

Administrative Procedure Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

#### List of Subjects in 49 CFR Part 582

Administrative practice and procedure, Insurance, Motor vehicles.

In consideration of the foregoing, NHTSA amends 49 CFR part 582 as follows:

#### PART 582—[AMENDED]

1. The authority citation for part 582 is revised to read as follows:

**Authority:** 49 U.S.C. 32303; delegation of authority at 49 CFR 1.50(f).

2. Section 582.5 is revised to read as follows:

#### § 582.5 Information form.

The information made available pursuant to § 582.4 shall be presented in writing in the English language and in not less than 10-point type. It shall be presented in the format set forth below, and shall include the complete explanatory text and the updated data published annually by NHTSA.

MARCH [YEAR TO BE INSERTED]

COMPARISON OF DIFFERENCES IN INSURANCE COSTS FOR PASSENGER CARS, STATION WAGONS/PASSENGER VANS, PICKUPS AND UTILITY VEHICLES ON THE BASIS OF DAMAGE SUSCEPTIBILITY

The National Highway Traffic Safety Administration (NHTSA) has provided the information in this booklet in compliance with Federal law as an aid to consumers considering the purchase of a new vehicle. The booklet compares differences in insurance costs for different makes and models of passenger cars, station wagons/passenger vans, pickups, and utility vehicles on the basis of damage susceptibility. However, it does not indicate a vehicle's relative safety.

The following table contains the best available information regarding the effect of damage susceptibility on insurance premiums. It was taken from data compiled by the Highway Loss Data Institute (HLDI) in its December [YEAR TO BE INSERTED] *Insurance Collision Report*, and reflects the collision loss experience of passenger cars, utility vehicles, light trucks, and vans sold in the United States in terms of the average loss payment per insured vehicle year for [THREE APPROPRIATE YEARS TO BE INSERTED]. NHTSA has not verified the data in this table.

The table represents vehicles' collision loss experience in relative terms, with 100 representing the average for all passenger vehicles. Thus, a rating of 122 reflects a collision loss experience that is 22 percent higher (worse) than average, while a rating of 96 reflects a collision loss experience that is 4 percent lower (better) than average. The table is not relevant for models that have

been substantially redesigned for [YEAR TO BE INSERTED], and it does not include information about models without enough claim experience.

Although many insurance companies use the HLDI information to adjust the "base rate" for the collision portion of their insurance premiums, the amount of any such adjustment is usually small. It is unlikely that your total premium will vary more than ten percent depending upon the collision loss experience of a particular vehicle.

If you do not purchase collision coverage or your insurance company does not use the HLDI information, your premium will not vary at all in relation to these rankings.

In addition, different insurance companies often charge different premiums for the same driver and vehicle. Therefore, you should contact insurance companies or their agents directly to determine the actual premium that you will be charged for insuring a particular vehicle.

**Please Note:** In setting insurance premiums, insurance companies mainly rely on factors that are not directly related to the vehicle itself (except for its value). Rather, they mainly consider driver characteristics (such as age, gender, marital status, and driving record), the geographic area in which the vehicle is driven, how many miles are traveled, and how the vehicle is used. Therefore, to obtain complete information about insurance premiums, you should contact insurance companies or their agents directly.

Insurance companies do not generally adjust their premiums on the basis of data reflecting the crashworthiness of different vehicles. However, some companies adjust their premiums for personal injury protection and medical payments coverage if the insured vehicle has features that are likely to improve its crashworthiness, such as air bags and automatic seat belts.

Test data relating to vehicle crashworthiness are available from NHTSA's New Car Assessment Program (NCAP). NCAP test results demonstrate relative frontal crash protection in new vehicles. Information on vehicles that NHTSA has tested in the NCAP program can be obtained by calling the agency's toll-free Auto Safety Hotline at (800) 424-9393.

[Insert Table To Be Published Each March by the National Highway Traffic Safety Administration]

If you would like more details about the information in this table, or wish to obtain the complete Insurance Collision Report, please contact HLDI directly, at: Highway Loss Data Institute, 1005 North Glebe Road, Arlington, VA 22201, Tel: (703) 247-1600.

Issued on: March 20, 1995.

**Ricardo Martinez,**  
*Administrator.*

[FR Doc. 95-7266 Filed 3-23-95; 8:45 am]

BILLING CODE 4910-59-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 227

[Docket No. 950309069-5069-01; I.D. 060694A]

RIN 0648-AG71

#### Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawling Activities; Flotation Device Requirements

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Final rule; technical amendments.

**SUMMARY:** NMFS issues this final rule to require shrimp trawlers using Turtle Excluder Devices (TEDs) in the Gulf and Atlantic Areas to attach specified flotation devices to hard TEDs or special hard TEDs with bottom escape openings. This action is necessary to improve the ability of bottom-opening, hard TEDs, and special hard TEDs to safely exclude sea turtles. In addition, NMFS is making technical amendments to the sea turtle conservation regulations to expand TED configuration options or to clarify gear descriptions, thereby reducing the chances of incidental capture and mortality of endangered and threatened sea turtles.

**EFFECTIVE DATE:** This rule is effective March 31, 1995, except for § 227.72(e)(4)(i)(I)(2)(ii), which contains information collection requirements that have not yet been approved by the Office of Management and Budget (OMB). Once OMB approves these requirements, a document will be published in the *Federal Register* announcing the effective date.

**ADDRESSES:** Requests for a copy of the environmental assessment (EA) prepared for this action, and comments on this action, should be addressed to the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz, Chief, Protected Species Management Branch, NMFS, Southeast Region (813/570-5312), or Barbara Schroeder, Acting National Sea Turtle Coordinator, NMFS Office of Protected Resources (301/713-1401).

#### SUPPLEMENTARY INFORMATION:

##### Background

All sea turtles that occur in U.S. waters are listed as either endangered or

threatened under the Endangered Species Act of 1973 (ESA). The Kemp's leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of these species, as a result of shrimp trawling activities, have been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR 227.72. Existing sea turtle conservation regulations (50 CFR part 227, subpart D) require most shrimp trawlers operating in the Gulf and Atlantic areas to have a NMFS-approved TED installed in each net rigged for fishing, year round. The required use of TEDs has significantly reduced shrimp trawler related mortalities of sea turtles.

NMFS regulations also set forth criteria for allowable modifications to NMFS-approved TEDs including the use of flotation devices. Under 50 CFR 227.72(e)(4)(iv)(A), floats may be attached to TEDs only if they are attached to the outside of the net or inside the net behind the rear surface, at the top of the TED. They may not be attached to a flap. In previous TED certification tests, bottom-opening, single-grid TEDs were tested with flotation. However, because it was not previously evident to NMFS gear specialists that the lack of flotation on bottom-opening TEDs may prevent turtle release if used in certain ways, flotation was not required.

#### Interim Final Rule

NMFS issued an interim final rule, with a request for comments, requiring the use of floats on bottom-opening single-grid TEDs (59 FR 33447, June 29, 1994). NMFS issued an interim final rule because delaying issuance of a flotation requirement to provide prior notice and an opportunity for public comment would likely result in lethal takings of endangered and threatened sea turtles. As discussed in the interim rule, there is information that the lack of flotation on bottom-opening hard TEDs is likely preventing sea turtles from safely exiting the trawls. For the same reasons, the interim rule was made effective with only a 14-day delay in effective date rather than the normal 30-day delay.

#### Comments and Responses on the Interim Final Rule

NMFS received numerous comments on the interim final rule, both from participants in meetings with NMFS personnel and by letter. NMFS reviewed all the comments and combined them under general categories provided below.

*Comment:* Although the implementation of the flotation requirement alone did not appear to substantially reduce turtle mortalities in the Gulf of Mexico during the summer of 1994, the use of floats should still be required because less experienced shrimp vessel operators may drag their nets on the bottom, resulting in sea turtle capture as well as unnecessary damage to trawl nets.

*Response:* NMFS agrees. The combination of the flotation requirement with heightened enforcement efforts during the periods of high sea turtle strandings in the Gulf of Mexico resulted in significant reductions in sea turtle mortalities during the summer of 1994. Thus, with some alterations to the flotation specifications, NMFS is making the flotation requirement a permanent addition to the TED regulations.

*Comment:* The delayed implementation of the interim final rule was shortened from the normal 30-day period to 14 days. This short period did not provide shrimpers with sufficient time to comply with flotation requirement.

*Response:* The Administrative Procedure Act (APA) provides that the publication of a rule shall be made not less than 30 days before its effective date, except as otherwise provided by the agency for good cause found and published with the rule (see 5 U.S.C. 553(d)). In this case, NMFS determined that good cause existed to reduce the delayed effective date from 30 days to 14 days because delayed implementation of the flotation requirement would have likely resulted in lethal takings of endangered and threatened sea turtles. In addition, NMFS gear experts noted that most shrimpers already possessed the inexpensive floats required. Finally, notice of the flotation requirement was informally given weeks before the effective date of the rule when NMFS staff met with members of the shrimping industry and media to request voluntary compliance with the flotation requirement.

*Comment:* Required use of floats will cause nets to twist. Twisted nets could result in lost catch and possible entanglement of sea turtles.

*Response:* NMFS gear experts met and traveled with members of the shrimp fishery who reported twisted nets resulting from floats on the TEDs. NMFS gear experts have noted that a net that is set with a twist in it is unlikely to untwist itself during the course of fishing, if floats are attached. Conversely, a properly set net with floats on the TED will not become twisted. In thousands of hours of TED testing, NMFS has never experienced a problem with twisting TEDs. NMFS believes that if proper care is taken when setting nets with TEDs with floats, net twisting can be prevented.

*Comment:* The requirement to use two polyvinyl chloride (PVC) floats on larger TEDs should not be applied to trawlers in shallow waters, as too much flotation will cause the net to fish too far off the bottom, resulting in lost catch.

*Response:* The interim final rule specified required flotation for a single-grid TED with a circumference of 120 inches (304.8 cm) or more to consist of a minimum of either one 9.8 inch (25.0 cm) diameter hard plastic or aluminum float or two 6.75 inches (17.2 cm) by 8.75 inches (22.2 cm) expanded PVC floats. Two PVC floats were required because PVC becomes compressed in deep water and loses buoyancy. While two PVC floats may provide excess flotation in shallow water, the same floats will provide adequate buoyancy in deeper water to ensure the TED does not drag on the bottom.

NMFS does not believe that this rule should be revised to create different requirements in different water depths because water depth requirements would be largely unenforceable. NMFS recommends that trawlers working in shallow waters switch to aluminum or hard plastic floats. In addition, the final rule provides options for shrimpers to use marked floats that would match the buoyancy of the TED, so that the problem of excessive flotation could be avoided. 50 CFR 227.72(e)(4)(i)(I)(2) allows shrimp fishermen to use floats of size and in any combination so that the combined buoyancy of the floats equals or exceeds that of the TED, as long as both the floats and TEDs have proper markings indicating their weight or buoyancy.

*Comment:* Tongue trawls (bib-type trawls) with hard TEDs should be exempt from the flotation requirement because the bib line on these nets normally would keep the TED from dragging on the bottom. The use of floats with this type of net would cause the net to fish off the bottom, reducing the catch.

*Response:* NMFS agrees that extra flotation might cause a tongue trawl to

fish too high when the center bridle line is tight. However, there is no way to determine how the line is being handled in the water: A slack center bridle line would allow the TED to drag on the bottom. Enforcement officers would be unable to effectively enforce any such exemption and ensure protection for sea turtles. Consequently, NMFS does not believe that tongue trawls should be exempt for the requirement to use floats.

*Comment:* Aluminum TEDs should be exempt from the flotation requirement. TEDs made from hollow, welded aluminum tubing can be positively buoyant, and light-weight aluminum rod constructions would not need additional flotation.

*Response:* In a June 14, 1994 news release, NMFS requested that shrimpers voluntarily attach flotation to bottom-opening hard TEDs, except those constructed of aluminum tubing. NMFS made this request prior to publication of the interim final rule, and at that time believed that floats may not be necessary on aluminum TEDs. Further investigation by NMFS gear experts, however, revealed that aluminum single-grid TEDs also require supplemental flotation for proper buoyancy.

While hollow tube TEDs can retain air, all welds must be watertight. In the course of normal wear-and-tear, it is impossible to ensure that the welds will be able to exclude water under high hydrostatic pressure at fishing depths. The experience of NMFS enforcement personnel is that hollow TEDs can and do flood under actual use.

NMFS' experience with solid rod aluminum TEDs is that they, too, need flotation to achieve neutral buoyancy. NMFS divers have filmed solid aluminum single-grid TEDs dragging hard on the bottom when insufficient flotation is used. Therefore, NMFS included aluminum TEDs in the flotation requirement in both the interim final rule and this final rule.

NMFS does recognize that the interim rule may have required too much flotation on TEDs that are constructed of very light materials. Likewise, too little flotation may have been required on TEDs that are constructed of very heavy materials. To address that problem, this final rule includes a provision for matching the buoyancy of the floats to the weight of each TED.

*Comment:* The specifications in the interim rule, based on the physical dimensions of the floats, do not allow for the use of floats of different shapes and sizes or multiple, smaller floats whose buoyancy may be equivalent. Fishermen who attempted to use other types and combinations of floats were

complying with the intent of the regulation, but were not complying with the letter of the regulation.

*Response:* NMFS agrees that there are many possible combinations of floats that would produce sufficient buoyancy to prevent TEDs from dragging on the bottom, and trapping sea turtles. When the buoyancy of each float can be easily determined, allowing the use of different numbers and sizes of floats would provide much greater flexibility to shrimpers in configuring their gear, based on their personal experience and preference. Therefore, provisions for the use of various combinations of floats of marked buoyancy have been incorporated in this final rule at 50 CFR 227.72(e)(4)(i)(I)(3).

*Comment:* Expanded ethylene vinyl acetate (EVA) should be considered as an alternative float material. Expanded EVA has the same characteristics as expanded PVC.

*Response:* NMFS agrees that floats constructed of expanded EVA could be used in place of expanded PVC. Provisions for the use of expanded EVA floats have been incorporated in this final rule.

#### **Final Rule and Changes From the Interim Final Rule**

As a result of comments and recommendations received, the final rule differs from the interim rule in several areas.

1. The interim final rule required flotation on only bottom-opening single-grid hard TEDs because these TEDs are the ones most frequently used and an need to rapidly address the emergency situation presented by the strandings last spring. Bottom-opening hooped hard TEDs and bottom-opening Jones TEDs which make up only a small portion of TEDs in use, also have the same dragging problem. Therefore, the final rule extends the flotation requirement to all bottom-opening hard and special hard TEDs, including hooped hard TEDs and a single special hard TED, the Jones TED.

2. The final rule allows for the use of floats constructed from expanded EVA as an alternative to floats constructed from expanded PVC. NMFS gear experts determined that the characteristics of expanded EVA are substantially similar to expanded PVC. Allowance of this material expands the options available to fishermen to comply with this rule.

3. The interim final rule specified required flotation solely on the basis of the size of the floats and the circumference of the TED. These measurements provide useful and enforceable approximations of the buoyancy provided by the floats and the

buoyancy required by the TED. They do not, however, provide a means for exactly matching the weight of the TED to the buoyancy, nor do they provide for the use of equivalent amounts of flotation by floats that do not meet the size specifications. The final rule provides three alternatives by which shrimpers can comply with the requirement to use floats. These alternatives address many of the comments expressed above and provide for maximum flexibility for shrimp fishermen. The first alternative, 50 CFR 227.72(e)(4)(i)(I)(1), provides the same requirement as that of the interim rule with respect to amount of flotation for TEDs with a circumference of 120 inches or greater and for TEDs with a smaller circumference.

The second alternative, 50 CFR 227.72(e)(4)(i)(I)(2), provides that floats of any size and in any combination may be attached so that the combined buoyancy of the floats equals or exceeds the weight of the TED provided that the floats and TEDs are marked by the manufacturers with their buoyancy and weight as specified in the regulation. NMFS has held informal discussions with some TED and float manufacturers who indicated that, while marked floats and TEDs are currently not generally available, they could be produced without great difficulty. NMFS believes that marked floats and TEDs will become more widely available, as manufacturers respond to demand from fishermen for labeled gear that will enable them to comply with this provision. Furthermore, previously manufactured TEDs may be weight marked by returning them to a registered manufacturer. By simply adding up the flotation values of the floats used and comparing that value to the imprinted weight of the TED, both fishermen and enforcement officials can quickly and easily determine whether sufficient flotation is being used to prevent bottom-opening TEDs from entrapping turtles. At the same time, shrimpers can be assured that they are not using excess flotation, which could result in handling difficulties or decreased catches.

The third alternative, at 50 CFR 227.72(e)(4)(i)(I)(3), provides for the use of floats of any size and in any combination, provided that the floats are marked as required, to achieve a certain buoyancy based on the circumference of the TED. This provision is established in order to increase the flotation options available before weight-marked TEDs become widely available in the industry. By allowing shrimpers to select different sizes and combinations of floats based

on their buoyancy, the final rule provides more flexibility in customizing gear for optimum handling. As an example, shrimpers may elect to use two smaller floats offset to the sides to stabilize the TED rather than one large float.

#### Technical Amendments to TED Gear Descriptions

A number of technical amendments are made to the sea turtle regulations to expand the options of shrimpers in configuring TEDs or to clarify previous gear descriptions.

1. The maximum allowable grid angle for hard TEDs is increased from 50° to 55°. A TED's optimum grid angle, both for turtle exclusion and shrimp retention, is 45°. Following proper installation of a single-grid hard TED or special hard TED in a new net, regular break-in and stretching of the net will cause the grid to sag, decreasing the grid angle by up to 10°. Therefore, increasing the maximum grid angle to 55° allows TEDs to be installed in new nets so that the optimum grid angle of 45° will be achieved after the net is broken in.

2. The requirements for escape openings on hard TEDs are clarified to prevent the possibility of turtle entrapment. The original requirements only specified an overall size for the escape opening. With certain TEDs, however, an escape opening could be cut that matched the regulatory specifications but that still left pockets of net webbing at the bottom edge of the TED that could entangle and trap a turtle. The technical amendment specifies the minimum amount of trawl net webbing material that must be cut along the face of the TED grid, though the existing requirements for minimum escape openings remain unchanged. This will ensure that the escape opening is not restricted at the face of the TED. The cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 8 inches (20.4 cm). In other words, the width of the cut in the trawl webbing along the face of the grid must extend on either side to within 4 inches (12.2 cm) of the maximum outside width of the grid. Figure 13 illustrates the dimensions for the cut.

3. The use of chafing webbing gear with bottom-opening TEDs, previously an allowable modification for hard TEDs used only in the summer flounder trawl fishery, is made an allowable modification for hard TEDs used in all trawl fisheries in which TEDs are required. Additionally, the materials which may be used and the method of attachment of the webbing chafing gear are specified.

4. The use of door frames on the exiting openings of hooped hard TEDs is no longer allowed. Continuing evaluation of TED technology by NMFS revealed that the use of a metal frame door frame on hooped hard TEDs may interfere with the release of small turtles. This change is believed to be beneficial to sea turtles and to have a negligible impact on fishermen. Doors on existing hooped hard TEDs can be easily removed at the hinges or sawed off, and a webbing flap may be used to cover the escape opening.

5. The method of attachment of the escape opening webbing flap is clarified to state that the sides of the webbing flap may be attached to the trawl webbing no farther back than the row of meshes which lies 6 inches (15.2 cm) behind the posterior edge of the grid. This description is much clearer than the previous description, and is therefore easier to comply with and enforce.

6. The requirements for the escape opening of the Taylor soft TED are changed. The minimum width of the forward edge of the escape opening is reduced from 96 inches (244 cm) to 72 inches (183.6 cm). The initial certification testing of the Taylor TED was conducted on a TED with the 72-inch (183.6-cm) forward edge, and that TED met NMFS certification requirements. Therefore, the description of the Taylor TED is changed to reflect the originally certified gear. Provisions remain in the Taylor TED description, however, for increasing the forward edge of the escape opening of the Taylor TED to 96 inches (244 cm) in order to permit the exclusion of leatherback turtles.

7. The method of attachment of an accelerator funnel forward of a hard TED is clarified. A funnel may be inserted immediately forward of the TED if its rear edge does not extend past the bars of the TED. The leading edge of the funnel may be sewn to the trawl around its entire circumference; the trailing edge of the funnel may be attached to the TED along 1/3 of the circumference of the funnel, on the side opposite the escape opening.

8. The description of the Andrews soft TED is changed to allow more flexibility in the construction of the TED. The Andrews TED is described as a webbing funnel within the trawl, and for the purposes of the regulation, the bottom panel of the trawl net may be incorporated as the bottom panel of the funnel. This change requires the bottom edge of the side panels of the funnel to be sewn to the bottom panel of the trawl, if the bottom panel of the trawl is being used as the bottom panel of the

funnel. Andrews TEDs constructed in this way should not have any deleterious effect on turtles compared to full-funnel Andrews TEDs, as the bottom panel of the trawl is a much smaller mesh size than the TED itself, and would not likely entangle turtles.

In addition, the requirement is deleted that the rear edge of the Andrews TED funnel extend to within 20 inches (50.8 cm) of the net extension. This requirement did not reflect the originally certified TED and made Andrews TEDs difficult to construct.

9. The use of roller gear with hard TEDs and special hard TEDs is allowed. Rollers, constructed of hard plastic, attached beneath the TED in a way that does not interfere with the TED escape opening, may reduce the TED's dragging on the bottom and can reduce chafing and damage to the TED and trawls. While roller gear may reduce chafing, attachment of proper flotation to a TED is the most effective means to control chafing on the TED and to ensure sea turtle escape from bottom-opening TEDs.

10. The description of construction materials approved for use in hard TEDs is clarified. If steel or aluminum tubing is used, the tubing must have a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm). The previous description specified a minimum inside diameter of 1/4 inch (0.64 cm) which would result in excessively heavy TEDs if a larger outside diameter pipe was used, which was not the intention of the original rule.

#### Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA), finds that good cause exists, under authority at 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and an opportunity for public comment on those provisions of this rule described above as technical amendments to TED gear descriptions. Such procedures are unnecessary because these changes are minor, technical amendments to existing regulations.

With respect to the provisions of this final rule which implement provisions of the interim final rule without change, no delay in effective date is required. Regarding those provisions of the interim final rule that have been changed by this final rule and those new provisions of this final rule, described above as technical amendments to TED gear descriptions, which have the effect

of relieving restrictions on shrimpers, no delay in effective date is required under 5 U.S.C. 553(d)(1). Concerning those provisions added by this final rule requiring the use of flotation on hooped hard TEDs and on the Jones TED, the AA finds for good cause, pursuant to 5 U.S.C. 553(d)(3), that it is unnecessary and contrary to the public interest to delay for 30 days the effective date of these provisions because 30-day delayed implementation of this requirement could result in unnecessary lethal takings of endangered and threatened sea turtles and most shrimpers already possess the necessary and inexpensive flotation devices required and can install them quickly. The AA has determined that 7-days delay in effective date will provide more than sufficient time to come into compliance. Further, with respect to those provisions of this rule described above as technical amendments to TED gear descriptions which impose new requirements on shrimpers, such as no longer allowing the use of door frames on hooped hard TEDs, the AA finds good cause to waive the 30-day delay in effective date under 5 U.S.C. 553(d)(3) because the restrictions are very minor and can be accomplished quickly and at little or no cost and that to delay their implementation could cause unnecessary lethal takings of endangered or threatened sea turtles. The AA has determined that a 7-day delay in effective date will provide more than sufficient time to come into compliance.

In the interest of uniformity with respect to implementation of the provisions of this rule, NMFS has determined to make the entire rule effective March 30, 1995, except for § 227.72(e)(4)(i)(I)(2)(ii), which contains information collection requirements that have not yet been approved by OMB.

This rule contains a collection of information subject to the Paperwork Reduction Act (PRA). This collection has been submitted to OMB for approval. Upon approval, a notice of effectiveness will be published in the *Federal Register*.

The AA prepared an EA for the final rule (57 FR 57348, December 4, 1992) requiring TED-use in shrimp trawls. A supplemental EA was prepared for the interim final rule and another was prepared specifically for this final rule, which concludes that this action will have no significant impact on the human environment. A copy of the EA is available (see ADDRESSES) and comments on it are requested.

**List of Subjects in 50 CFR Part 227**

Endangered and threatened species, Exports, Imports, Incorporation by reference, Marine mammals, Transportation.

Dated: March 17, 1995.

**Gary Matlock,**

*Program Management Officer, National Marine Fisheries Service.*

For the reasons set out in the preamble, 50 CFR part 227 is amended as follows:

**PART 227—THREATENED FISH AND WILDLIFE**

1. The authority citation for part 227 continues to read as follows:

**Authority:** 16 U.S.C. 1531 *et seq.*

2. In § 227.72, paragraph (e)(4)(iii)(A)(2) is removed and reserved; paragraph (e)(4)(iii)(E) is added; and paragraphs (e)(4)(i)(A)(3), (e)(4)(i)(C), (e)(4)(i)(G)(1), (e)(4)(i)(G)(2)(i), (e)(4)(i)(I), (e)(4)(ii)(A), (e)(4)(ii)(B), (e)(4)(iii)(C), (e)(4)(iii)(D), and (e)(4)(iv) are revised to read as follows:

**§ 227.72 Exceptions to prohibitions.**

\* \* \* \* \*

- (e) \* \* \*
- (4) \* \* \*
- (i) \* \* \*
- (A) \* \* \*

(3) Steel or aluminum tubing with a minimum outside diameter of 1/2 inch (1.27 cm) and a minimum wall thickness of 1/8 inch (0.32 cm) (also known as schedule 40 tubing).

\* \* \* \* \*

(C) *Angle of deflector bars.* The angle of the deflector bars must be between 30° and 55° from the normal, horizontal flow through the interior of the trawl.

\* \* \* \* \*

(G) \* \* \*

(I) On a hooped hard TED, the escape opening must not be smaller than 25 inches by 25 inches (63.5 cm by 63.5 cm) in the Gulf Area, or 30 inches by 30 inches (76.2 cm by 76.2 cm) in the Atlantic Area. A door frame may not be used over the escape opening; however, a webbing flap may be used as provided in paragraph (e)(4)(iv)(C) of this section.

(2)(i) On a single-grid hard TED, the cut in the trawl webbing for the escape opening cannot be narrower than the outside width of the grid minus 4 inches (10.2 cm) on both sides of the grid, when measured as a straight line width. (Figure 13 of this part illustrates the dimensions of this cut.) The resulting escape opening in the net webbing must measure at least 32 inches (81.3 cm) in horizontal taut length and, simultaneously, 10 inches (25.4 cm) in

vertical taut height in the Gulf Area; or 35 inches (88.9 cm) in horizontal taut length and, simultaneously, 12 inches (30.5 cm) in vertical taut height in the Atlantic Area. The vertical measurement must be taken at the midpoint of the horizontal measurement.

\* \* \* \* \*

(I) *Flotation.* Floats must be attached to the top one-half of all hard TEDs with bottom escape openings. The floats may be attached either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface. Floats must be attached with heavy twine or rope. Floats must be constructed of aluminum, hard plastic, expanded polyvinyl chloride, or expanded ethylene vinyl acetate unless otherwise specified. The requirements of this paragraph may be satisfied by compliance with either the dimension requirements of paragraph (e)(4)(i)(I)(1) of this section, or the buoyancy requirements of paragraph (e)(4)(i)(I)(2) of this section, or the buoyancy-dimension requirements of paragraph (e)(4)(i)(I)(3) of this section. If roller gear is used pursuant to paragraph (e)(4)(iv)(E), the roller gear must be included in the circumference measurement of the TED or the total weight of the TED.

(I) *Float dimension requirements.* (i) For hard TEDs with a circumference of 120 inches (304.8 cm) or more, a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or two expanded polyvinyl chloride or expanded ethylene vinyl acetate floats, each no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(ii) For hard TEDs with a circumference of less than 120 inches (304.8 cm), a minimum of either one round, aluminum or hard plastic float, no smaller than 9.8 inches (25.0 cm) in diameter, or one expanded polyvinyl chloride or expanded ethylene vinyl acetate float, no smaller than 6.75 inches (17.2 cm) in diameter by 8.75 inches (22.2 cm) in length, must be attached.

(2) *Float buoyancy requirements.* Floats of any size and in any combination must be attached such that the combined buoyancy of the floats, as marked on the floats, equals or exceeds the weight of the hard TED, as marked on the TED. The buoyancy of the floats and the weight of the TED must be clearly marked on the floats and the TED as follows:

(i) *Float buoyancy markings.* Marking must be made in clearly legible raised

or recessed lettering by the original manufacturer. The marking must identify the buoyancy of the float in water, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the buoyancy in English units. The marking must identify the nominal buoyancy for the manufactured float.

(ii) *TED weight markings.* The marking must be made by a registered TED manufacturer and must be permanent and clearly legible and must be accompanied by the identifying symbol of the registered manufacturer. The marking must identify the in-air, dry weight of the TED, expressed in grams or kilograms, and must include the metric unit of measure. The marking may additionally include the weight in English units. The marked weight must represent the actual weight of the individual TED as manufactured. Previously manufactured TEDs may be marked upon return to a registered TED manufacturer. Where a TED is comprised of multiple detachable components, the weight of each component must be separately marked. A TED manufacturer may become registered to mark TEDs by requesting registration in writing from the NMFS Southeast Regional Director. To request registration, the manufacturer should write to the Director, Southeast Region, NMFS, 9721 Executive Center Dr. North, St. Petersburg, FL 33702, and include the manufacturer's name, address, and telephone number; the sizes, styles, and anticipated number of TEDs to be produced annually; the method of marking; and a description of the manufacturer's distinctive, identifying symbol. Upon receipt of a complete request, the Director, Southeast Region, NMFS, will notify the manufacturer in writing of their registration.

(3) *Buoyancy-dimension requirements.* Floats of any size and in any combination, provided that they are marked pursuant to paragraph (e)(4)(i)(I)(2)(i) of this section, must be attached such that the combined buoyancy of the floats equals or exceeds the following values:

(i) For floats constructed of aluminum or hard plastic, regardless of the size of the TED grid, the combined buoyancy must equal or exceed 14 lb (6.4 kg);

(ii) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where the circumference of the TED is 120 inches (304.8 cm) or more, the combined buoyancy must equal or exceed 20 lb (9.1 kg); or

(iii) For floats constructed of expanded polyvinyl chloride or expanded ethylene vinyl acetate, where

the circumference of the TED is less than 120 inches (304.8 cm), the combined buoyancy must equal or exceed 10 lb (4.5 kg).

(ii) \* \* \*

(A) *Flounder TED* (Figure 10 of this part). The Flounder TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe with a wall thickness of at least 1/8 inch (0.3 cm). It must have a rectangular frame with outside dimensions which can be no less than 51 inches (129.5 cm) in length and 32 inches (81.3 cm) in width. It must have at least five vertical deflector bars, with bar spacings of no more than 4 inches (10.2 cm). The vertical bars must be connected to the top of the frame and to a single horizontal bar near the bottom. The horizontal bar must be connected at both ends to the sides of the frame and parallel to the bottom bar of the frame. There must be a space no larger than 10 inches (25.4 cm) between the horizontal bar and the bottom bar of the frame. An additional vertical bar runs from the middle of the bottom bar to the middle of the horizontal bar dividing the opening at the bottom into two rectangles with an opening height of no more than 10 inches (25.4 cm) and an opening width of no more than 14 1/2 inches (36.8 cm). If, because of the width of the TED, the opening width of the bottom rectangles exceeds the maximum allowed, additional vertical bars must be added. This TED must comply with paragraphs (e)(4)(i)(B), (e)(4)(i)(C), (e)(4)(i)(F), and (e)(4)(i)(G) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, and the size of the escape opening, except that the deflector bars must be positioned in the net to deflect turtles to the escape opening in the top of the trawl. This TED may not be configured with a bottom escape opening. Installation of an accelerator funnel is not permitted with this TED. Use of this TED is restricted to the Atlantic summer flounder bottom trawl fishery.

(B) *Jones TED* (Figure 11 of this part). The Jones TED must be constructed of at least 1 1/4 inch (3.2 cm) outside diameter aluminum or steel pipe, and the pipe must have a wall thickness of at least 1/8 inch (0.3 cm). It must be generally oval in shape with a flattened bottom. The deflector bars must be attached to the frame at a 45° angle from the horizontal positioning downward and each bar must be attached at only one end to the frame. The deflector bars must be attached and lie in the same plane as the frame. The space between the ends of the bottom deflector bars and the bottom frame bar must be no

more than 3 inches (7.6 cm). The spacing between the bottom three deflector bars on each side must be no greater than 2 1/2 inches (6.4 cm). The spacing between all other deflector bars must not exceed 3 1/2 inches (8.9 cm) and spacing between ends of opposing deflector bars also must not exceed 3 1/2 inches (8.9 cm). This TED must comply with paragraphs (e)(4)(i)(B), (e)(4)(i)(C), (e)(4)(i)(F), (e)(4)(i)(G), (e)(4)(i)(H)(2), and (e)(4)(i)(I) of this section with respect to the method of attachment, the angle of the deflector bars, the position of the escape opening, the size of the escape opening, the size of the grid, and flotation.

(iii) \* \* \*

(C) *Andrews TED* (Figures 8a and 8b of this part). The Andrews TED is a funnel constructed of 5-inch (12.7-cm) stretched mesh polyethylene or polypropylene webbing that is sewn inside a shrimp trawl. The bottom panel of the trawl may be used as the bottom panel of the funnel, so long as the bottom edges of the sides of the funnel are sewn at every mesh to the bottom panel of the trawl. The leading edge of the funnel must be sewn with heavy twine at all points to the outer trawl beginning on the row of meshes located 20 meshes behind the center of the footrope and continuing around the circumference of the trawl, following the same row of meshes. The webbing may not be laced with rope. The funnel must taper to an escape opening in the bottom of the trawl. The trailing edge on the funnel must be sewn at all points around the circumference of the escape opening. The escape opening must be at least 96 inches (243.8 cm) in circumference. A webbing flap may be used to cover the escape opening if no device holds the webbing flap closed or otherwise restricts the opening, and if such flap is constructed of webbing that has a stretched mesh size no larger than 2 inches (5.1 cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is 50 meshes wide and 15 meshes deep, does not overlap the exit opening more than 5 meshes on each side (it may be attached along the 15-mesh edge), and maintains an opening of at least 48 inches (121.9 cm) in a taut position.

(D) *Taylor TED* (Figures 9a and 9b of this part). The Taylor TED is constructed of 6-inch (15.2-cm) polyethylene or polypropylene webbing that is heat-set knotted or braided. The Taylor TED deflector panel must be not less than 228 inches (580 cm) on the leading edge and not less than 120 inches (305 cm) long. The leading edge, sides, and apex of the deflector panel

must be sewn to the trawl body so as to form a complete barrier to large objects inside the trawl net forward of the codend or extension. The apex may be removed not more than 24 inches (61 cm) forward of the rear point. If the apex is removed, a rectangular section 24 inches (61 cm) long must be sewn evenly to the rear of the deflector panel to maintain the 120-inch (305-cm) length. The leading edge of the Taylor TED deflector panel must be sewn to the bottom body of the trawl net. The rear point of the deflector panel, or rear edge, if the apex is removed, must be sewn evenly, centered across the top body. An escape opening must be located on the top of the trawl body centered over the deflector panel. The opening must measure not less than 72 inches (183.6 cm), must be in a single row of meshes, and must be located no farther forward than the point where its entire length is above the deflector panel--the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the deflector panel on the other side. All trawl webbing above the deflector panel between the 72-inch (183.6-cm) cut and the posterior edge of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap may not exceed the length of the forward edge of the triangular opening. The flap may extend not more than 12 inches (30.5 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the body, but may not be attached farther aft than the rear point of the escape opening. One row of chain not larger than 3/16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain may not exceed 84 inches (214.2 cm).

(E) *Allowable modifications to soft TEDs.* The following modifications may be made to the Morrison and Taylor TEDs to increase the size of the escape opening to permit the exclusion of leatherback turtles. An enlarged escape opening must be created on the top of the trawl body centered over the deflector panel. The opening must measure not less than 96 inches (244 cm), must be in a single row of meshes, and must be located no farther forward than the point where its entire length is above the deflector panel--the forward edge of the opening must extend from the attachment of the deflector panel on one side of the body, across the top of the body, to the attachment of the

deflector panel on the other side. All trawl webbing above the deflector panel between the 96-inch (244-cm) cut and the posterior edge of the deflector panel must be removed. A rectangular flap of nylon webbing not larger than 2-inch (5.1-cm) stretched mesh may be sewn to the forward edge of the escape opening. The width of the flap may not exceed the length of the forward edge of the triangular opening. The flap may extend not more than 12 inches (30.4 cm) beyond the rear point of the escape opening. The sides of the flap may be attached to the body, but may not be attached farther aft than the rear point of the escape opening. One row of chain not larger than 3/16 inch (4.76 mm) may be sewn evenly to the back edge of the flap. The stretched length of the chain may not exceed 96 inches (244 cm). For the Morrison TED, the apex of the excluder panel may be removed no more than 48 inches (122 cm) forward of the rear edge. A rectangular section 48 inches (122 cm) long must then be sewn evenly to the rear of the excluder panel to maintain the length prescribed in the description of the Morrison TED. For the Morrison TED, the addition of a webbing flap and the modification of the excluder panel may only be done conjointly with the enlargement of the escape opening as described in this paragraph (e)(4)(iii)(E).

(iv) *Allowable modifications to TEDs.* No modifications may be made to an approved soft TED, except for the modifications described in paragraph (e)(4)(iii)(E). Unless otherwise prohibited in paragraph (e)(4)(ii) of this section, only the following modifications may be made to an approved hard TED and an approved special hard TED:

(A) *Floats.* In addition to floats required pursuant to paragraph (e)(4)(i)(I) of this section, floats may be attached to the top one-half of the TED, either outside or inside the net, but not to a flap. Floats attached inside the net must be behind the rear surface at the top of the TED.

(B) *Accelerator funnel.* An accelerator funnel may be installed in the trawl, if it is made of net webbing material with a stretched mesh size not greater than 1 5/8 inches (4.1 cm), if it has an inside horizontal opening of at least 39 inches (99.1 cm) when measured in a taut position, if it is inserted in the net immediately forward of the TED, and if its rear edge does not extend past the bars of the TED. The trailing edge of the accelerator funnel may be attached to the TED on the side opposite the escape opening if not more than 1/3 of the circumference of the funnel is attached, and if the inside horizontal opening of

at least 39 inches (99.1 cm) is maintained. In a downward shooting TED, only the top 1/3 of the circumference of the funnel may be attached to the TED. In an upward shooting TED, only the bottom 1/3 of the circumference of the funnel may be attached to the TED.

(C) *Webbing flap.* A webbing flap may be used to cover the escape opening if no device holds it closed or otherwise restricts the opening, and if it is constructed of webbing with a stretched mesh size no larger than 1 5/8 inches (4.1 cm), lies on the outside of the trawl, is attached along its entire forward edge forward of the escape opening, is not attached on the sides beyond the row of meshes that lies 6 inches (15.2 cm) behind the posterior edge of the grid, and does not extend more than 24 inches (61.0 cm) beyond the posterior edge of the grid.

(D) *Chafing webbing.* A single piece of nylon webbing, with a twine size no smaller than size 36 (2.46 mm in diameter), may be attached outside of the escape opening webbing flap to prevent chafing on bottom opening TEDs. This webbing may be attached along its leading edge only. This webbing may not extend beyond the trailing edge or sides of the existing escape opening webbing flap, and it must not interfere or otherwise restrict the turtle escape opening.

(E) *Roller gear.* Roller gear may be attached to the bottom of a TED to prevent chafing on the bottom of the TED and the trawl net. When a webbing flap is used in conjunction with roller gear, the webbing flap must be of a length such that no part of the webbing flap can touch or come in contact with any part of the roller gear assembly or the means of attachment of the roller gear assembly to the TED, when the trawl net is in its normal, horizontal position. Roller gear must be constructed according to one of the following design criteria:

(1) A single roller consisting of hard plastic shall be mounted on an axle rod, so that the roller can roll freely about the axle. The maximum diameter of the roller shall be 6 inches (15.24 cm), and the maximum width of the axle rod shall be 12 inches (30.4 cm). The axle rod must be attached to the TED by two support rods. The maximum clearance between the roller and the TED shall not exceed 1 inch (2.5 cm) at the center of the roller. The support rods and axle rod must be made from solid steel or solid aluminum rod no larger than 1/2 inch (1.28 cm) in diameter. The attachment of the support rods to the TED shall be such that there are no protrusions (lips, sharp edges, burrs, etc.) on the front face

of the grid. The axle rod and support rods must lie entirely behind the plane of the face of the TED grid.

(2) A single roller consisting of hard plastic tubing shall be tightly tied to the back face of the TED grid with rope or heavy twine passed through the center

of the roller tubing. The roller shall lie flush against the TED. The maximum outside diameter of the roller shall be 3 1/2 inches (8.0 cm), the minimum outside diameter of the roller shall be 2 inches (5.1 cm), and the maximum length of the roller shall be 12 inches

(30.4 cm). The roller must lie entirely behind the plane of the face of the grid.

\* \* \* \* \*

3. Figure 1 to part 227 is revised to read as follows:

BILLING CODE 3510-22-F

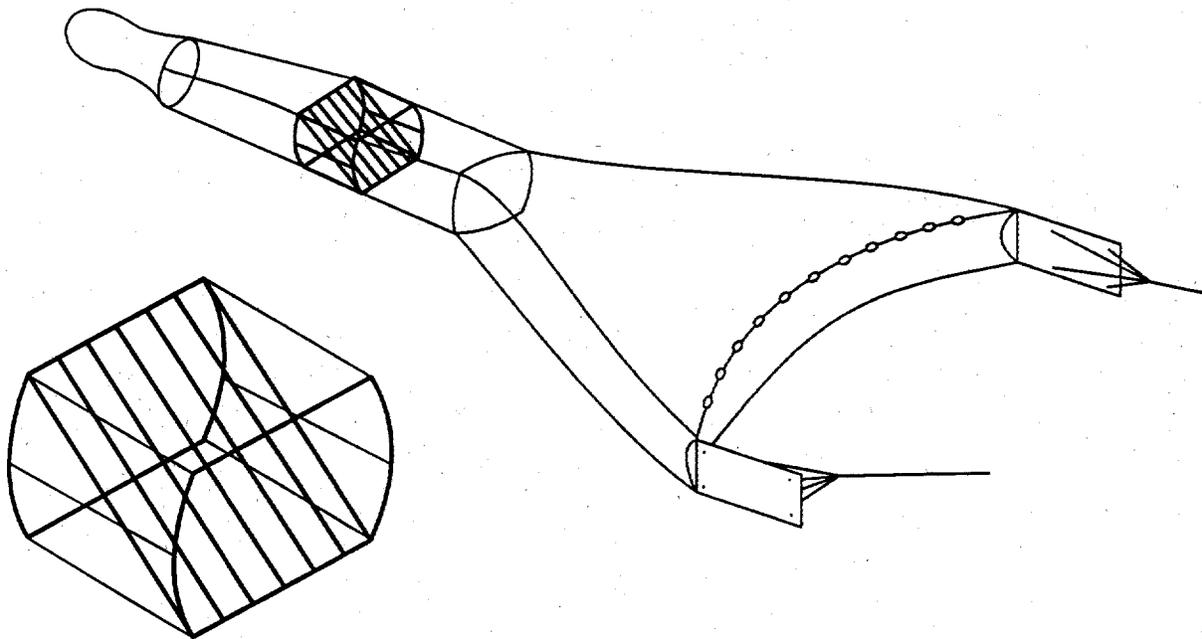


FIGURE 1 to part 227--NMFS TED

BILLING CODE 3510-22-C

4. Figure 13 to part 227 is revised to read as follows:

BILLING CODE 3510-22-F

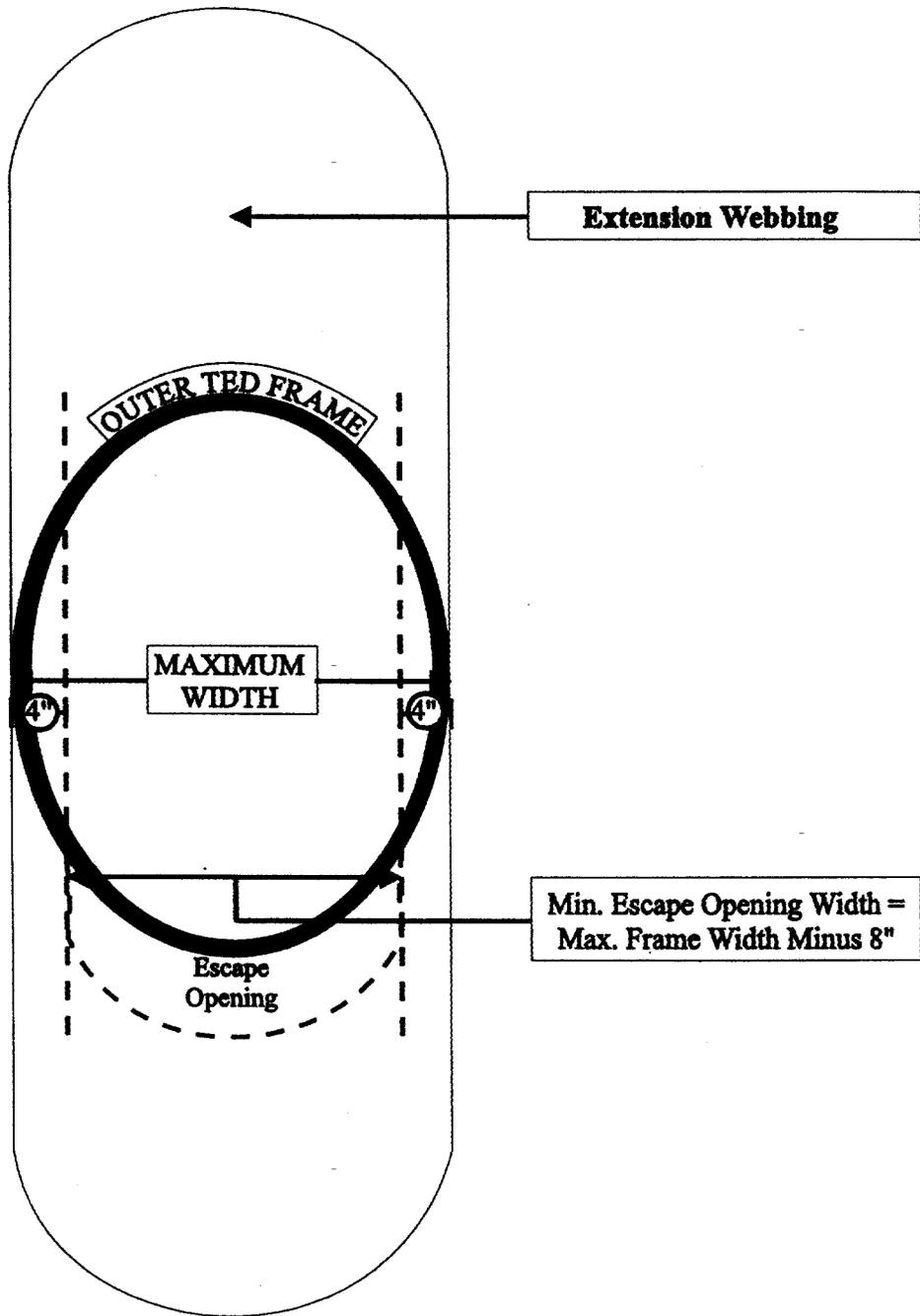


FIGURE 13 to part 227--SINGLE GRID HARD TED ESCAPE OPENING