

FOR FURTHER INFORMATION CONTACT:

Gregory Ormsby, Engineer, Federal Emergency Management Agency, room 713, 500 C Street SW., Washington, DC 20472, (202) 646-2726.

SUPPLEMENTARY INFORMATION:

The Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5121 *et seq.*, authorizes the President to provide supplemental assistance to State and local governments and certain private nonprofit organizations after the President declares a major disaster. Section 406 of the Stafford Act, "Repair, Restoration, and Replacement of Damaged Facilities," authorizes the President to fund the repair, restoration, reconstruction, or replacement of a damaged public facility or private nonprofit facility "... on the basis of the design of the facility as it existed immediately prior to the major disaster and in conformity with current applicable codes, specifications, and standards." Under authority delegated by the President to FEMA, we have interpreted the phrase, "... in conformity with *current* codes, specifications, and standards ..." to mean those codes, specifications, and standards that are officially adopted and implemented before project approval, that is, the date FEMA approves the repair estimate for a specific facility. This interpretation is codified at 44 CFR 206.226(b)(3).

44 CFR 206.226(b)(3) allows applicants to incorporate new codes and standards in the eligible repair of damaged facilities as well as the construction of new facilities. Damage mitigation achieved by the new codes would lessen the impact of future disasters and reduce future Federal disaster expenditures. This change was made from pre-Stafford Act regulations to encourage adoption of codes at a time when there is a heightened awareness of the need for improved codes.

Recently, FEMA has experienced several unintended consequences of this interpretation of the law, which have had negative impacts on the program. We have experienced protracted delays in repairing eligible projects as applicants debate the adoption of codes and standards that will affect eligible damaged facilities and the amount of Federal assistance they will receive. After adopting new codes and standards, there have been protracted discussions with FEMA regarding the applicability of the new codes and standards to the damaged facilities. These actions have resulted in extensive delays in repairing damaged facilities

and subsequently in closing out disasters.

After review of the statute and a General Accounting Office (GAO) report entitled "Disaster Assistance: Improvements Needed in Determining Eligibility for Public Assistance" (GAO/RCED-96-113), which commented on this provision in the regulations, FEMA determined that its *current* interpretation is not fully consistent with Congressional intent. FEMA believes that the word "current" means *at the time of the disaster* and not at the time of project approval. This is consistent with Congressional intent.

Accordingly, FEMA proposes to revise 44 CFR 206.226 (b)(3) to reflect this revised interpretation. The proposed rule would become effective for disasters declared one year or more after publication of the final rule. During this period, applicants will be encouraged to adopt improved building codes before their next disaster. In this way, all those structures built between the adoption of a code and the next disaster will benefit from better construction and have less damage. All other provisions of 44 CFR 206.226(b) would remain unchanged.

National Environmental Policy Act. This proposed rule would be categorically excluded from the preparation of environmental impact statements and environmental assessments as an administrative action in support of normal day-to-day grant activities. No environmental assessment or environmental impact statement has been prepared.

Regulatory Flexibility Act. A regulatory impact analysis is in process to determine the effect of this rule on small communities.

Paperwork Reduction Act. This rule does not involve any collection of information for the purposes of the Paperwork Reduction Act.

Executive Order 12612, Federalism. In promulgating this rule, FEMA has considered the President's Executive Order 12612 on Federalism. This rule makes no changes in the division of governmental responsibilities between the Federal government and the States. Grant administration procedures in accordance with 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, remain the same. No Federalism assessment has been prepared.

Executive Order 12778, Civil Justice Reform. This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, Civil Justice Reform, dated October 25, 1991, 3 CFR, 1991 Comp., p. 359.

List of Subjects in 44 CFR Part 206

Disaster assistance, Public assistance. Accordingly, 44 CFR part 206 is proposed to be amended as follows:

1. The authority citation for part 206 continues to read as follows:

Authority: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12148, 44 FR 43239, 3 CFR, 1979 Comp., p. 412; and E.O. 12673, 54 FR 12571, 3 CFR, 1989 Comp., p. 214.

2. Section 206.226 (b)(3) is proposed to be revised to read as follows:

§ 206.226 Restoration of damaged facilities.

* * * * *

(b)(1) * * *

(2) * * *

(3) Be in writing and formally adopted by the applicant or State prior to the disaster declaration date or be a legal Federal requirement applicable to the type of restoration;

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Dated: October 16, 1996.

James L. Witt,

Director.

[FR Doc. 96-27430 Filed 10-24-96; 8:45 am]

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FEDERAL MARITIME COMMISSION**46 CFR Part 552**

[Docket No. 95-15]

Availability of the Annual Financial and Operating Statements Filed by Domestic Offshore Carriers

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: The Federal Maritime Commission ("FMC" or "Commission") is withdrawing the proposed rule amending its regulations governing the availability of the annual financial and operating statements filed by vessel-operating common carriers by water providing port-to-port services in the domestic offshore trades, because jurisdiction over such services has been transferred to the Surface Transportation Board.

FOR FURTHER INFORMATION CONTACT:

Austin L. Schmitt, Director, Bureau of Economics and Agreement Analysis, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573-0001, 202-523-5787.

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W.,

Washington, D.C. 20573-0001, 202-523-5740.

SUPPLEMENTARY INFORMATION:

The Commission previously published a Notice of Proposed Rulemaking (60 FR 53572) in this proceeding seeking comments on allowing limited access to the annual financial and operating statements filed by ocean common carriers providing port-to-port services in the domestic offshore trades. The ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803 ("ICC Termination Act"), has since transferred jurisdiction over such services, which had formerly been regulated by the FMC under the Intercoastal Shipping Act, 1933, 46 U.S.C. app. 843-848 ("1933 Act"), to the Surface Transportation Board ("Board"), and provides that such services are subject to rate regulation by the Board. Accordingly, no further Commission action in this proceeding is appropriate and the proposed rule is withdrawn.

By the Commission.

Joseph C. Polking,
Secretary.

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BILLING CODE 6730-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1842 and 1852

Revision to NASA FAR Supplement Coverage on Contractor Financial Management Reporting

AGENCY: Office of Procurement, Contract Management Division, National Aeronautics and Space Administration (NASA).

ACTION: Notice of Proposed rulemaking.

SUMMARY: Changes are proposed to update the NASA FAR Supplement (NFS) coverage on contractor financial management reporting to make it compatible with current NASA reporting policy, including accounting requirements imposed by the Chief Financial Officers Act of 1990, the need for complete, timely and accurate project cost information and reassessment of the appropriate level of responsibility and authority in accordance with Government downsizing initiatives.

The revised NFS coverage eliminates requirements for use of the Monthly Contractor Financial Management Performance Analysis Report, NASA Form 533P, and the clause included in 1852.242-74. NASA no longer uses the NF 533P format and is revising its

approach to performance measurement reporting as a result of discussions with other Government agencies and industry. Revisions to the NASA performance measurement requirements will be published at a later date. The revised coverage gives regulatory effect to the publication of revised guidance on NASA Contractor Financial Management Reporting in NASA Procedures and Guidelines (NPG) 9501.2; provides for approval of exceptions from the standard reporting requirements set forth in the NPG at NASA Centers, rather than at Headquarters; permits waiver of NF 533Q reporting for certain contracts where NF 533M reporting provides adequate information; encourages the submission of reports earlier than the required due dates whenever feasible; and permits the use of alternative due dates, but only when data will be received in time for use in NASA's monthly cost accrual process. The time period for submission of the initial report is extended from 10 to 30 days after authorization to proceed has been granted. Contracting officers are given additional options to direct the contractor to report only when actual cost changes occur or suspend reporting altogether when the contract effort is completed and NASA has accepted all contract line items. Prime contractors are no longer required to use NASA Forms 533 for subcontractor reporting, but must ensure that their NF 533 reports include accurate and timely subcontractor cost data. The revised procedures will be required to be used on all new contracts issued after the proposed regulations are adopted as a final rule. Existing contracts at that time will not require modification to incorporate the changes unless: requested by the contractor; there is a demonstrated cost savings; or there will be no cost for implementation.

DATES: Comments must be received on or before November 25, 1996.

ADDRESSES: Submit comments to Larry G. Pendleton, Contract Management Division (Code HK), Office of Procurement, NASA Headquarters, Washington, DC 20546. Comments on the paperwork burden should be addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NASA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Mr. Larry G. Pendleton, NASA Headquarters, Code HK, (202) 358-0487.

SUPPLEMENTARY INFORMATION:

Background

NASA is updating its requirements for contractor financial management reporting in order to comply with the Chief Financial Officers Act of 1990, obtain complete, timely and accurate project cost information, and implement changes in the responsibilities and authorities of both NASA Headquarters and subordinate organizational elements.

The Chief Financial Officers Act of 1990 requires that NASA publish audited annual financial statements. This requirement has placed additional emphasis on the need for timely and accurate contract cost data to ensure the accuracy of NASA accounting information.

NASA's guidance for contractor financial management reporting, NPG 9501.2, has been revised to clarify reporting requirements, address problems and questions that have arisen over time, and reassign responsibilities and authorities to permit more effective operations in today's environment. Training on NASA's expectations for contractor financial management reporting has been presented to all NASA contractors holding cost-reimbursement contracts over the past two years, and contractors have informally reviewed and commented upon the revised guidance. These changes to the NFS recognize the modified NPG 9501.2 and provide complimentary coverage.

Based upon discussions with other Government agencies and industry representatives, NASA has eliminated the Monthly Contractor Financial Management Performance Report, NF 533P, from the NASA Contractor Financial Management Reporting system. The agency is revising its approach to performance measurement, or earned value, reporting to make it more consistent with Department of Defense requirements and existing contractor systems.

Change Highlights

The following revisions eliminate the use of the Monthly Contractor Financial Management Performance Analysis Report, NASA Form 533P. The contract clause at 1852.242-74 which required use of NF 533P is deleted. Exceptions from the standard reporting requirements are authorized to be approved at NASA Centers rather than at NASA Headquarters. The time period for submission of the initial report is extended from 10 to 30 days after contract authorization to proceed has been granted. Prime contractors are no