period. Do not administer to chickens producing eggs for human consumption. Withdraw 5 days before slaughter. Use as sole source of organic arsenic. Overdosage or the lack of water intake may result in weakness or paralysis of legs.

3. New § 520.2089 is added to read as follows:

§ 520.2089 Roxarsone liquid.

(a) *Specifications.* Each teaspoon (5 milliliters) of solution contains 72 milligrams of roxarsone (3-nitro-4-hydroxyphenylarsonic acid).

(b) *Sponsor.* See No. 017144 in § 510.600(c) of this chapter.

(c) *Related tolerances.* See § 556.60 of this chapter.

(d) *Conditions of use in growing chickens and growing turkeys*—(1) *Amount.* 1 teaspoon (5 milliliters) to each gallon of drinking water (0.002 percent roxarsone).

(2) *Indications for use.* For improved rate of weight gain, improved feed efficiency, and improved pigmentation.

(3) *Limitations.* Administer continuously throughout growing period. Do not administer to chickens producing eggs for human consumption. Withdraw 5 days before slaughter. Use as sole source of organic arsenic. Overdosage or the lack of water intake may result in weakness or paralysis of legs.

Dated: December 8, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93-30610 Filed 12-15-93; 8:45 am]

BILLING CODE 4160-01-F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 1

CGD 78-82

RIN 2115-AE67

Enforcement; Civil and Criminal Penalty Proceedings

AGENCY: Coast Guard, DOT.

ACTION: Adoption of interim rule as final.

SUMMARY: This rule adopts as final, the Coast Guard regulations contained in 33 CFR part 1, subpart 1.07—Enforcement; Civil and Criminal Penalty Proceedings which were published as an interim final rule on November 20, 1978. The Coast Guard had anticipated finalizing the interim final rule after a comment period and a six-month evaluation of effectiveness. However, due to an administrative oversight, the rule was never finalized.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: LCDR Michael Emge, Maritime and International Law Division, Office of the Chief Counsel, at (202) 267-1527.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR Michael Emge, Project Manager, and C.G. Green, Project Counsel.

Regulatory History

On November 20, 1978, the Coast Guard published in the **Federal Register** an interim final rule entitled "Enforcement; Civil and Criminal Penalty Proceedings" (43 CFR 54186). The regulations described the Coast Guard civil penalty process and how criminal cases are referred to the U.S. Attorney for prosecution. The regulations became effective three months after publication, on February 20, 1979. The Coast Guard received fourteen comments on the interim rule.

Background and Purpose

The interim final regulations effective on February 20, 1979, have proved workable and an improvement over the previous procedures. Even though several amendments were published as final rules, none of these amendments finalized the interim final rule. The interim rule, however, remained effective and has, with its several amendments, comprised the Coast Guard's civil penalty system since 1979. The amendments are discussed below.

This rule finalizes the regulations, as amended, and closes the docket on this rulemaking. The text of the final rule as adopted herein appears in the Code of Federal Regulations for 33 CFR parts 1 to 124, July 1, 1993 edition. Since these rules have been effective since 1979, and because their adoption as a final rule does not change them, good cause exists to make the final rule effective in fewer than thirty days.

Discussion of amendments: On June 5, 1985, the Coast Guard published (50 FR 23688) a rule amending 33 CFR part 1, subpart 1.07. The rule implemented a one year test of the voluntary Marine Safety Reporting Program (MSRP) to determine the desirability and feasibility of an ongoing MSRP. The MSRP was designed to collect information from commercial vessel operators about near mishaps or difficulties encountered with the navigation and control of commercial vessels. The rule encouraged voluntary participation in the MSRP by providing relief from possible penalty action for certain participants. The rule was effective June 1, 1985.

On May 29, 1986, the Coast Guard published a final rule (51 FR 19329) terminating the MSRP. This rule was effective June 15, 1986, permitting a two week grace period for processing incident report forms submitted late in the program.

On May 11, 1987, minor revisions were published (52 FR 17554) to reflect realignment of the Coast Guard districts and internal reorganization. In this change, the requirement for a second copy of a petition to reopen a hearing was eliminated. Also, to provide Coast Guard District Commanders with more time to comment on a respondent's appeal of a Hearing Officer decision, the time frame for accepting a District Commander's comments was lengthened from 20 to 30 days. References to gender were also removed. The rule was effective on publication in the **Federal Register**.

On September 11, 1989, the regulations were again amended (54 FR 37613) as mandated by the Anti-Drug Abuse Amendments Act of 1988 (Pub. L. 100-690). This amendment added § 1.07-100 to 33 CFR part 1, subpart 1.07 to provide for the issuance of a summons to appear in lieu of the seizure of a commercial fishing industry vessel for violations involving the possession of personal use quantities of a controlled substance. This final rule was preceded by an April 10, 1989, notice of proposed rulemaking (54 FR 14250). Public comments were considered and the final rule was effective October 11, 1989.

None of these amendments specifically addressed the comments received on the interim final rule published in 1978, and none of the amendments specifically adopted the subpart as a final rule. The public docket on this rulemaking has remained open since publication of the interim rule, despite the subsequent amendments to the procedures as discussed above.

Discussion of Comments and Changes

Since the regulations in 33 CFR part 1, subpart 1.07 are solely rules of agency procedure and practice, 5 U.S.C. 553(b)[(3)](A) exempts them from the notice and comment rulemaking requirements of the Administrative Procedure Act. Although public notice and comment were not required, the Coast Guard invited public comment on the rules when they were published in 1978. In response to this request for public comment, fourteen comments were received. Although the comment period officially closed September 1, 1979, the two comments received after that period were also considered. None of the comments, however, resulted in revisions to the interim rule. These comments are briefly discussed below.

One comment came from the author of an article which appeared in the August 1979 issue of Boating magazine. The article was a commentary on the November 20, 1978, civil penalty regulations and was entitled "The Coast Guard Wants to Be Your Prosecutor, Judge, and Jury." At least eight of the thirteen other public comments received appeared prompted by this magazine article. These comments agreed with the magazine article, but did not offer any additional substantive comments. The article's author suggested that the Coast Guard's civil penalty system short cut due process for several reasons. These reasons included: (1) The people that decide cases, Hearing Officers, are not impartial because they are Coast Guard officers; (2) the system does not provide for a hearing on the record; and (3) the Coast Guard is not required to prove the alleged violations and the process, in essence, makes a party guilty until that party proves their innocence. The Coast Guard disagrees with these characterizations of its civil penalty system.

Although Hearing Officers are Coast Guard officers, they are impartial. The regulations in 33 CFR 1.07–15(a) specifically state that the Hearing Officer has no other responsibility, direct or supervisory, for the investigation of cases referred for the assessment of civil penalties. Also, the Hearing Officer decides each case on the basis of the evidence before him, and must have no prior connection with the case. The Hearing Officer is solely responsible for the decision in each case referred to him. 33 CFR 1.07–15(b). To ensure Hearing Officer impartiality, the Coast Guard assigns personnel specifically to that position, outside of any Coast Guard program duties or influence.

The Coast Guard civil penalty process under 33 CFR part 1, subpart 1.07 does not provide for a hearing on the record, i.e., a hearing before an Administrative Law Judge and a transcript of the proceedings, because the statutes enforced under the civil penalty process do not require such hearings. The civil penalty process is designed to afford parties with appropriate due process and yet process numerous reports of alleged violations arising from the Coast Guard's law enforcement activities. The regulations do provide that an alleged violator, or "party," may request a hearing before the Hearing Officer, if desired. 33 CFR 1.07–25. The party may also have a transcript of that hearing prepared at the party's expense. 33 CFR 1.07–60(b). Coast Guard Hearing Officers process approximately 14,400 cases each year under these procedures. To provide a hearing on the record for each of these cases would create a significant administrative burden on the agency; it would greatly increase the costs for both the agency and parties; and it would slow case processing to an unacceptable level without providing significant improvement to the system. It is worthwhile to note Congress' recognition of the Coast Guard civil penalty process in the legislative history of 46 U.S.C. 2107, one of the Coast Guard's enforcement enabling authorities:

> The assessment of civil penalties under this section should not require an "on the record" hearing within the meaning of the Administrative Procedures Act (APA). It is intended that these civil penalties be assessed in a fair manner. However, the Committee recognizes that statutes passed in the last decade have involved the Coast Guard in tens of thousands of civil penalty enforcement cases and that it is necessary that the penalties be assessed efficiently. The Coast Guard's procedural regulations for assessing civil penalties ensure that the essential elements of due process, notice, and opportunity to be heard, are provided to alleged violators (see 33 CFR supbart 1.07). The more rigid and time-consuming procedures applicable to APA adjudications are unwarranted in the case of Coast Guard civil penalty assessment procedures and would seriously hamper the orderly enforcement of these administrative penalties.

H.R. Rep. No. 338, 98th Cong., 1st Sess. 132 (1983). For the reasons discussed above, the rules have not been changed to provide for hearings on the record.

The perceptions by commenters that the Coast Guard is not required to prove alleged violations and that the Coast Guard's civil penalty process makes a party guilty until that party proves his or her innocence are misunderstandings. When a Hearing Officer receives a violation case from a District Commander, the Hearing Officer makes a preliminary review of it. If after this review there appears to be sufficient evidence to proceed, the Hearing Officer then notifies the party of the alleged violation and the party's rights. 33 CFR 1.07–20. The party may then offer any relevant evidence or statements to rebut the allegation or otherwise exculpate the party. 33 CFR 1.07–55(b), (f). Rebuttal by the Coast Guard and a further response by the party may then take place. 33 CFR 1.07–55(c). After the evidence and any arguments are received by the Hearing Officer, the Hearing Officer makes a decision based on the record. If the weight of the evidence does not show that the alleged violation occurred and the party is the responsible entity, the Hearing Officer either remands or dismisses the case. 33 CFR 1.07–65(a). The burden of proving an alleged violation remains with the Coast Guard throughout the process. If appropriate, sufficient evidence to create a presumption of a violation will require the party to present evidence overcoming the presumption. However, the Coast Guard always bears the ultimate burden to prove an alleged violation. Additionally, appeals of civil penalty assessments to the Commandant are closely reviewed. If on appeal, the Hearing Officer's decision is not supported by substantial evidence in the case record, the case is either remanded or dismissed. Accordingly, no change to the rule has been made.

Another comment voiced support for the interim final rule but suggested that certain significant cases warrant review by a body other than the Coast Guard and the Department of Transportation. Judicial review authority does exist and need not be addressed in this rulemaking. The Administrative Procedures Act, 5 U.S.C. Chapter 7, provides authority and guidelines for federal court review of Coast Guard civil penalty actions.

One comment, from a large corporation, voiced support for the interim final rule, but suggested that the provision in 33 CFR 1.07–25 for responding within 30 days to a notice from a Hearing Officer of initiation of action, be lengthened to 60 days. The comment stated that additional time is needed to investigate the alleged violations and to get the Hearing Officer's letter to the person responsible for the party's reply. Based on its experience with the civil penalty system since 1979, the Coast Guard does not agree that the additional 30 days is necessary. Where good cause is shown and additional time is requested, Hearing Officers have typically provided additional time to accommodate a party's investigation or response to the allegations. Generally, the majority of parties do not need additional time to fully respond to the allegations. Accordingly, the 30 day requirement has remained.

Regulatory Evaluation: This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation is unnecessary.

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 raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment: Under section 2.B.2 of Commandant Instruction M16475.1B, this action is categorically excluded from further environmental documentation. A Categorical Exclusion Determination has been placed in the docket for this rulemaking.

List of Subjects in 33 CFR Part 1

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Penalties.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 1 as follows:

PART 1—[AMENDED]

1. The authority citation for 33 CFR part 1, subpart 1.07 continues to read as follows:

Authority: 14 U.S.C. 633; 49 CFR 1.46.

2. Subpart 1.07, which was revised as an interim rule except for the Appendix on November 20, 1978 (43 FR 54186), and amended on June 5, 1985 (50 FR 23688), May 29, 1986 (51 FR 19329), May 11, 1987 (52 FR 17554), and September 11, 1989 (54 FR 37613), is adopted, as amended, as a final rule.

Dated: December 10, 1993.

J.E. Shkor,

Chief Counsel.

[FR Doc. 93-30713 Filed 12-15-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 80

[CGD 93-071]

RIN 2115-AE65

International Regulations for Preventing Collisions at Sea; 1972 COLREGS Demarcation Lines; Blind Pass, Near Fort Myers, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the regulations establishing lines of demarcation delineating those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with Inland Navigation Rules by adding a boundary line in waters in Blind Pass, near Fort Myers, Florida. When the original lines were established, Blind Pass was not navigable. This action will clarify the status of the navigable waters in the subject area.

EFFECTIVE DATE: December 16, 1993.

ADDRESSES: Unless otherwise indicated, documents referenced in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 93-071), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593-0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267-0352 or (202) 267-0357.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

The regulations in 33 CFR part 80 establish the lines of demarcation delineating those waters upon which mariners shall comply with the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS) and those waters upon which mariners shall comply with the Inland Navigation Rules. The waters inside of the lines are Inland Rules waters. The waters outside the lines are COLREGS waters.

The regulations establishing COLREGS Demarcation Lines in 33 CFR part 80 were promulgated July 11, 1977 (42 FR 35782). Since that time, some of the lines have been redesignated to reflect geographic or marking changes (46 FR 28154, May 26, 1981 and 51 FR 7787, March 6, 1986).

On the west coast of Florida near Fort Myers and Punta Gorda there are a string of barrier Islands that separate Pine Island Sound from the Gulf of Mexico. Currently, 33 CFR 80.750 delineates lines of demarcation across several navigable channels between these barrier islands, making Pine Island Sound inland waters for the purposes of the Inland Navigation Rules. Blind Pass lies between the southern tip of Captiva Island and the northwestern tip of Sanibel Island and provides access from the Gulf of Mexico to Pine Island Sound (See NOAA Chart 11427 or 11426). Blind Pass was not navigable when the original demarcation lines were established. However, in the last several years, due to the shifting nature of these barrier islands, Blind Pass has opened and become a fairly stable channel used by commercial fishermen.

Because this channel is now navigable, the Coast Guard has determined that it is appropriate to establish a demarcation line to clarify the status of the subject area. Existing COLREG demarcation lines designate Pine Island Sound as inland waters. To remain consistent with this designation, and to clarify the status of the recently navigable Blind Pass, the Coast Guard is establishing a line formed by the centerline of the highway bridge over Blind Pass in addition to the existing lines drawn across Redfish and Captiva Passes parallel to the general trend of the seaward, highwater shorelines. The Coast Guard has chosen the fixed bridge crossing Blind Pass as the COLREGS demarcation line for several reasons: (1) The use of a fixed landmark, like a bridge, will provide a tangible, easy reference for the mariner; (2) the bridge is of recent construction and therefore is likely to remain in place for the foreseeable future; and (3) the shifting nature of these barrier islands makes delineation using points of land inadvisable.

33 CFR 80.753(a) delineates a COLREGS demarcation line in another pass bearing the name Blind Pass. This pass lies between Treasure Island and Long Key near St. Petersburg Florida, several hundred miles north of the Blind Pass between Captiva and Sanibel Islands. To prevent confusion, the Coast Guard is amending the description of this line by including the names of the nearby islands within the description. The position of the demarcation line in 33 CFR 80.753(a) remains unchanged.

This amendment will clarify the status of the newly navigable Blind Pass and will be an aid to The Florida Marine Patrol in its efforts to enforce fishing regulations. The Florida Administrative Code closes Pine Island Sound to net fishing from November 1 through January 31 each year.

Because this rule adds a line of demarcation to a newly navigable area that clearly falls within inland waters in accordance with existing demarcation lines, this action is considered to be administrative in nature. Accordingly, under 5 U.S.C. 553(b)(3)(B) notice and opportunity for public comment are unnecessary and, in accordance with 5 U.S.C. 553(d)(3), good cause exists to publish this action as a final rule effective upon publication in the Federal Register.

Regulatory Assessment

This rule is not a significant regulatory action under Executive Order 12866 and not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). This rule merely adds a line of demarcation to an area that falls clearly within inland waters. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Assessment is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small business that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. although exempt, the Coast Guard has reviewed this rule for potential impact on small entities. This rule merely adds a demarcation line to clarify the status, consistent with existing lines of demarcation, of inland waters in the area of Pine Island Sound in Florida.

Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under Federal law, authority to designate COLREGS lines of demarcation is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, the Coast Guard intends this rule to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation. As this rule is a clarification of existing lines there will be no impact on the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 80

Navigation (water), Treaties, Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 80 as follows:

PART 80—COLREGS DEMARCATION LINES

1. The authority citation for part 80 continues to read as follows

Authority: 14 U.S.C. 2; 14 U.S.C. 633; 33 U.S.C. 151(a); 49 CFR 1.46.

2. In § 80.750, paragraph (a) is revised to read as follows:

§ 80.750 Sanibel Island, FL to St. Petersburg, FL.

(a) A line formed by the centerline of the highway bridge over Blind Pass, between Captiva Island and Sanibel Island, and lines drawn across Redfish and Captiva Passes parallel to the general trend of the seaward, highwater shorelines.

* * * * *

2. In § 80.753, paragraph (a) is revised to read as follows:

§ 80.753 St. Petersburg, FL to Anclote, FL.

(a) A line drawn across Blind Pass, between Treasure Island and Long Key, parallel with the general trend of the seaward, highwater shoreline.

* * * * *

Dated: December 8, 1993.

W.J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93-30702 Filed 12-15-93; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 117

[CGD07-93-111]

Drawbridge Operation Regulations, Atlantic Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: At the request of Congressman E. Clay Shaw, Jr., the Coast Guard is hereby providing notice that the Florida Department of Transportation has been granted permission to temporarily deviate from regulations governing the opening of the East Sunrise Boulevard Drawbridge at Fort Lauderdale from December 1, 1993 to January 31, 1994, for the purpose of evaluating the reasonableness of possible changes to the permanent regulations. This deviation establishes a 15-minute opening schedule from 10 a.m to 6 p.m. daily which is intended to eliminate back-to-back openings that cause traffic delays. The 60-day test will determine whether a 15-minute opening schedule will improve the flow of highway traffic without unreasonably impacting navigation.

EFFECTIVE DATE: Comments must be received on or before January 30, 1994. This rule is effective on December 1, 1993 through January 30, 1994.

ADDRESSES: Comments may be sent to Commander (oan), Seventh Coast Guard District, 909 SE. 1st Avenue, Miami, Florida 33131-3050. The telephone number is 305-536-4103.

FOR FURTHER INFORMATION CONTACT: Mr. Brodie Rich, Project Manager, Bridge Section, at (305) 536-4103.

SUPPLEMENTARY INFORMATION: The Coast Guard granted a temporary deviation to the regulations for this drawbridge owned and operated by the Florida Department of Transportation (FDOT) presently opening on demand which allows FDOT not to open the draws from 10 a.m. to 6 p.m. daily except on the hour, quarter hour, half hour and three-quarter hour. This revised schedule is intended to eliminate back-to-back draw openings and decrease vehicular delays.

Request for Comments

The Coast Guard encourages interested persons to participate in this evaluation of possible changes to the regulations governing this bridge by submitting written data, views, or arguments to the address above. Persons submitting comments should include their name and address, identify this docket number [CGD07-93-111] and specific provisions to which each comment applies, and give reasons for each comment. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

At such time as it appears appropriate to propose a permanent change to the regulations, the Coast Guard plans to publish a notice of proposed rulemaking which will again request comments, and which will state a different period for the consideration of comments for those proposed regulations.

Notice

Notice is hereby given that:

1. The Coast Guard has granted the Florida Department of Transportation, a temporary deviation from the operating requirements of 33 CFR 117.5 governing the East Sunrise Boulevard Drawbridge, for the purpose of evaluating possible changes to the permanent regulations.

2. This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations § 117.43, for the purpose of evaluating a possible change to the current "on demand" operation. Under this deviation, the Sunrise Boulevard drawbridge need open only on the hour, quarter-hour, half-hour, and three-quarter hour from 10 a.m. to 6 p.m., daily.

3. In accordance with 33 CFR 117.261(a), public vessels of the United States, tugs with tows, and vessels in a situation where a delay would endanger life or property shall, upon proper signal, be passed through the draw at any time.

4. The 60-day trial period is scheduled to occur during the winter tourist season, when the beach areas experience the heaviest vehicular traffic and the greatest number of drawbridge openings. The daily 15-minute operating schedules will be in effect from 10 a.m. to 6 p.m. each day. When the test is completed, the results will be compared with the existing "on demand" opening schedule to determine which operating schedule best meets the needs of navigation, helps reduce vehicular traffic delays, and eliminates back-to-back openings.

5. This period of deviation is effective from December 1, 1993 through January 30, 1994.

Dated: November 24, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard Commander, Seventh Coast Guard District.

[FR Doc. 93–30705 Filed 12–15–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD01–93–154]

RIN 2115–AA97

Safety Zone: Providence River, Providence, RI

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is amending the temporary final rule published in the **Federal Register** on March 16, 1993 (58 FR 14151) to change the termination date of the safety zone established in the Providence River from December 31, 1993 to May 1, 1994.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Lieutenant Walter Petig of Marine Safety Office Providence at (401) 435–2300.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this regulation are Lieutenant W. Petig, Project Manager for the Coast Guard Captain of the Port, Providence, and Lieutenant Commander J. Stieb, Project Counsel for the First Coast Guard District Legal Office.

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective less than 30 days after **Federal Register** publication. The existing safety zone expires on December 31, 1993. Publishing a Notice of Proposed Rulemaking (NPRM) would be contrary to public interest since an extension in time for the existing safety zone is needed immediately to prevent a lapse in the regulations. A NPRM for a Regulated Navigation Area (RNA), which will replace the existing safety zone, was signed by the First Coast Guard District Commander on December 6, 1993. The Coast Guard intends to publish a final RNA prior to May 1, 1993.

Regulatory Assessment

This action is not considered a significant regulatory action under Executive Order 12866 and is not significant under "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040, February 26, 1979).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The environmental impact of the proposed rule has been evaluated using the Coast Guard's procedures for implementing the National Environmental Policy Act (Commandant Instruction M16475.1B). Under section 2.B.2.(c) of these procedures, it is concluded that this action is categorically excluded from further environmental documentation, since it is an action performed as part of Coast Guard operations to carry out statutory authority in the area of maritime safety and protection of the environment. A Categorical Exclusion Determination is available in the docket for inspection or copying.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulations

In consideration of the foregoing, part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Temporary § 165.T01–005 is amended, by revising paragraph (b) to read as follows:

§ 165.T01–005 Safety Zone: Providence River, Providence, RI.

* * * * *

(b) These regulations became effective at 8 a.m., February 19, 1993, and will terminate at 8 a.m., May 1, 1994, unless terminated sooner by the Coast Guard Captain of the Port, Providence.

* * * * *

Dated: December 9, 1993.

H.D. Robinson,

Captain, U.S. Coast Guard, Captain of the Port, Providence.

[FR Doc. 93–30706 Filed 12–15–93; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 64 and 69

[CC Docket No. 91–115; FCC 93–535]

Tariffing Requirements for Billing Name and Address

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration.

SUMMARY: On December 6, 1993, the Commission adopted a Second Order on Reconsideration refusing to modify its

basic finding that provision of billing name and address information is a service subject to Title II of the Communications Act of 1934, and so must be provided under tariff. But it did modify certain rules protecting end user privacy when local exchange carriers provide billing name and address information under tariff. Nineteen parties filed petitions for reconsideration of the rules adopted in the Second Report and Order in this docket, arguing that restrictions on the availability and usage of billing name and address information unduly limit legitimate business activities of local telephone companies and their access service customers. The petitioners also argued that prohibiting release of billing name and address information of unlisted or nonpublished end users unless those end users authorize such disclosure could result in unnecessary customer confusion. The Second Order on Reconsideration permits billing name and address to be disclosed on a bulk basis, but adopts new rules to ensure that this information is not used for marketing purposes. The Order also permits local telephone companies to assume that end users consent to disclosure of billing name and address information unless they withhold consent. Finally, the Order adopts a new rule to allocate costs to the billing name and address rate element.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, Tariff Division, Common Carrier Bureau, (202) 632-6917.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Order on Reconsideration adopted December 6, 1993, and released December 7, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Public Reference Room (room 230), 1919 M St., NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Suite 140, 2100 M Street, NW., Washington, DC 20037.

Regulatory Flexibility Analysis

The Commission has determined that section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), does not apply to these rules because they do not have a significant economic impact on a substantial number of small entities. The definition of a "small entity" in section 3 of the Small Business Act excludes any business that is dominant in its field of operation. Although some of the local exchange carriers that will be affected are very small, local exchange carriers do not qualify as small entities because each of them has a monopoly on ubiquitous access to the subscribers in their service area. The Commission has also found all exchange carriers to be dominant in its competitive carrier proceeding. See 85 FCC 2d 1, 23–24 (1980). To the extent that small telephone companies will be affected by these rules, the Commission hereby certifies that these rules will not have a significant effect on a substantial number of "small entities."

Summary of Report and Order

In the Second Report and Order in this Docket, the Commission required local exchange carriers (LECs) to provide their customers' billing name and address (BNA) information to interexchange carriers and other telecommunications service providers on a common carrier basis. Because widespread disclosure of BNA information could conflict with customers' reasonable expectations of privacy, the Commission also limited BNA disclosure, thus safeguarding these expectations. Nineteen parties filed petitions for reconsideration of the Second Report and Order, many contending that the Commission erred in requiring LECs to file tariffs for BNA service. The petitioners also argued that some of the privacy protections might interfere with established business practices, or might conflict with the interests of end users. The Commission refused to modify its basic finding that BNA provision must be provided under tariff, but it did modify the rules protecting end user privacy.

Local exchange carriers were not permitted to release BNA information on a "bulk" basis, *i.e.*, were not permitted to disclose all the BNA in their records. In addition, parties obtaining BNA information were not permitted to use it for any purpose other than billing and collection. Petitioners claim that the restrictions against bulk BNA disclosure and BNA usage precludes reasonable BNA uses, such as confirmation of service orders, or preventing fraud by customers who attempt to avoid paying a bill by switching to another interexchange carrier. The Second Order on Reconsideration lifts the prohibition against bulk disclosure. To maintain privacy protections, however, the Second Order on Reconsideration permits BNA information to be used only for the following purposes: (1) Billing customers, (2) any purpose associated with the "equal access" requirement of United States v. AT&T, 552 F.Supp. 131 (D.D.C. 1982), or (3) verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes. The Second Order on Reconsideration expressly forbids BNA information to be used for marketing purposes.

The Second Report and Order also required LECs to obtain a one-time written authorization for BNA disclosure from existing and future LEC cardholders having unpublished or unlisted numbers. With respect to third party and collect calls, customers are given an opportunity to accept or reject charges to their line accounts prior to the completion of those calls, and no BNA is released if the subscriber refuses the call. The Commission determined that the opportunity to refuse a call is sufficient to protect from unwanted disclosure the BNA of end users with unpublished or unlisted numbers. Finally, the Commission concluded that the line information database (LIDB), which maintains information on the credit status of calling cards, should be modified to notify telecommunications service providers that certain end users do not permit their BNA information to be released for billing purposes.

The petitioners expect few customers to respond to requests for BNA authorization, argue that the modification to LIDB would result in disabling the calling cards of end users who do not authorize BNA disclosure, and assert that these customers will be surprised and confused by this result. Petitioners also argue that the Commission should consider a subscriber's use of a calling card as implicit authorization for BNA disclosure, just as the Commission considers accepting a third party or collect call as implicit authorization. The Second Order on Reconsideration revises the written authorization requirement so that LECs may assume that end users do not oppose BNA disclosure unless they affirmatively withhold authorization. The Second Order on Reconsideration also agrees that calling card calls should not be treated differently from third party and collect calls, and enables end users to withhold consent for BNA disclosure for third party and collect calls as well as calling card calls. In addition, the Order reschedules the date on which LECs are required to file tariffs for the provision of BNA of unlisted and nonpublished subscribers, from February 9 to February 23, 1994.

Finally, one petitioner argued that the cost allocation rules adopted in the Second Report and Order do not allocate all the appropriate costs in the

BNA information rate element established in that Order. Therefore, in the Second Order on Reconsideration, the Commission revised Section 47 CFR 69.407 to allocate more costs to the BNA rate element.

Ordering Clauses

Accordingly, *It is ordered* That the petitions for reconsideration filed by the parties listed in Appendix A of this Order are granted to the extent indicated above, and otherwise are denied.

It is further ordered That pursuant to authority contained in sections 1, 4, and 201–205 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, and 201–205, parts 64 and 69 of the Commission's Rules, 47 CFR parts 64, 69, are amended as set forth below.

It is further ordered, Pursuant to section 405 of the Communications Act of 1934, as amended, 47 U.S.C. 405, that In the Matter of Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards, CC Docket No. 91–115, Second Report and Order, 8 FCC Rcd 4478 (1993) is modified to reflect the revisions to the deadlines established in paragraphs 45 and 46 of that Order, as specified above.[1]

It is further ordered That the policies, rules and requirements set forth herein are adopted.

It is further ordered That the provisions in this Second Order on Reconsideration will be effective January 18, 1994.

It is further ordered That the petition for waiver of the BNA Order filed by Pacific Bell and Nevada Bell is denied.

It is further ordered That the petition for waiver of the BNA Order filed by GTE Service Corporation is denied.

List of Subjects

47 CFR Part 64

Communications common carriers, Miscellaneous rules relating to common carriers.

47 CFR Part 69

Communications common carriers, Access charges.

Rules

Amendments to the Code of Federal Regulations

Title 47 of the CFR, parts 64 and 69 are amended as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

1. The authority citation for part 64 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted.

2. Section 64.1201 is amended by revising paragraph (a)(2), redesignating paragraph (c) as paragraph (c)(1) and revising it, adding new paragraph (c)(2), removing and reserving paragraph (d), and revising paragraphs (e)(2) and (e)(3) to read as follows:

§ 64.1201 Restrictions on billing name and address disclosure.

(a) * * *

(2) The term "telecommunications service provider" means interexchange carriers, operator service providers, enhanced service providers, and any other provider of interstate telecommunications services.

* * * * *

(c)(1) No telecommunications service provider or authorized billing and collection agent of a telecommunications service provider shall use billing name and address information for any purpose other than the following:

(i) Billing customers for using telecommunications services of that service provider and collecting amounts due;

(ii) Any purpose associated with the "equal access" requirement of United States v. AT&T 552 F.Supp. 131 (D.D.C. 1982); and

(iii) Verification of service orders of new customers, identification of customers who have moved to a new address, fraud prevention, and similar nonmarketing purposes.

(2) In no case shall any telecommunications service provider or authorized billing and collection agent of a telecommunications service provider disclose the billing name and address information of any subscriber to any third party, except that a telecommunications service provider may disclose billing name and address information to its authorized billing and collection agent.

(d) [reserved]

(e) * * *

(2) In addition to the notification specified in paragraph (e)(1) of this section, all local exchange carriers providing billing name and address information shall notify their subscribers with unlisted or nonpublished telephone numbers that:

(i) Customers have a right to request that their BNA not be disclosed, and that customers may prevent BNA disclosure for third party and collect calls as well as calling card calls;

(ii) LECs will presume that unlisted and nonpublished end users consent to disclosure and use of their BNA if customers do not affirmatively request that their BNA not be disclosed; and

(iii) The presumption in favor of consent for disclosure will begin 30 days after customers receive notice.

(3) No local exchange carrier shall disclose the billing name and address information associated with any subscriber who has affirmatively withheld consent for disclosure of BNA information.

PART 69—ACCESS CHARGES

3. The authority citation for part 69 continues to read as follows:

Authority: Sec. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154.

4. Section 69.407 is amended by redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

§ 69.407 Revenue accounting expenses in Account 6620.

* * * * *

(c) Revenue Accounting Expenses allocated to the interstate jurisdiction that are attributable to the provision of billing name and address information shall be assigned to the Billing Name and Address element.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–30607 Filed 12–15–93; 8:45 am]

BILLING CODE 6712–01–M

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[1] See 5 U.S.C. 553(d)(1).

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47 CFR Part 73

[MM Docket No. 91–339; RM–7857, RM–7901, RM–7921]

Radio Broadcasting Services; Alfred, Campbell and Waverly, NY

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WATS Broadcasting, Incorporated, substitutes Channel 271A for Channel 272A at Waverly, New York, and modifies the license of Station WAVR to specify operation on the alternate Class A channel. See 56 FR 60956, November 29, 1991. At the request of Pembrook Pines Elmira Ltd. and PMJ Communications, Inc., Channel 270A is allotted to Alfred, New York, as the community's first local commercial FM transmission service. Channel 270A can be allotted to Alfred without the imposition of a site restriction at coordinates North Latitude 42–15–30 and West Longitude 77–47–30. Channel 271A can be allotted to Waverly at the