

Corporation (Dow) to conduct the final clean-up. An agreement between EPA and Dow was entered in the United States District Court on May 22, 1991.

Final cleanup actions were conducted between November 1991 and July 1994. On August 30, 1994, Dow's contractor submitted a Remedial Action Report signifying successful completion of the remedial activities. The report documents and discusses the work performed at the site. KDEP concurred with the Remedial Action Report. The work was completed at a cost of \$2,928,681.

#### *C. Characterization of Risk*

Samples collected during the Removal and findings made in the RI/FS indicated unacceptable levels of contamination in subsurface soils, located in the central area and an outlying area of the site. Organic contaminants were concentrated primarily in the central area, and the outlying area contained only inorganic contaminants. In both these areas, the contaminants were located within the near-surface (1 to 2 feet deep) and subsurface (3 to 9 feet deep) of the Site.

At completion of the remedial action, confirmatory sampling verified that: (1) The ROD cleanup objectives were achieved, (2) all actions specified in the ROD were implemented, and (3) the Site no longer posed any threats to human health and the environment.

#### *D. Operation and Maintenance*

Since all of the contaminated soil was remediated, and quarterly monitoring of Boutwell Spring was terminated, no long term Operation and Maintenance (O&M) activities associated with the site are required.

#### *E. Five-Year Review*

EPA Region 4 has determined that the remedial action completed has attained the site remediation objectives outlined in the ROD and that no hazardous substances, pollutants, or contaminants remain on-site exceeding concentrations that will restrict unlimited use of the site or threaten human health through unlimited exposure. Therefore, a 5-year review of this site will not be required.

#### *F. Explanation of Significant Differences*

The remedy selected in the ROD was modified in two instances by issuance of an Explanation of Significant Differences (ESD). The first ESD was issued in March 1993. This ESD modified the remedy to include: removal of additional drums and contaminated material; identification of subsurface soils containing an organic liquid and development of a cleanup

plan; and treatment of contaminated rainwater collected during the excavation.

The second ESD was issued in August 1995 and it was done primarily to eliminate the ROD requirement for 5 years of monitoring of Boutwell Spring and the requirement for deed restrictions. Both of these requirements were dropped due to the fact that the cleanup objectives in the ROD were met, and no hazardous substances, pollutants, or contaminants remained onsite that would restrict unlimited use of or exposure to the Site.

#### *G. State Concurrence to Delete the Howe Valley Site*

The Commonwealth of Kentucky concurred with the deletion of the Site by letter dated December 7, 1995. EPA, with concurrence of the Commonwealth of Kentucky, believes that the following criterion for deletion have been met: (1) Responsible parties have implemented all appropriate response actions required; and (2) No further response action by responsible parties is appropriate. Subsequently, EPA is proposing deletion of Howe Valley Landfill Site from the NPL. Documents supporting this action are available from the public docket.

Dated: March 14, 1996.

Phyllis P. Harris,

*Acting Deputy Regional Administrator, U.S. EPA Region 4.*

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 46 CFR Part 14

[CGD 94-004]

RIN 2115-AE72

#### Electronic Records of Shipping Articles and Certificates of Discharge

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to revise the way that information on the "engagement" (shipment) and discharge of merchant mariners is maintained and submitted and to accomplish editorial and other, slight changes throughout its governing rules. The revision is due to statutory amendments directing, in effect, that ship-operating companies ("shipping companies") maintain shipping articles and certificates of discharge and that they electronically submit the information from them.

Nevertheless, it should reduce by about 70 percent the companies' burden of preparing articles and certificates, should reduce proportionately the number of personnel manually entering data and manually filing documents for the Coast Guard, and is in keeping with the Administration's Reinventing Government initiatives.

**DATES:** Comments must be received on or before May 28, 1996.

**ADDRESSES:** Comments may be mailed to the Executive Secretary, Marine Safety Council (G-LRA, 3406) [CGD 94-004], U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001, or may be delivered to room 3406 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267-1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Justine Bunnell, Marine Personnel Division, National Maritime Center, (703) 235-1951.

#### SUPPLEMENTARY INFORMATION

##### Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names addresses, identify this rulemaking [CGD 94-004] and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. A person may lodge a request for a public hearing by writing to the Marine Safety Council at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a

time and place announced by a later notice in the Federal Register.

#### Background and Purpose

In 1937 the Coast Guard became custodian of the program for protection of merchant mariners ("mariners"). To ensure that mariners are employed of their own will, that they are properly paid for their service, and that their time in service is properly documented, they and the masters or other persons in charge of their vessels, or these persons' representatives, sign contracts, known as shipping articles ("articles"). (From this point forward in the preamble, "masters" will stand for all of those persons other than mariners.)

The content and form, respectively, of articles for foreign and intercoastal voyages appear at 46 U.S.C., §§ 10302 and 10303, and 10304; the content of articles for coastwise voyages appears at 46 U.S.C. 10502, even as the form of these articles remains unspecified by statute; both the content and form of articles for voyages on the Great Lakes remain unspecified by statute. (Articles consist of three parts: (1) features of the voyage and of several reciprocal duties, clear down the caloric value of food served to each mariner daily; (2) particulars of engagement; and (3) particulars of discharge.) From 1937 usages or practices regarding articles have changed little. The same has been true regarding certificates of discharge.

When reporting for a foreign or intercoastal voyage—or for a coastwise voyage (including a voyage on the Great Lakes) aboard a vessel of 50 gross tons or more—the mariner presents to the master a valid merchant mariner's document ("MMD") listing the mariner's qualifications. The master reviews the MMD, verifies the mariner's qualifications, and enters the information in the particulars of engagement (part 2 of the articles), then the master and the mariner sign the articles in the appropriate places.

When finishing a foreign or intercoastal voyage, the master enters the mariner's wages and date of discharge in the particulars of discharge (part 3 of the articles), then the master and the mariner sign the articles in the other appropriate places. The master completes the certificate of discharge in the appropriate place, then the master and the mariner sign it in the appropriate place. (The certificate indicates the mariner's name and identification number, the dates and places of shipment and discharge, the name and official number of the vessel, and the name of the shipping company.) If the mariner holds a continuous discharge book, the master also

completes and signs it in the appropriate place. The master ensures that the entries in the continuous discharge book (if held), on the certificate, and in the two particulars are proper, corresponding entries.

The mariner keeps the continuous discharge book (if held). The mariner gets the original of the certificate of discharge.

When leaving the vessel before the end of the voyage, the mariner closes out the contract otherwise. He or she and the master sign a "mutual agreement" as well as the particulars of discharge; the master notes in these particulars that the reason for the mariner's leaving is mutual agreement. The master completes and signs a certificate of discharge, then the mariner signs it. If the mariner holds a continuous discharge book, the master completes and signs it.

At the end of the voyage, after all mariners have signed the particulars of discharge and received their certificates of discharge, the shipping company sends the articles and signed copies of the certificates to the Coast Guard. The Coast Guard reviews the articles and certificates to ensure that they are complete and accurate. Next, it manually enters the data off the certificates into its own sea-service database and manually files the certificates in the mariners' records. Last, it manually files the articles (alphabetically, by name of vessel).

These usages or practices have prevailed for two generations. On December 20, 1993, however, Congress enacted Public Law 103-206, the Coast Guard Authorization Act for 1994. Title IV, § 411, of that Act added 46 U.S.C., sub-§§ 10302(d) and 10502(e), each to read in full:

The owner, charterer, managing operator, master, or individual in charge shall maintain the shipping agreement ["articles"] and make [them] available to the [mariner].

It added 46 U.S.C. 10320 to read in full:

The Secretary shall prescribe regulations requiring vessel owners to maintain records of [mariners] on matters of engagement, discharge, and service. A vessel owner shall make these records available to the [mariner] and the Coast Guard on request.

It added 46 U.S.C., § 10502(f), to read the same, except that it substituted "shipping companies" for "vessel owners":

The Secretary shall prescribe regulations requiring shipping companies to maintain records of [mariners] on matters of engagement, discharge, and service. The shipping companies shall make these records available to the [mariner] and the Coast Guard on request.

It also raised the penalties in 46 U.S.C., §§ 10321(a) and 10508(b), from \$500.00 to \$5,000.00 for violating any provision of these chapters or regulations prescribed under these chapters.

The Coast Guard had proposed the legislation because of budgetary constraints leading to cuts in its workforce and of the advent of computerization. Shipping companies will now be responsible for keeping articles and signed copies of certificates of discharge. They will still be free to submit them traditionally—but will now be free to submit just the data from them electronically. Either way, the Coast Guard will now maintain its sea-service database electronically. The companies may develop their own software, use off-the-shelf software, or obtain software developed by the Coast Guard, to generate articles and certificates from existing records of personnel. Whichever of these three courses a particular company follows, the Coast Guard will provide standards that ensure compatibility for the electronic transfer of data from the company's system to the Coast Guard's sea-service database.

The primary purposes of this rule are to standardize the format of articles (for all voyages that require them), to eliminate redundant forms such as masters' reports of mariners shipped or discharged, to authorize persons acting as masters to initiate and sign articles and certificates of discharge, to confer on shipping companies the legal and practical ability to transfer sea-service data electronically to the Coast Guard, and in general to lighten recordkeeping and shift much of what little remains onto the companies. The secondary purposes of this rule are to publish new statutory penalties and to remove gender-based language. A welcome effect of it would be to clarify 46 CFR Part 14.

#### Discussion of Proposed Rule

There would persist four separate subparts. But they would present a logical flow of work, from the format of the articles to the transmittal and storage of finished articles and certificates of discharge.

New Subpart A (current Subpart 14.01)—General—would contain only the purposes of the rule, several addresses of the Coast Guard, and general doctrine on the disclosure and privacy of information held by the Coast Guard. It would remit treatment of shipping articles into new Subpart B.

New Subpart B (current Subpart 14.05)—Shipment of Merchant Mariners—would cover all voyages

requiring or electing articles rather than only foreign and intercoastal voyages.

New § 14.201, Voyages upon which shipping articles are required (current §§ 14.01–5 and 14.05–10(c), (d), and (e)) would state which voyages must have articles; abolish reference to the Master's Report of Seamen Shipped or Discharged, Form CG–735T, which is an obsolete form; and eliminate gender-based language. By abolishing reference to this form, § 14.213 would remove a non-statutory authority and would standardize articles on all voyages requiring them.

New § 14.203, Voyages upon which shipping articles are not required (current §§ 14.01–7 and 14.05–10(a)(1) through (5)), would contain only editorial changes.

New § 14.205, Production of credentials by merchant mariner signing shipping articles (current § 14.05–5), would eliminate gender-based language.

New § 14.207, Content and form of shipping articles (current § 14.05–1), would contain mainly editorial changes, but would elaborate the entries required in articles.

New § 14.209, Preparation of shipping articles at beginning of voyage (current § 14.05–3), would clarify that an individual other than the master may be in charge of the vessel and would require that the shipping company prepare a signed original, a signed copy, and an unsigned copy of them.

New § 14.211, Posting of copy of shipping articles (current § 14.05–2), would abolish reference to the Forecastle Card, Form CG–704.

New § 14.213, Report of shipment of merchant mariner (current § 14.05–10), would still treat the shipment of mariners but no longer their discharge and would abolish reference to the Master's Report of Seamen Shipped or Discharged, Form CG–735T, which is an obsolete form. By abolishing reference to this form, § 14.213 would comply with the statutory command, among others, to standardize articles on all voyages requiring them.

New Subpart C (current Subpart 14.10)—Discharge of Merchant Mariners—would cover discharges on all voyages requiring them.

New § 14.301, Paying off of merchant mariner during or after voyage upon which shipping articles are required (current § 14.05–7), would eliminate gender-based language.

New § 14.303, Discharge of fit merchant mariner in foreign port (current § 14.10–10), would eliminate gender-based language.

New § 14.305, Discharge of incapacitated merchant mariner in foreign port (current § 14.10–20), would

shorten and tighten the current treatment as well as would eliminate gender-based language.

New § 14.307, Entries in continuous discharge book, (current § 14.10–1), would abolish reference to the Record of Entry in Continuous Discharge Book, Form CG–718E, which is an obsolete form.

New § 14.309, Entries on certificate of discharge (current § 14.10–5), would require the shipping company to maintain copies of certificates of discharge as well as would eliminate gender-based language.

New § 14.311, Entries in shipping articles at end of voyage (current § 14.05–15), would clarify the current contents as well as would eliminate gender-based language.

New § 14.313, Report of discharge of merchant mariner (current § 14.05–10), would perpetuate only the portion of the current section pertaining to the discharge of mariners and would authorize the electronic transmission of data to the Coast Guard.

New § 14.315, Storage of shipping articles and of certificates of discharge (current § 14.05–15), would guide shipping companies in the storage of articles and of certificates of discharge and establish procedures for when companies merge or go out of business.

Current Subpart 14.15—Disclosure of Information Regarding Shipments and Discharges of Merchant Mariners—would vanish as a distinct subpart. Its one section would become new § 14.105.

New Subpart D (current Subpart 14.20)—Oceanographic-Research Vessels—would, of course, govern oceanographic-research vessels.

New § 14.401, General (current § 14.20–1), would correct statutory cites as well as would eliminate gender-based language.

New § 14.403, Exemptions (current § 14.20–10), would correct statutory cites as well as would eliminate gender-based language.

New § 14.405, Procedures (current § 14.20–5), would contain only editorial changes.

New § 14.407, Reports (current § 14.20–15), would abolish reference to the Master's Report of Seamen Shipped or Discharged, Form CG–735T, which is an obsolete form, as well as would eliminate gender-based language.

#### Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and would not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the

Office of Management and Budget (OMB) under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) [44 FR 11040 (February 26, 1979)]. Its economic impact would be so minimal, the Coast Guard expects, that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Many shipping companies, for their own purposes and convenience, already maintain electronic records of employment, from which they can generate both articles and certificates of discharge. Until now they have had to generate both by writing or typing. Now they will be able to print both, when required, from the computer; transmit the data off the certificates directly to the Coast Guard, using the software developed by the Coast Guard if not software developed by themselves or bought off the shelf; and still provide original certificates to their mariners. Upgrades or enhancements to the software, and long-term support for it, may cost them \$250 a year. But initial issue of it, and first-year support of it, will cost them nothing. And this new way of doing business will save them time, effort, and money—about \$1 million a year. [Since most of these benefits accrue through new reductions of paperwork, the detailed account of them appears under *Collection of Information*, below.]

#### Small Entities

Under the Regulatory Flexibility Act [5 U.S.C. 601 *et seq.*], the Coast Guard must consider whether this proposed rule, if adopted, would have a significant economic impact on a substantial number of small entities. "Small entities" may include (1) small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and (2) governmental jurisdictions with populations of less than 50,000.

Smaller shipping companies may lack the equipment necessary to prepare articles and certificates of discharge and to transmit the data from the certificates to the Coast Guard, electronically. But the Coast Guard would continue to accept copies of the certificates from these companies, by mail: They would not need to buy computers. This would let the Coast Guard maintain an accurate sea-service database receiving data from all companies required to submit them, by mail if not electronically.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that the rule, if adopted, would not have a significant

economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that the rule would have a significant economic impact on it, please submit a comment (see **ADDRESS**) explaining why you think it qualifies and in what way and to what degree this rule would economically affect it.

#### Collection of Information

Under the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*], OMB reviews each proposed rule that contains a collection-of-information requirement, to determine whether the practical value of the information would be worth the burden imposed by its collection. Collection-of-information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposed rule contains collection-of-information requirements in the following sections: 14.207, 14.209, 14.213, 14.301, 14.303, 14.305, 14.307, 14.309, 14.311, 14.313, 14.315, 14.405, and 14.407. The following particulars apply:

*DOT No:* 2115.

*OMB Control Nos:* 2115-0015 and 2115-0042.

*Administration:* U.S. Coast Guard.

*Title:* Electronic Records of Shipping Articles and Certificates of Discharge.

*Need for Information:* To protect merchant mariners by ensuring that records of their employment, wages, and next of kin are accurate and are available for their review.

*Proposed Use of Information:* To promote safety aboard domestic merchant vessels by ensuring that merchant mariners qualify by training and service for original or upgraded credentials; to maintain sea-service data toward retirement benefits; and to furnish those data in the many cases litigated over collisions, injuries, or asbestosis

#### Forms

##### Current

The regulated community—shipping companies and mariners—would be free to forgo the use of each of these records, in whole or in its current form: Forecastle Card, CG-704; Shipping Articles, CG-705A; Certificate of Discharge, CG-718A; Record of Entry, CG-718E; Continuous Discharge Book, CG-719A; and (although OMB did not renew authority for its use after February 1995) Master's Report of Seamen Shipped or Discharged, CG-735T.

#### Proposed

The regulated community would still have to deal with all of the data contained in these records, in some form: Shipping Articles, CG-705A; and Certificate of Discharge, CG-718A.

*Respondents:* The chief regulatory impact would fall on the medium and large shipping companies because they operate most of the vessels required to execute articles and certificates of discharge. They would continue to prepare, issue, and keep files of articles and of copies of certificates. They would make these files accessible to the Coast Guard and mariners upon request and would send—voyage by voyage, for the sea-service database of the Coast Guard—either copies of certificates, as they do now, though without articles, or data transmitted electronically from these files.

*Frequency of Response:* Articles and copies of certificates of discharges have been due after each voyage. Articles and certificates would still have to be prepared for each voyage. Data from certificates would still have to reach the Coast Guard after each voyage. But now these data could move by wire rather than by mail; no forms would need move, unless shipping companies chose not to avail themselves of the benefits of this proposed rule, until after a lag of ten years. The number and length of voyages depend on the companies.

*Estimate of Total Burden:*

##### Current

The master of each vessel prepares, by hand, large, antiquated articles and certificates of discharge. The shipping companies send these records to the Coast Guard. The Coast Guard enters, by hand, sea-service data into its database, and files originals of articles (alphabetically, by names of vessels) and copies of certificates in individual mariners' records. It leaves the copies in the records. But, after three years, it transfers articles to the Federal Records Center at Suitland, Maryland, which stores them for sixty years. And, after three years of inactivity, it transfers the records themselves to that Center, which again, stores them for sixty years.

##### Proposed

The master of each vessel would still prepare articles and certificates of discharge. The shipping company would retain the option of his or her preparing both forms manually and sending copies of certificates to the Coast Guard for entry into its sea-service database. But it would gain that of his or her preparing both forms electronically—on software developed

by themselves or the Coast Guard, or bought from stock—and of transmitting the data from certificates electronically to the Coast Guard. The Coast Guard would maintain the record of sea service in its database for six years after the mariner's last activity—such as taking out an upgraded, renewed, modified, or duplicate license or MMD, or sailing—and then transfer its record, in whatever electronic form, to the Center.

The burden would decrease greatly for companies that already had, or that obtained, the capability of preparing articles and certificates electronically from their current records of employment. (They would no longer collect data more than once and could collect them however they chose.) It would decrease considerably even for companies lacking this capability. They would, while their masters continued preparing articles and certificates manually, need only to send copies of certificates to the Coast Guard voyage by voyage; even they would not need to send articles to the Coast Guard voyage by voyage. So both the cost of sending articles oftener than once a year and the cost of sending them at all during the first ten years would be eliminated for all companies: All would maintain files of articles and of copies of certificates for ten years; then they would send the articles to the Coast Guard, which would prepare the articles for storage at the Federal Records Center, and the shipping companies would destroy their copies of certificates, since the Coast Guard would hold the record in its database. The added burden on these would take the forms of allotting more storage space in their offices to maintain the articles for ten years and of, about one work week for one person per company per year after the first ten years, both packing the articles to send to the Coast Guard for further storage and destroying their copies of discharges. The Coast Guard invites comments on the size of this added burden (or of any other burden, whether or not anticipated here).

*Average Burden-Hours for Each Respondent:*

Each year, shipping companies prepare about 8,000 articles with accompanying certificates of discharge; this costs them almost \$1.43 million. Each year hereafter, they would still prepare about 8,000 articles with accompanying certificates; but this would cost them just about \$0.43 million. The reason is the efficiency that this rule would bring. For each voyage, masters need about 2.5 hours to prepare the articles with accompanying certificates and send them. For each voyage hereafter, those able to file electronically would need about 0.5

hour to prepare the documents and 0.25 hour to file the data from them. The burden-hours would diminish by just about 70 percent.

#### *Savings*

#### *For Respondents*

The average salary for the staff to prepare the articles and certificates of discharge is \$50 an hour. That staff could save 20,000 hours a year, though the exact figure would depend on two variables: the numbers and kinds of vessels and voyages; and the offsetting burden, in the eleventh and later years, of purging ten-year-old copies of certificates and packing and sending ten-year-old articles. The Coast Guard invites comments on the sizes of these two variables.

#### *For Coast Guard*

The Coast Guard would save in three ways: (1) on its own personnel, (2) on its contractors' personnel, and (3) on storage-space. (1) Although some shipping companies may continue to submit paper copies of certificates of discharge requiring the Coast Guard to continue entering data from some records, the Coast Guard would save 950 hours or \$20,000 a year on its own personnel. (2) The Coast Guard has eliminated 10 "positions" and saved 19,000 hours and has lost \$460,000 a year from its budget to support contractors' personnel. And (3) the Coast Guard would need 15 or 20 fewer cubic feet of storage-space a year over the next 15 years and so would save \$7,500—at \$500 a year over those years—on storage-space.

OMB has approved these requirements on paperwork under a separate submittal pursuant to the Paperwork Reduction Act [44 U.S.C. 3501 *et seq.*]. Persons submitting comments on the requirements should submit their comments both to OMB and to the Coast Guard where indicated under **ADDRESS**.

#### *Federalism*

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that the rule would not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

#### *Environment*

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under paragraph 2.B.2 of Commandant Instruction M16475.1B, the rule is categorically excluded from further environmental documentation.

Subparagraphs 2.B.2.e.(34) (a) and (c) of that Instruction exclude, respectively, regulations that are editorial or procedural and those that concern maritime personnel. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under **ADDRESS**.

#### List of Subjects in 46 CFR Part 14

Oceanographic research vessels, Reporting and recordkeeping requirements, Seamen [Merchant mariners].

For the reasons set out in the preamble, the Coast Guard proposes to revise 46 CFR Part 14 to read as follows:

### **PART 14—SHIPMENT AND DISCHARGE OF MERCHANT MARINERS**

#### **Subpart A—General**

- 14.101 Purpose of part.
- 14.103 Addresses of Coast Guard.
- 14.105 Disclosure and privacy.

#### **Subpart B—Shipment of Merchant Mariners**

- 14.201 Voyages upon which shipping articles are required.
- 14.203 Voyages upon which shipping articles are not required.
- 14.205 Production of credentials by merchant mariner signing shipping articles.
- 14.207 Content and form of shipping articles.
- 14.209 Preparation of shipping articles at beginning of voyage.
- 14.211 Posting of copy of shipping articles.
- 14.213 Report of shipment of merchant mariner.

#### **Subpart C—Discharge of Merchant Mariners**

- 14.301 Paying off of merchant mariner during or after voyage upon which shipping articles are required.
- 14.303 Discharge of merchant mariner in foreign port.
- 14.305 Discharge of merchant mariner in foreign port with appearance before consul.
- 14.307 Entries in continuous discharge book.
- 14.309 Entries on certificate of discharge.
- 14.311 Entries in shipping articles at end of voyage.
- 14.313 Report of discharge of merchant mariner.
- 14.315 Storage of shipping articles and of certificates of discharge.

#### **Subpart D—Oceanographic-Research Vessels**

- 14.401 General.
- 14.403 Exemptions.
- 14.405 Procedures.
- 14.407 Reports.

Authority: 5 U.S.C. 552; 46 U.S.C. Chapters 103 and 105.

### **Subpart A—General**

#### **§ 14.101 Purpose of part.**

Part 14 prescribes rules for the shipment and discharge of merchant mariners aboard certain vessels of the United States.

#### **§ 14.103 Addresses of Coast Guard.**

(a) By mail: National Maritime Center (NMC-4A), U.S. Coast Guard, Suite 510, 4200 Wilson Boulevard, Arlington, VA 22203-1804

(b) By facsimile: 703-235-1062

#### **§ 14.105 Disclosure and privacy.**

The Coast Guard makes information available to the public in accordance with 49 CFR Part 7, including Appendix B.

### **Subpart B—Shipment of Merchant Mariners**

#### **§ 14.201 Voyages upon which shipping articles are required.**

(a) Before proceeding either upon a foreign, intercoastal, or coastwise voyage (including a voyage on the Great Lakes) listed in paragraph (b) of this section or with the engagement or replacement of a merchant mariner for such a voyage, each master or individual in charge of a vessel of the United States shall execute shipping articles however prepared, manually or electronically. The master or individual in charge and each mariner engaged or replaced shall sign the the articles.

(b) Except as provided by § 14.203 of this part, articles are required upon each voyage by a vessel of the United States—

(1) Of 100 tons or more, from a port in the United States to any foreign port other than a port in—

- (i) Canada;
- (ii) Mexico; or
- (iii) The West Indies;

(2) Of 75 gross tons or more, between a port of the United States on the Atlantic Ocean and a port of the United States on the Pacific Coast; or

(3) Of 50 gross tons or more, between a port in one State and a port in another State other than an adjoining State.

#### **§ 14.203 Voyages upon which shipping articles are not required.**

Although they may be used for the voyage, shipping articles are not required for any voyage by—

- (a) A yacht;
- (b) A vessel engaged exclusively in fishing or whaling;
- (c) A vessel aboard which the merchant mariners are by custom or agreement entitled to participate in the profits or results of a cruise or voyage;

(d) A vessel employed exclusively in trade on the navigable rivers of the United States;

(e) A ferry, or a tug used in ferrying, if the vessel is employed exclusively in trade on the Great Lakes, other lakes, bays, sounds, bayous, canals, or harbors; or

(f) An unrigged vessel other than a seagoing barge.

**§ 14.205 Production of credentials by merchant mariner signing shipping articles.**

On engagement for a voyage upon which shipping articles are required, each merchant mariner shall present to the master or individual in charge of the vessel every document, certificate, or license required by law for the service the mariner would perform.

**§ 14.207 Content and form of shipping articles.**

(a) (1) The content and form of shipping articles for each vessel of the United States of 100 gross tons or more upon a foreign or intercoastal voyage must conform to 46 U.S.C., §§ 10302, 10303, 10304, and 10305. The articles must identify the nature of the voyage and specify at least the name, the number of the license or merchant mariner's document, the capacity of service, the time due on board to begin work, and the name and address of the next of kin of, and the wages due to, each merchant mariner, either who was discharged or whose services were otherwise terminated during the month.

(2) The content and form of articles for each such vessel upon a coastwise voyage (including a voyage on the Great Lakes) must conform to 46 U.S.C. 10502. The articles must specify at least the matter identified by paragraph (a)(1) of this section, except that they must not specify the wages due to the mariner.

(b) Any shipping company that manually prepares the articles may, upon request, obtain Shipping Articles, Form CG-705A, from any Officer in Charge, Marine Inspection (OCMI), of the Coast Guard.

(c) Any company that electronically prepares the articles may, upon request submitted to either address in § 14.103, obtain a copy of software developed by the Coast Guard to produce articles in the proper format. Alternatively, a company may develop its own software or buy it off the shelf; but, in either of these cases, it must secure approval of the software from the National Maritime Center at either address in § 14.103 of this part.

**§ 14.209 Preparation of shipping articles at beginning of voyage.**

Each master or individual in charge of a vessel when shipping articles are

required shall prepare an original and two copies of the articles. The original and one copy must be signed by the master or individual in charge and by each merchant mariner under his or her command; but the second copy must not be signed by any of them.

**§ 14.211 Posting of copy of shipping articles.**

On commencement of a foreign, intercoastal, or coastwise voyage (including a voyage on the Great Lakes), each master or individual in charge of a vessel when shipping articles are required shall ensure that a legible copy of the articles, unsigned, is posted at a place accessible to the crew.

**§ 14.213 Report of shipment of merchant mariner.**

(a) When a vessel of the United States sails upon a foreign, intercoastal, or coastwise voyage (excluding a voyage on the Great Lakes), each master or individual in charge shall, at the commencement of the voyage, send one copy of shipping articles, signed by himself or herself and by each merchant mariner under his or her command, to the owner, charterer, or managing operator. He or she shall keep the original throughout the voyage and enter in it all changes made to the crew during the voyage.

(b)(1) When a vessel of the United States sails exclusively on the Great Lakes, each master or individual in charge shall, at the commencement of the season, or once the vessel is put into service, whichever occurs earlier, send one copy of articles, signed by himself or herself and by each mariner under his or her command, to the owner, charterer, or managing operator.

(2) The master or individual in charge shall send supplementary particulars of engagement covering each mariner engaged during the month, signed by himself or herself and by each mariner under his or her command, to the owner, charterer, or managing operator.

(3) The master or individual in charge shall, at the close of the season, or once the vessel is withdrawn from service, whichever occurs later, send articles, signed by himself or herself and by each mariner under his or her command, to the owner, charterer, or managing operator.

(c) When a vessel of the United States sails exclusively on bays or sounds, each master or individual in charge shall, on the last day of each calendar month, send articles, signed by himself or herself and by each mariner under his or her command, to the owner, charterer, or managing operator.

(d) Any person who fails to comply with the requirements of this section is subject to a civil penalty of \$5,000.

**Subpart C—Discharge of Merchant Mariners**

**§ 14.301 Paying off of merchant mariner during or after voyage upon which shipping articles are required.**

Each master or individual in charge of a vessel when shipping articles are required shall complete and sign, and each merchant mariner paid off during or after such a voyage shall sign, the articles and otherwise comply with the requirements of this subpart. When signed by the master or individual in charge and by the mariner, the articles constitute a release from the duties to which they bound their parties.

**§ 14.303 Discharge of merchant mariner in foreign port.**

Except as provided by § 14.305 of this part, in a foreign port where a United States consul or his or her representative ("consul") is available, each master or individual in charge of a vessel from which a merchant mariner is being discharged in that port and each mariner being discharged in that port shall sign the shipping articles and the certificate of discharge in the presence of the consul.

**§ 14.305 Discharge of merchant mariner in foreign port without appearance before consul.**

(a) In a foreign port where a United States consul or his or her representative ("consul") is available, the consul may waive the appearance before the consul of—

(1) Any master or individual in charge of a vessel, if the consul finds that he or she cannot accompany the merchant mariner to the consul without placing the crew, the vessel, or the cargo at risk by his or her absence; or

(2) Any mariner being discharged in that port, if the consul find that the mariner cannot accompany the master or individual in charge to the consul without placing himself or herself at risk.

(b) If the consul waives the personal appearance of either the master or individual in charge or the mariner, the master or individual in charge shall, as the case may be, send or give the consul—

(1) A written statement showing the name and official number of the vessel, the name of the shipping company, and the type of voyage; the name, the social-security number, the capacity of service, the date and place of engagement, and the date and place of discharge of the mariner; and the reasons why the

mariner is being discharged and why, as the case may be, the master or individual in charge or the mariner cannot appear before the consul;

(2) An account of the wages due the mariner; and

(3) Either the funds to pay the wages or the commitment of the company to pay.

(c) If the consul deems the statement, the account, and the funds or the commitment satisfactory, the consul may discharge the mariner as if both the master or individual in charge and the mariner had appeared before him or her.

(d) If the consul deems the statement, the account, or the funds or the commitment unsatisfactory, the consul may decline to discharge the mariner—and may order the return of him or her to the vessel at the expense of the vessel, so long as the return will cause no harm to the mariner, the crew, the vessel, or the cargo.

(e) When an incapacitated merchant mariner cannot sign the shipping articles, the certificate of discharge, or any other form (including a Mutual Release, Form CG-713A) on leaving the vessel, the master or individual in charge of the vessel shall complete the master's part of the form and place the form with the mariner.

#### **§ 14.307 Entries in continuous discharge book.**

If a merchant mariner holds a continuous discharge book, the master or individual in charge of the vessel shall make the proper entries in it.

#### **§ 14.309 Entries on certificate of discharge.**

(a) Each master or individual in charge of a vessel shall, for each merchant mariner being discharged from the vessel, prepare a certificate of discharge and two copies—whether by writing or typing them on the prescribed form with permanent ink or generating them from computer in the prescribed format—and shall sign them with permanent ink.

(b) Each mariner being discharged shall sign the certificate and both copies with permanent ink.

(c) When the mariner leaves the vessel, the master or individual in charge shall give the certificate to the mariner.

(d) Except as directed by § 14.315 of this part, the shipping company shall keep both copies of the certificate.

#### **§ 14.311 Entries in shipping articles at end of voyage.**

(a) At the end of each voyage upon which shipping articles are required, the master or individual in charge of the vessel shall—

(1) Complete the articles, conforming the pertinent entries in them to those on

the certificate of discharge and its copies;

(2) Note in the articles the execution of each Mutual Release;

(3) Attach to the articles each Mutual Release and a copy of each certificate; and

(4) Pay to each merchant mariner all wages due.

(b) When he or she is paid off, each mariner shall sign the articles.

#### **§ 14.313 Report of discharge of merchant mariner.**

At the end of each foreign, intercoastal, or coastwise voyage by a vessel of the United States, or of each voyage by such a vessel that sails exclusively on bays or sounds (or by such a vessel at the close of the season on the Great Lakes, or once the vessel is withdrawn from service there, whichever occurs later), the shipping company shall either—

(a) Send a copy of each certificate of discharge to the address in paragraph 14.103(a) of this part; or

(b) Electronically transmit the data that go onto the certificates, in proper format, via disk to the address in § 14.103(a) of this part, via modem to an electronic address which the shipping company may request from the National Maritime Center or via internet.

#### **§ 14.315 Storage of shipping articles and of certificates of discharge.**

(a) Each shipping company shall keep all original shipping articles and copies of all certificates of discharge for ten years. The Coast Guard will dispose of copies of certificates submitted manually, once the data are entered into its sea-service database and are validated.

(b) Each shipping company that goes out of business or merges with another company shall send all original articles to the address in paragraph 14.103(a) of this part within 30 days of the transaction.

### **Subpart D—Oceanographic-Research Vessels**

#### **§ 14.401 General.**

Unless otherwise provided by Title 46, U.S.C., by any amending or supplementing that Title, or by this subpart, that Title—as far as it governs the employment of merchant mariners—remains, and any act amending or supplementing that Title becomes, applicable to oceanographic-research vessels.

#### **§ 14.403 Exemptions.**

(a) Certain requirements of Title 46, U.S.C., do not apply to the employment of merchant mariners on oceanographic-

research vessels. These requirements are those concerned with, among other things, the shipment and discharge of mariners, their pay and allotments, and the adequacy of their clothing. 46 U.S.C. 2113(2) allows exemptions of oceanographic-research vessels from certain requirements of Part B, C, F, or G of Subtitle II of Title 46 U.S.C., upon such terms as the Secretary deems suitable. The exemptions available under this subpart are subject to the terms specified below:

(1) No use of any exemption relieves the owner, charterer, managing operator, master, or individual in charge of the vessel of other statutory responsibilities for the protection of every mariner under his or her command.

(2) If it is presented at a reasonable time and in a reasonable manner, the master or individual in charge shall receive, consider, and appropriately address the legitimate complaint of any mariner.

(b) For any oceanographic-research vessel sailing with any mariner employed by any firm, association, corporation, or educational or governmental body or agency, the Commandant may grant exemptions from Title 46, U.S.C.:

- (1) Section 10301, Application.
- (2) Section 10302, Shipping articles (for foreign and intercoastal voyages).
- (3) Section 10307, Posting of articles.
- (4) Section 10308, Foreign engagements.
- (5) Section 10311, Certificates of discharge.
- (6) Sections 10313 & 10504, Wages.
- (7) Sections 10314 & 10505, Advances.
- (8) Section 10315, Allotments.
- (9) Sections 10316 & 10506, Trusts.
- (10) Sections 10321 & 10508, General penalties.

(11) Section 10502, Shipping articles (for coastwise voyages).

(12) Section 10509, Penalty for failure to begin coastwise voyages.

#### **§ 14.405 Procedures.**

(a) Upon written request by the owner, charterer, managing operator, master, or individual in charge of the vessel to the OCM of the Coast Guard in whose zone the vessel is located, the Commandant may grant an exemption of any oceanographic-research vessel designated by 46 U.S.C. 2113(2) from any requirement of any section listed by paragraph 14.403(b) of this part.

(b) The request must state—

- (1) Any requirement of any section listed by paragraph 14.403(b) of this part from which the applicant wishes an exemption; and
- (2) What business-practices regarding, among other things, the shipment and

discharge of merchant mariners, their pay and allotments, and the adequacy of their clothing would justify the exemption.

(c) The OCMI will forward the request, along with his or her recommendation, to the Commandant, who will determine whether to grant any exemption of any vessel from any requirement. The OCMI will issue a letter indicating any exemption granted. The master or individual in charge of the vessel shall keep the letter aboard the vessel.

(d) If operating conditions change, the owner, charterer, managing operator, master, or individual in charge of the vessel shall so advise the OCMI. The OCMI will forward pertinent information on how the conditions have changed, along with his or her recommendation, to the Commandant, who will determine whether any exemption should remain granted.

#### **§ 14.407 Reports.**

(a) The owner, charterer, managing operator, master, or individual in charge of each oceanographic-research vessel of 100 gross tons or more shall maintain a record of the employment, discharge, or termination of service of every merchant mariner in the crew. At least every six months, the person maintaining this record shall transmit it to the Coast Guard—either manually, in the form of a copy of a certificate of discharge, or electronically.

(b) The owner, charterer, managing operator, master, or individual in charge of the vessel shall keep original shipping articles and a copy of each certificate ready for review by the Coast Guard or the concerned mariner upon request. (After the effective date of this rule, the Coast Guard will no longer keep either original articles or copies of certificates; it will keep only electronic records of employment.)

(c) The master or individual in charge of the vessel shall ensure that every entry made in the articles agrees with the corresponding entry made in a continuous discharge book, on a certificate, or in any other proof of sea service furnished to the mariner.

(d) Each oceanographic company shall keep all original articles and copies of all certificates for ten years. After then each such company shall send all articles to the address in paragraph 14.103(a) of this part.

(e) Each oceanographic company that goes out of business or merges with another company shall send all original articles to the address in paragraph 14.103(a) of this part, within 30 days of the transaction.

Dated: March 21, 1996.

J.C. Card,

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

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## **FEDERAL COMMUNICATIONS COMMISSION**

### **47 CFR Part 76**

[CS Docket No. 96-57; FCC 96-117]

### **Telecommunications Act of 1996**

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commission is issuing this Notice of Proposed Rulemaking ("NPRM") in order to solicit comment on the proper implementation of Section 623(a)(7)(A) of the Communications Act. This NPRM is necessary to fulfill the statutory requirement in Section 301(j) of the Telecommunications Act of 1996 that the Commission allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the varying levels of functionality of the equipment within each such broad category. This proceeding will permit the Commission to issue final rules.

**DATES:** Comments are due April 12, 1996. Reply comments are due April 22, 1996.

**FOR FURTHER INFORMATION CONTACT:** Ibn Spicer, Cable Services Bureau, Financial Analysis Division (202) 418-2296.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Notice of Proposed Rulemaking in CS Docket No. 96-57, FCC 96-117, adopted March 18, 1996 and released March 20, 1996. The complete text of this Notice of Proposed Rulemaking is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street N.W., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, Inc. ("ITS Inc.") at (202) 857-3800, 2100 M Street N.W., Suite 140, Washington, DC 20017.

Synopsis of Notice of Proposed Rulemaking

1. In this Notice of Proposed Rulemaking ("NPRM"), we propose to amend our rules to implement Section 301(j) of the Telecommunications Act of

1996 ("1996 Act") which adds a new Section 623(a)(7) to the Communication Act of 1934, as amended ("Communications Act"). Section 301(j) of the 1996 Act requires that the Commission allow cable operators to aggregate, on a franchise, system, regional, or company level, their equipment costs into broad categories regardless of the varying levels of functionality of the equipment within each such broad category. That section also provides that "[s]uch aggregation shall not be permitted with respect to equipment used by subscribers who receive only a rate regulated basic tier."

Discussion

#### *A. Cost Categorization*

2. Section 301(j) of the 1996 Act requires the Commission to allow regulated operators to aggregate "their [customer] equipment costs into broad categories, such as converter boxes, regardless of the varying levels of functionality of the equipment within each such broad category." We tentatively conclude that the statute intends that equipment be classified and placed in categories based on the primary purpose of the equipment.

3. We propose to amend the Equipment Basket provisions in Section 76.923(c) to allow categorization of customer equipment costs into broad categories. We further propose eliminating the language in Sections 76.923(f) and (g) that requires separate charges for each significantly different type of remote control device, converter box, and other customer equipment. We propose amending the rules to require that equipment be categorized based on its primary purpose. Thus, customer equipment, except equipment used by basic-only subscribers, that is used for the same purpose may be aggregated into the same broad category and priced at the same rate, regardless of the level of functionality. We seek comment on whether the Commission should establish a definition of the term "level of functionality" in order to bring more certainty to these new rules. If commenters believe we should do so, they should propose a definition of that term. Because equipment rates to subscribers must be based on actual costs, operators must base equipment charges on the same aggregation level as their costs. We propose amending our rules to make this explicit. Section 76.923(l) currently permits small systems to average costs for "similar types of equipment" on a company-wide basis. We propose eliminating this section since all systems shall be permitted to aggregate equipment