject to penalties under 18 U.S.C 1001. Coast Guard marine inspectors will review alternative midperiod examination reports, conduct biennial inspections and drydock examinations of OSVs in foreign ports, conduct oversight of the alternative midperiod examination program, and carry out an unchanged OSV inspection program on vessels based in U.S. waters.

The Coast Guard will require alternative midperiod examination reports to be complete, descriptive, include photographs, if needed, and be supported by documentation of the servicing of lifesaving and fire protection equipment. Further, persons who conduct these examinations must be familiar with applicable Coast Guard regulations and the vessel's operation. The Coast Guard has final responsibility for the manner in which the alternative midperiod examination is conducted and for the determination of the condition of the vessel. The OCMI will evaluate the continued compliance and fitness of a vessel for its intended route and service on the basis of the alternative midperiod examination report.

The Coast Guard is currently engaged in a separate rulemaking which will set uniform standards for new OSVs. An NPRM, CGD 82-004, "Offshore Supply Vessel Regulations", was published in the *Federal Register* on May 9, 1989 (54 FR 20006). A public hearing was held in New Orleans, LA on September 13, 1989. It is anticipated that a Final Rule will be published in the summer of 1990. The provisions of this rulemaking providing for alternative midperiod examinations

will be included in that project when it is published as a Final Rule.

The alternative midperiod examination program has been restricted to conventional hull form OSVs only. Liftboats are not currently eligible because they have a casualty record which is significantly worse than that of conventional hull form OSVs. Also, since liftboats are just now being brought under certification, both industry and the Coast Guard need to gain experience with liftboat inspections. The Coast Guard does not know of any U.S. flag liftboats presently working overseas. The definition of liftboat, as proposed in the "Offshore Supply Vessel Regulations", is included in this Final Rule.

#### Discussion of Comments and Changes

A total of seven comment letters were received in response to the NPRM. Four comment letters were in general support of the appropriateness and intent of this regulatory project. However, these comment letters provided specific recommendations for improvement. The other three comment letters also provided specific recommendations for improvement. Changes have been made to the proposed regulations as a result of the comments, as discussed below.

One comment opposed the NPRM, stating that owner's representatives would be less than impartial, and that classification society representatives, as impartial third parties, could do a better job. The requirement for a detailed report in § 91.27-13(c) is intended to assure that the alternative midperiod examination is properly performed. The regulations allow the use of any designated representative of the owner or operator to perform the alternative midperiod examination, including a classification society or any other third party.

Four comments requested that the scope of a reinspection be clarified. Section 91.27-13(c)(2) of the NPRM referenced § 91.27-5, which defines the scope of a reinspection the same as for an inspection, but in less detail. The Coast Guard's position is that the definition of a reinspection, which by analogy also applies to an alternative midperiod examination, is sufficient to avoid confusion and yet ensure enough detail in the performance of the reinspection or alternative midperiod examination.

Five comments requested that the tonnage cutoff for authorizing alternative midperiod examinations be increased from 400 GT, as proposed in the NPRM, to 500 GT and that other governments or classification societies be allowed to perform surveys required

under the provisions of Regulation 16 of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). This comment has not been adopted. Under MARPOL Regulation 16 the Coast Guard is obligated to perform annual surveys on OSVs of 400 gross tons or more operating outside of the United States, and to endorse the International Oil Pollution Prevention (IOPP) Certificate upon completing a satisfactory survey. The Coast Guard has not delegated authority for conducting IOPP surveys to any other government or third party organization, and there are no plans to do so. This survey normally is conducted concurrently with an inspection for certification or reinspection. The necessity to perform this survey limits the applicability of these rules to vessels of less than 400 gross tons. As explained in the Final Regulatory Evaluation, out of an overseas OSV population which remains near 100 at any given time, less than 10 are between 400 and 500 GT. It is probable that less than five (or only one-half) of these would need to participate in the alternative midperiod examination program in any one year, if eligible. These OSVs represent only 5% of the U.S. overseas OSV fleet and less than 1% of the total U.S. OSV fleet of 605 vessels. For the Coast Guard to continue to perform reinspections of these OSVs will not unduly burden industry and will still allow the Coast Guard to meet its international treaty obligations in this area. Therefore, OSVs between 400 and 500 GT will still be required to have a midperiod reinspection performed by the Coast Guard.

Two comments suggested that submitting a request for "permission" to conduct the alternative midperiod examination is not necessary. The alternative midperiod examination is performed under the authority of the OCMI having responsibility for the area in which the OSV is operating and will be examined. The Coast Guard has decided that "authorization" may better describe the intent of this requirement. The OCMI needs to know for planning purposes what the owner/operator is considering. Additionally, the act of requesting authorization will also start the approval process, under which the OCMI will determine whether to grant authorization by evaluating the vessel and owner/operator safety and compliance records. Having the processing start with a request for authorization formalizes the relationship.

Four comments questioned the reasonableness of the eligibility requirement of not having had a marine casualty in the last year proposed in § 91.27-13(a)(3). Eligibility for this program is based, in part, on a vessel's safety record as reflected in reports of casualties. The Coast Guard's position is that the nature, number, and severity of casualties should be taken into account. However, the Coast Guard agrees with other aspects of the comments that the OCMI should be allowed more flexibility in evaluating the vessel's overall track record. One minor casualty caused by heavy weather or while loading deck cargo near a platform or rig may not be cause for concern, but several minor casualties or a significant casualty such as a collision would be. This requirement has been included in § 91.27-13(b) as one factor to be considered by the OCMI before granting authorization to participate in the program. The wording of this section has also been changed to indicate that only reportable marine casualties, as defined in 46 CFR 4.03-1, will be the basis for this factor.

There were three comments about the eligibility requirement that the vessel not have any outstanding inspection requirements proposed in § 91.27-13(a)(4). One comment said this was reasonable and two suggested that the number and type of outstanding requirements permitted for the vessel to remain eligible should be left up to the OCMI's discretion. The Coast Guard's experience is that the nature, number, and severity of any outstanding requirements is indicative of the vessel's overall performance and safety record. However, the Coast Guard agrees that the OCMI should have more flexibility considering eligibility and has included this requirement in § 91.27-13(b) as a factor to be considered by the OCMI before granting authorization to participate in the program.

Three comments stated that the special recommendation of the Coast Guard marine inspector who last inspected the vessel proposed in § 91.27-13(a)(5) is subjective, complicates the process, and implies that OSVs applying for the alternative midperiod examination program should be in better condition than those certified by a Coast Guard marine inspector as "safe for route and service." The Coast Guard considers the consultation of previous inspection and drydock examination reports to be an important source of information concerning the vessel's inspection status, and a track record of preventative maintenance and unsafe

work practices aboard the vessel. However, this is not an eligibility requirement but something that it is important to consider when determining whether to approve the owner/operator's request. Accordingly, this requirement has been included in § 91.27-13(b) and the wording changed to require the OCMI to consider information in previous inspection and drydock examination reports.

There were four comments objecting to proposed § 91.27-13(b)(2)(ii) which required the Officer in Charge, Marine Inspection to consider an owner/operator's history of reimbursement of Coast Guard expenses. The comments stated that reimbursement was irrelevant and does not impact on safety, and pointed out that there is some question about the legality of collecting reimbursement for inspections not requested by the owner/operator. The owner or managing operator is required by 46 U.S.C. 3317(b) to make reimbursement for travel and subsistence expenses incurred by Coast Guard personnel performing inspections at foreign ports or places, if the owner or managing operator requested the inspection. In the past, the Coast Guard generally has not conducted overseas inspections unless the owner or managing operator, or a representative such as a master or port engineer, requests the inspection. Therefore, reimbursement was required for all overseas inspections conducted by the Coast Guard. Unfortunately, the Coast Guard has had problems with collecting reimbursements and some companies are delinquent in payment. However, the Coast Guard has reconsidered and decided that the act of conducting a safety inspection should not be tied to collecting reimbursement for the inspection. This requirement will not be considered by this rulemaking and has been removed.

Three comments stated that the comprehensive report required by proposed § 91.27-13(c)(3) runs afoul of the concept of a reinspection, questioning why photos are necessary, and requesting to know if any particular format would be required. The report of the alternative midperiod examination must contain enough facts and details for the OCMI to determine if the vessel "is in satisfactory condition" and "reasonably fit for its intended service and route." A change was made concerning the need for photographs. Photographs are not necessary if the situation is explained in some other way such as writing or a sketch. Photos may be useful in many situations. No particular format is required. Coast

Guard Hull Inspection and Machinery Inspection Books can be used as long as they meet the owner/operator's needs. It is incumbent upon all owner/operators to make sure that the report submitted to the OCMI contains sufficient information for determining the condition of the vessel.

Proposed § 91.27-13(f) was split into two new sections, (g) and (h), to clarify the Coast Guard's intent and simplify the regulations.

Two comments questioned the Coast Guard's authority to board U.S. vessels in foreign ports without notifying the owner/operators. The Coast Guard can board any U.S. vessel, as defined in 46 U.S.C. 2101, in foreign ports or on the high seas as well as in U.S. waters to enforce U.S. inspection laws and regulations. No notice to the owner/operator is required. This authority is well established by U.S. law and supported by a long history of case law. After consideration, the Coast Guard has decided it is not necessary to restate its legal authority in a regulation, and the sentence concerning "inspections with or without notice" was removed from proposed § 91.27-13(f). In the past, the Coast Guard has not exercised this authority, but unscheduled inspections may still be made as a part of the Coast Guard's responsibility to conduct oversight of the alternative midperiod examination program and to investigate any reported or suspected violations of U.S. inspection, documentation, and manning laws. Although overseas locations are not within the boundaries of Marine Inspection Zones as defined in 33 CFR part 3, the Marine Safety Manual, Volume II section 6.C.13., designates areas of responsibility for inspection of U.S. vessels in foreign countries to certain OCMI's located within the United States. As a matter of international law and the doctrine of comity the foreign flag state is notified, through the Department of State and the American Embassy in the country, by the OCMI who is going to have inspectors working in that country.

Closely related to the matter of reimbursement discussed in the paragraph about proposed § 91.27-13(b)(2)(ii), one of these comments also stated that the owner/operator should not have to pay for inspections conducted without notice. This comment pointed out that owner/operator assistance in planning an overseas inspection facilitated the inspection and mitigated the cost. The Coast Guard realizes that it must pay travel and per diem expenses for inspections conducted without notice since they will not be requested by the owner/operator.

The Coast Guard also realizes that due to changing vessel schedules and company contracts, the vessel may have been moved to another port when the inspector arrives.

Several of the comments stated that the alternative midperiod examination process was too detailed, and that the process outlined in the NPRM hinders the examination procedure by making it an option of the OCMI rather than an option of the owner/operator. The changes discussed above have addressed many of these concerns. The Coast Guard considers the procedures and process detailed in this Final Rule to be the minimum necessary to assure that the examination is done correctly.

#### E.O. 12291 and DOT Regulatory Policies and Procedures

This rulemaking is considered to be non-major under Executive Order 12291 and non-significant under DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). A final regulatory evaluation has been prepared and placed in the rulemaking docket. It may be inspected or copied at the office of the Executive Secretary, Marine Safety Council (C-LRA-2), Room 3600, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001, from 8 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

It is estimated these regulations will result in annual savings to the OSV industry of approximately \$200,000 to \$250,000 for travel, per diem, and vessel relocation expenses. The Coast Guard will save approximately \$60,000 annually, due primarily to reduced personnel costs and a reduction in the cost associated with collecting inspector travel and per diem expenses from OSV owner/operators. The agency will be able to focus its resources on OSVs with poor safety and compliance records.

#### Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether the rule it is proposing is likely to have 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).

These regulations will affect owners and operators of offshore supply vessels. Because of the relatively high costs of these vessels (one 180' standard design may be constructed for \$5 million; one 120' standard design may be

constructed for \$1.2 million), their owners and operators tend to be multi-vessel corporations or otherwise substantial corporations. For the above reasons, the Coast Guard certifies that these rules will not have a significant economic impact on a substantial number of small entities.

#### Paperwork Reduction Act

This rulemaking contains information collection requirements in § 91.27-13. They have been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been approved. The OMB Control Number assigned is 2115-0517. This number is added to the display table in § 90.01-15(b).

#### Environmental Analysis

The Coast Guard has considered the environmental impact of the regulations and concluded that this rulemaking is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been prepared and is on file in the rulemaking docket.

#### Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

#### List of Subjects

##### 46 CFR Part 90

Cargo vessels, Marine safety.

##### 46 CFR Part 91

Cargo vessels, Marine safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Coast Guard amends chapter I of Title 46 of the Code of Federal Regulations, as set forth below:

#### PART 90—[AMENDED]

1. The authority citation for part 90 continues to read as follows:

Authority: 46 U.S.C. 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

##### § 90.01-15 [Amended]

2. In § 90.01-15 paragraph (b) is amended by adding the following line, in sequential order, to the display table to read as follows:

§ 91.27-13

2115-0517

3. Subpart 90.10 is amended by adding new § 90.10-20 to read as follows:

##### § 90.10-20 Liftboat.

"Liftboat" means an offshore supply vessel with moveable legs capable of raising its hull above the surface of the sea.

#### PART 91—[AMENDED]

4. The authority citation for part 91 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; E.O. 11735, 38 FR 21243, 3 CFR, 1971-1975 Comp., p. 793; 49 CFR 1.46.

5. Subpart 91.27 is amended by adding a new § 91.27-13 to read as follows:

##### § 91.27-13 Alternative provisions for reinspections of offshore supply vessels in foreign ports.

(a) The owner or operator of an offshore supply vessel of less than 400 gross tons, except liftboats as defined in § 90.10-20 of this subchapter, may request authorization to conduct an alternative midperiod examination. The request must be made to the Officer in Charge, Marine Inspection who is assigned responsibility for conducting inspections in the country in which the vessel is operating and will be examined. To qualify for the alternative midperiod examination, the following requirements must be met:

(1) The request for authorization must be in writing and received by the cognizant Officer in Charge, Marine Inspection before the end of the twelfth month of the period of validity of the vessel's certificate of inspection; and

(2) The vessel is expected to be continuously employed outside of the United States during the tenth through the fourteenth month of the period of validity of the vessel's certificate of inspection.

(b) In determining whether to grant authorization for the alternative midperiod examination, the Officer in Charge, Marine Inspection shall consider the following:

(1) Information contained in previous inspection and drydock examination reports, including the Officer in Charge, Marine Inspection's recommendation for participation in the alternative midperiod examination program, if one has been made;

(2) The nature, number, and severity of any marine casualties or accidents, as defined in § 4.03-1 of this chapter, which the vessel has experienced in the last three years;

(3) The nature, number, and severity of any outstanding inspection requirements for the vessel; and

(4) The owner or operator's history of compliance and cooperation in the alternative midperiod examination program, including:

(i) The prompt correction of deficiencies;

(ii) The reliability of previously submitted alternative examination reports; and

(iii) The reliability of representations that the vessel under consideration will be, and other vessels previously examined under this section were, employed outside of the United States for the tenth through the fourteenth month of the periods of validity of their certificates of inspection.

(c) If authorization is granted, the Officer in Charge, Marine Inspection shall provide the applicant written authorization to proceed with the alternative midperiod examination, including special instructions when appropriate.

(d) The following conditions must be met for the alternative midperiod examination to be accepted by the Coast Guard in lieu of conducting a reinspection in accordance with § 91.27-1 of this subpart.

(1) The alternative midperiod examination must be conducted between the tenth and fourteenth month of the period of validity of the vessel's certificate of inspection.

(2) The alternative midperiod examination must be of the scope detailed in § 91.27-5 of this subpart and must be conducted by the vessel's master, owner, operator, or a designated representative of the owner or operator.

(3) Upon completion of the alternative midperiod examination, the person or persons conducting the examination shall prepare a comprehensive report describing the conditions found. This examination report shall contain sufficient detail to allow an evaluation to be made by the Officer in Charge, Marine Inspection to whom the report is submitted that the vessel is fit for the service and route specified on the certificate of inspection. The report must include reports and receipts documenting the servicing of lifesaving and fire protection equipment, and any photographs or sketches necessary to clarify unusual circumstances. Each person preparing the report shall sign it and certify that the information contained therein is complete and accurate.

(4) Unless the vessel's master participated in the alternative midperiod examination and preparation of the examination report, the master shall

review the report for completeness and accuracy. The master shall sign the report to indicate review and forward it to the vessel's owner or operator who requested authorization to conduct the examination.

(5) The owner or operator of an offshore supply vessel examined under this subpart must review and submit the report required by paragraph (d)(3) of this section to the Officer in Charge, Marine Inspection who issued the authorization to conduct the alternative midperiod examination. The examination report must be received by the cognizant Officer in Charge, Marine Inspection before the first day of the sixteenth month of the period of validity of the vessel's certificate of inspection. The forwarding letter or endorsement must be certified and contain the following information:

(i) That the person or persons who conducted the examination acted on behalf of the vessel's owner or operator;

(ii) That the examination report was reviewed by the owner or operator;

(iii) That the discrepancies noted during the examination have been corrected or will be corrected within a stated time frame; and

(iv) That the owner or operator has sufficient personal knowledge of conditions aboard the vessel at the time of the examination or has made necessary inquiries to justify forming a belief that the examination report is true and correct.

(e) The form of certification required under this subpart is as follows:

I certify that the above is true and complete to the best of my knowledge and belief.

(f) Deficiencies and hazards discovered during an alternative midperiod examination conducted pursuant to this section must be corrected or eliminated, if practical, before the examination report is submitted to the Officer in Charge, Marine Inspection in accordance with paragraph (d)(5) of this section.

Deficiencies and hazards that are not corrected or eliminated by the time the examination report is submitted must be listed in the report as "outstanding." Upon receipt of an examination report indicating outstanding deficiencies or hazards, the Officer in Charge, Marine Inspection shall inform the owner or operator of the vessel in writing of the time period specified to correct or eliminate the deficiencies or hazards and the method for establishing that it has been accomplished. Where a deficiency or hazard remains uncorrected or uneliminated after the expiration of the time specified for correction or elimination, the Officer in

Charge, Marine Inspection shall initiate appropriate enforcement measures.

(g) Upon receipt of the report required by paragraph (d)(3) of this section, the Officer in Charge, Marine Inspection shall evaluate it and make the following determinations:

(1) Whether the alternative midperiod examination is accepted in lieu of the reinspection required by § 91.27-1 of this subpart;

(2) Whether the vessel is in satisfactory condition; and

(3) Whether the vessel continues to be reasonably fit for its intended service and route.

The Officer in Charge, Marine Inspection may request any additional information required to make the determinations required by this section. The Officer in Charge, Marine Inspection shall inform the owner/operator in writing of the determinations required by this section.

(h) Should the Officer in Charge, Marine Inspection determine in accordance with paragraph (g) of this section that the alternative midperiod examination is not accepted in lieu of the reinspection required by § 91.27-1 of this subpart, the vessel must be reinspected by the cognizant Officer in Charge, Marine Inspection as soon as practical.

Dated: January 3, 1990.

J.D. Sipes,

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

[FR Doc. 90-1660 Filed 1-24-90; 8:45 am]

BILLING CODE 4910-14-M

## Urban Mass Transportation Administration

### 49 CFR Part 653

[Docket No. 88-F]

RIN 2132-AA33

## Control of Drug Use in Mass Transportation Operations

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Final rule; suspension of 49 CFR part 653.

**SUMMARY:** This final rule suspends until further notice UMTA's rule requiring recipients of Federal mass transit assistance to have an anti-drug program for sensitive safety employees. This action responds to a United States Court of Appeals decision.

**EFFECTIVE DATE:** This rule is effective January 25, 1990.