

Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (32)(e), of the Instruction, from further environmental documentation. It has been determined that this final rule does not significantly impact the environment.

#### List of Subjects in 33 CFR Part 117

Bridges.

#### Regulations

■ Under 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g), and for the reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

■ 1. The authority citation for part 117 continues to read as follows:

**Authority:** 33 U.S.C. 499; DHS Delegation No. 0170.1; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

#### § 117.907 [Removed]

■ 2. Remove § 117.907.

Dated: February 13, 2004.

J.L. Grenier,

*Captain, Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–4279 Filed 2–25–04; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 117

[CGD01–04–012]

#### Drawbridge Operation Regulations: Hackensack River, NJ

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of temporary deviation from regulations and request for comment.

**SUMMARY:** The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations to test an alternate drawbridge operation regulation for the AMTRAK Portal Bridge, mile 5.0, across the Hackensack River at Little Snake Hill, New Jersey. Under this temporary 90-day deviation the two time periods in the morning and afternoon, Monday through Friday, when the bridge may

remain closed to vessel traffic, will be expanded. Additional bridge openings will be provided for commercial vessels after at least a one-hour advance notice is given. The purpose of this temporary deviation is to test an alternate drawbridge operation schedule for 90 days and solicit comment from the public.

**DATES:** This deviation is effective from March 1, 2004 through May 29, 2004. Comments must reach the Coast Guard on or before 30 June 2004.

**ADDRESSES:** You may mail comments to Commander (obr), First Coast Guard District Bridge Branch, One South Street, Battery Park Building, New York, New York, 10004, or deliver them to the same address between 7 a.m. and 3 p.m., Monday through Friday, except, Federal holidays. The telephone number is (212) 668–7165. The First Coast Guard District, Bridge Branch, maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the First Coast Guard District, Bridge Branch, 7 a.m. to 3 p.m., Monday through Friday, except Federal holidays.

#### Request for Comments

We encourage you to participate in this schedule test by submitting comments or related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–04–012), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know if they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

**FOR FURTHER INFORMATION CONTACT:** Gary Kassof, Project Officer, First Coast Guard District, at (212) 668–7165.

**SUPPLEMENTARY INFORMATION:** The AMTRAK Portal Bridge has a vertical clearance in the closed position of 23 feet at mean high water and 28 feet at mean low water. The existing drawbridge operation regulations are listed at 33 CFR 117.723(c).

The bridge owner, National Railroad Passenger Corporation (AMTRAK) requested a temporary deviation from the drawbridge operation regulations to test for a period of 90 days, an alternate

drawbridge operation schedule. This temporary 90-day deviation will expand the two time periods in the morning and afternoon Monday through Friday when the bridge may remain closed to vessel traffic. Rail traffic during the morning and afternoon commuter periods have increased. Bridge openings during the two commuter time periods have caused delays to rail traffic prompting the bridge owner to request the expansion of the bridge closure periods week days, Monday through Friday.

The existing drawbridge operation regulations allow the bridge to remain closed to vessel traffic, Monday through Friday, from 7:20 a.m. to 9:20 a.m. and from 4:30 p.m. to 6:50 p.m., daily.

Under this 90-day temporary deviation, effective from March 1, 2004 through May 29, 2004, the AMTRAK Portal Bridge need not open for vessel traffic, Monday through Friday, from 6 a.m. to 10 a.m. and from 4 p.m. to 8 p.m., daily.

Additional bridge openings will be provided for commercial vessels from 6 a.m. to 7:20 a.m., from 9:20 a.m. to 10 a.m., from 4 p.m. to 4:30 p.m. and from 6:50 p.m. to 8 p.m., if at least a one-hour advance notice is given by calling the number posted at the bridge.

This deviation from the operating regulations is authorized under 33 CFR § 117.43.

Dated: February 13, 2004.

John L. Grenier,

*Captain, U.S. Coast Guard, Acting Commander, First Coast Guard District.*

[FR Doc. 04–4280 Filed 2–25–04; 8:45 am]

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#### DEPARTMENT OF HOMELAND SECURITY

#### Coast Guard

#### 33 CFR Part 165

[COTP San Francisco Bay 03–002]

RIN 1625–AA00

#### Security Zones; San Francisco Bay, California

**AGENCY:** Coast Guard, DHS.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard is establishing moving and fixed security zones extending 100 yards around and under all High Interest Vessels (HIVs) that enter, are moored in, anchored in or depart from the San Francisco Bay and Delta ports, California. These security zones are necessary security measures and are intended to protect the public and ports from potential

subversive acts. Entry into these security zones is prohibited, unless specifically authorized by the Captain of the Port San Francisco Bay, or his designated representative.

**DATES:** This rule is effective March 29, 2004.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket 03-002 and are available for inspection or copying at the Waterways Management Branch between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Doug Ebberts, Waterways Management Branch, U.S. Coast Guard Marine Safety Office San Francisco Bay, (510) 437-3073.

#### **SUPPLEMENTARY INFORMATION:**

##### **Regulatory Information**

On December 31, 2002, we published a final rule entitled "Security Zones, San Francisco Bay, CA" in the **Federal Register** (67 FR 79854) creating section 165.1183 of title 33 of the Code of Federal Regulations (CFR), setting forth security zones for cruise ships and tank vessels. On November 12, 2003, we published a notice of proposed rulemaking (NPRM) entitled "Security Zones; San Francisco Bay, California" in the **Federal Register** (68 FR 64038), proposing to amend section 165.1183 to include HIV's as protected vessels, along with cruise ships and tank vessels. We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

On February 27, 2003, we published a rule in the **Federal Register** (68 FR 9003) creating temporary section 165.T11-077 of title 33 of the Code of Federal Regulations (CFR). Under temporary section 165.T11-077, which expired at 11:59 p.m. P.s.t. on May 31, 2003, the Coast Guard established 100-yard security zones around all High Interest Vessels (HIV's) that entered, were moored in, anchored in or departed from the San Francisco Bay and Delta ports.

On May 30, 2003, a change in effective period temporary rule was published in the **Federal Register** (68 FR 32368) under the same previous temporary section 165.T11-077, which expired at 11:59 p.m. P.d.t. on September 30, 2003.

On September 26, 2003, another change in effective period temporary rule was published in the **Federal Register** (68 FR 55445) under the same previous temporary section 165.T11-

077, which is set to expire at 11:59 p.m. P.s.t. on March 31, 2004. The Captain of the Port has determined that the need for continued security regulations exists. Accordingly, this final rule creates a permanent regulation for security zones in the same locations covered by the temporary final rule published on February 27, 2003 (68 FR 9003), which was later extended by two other rules published in the **Federal Register** on May 30, 2003 (68 FR 32368), and September 26, 2003 (68 FR 55445).

These security zones are activated when any HIV passes shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) and remains in effect while the vessel is underway, anchored or moored within in the San Francisco Bay and Delta ports. When activated, this security zone will encompass all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any HIV in the San Francisco Bay and Delta ports. This security zone is automatically deactivated when the HIV passes seaward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W & 37°46.5' N, 122°35.2' W, respectively) on its departure from port. Vessels and people may be allowed to enter an established security zone on a case-by-case basis with authorization from the Captain of the Port.

Vessels or persons violating this rule will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed \$27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of \$250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: seizure and forfeiture of the vessel to the United States, a maximum criminal fine of \$10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State,

county, municipal, and private agency to assist in the enforcement of the regulation.

#### **Background and Purpose**

Since the September 11, 2001, terrorist attacks on the World Trade Center in New York, the Pentagon in Arlington, Virginia, and Flight 93, the Federal Bureau of Investigation (FBI) has issued several warnings concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan and the conflict in Iraq have made it prudent for U.S. ports to be on a higher state of alert because Al-Qaeda and other organizations have declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

The threat of maritime attacks is real as evidenced by the attack on the USS Cole and the subsequent attack in October 2002 against a tank vessel off the coast of Yemen. These threats manifest a continuing threat to U.S. assets as described in the President's finding in Executive Order 13273 of August 21, 2002 (67 FR 56215, September 3, 2002), that the security of the U.S. is endangered by the September 11, 2001, attacks and that such aggression continues to endanger the international relations of the United States. See also Continuation of the National Emergency with Respect to Certain Terrorist Attacks (67 FR 58317, September 13, 2002), and Continuation of the National Emergency with Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism (67 FR 59447, September 20, 2002). The U.S. Maritime Administration (MARAD) in Advisory 02-07 advised U.S. shipping interests to maintain a heightened status of alert against possible terrorist attacks. MARAD more recently issued Advisory 03-05 informing operators of maritime interests of increased threat possibilities to vessels and facilities and a higher risk of terrorist attack to the transportation community in the United States. The ongoing foreign hostilities have made it prudent for U.S. ports and waterways to be on a higher state of alert because the Al-Qaeda organization and other similar organizations have declared and ongoing intention to conduct armed attacks on U.S. interests worldwide.

In its effort to thwart terrorist activity, the Coast Guard has increased safety and security measures on U.S. ports and waterways. As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99-399), Congress amended section 7 of the Ports and Waterways Safety Act (PWSA), 33 U.S.C. 1226, to allow the Coast Guard to take actions,

including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels or public or commercial structures. The Coast Guard also has authority to establish security zones pursuant to the Act of June 15, 1917, as amended by the Magnuson Act of August 9, 1950 (50 U.S.C. 191 *et seq.*) and implementing regulations promulgated by the President in subparts 6.01 and 6.04 of part 6 of title 33 of the Code of Federal Regulations.

In this particular rulemaking, to address the aforementioned security concerns, and to take steps to prevent the catastrophic impact that a terrorist attack against an HIV would have on the public interest, the Coast Guard is establishing permanent security zones around and under HIV's entering, departing, moored or anchored within the San Francisco Bay and Delta ports. These security zones help the Coast Guard to prevent vessels or persons from engaging in terrorist actions against HIV's. Due to these heightened security concerns, and the catastrophic impact a terrorist attack on an HIV would have on the crew and passengers on board and surrounding area and communities, security zones are prudent for these types of vessels.

#### Discussion of Comments and Changes

No public hearing was requested, and none was held. We received one letter on the proposed rule, which recommended that we establish a standardized means for vessels to transmit the existence of a security zone using their Automatic Identification System (AIS). Although AIS may be used in the future to include security zone information, the system and policies on how AIS will be used are still being developed. In addition, a Coast Guard or other law enforcement vessel will normally be present to escort HIVs. In addition to informing nearby vessels of the existence of the security zone, the escort boat provides a visual indication that a security zone is being enforced. Therefore, we did not change the final rule based on this comment and will implement the provisions of the proposed rule as written. The comment received regarding incorporation of security zone information in AIS data will be forwarded to the appropriate office at Coast Guard Headquarters for consideration in AIS technology development and implementation.

#### Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866,

Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this regulation restricts access to the zones, the effect of this regulation is not significant because: (i) The zones encompass only a small portion of the waterway; (ii) vessels are able to pass safely around the zones; (iii) vessels will be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port, or his designated representative; and (iv) vessels are able to safely transit around the zones while a vessel is moored or at anchor in the San Francisco Bay and Delta ports.

The size of these zones is the minimum necessary to provide adequate protection for HIV's, their crews and passengers, other vessels operating in the vicinity of HIV's, their crews and passengers, adjoining areas, and the public. The entities most likely to be affected are commercial vessels transiting the main ship channel en route the San Francisco Bay and Delta ports and pleasure craft engaged in recreational activities and sightseeing. The security zones will prohibit any commercial vessels from meeting or overtaking an HIV in the main ship channels, effectively prohibiting use of the channels. However, the moving security zones are only effective during HIV transits, which last approximately 30 minutes.

#### Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The security zones will not have a significant economic impact on a

substantial number of small entities for several reasons: Vessel traffic can pass safely around the area and vessels engaged in recreational activities, sightseeing and commercial fishing have ample space outside of the security zones to engage in these activities. When a HIV is at anchor, vessel traffic has ample room to maneuver around the security zones. Small entities and the maritime public will be advised of these security zones via public notice to mariners.

#### Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

#### Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the

effects of this rule elsewhere in this preamble.

### Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

### Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

### Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

### Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

### Environment

We have analyzed this rule under Commandant Instruction M16475.ID, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of

a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because we are establishing a security zone. An "Environmental Analysis Check List" and a "Categorical Exclusion Determination" (CED) are available in the docket where indicated under ADDRESSES.

### List of Subjects in 33 CFR Part 165

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

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

### PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

**Authority:** 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. Revise § 165.1183 to read as follows:

#### § 165.1183 Security Zones; Cruise Ships, Tank Vessels and High Interest Vessels, San Francisco Bay and Delta ports, California.

(a) *Definitions.* As used in this section—

*Cruise ship* means a passenger vessel, except for a ferry, over 100 feet in length, authorized to carry more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the San Francisco Bay and Delta ports.

*High Interest Vessel* or *HIV* means any vessel deemed by the Captain of the Port or higher authority as a vessel requiring protection based upon risk assessment analysis of the vessel and is therefore escorted by a Coast Guard or other law enforcement vessel with an embarked Coast Guard commissioned, warrant, or petty officer.

*Tank vessel* means any self-propelled tank ship that is constructed or adapted primarily to carry oil or hazardous material in bulk as cargo or cargo residue in the cargo spaces. The definition of tank ship does not include tank barges.

(b) *Locations.* The following areas are security zones:

(1) *Zones for anchored vessels.* All waters, extending from the surface to

the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is anchored at a designated anchorage within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively);

(2) *Zones for moored or mooring vessels.* The shore area and all waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is moored, or in the process of mooring, at any berth within the San Francisco Bay and Delta port areas shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively); and

(3) *Zones for vessels underway.* All waters, extending from the surface to the sea floor, within 100 yards ahead, astern and extending 100 yards along either side of any cruise ship, tank vessel or HIV that is underway shoreward of the line drawn between San Francisco Main Ship Channel buoys 7 and 8 (LLNR 4190 & 4195, positions 37°46.9' N, 122°35.4' W and 37°46.5' N, 122°35.2' W, respectively).

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Francisco Bay, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 415–399–3547 or on VHF–FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(3) When a cruise ship, tank vessel or HIV approaches within 100 yards of a vessel that is moored, or anchored, the stationary vessel must stay moored or anchored while it remains within the cruise ship, tank vessel or HIV's security zone unless it is either ordered by, or given permission from, the COTP San Francisco Bay to do otherwise.

(d) *Authority.* In addition to 33 U.S.C. 1231, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by local law enforcement as necessary.

Dated: January 28, 2004.

**Gerald M. Swanson,**

*Captain, U.S. Coast Guard, Captain of the Port, San Francisco Bay, California.*

[FR Doc. 04-4209 Filed 2-25-04; 8:45 am]

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## LIBRARY OF CONGRESS

### Copyright Office

#### 37 CFR Part 202

[Docket No. RM 2004-1]

#### **“Best Edition” of Published Motion Pictures for the Collections of the Library of Congress**

**AGENCY:** Copyright Office, Library of Congress.

**ACTION:** Final rule with request for comments.

**SUMMARY:** Owners of motion pictures that have been published must submit copies of their movies to the Copyright Office for the Library of Congress to use and include in its collections. This mandatory deposit requirement may be satisfied at the same time that an application for copyright registration is submitted. In order to obtain copies of superior quality when works are published in more than one format, the Library of Congress established “best edition” requirements. The purpose of this rule is to amend the best edition requirements for motion pictures to take into account recent technological developments and to make editorial changes that clarify the requirements.

**DATES:** Effective date: This rule shall take effect April 26, 2004.

**Comment Date:** Comments are due by March 29, 2004.

**ADDRESSES:** An original and ten copies of any comment shall be sent to the Copyright Office. If comments are mailed, the address is: Copyright Office GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0400. If comments are hand delivered by a commercial, non-government courier or messenger, comments must be delivered to: the Congressional Courier Acceptance Site, located at Second and D Streets, NE., between 8:30 a.m. and 4 p.m., e.s.t. If hand delivered by a private party, they must be delivered to the Public Information Office, James Madison Memorial Building, Room 401, First and Independence Street, Washington, DC between 8:30 a.m. and 5 p.m., e.s.t.

**FOR FURTHER INFORMATION CONTACT:**

Marilyn J. Kretsinger, Associate General Counsel, or Renee Coe, Senior Attorney,

Copyright GC/I&R, P.O. Box 70400, Southwest Station, Washington, DC 20024-0400. Telephone: (202) 707-8380. Telefax: (202) 707-8366.

**SUPPLEMENTARY INFORMATION:**

#### **I. Background**

Sections 407 and 408 of title 17, United States Code, require that owners of any motion picture that has been published must deposit a copy of the work with the Copyright Office for the use of the Library of Congress. The copy submitted must be the “best edition” of the work, which is “the edition, published in the United States, at any time before the date of deposit, that the Library of Congress determines to be most suitable for its purposes.” 17 U.S.C. 101 (definition of best edition). Based on that statutory requirement, the regulations require that “when two or more editions of the same version of a work have been published, the one of the highest quality is generally considered to be the best edition.” 37 CFR 202, App. B. The criteria for what constitutes the best edition, for all kinds of copyrighted works, are contained in Appendix B of 37 CFR 202, which is entitled “‘Best Edition’ of Published Copyrighted Works for the Collections of the Library of Congress.” Subpart III of Appendix B establishes the requirements for motion pictures, ranking movie formats for commercial and home viewing in descending order of preference relative to their quality, beginning with the format that is most suitable for the Library’s purposes. This regulation amends subpart III to make changes that take into account recent technological developments and to make editorial changes that clarify the requirements.

#### **II. Changes to Best Edition Rule**

##### *A. Film Formats*

The only change to the requirements for film formats is to add 70 millimeter positive print as the most desirable film format (apart from preprint material, by special arrangement). The addition of this film format to the regulation clarifies the Library’s desire to obtain published motion pictures in a superior format. This format is only required where the original production negative size is greater than 35 millimeters.

##### *B. Video Formats*

*One-Inch Open Reel Tape.* One-inch open reel tape has been deleted from subpart III of the best edition list because it is a defunct format.

*BetacamSP, Digibeta and Betacam.* Betacam SP will continue to be on the list and digibeta, also known as digital

beta, has been added. These are videocassettes in analog and digital formats, respectively, that are now widely used in the television industry. Both are better quality than the format that is commonly known as “betacam,” which has been deleted from the list.

*D-2.* D-2 is an obsolete version of the D Series. The current version is D-9. However, the format for the D Series has been entirely eliminated from the list because each version rapidly becomes obsolete.

*DVD and Videodisc.* DVDs, which are 4¾ inch disks in digital format for home viewing of films, are replacing videodiscs on the list, which are 12 inch disks in analog format.

*Three-Quarter Inch Cassette.* Three-quarter inch cassette, also commonly known as “U-matic,” has been removed from the list because it is a defunct format.

*One-Half Inch VHS Cassette and VHS Cassette.* Changing “one-half inch VHS cassette” to “VHS cassette” is an editorial change. “VHS cassette” is now the commonly used term for this home viewing format.

#### **III. Written Comments**

The Copyright Office is publishing this amendment as a final rule because owners of published motion pictures have already begun complying with these changes to the best edition requirements. The Office believes these changes are noncontroversial and will elicit no significant adverse comment. However, the Office is providing the public an opportunity to submit written comments by March 29, 2004. The rule will take effect April 26, 2004, unless the Copyright Office has received adverse substantive comments and publishes a notice withdrawing the rule before that date.

#### **IV. Regulatory Flexibility Act Statement**

Although the Copyright Office, as a department of the Library of Congress and part of the Legislative Branch, is not an “agency” subject to the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Register of Copyrights has considered the effect of the proposed amendment on small businesses. The Register has determined that the amendments would not have a significant economic impact on a substantial number of small business entities that would require a provision of special relief for them. The proposed amendments are designed to minimize any significant economic impact on small business entities.

#### **List of Subjects in 37 CFR Part 202**

Claims, Copyright.