

§ 301.6302-1T Use of Federal Reserve banks after December 31, 2000

Federal Reserve banks are not authorized depositories for Federal tax deposits made after December 31, 2000.

Dated: December 6, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: December 6, 2000.

Jonathan Talisman,

Acting Assistant Secretary for Tax Policy.

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DEPARTMENT OF DEFENSE**Department of the Army****32 CFR Part 668****Report On Use of Employees of Non-Federal Entities to Provide Services to the Department of the Army**

AGENCY: Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs), and Office of the Assistant Secretary of the Army (Acquisition, Logistics and Technology), Department of the Army, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements Section 343 of the FY 2000 Department of Defense Authorization Act, Section 129a and Section 2461(g) of title 10 within the Department of the Army by means of a reporting requirement included in certain contract actions described in the rule.

EFFECTIVE DATE: December 26, 2000.

ADDRESSES: Office of the Assistant Secretary of the Army for Manpower & Reserve Affairs (ASA (M&RA)), Attention SAMR-FMMR, Rm. 2A672, Washington, DC 20310, or contact the following persons by e-mail or phone as indicated below.

FOR FURTHER INFORMATION CONTACT: Dr. John Anderson, SAMR-FMMR, Phone 703-614-8247, e-mail: John.Anderson@hqda.army.mil or John R. Conklin, SAAL-ZPS, e-mail: John.Conklin@sarda.army.mil

SUPPLEMENTARY INFORMATION:**a. Background**

(1) The Department of the Army previously announced an interim rule to establish basic contractor-reporting requirements to identify the number and value of direct, and associated indirect, labor work year equivalents for contracted services in support of the Army. The interim rule, effective on the date of publication, was published in

the **Federal Register** (65 FR 13906) dated Wednesday, March 15, 2000. Comments and responses pertaining to the new reporting requirements are provided in b. below.

(2) Major changes to the Interim Rule are outlined herein and further explained in "b." below. In response to numerous administrative questions and requests for clarification from both public and private sector sources, Part 668 has been completely reorganized and rewritten for better readability, clarity and completeness; and to allow easier implementation by the Army contracting community and Army contractors. To further assist with this objective, the Final Rule will be cited and further implemented as appropriate in the Army Federal Acquisition Regulation Supplement.

(3) The substantive changes resulting from the Public Comment process are as follows:

(a) Section 668.1(b)(1)(i) excepting FAR Part 12 contract actions from inclusion of the reporting requirement, and mandatory reporting, is deleted in its entirety. With the effective date of this Final Rule, the reporting requirement will be included in all contracts specified in the amended § 668.1(c)(3) (including those entered into using Part 12 procedures, unless otherwise exempt). All affected contractors shall be requested to provide reportable data from October 1, 1999 (or later start of contract date), in order to insure complete, accurate and useful information to Congress and Army planners.

(b) Section 668(b)(1)(iii) is deleted, and will be moved to § 668.2(e).

(c) Section 668.2 is renamed "Contract Reporting Requirements." Section 668.2(a) is changed (in § 668.2(d)) by amending "relevant composite indirect labor rate" to read "relevant annualized average or composite indirect labor rates" in order to clarify that rates reported (for hours and dollar value) do not have to be adjusted for every reporting period; and will further clarify that actual estimated hours and dollars may always be reported (in lieu of rates) for indirect labor related to the direct labor reported. To this end, the ASA (M&RA) secure website (<https://contractorpower.us.army.mil>) will be amended to add appropriate fields and clarifications.

(d) A new § 668.2(g) is added to clarify that prime contractors may use their discretion to determine whether sub-contractors will report their information directly to the data collection web site, or to the prime

contractors for validation and submission to the collection web site.

(e) The current paragraph (c), titled "Reporting format" is redesignated as paragraph (i) and corresponding changes are made to the list of required data elements;

(f) The secure Army website and its URL address is now highlighted in Section 668.2(a) and (i). The website is the principal source of detailed information on the reporting process, Help Desk functions, and other information and assistance.

b. Comments and Responses

Comments and responses are provided as follows:

Comment: Contractor recommended that the rule clarify that it is permissible for a contractor to use an algorithm of the overall relation of total indirect labor hours to the total direct and indirect hours on an annualized basis for the purposes of reporting the composite indirect rate.

Response: The rule will be clarified to reflect the permissibility for contractors to report using an annualized average composite indirect rate for estimating indirect man-hours rather than a rate developed for the specific reporting period.

Comment: Public sector union requested clarification on the meaning of the "composite indirect rate" for estimating value.

Response: The composite indirect rate for estimating value (as opposed to hours) is intended to capture the labor-related charges included in the indirect pools. This rate, when multiplied against the value of direct labor hours is intended to provide an estimate of all of the compensation related charges associated with the reportable services under the contract action during the reporting period (*i.e.*, both direct and indirect labor charges). These compensation charges include: salaries and wages; directors' fees; bonuses (including stock); incentive awards; employee stock options; stock appreciation rights; employee insurance; fringe benefits (*e.g.*, vacation, sick leave, holidays, military leave, supplemental unemployment benefit plans); contributions to pension plans (defined benefit, defined contribution); other post-retirement benefits, annuity, and employee incentive compensation and deferred compensation plans; early retirement plans; off-site pay; incentive pay; hardship pay; severance pay; and COLA differential. Contractors may also report estimated total hours and dollars for (related) indirect labor (as opposed to providing average composite rates). Either method chosen should be

consistently reported. The Final Rule, at Section 668.2(d)(2), contains these clarifications; and the secure Army website will be amended to reflect the new data fields.

Comment: Contractor questioned application of reporting requirement to Time and Materials (T&M) and Firm Fixed Price (FFP) contracts since the contractor invoices the Government based on its fully burdened labor rates, as proposed under T&M, and agreed upon prices or rates under FFP, and does not otherwise usually disclose actual labor costs (under T&M) or actual labor hours or costs under FFP. Conversely, public sector unions requested that the Rule be clarified to apply the reporting requirement to firm fixed price type contracts, on the basis that, assuming the numbers (hours and value) are known and collected by the contractors for their own business purposes, the numbers should be reported to the secure Army website since they are not to be used for billing nor for audit, or any other purposes beyond those stated in the Rule (reporting and manpower planning).

Response: The Army is not requesting this contractor manpower information as a basis for future negotiation, payment or post-audit under the contract(s) reported; and is treating all provided information, especially any estimated indirect labor hour or rate/value information, as proprietary when specifically associated with a contractor by name and contract number. The Rule will clarify that reporting the requested information is not required when a contractor would be forced to create a new, internal cost accounting, allocation or payroll system in order to reasonably identify the requested data. However, it is unlikely that a contractor would be able to operate in accordance with generally accepted accounting principles, and in compliance with taxation and benefits laws and regulations, without having the requested information readily available either at the time of a request for progress payment, submission of invoices or vouchers, or quarterly. Lastly, the data as reported by contractors will not be furnished through or to Army contracting offices, but directly to the office responsible for manpower reporting to Congress and providing gross data to Army planners. Accordingly, firm fixed price contracts and time and materials contracts shall fall within the scope of the reporting requirement and the Final Rule is clarified to reflect that change.

Comment: Public sector union questioned the exclusion of Federal Acquisition Regulation (FAR) Part 12

service contracts from the scope of the reporting requirement.

Response: Initially, FAR Part 12 contracts were exempted on the basis that the reporting requirement could detract from the commercial practices tenet, and based on the sparse use of those procedures for service contracts in general. However, on review of the comments, and reflection on the remaining exceptions for reporting, it was determined that, if contractors possessed the needed data as a matter of common business practice, and if the reporting requirement was minimally burdensome and intrusive, then it should be reported, notwithstanding the use of Part 12. In addition, Army contracting personnel notified us that the number and size/scope of Part 12 Service contracts was quite large and increasing, contrary to our initial expectations. Given the intended scope of both section 2461(g) of title 10 and section 343 of the Fiscal Year 2000 National Defense Authorization Act, excluding the significant and growing numbers of service contracts awarded under Part 12 will detract from the reliability of information collected and undercut the purposes of data collection. Accordingly, the Final Rule eliminates the exception for contracts entered into under the authority and procedures of FAR Part 12.

Comment: Public sector unions questioned the exclusion of contracts below \$100,000 in value from the scope of the rule.

Response: The \$100,000 exclusion is intended to minimize the workload burden in compiling the report, and covers a relatively small number of contractor support man-hours provided under a large number of contract actions. The Rule will, however, be clarified to explain that the \$100,000 refers to the total estimated value of the contract in the case of Task Order or Delivery Order contracts. Individual orders under such contracts that are reported using a DD Form 350, Individual Contracting Action Report (i.e., greater than \$25,000) shall be reported). The Army may periodically consider eliminating this exclusion in the event the exclusion is misused or results in a substantial number of service contracts and manpower information being excluded from the requirement in a way that would impair the reliability of the overall data.

Comment: Public sector unions questioned the scope of the proprietary nature of the data and requested that the Army address how it intends on making the data available to the public. Army Major Command Chiefs of Staff and their contracting offices queried how

they would be informed about contractor compliance with the reporting requirement.

Response: For the purposes of this data collection effort, information reported on direct or indirect labor hours and rates, and the value of those hours, when associated with a contract number and contractor identity, is treated as proprietary. It was and is considered essential to the data collection effort to ensure this level of information security to reporting contractors. Data subject to potential release to Army sources or the public, or under the Freedom of Information Act, would include information such as the identity of contractors reporting; the number of contract actions reported on; and the overall number of labor hours and value of various categories of support services reported, and other aggregations, but in no event will there be public release of specific reported data when linked to contractor name and or contract number. The Final Rule is clarified to provide that proprietary information may be provided to internal Army sources for purposes of evaluating and enforcing compliance with the reporting requirement, provided the information is appropriately marked and treated as proprietary. For purposes of assuring compliance with the reporting requirement, the Army may eventually decide to make a summarization of non-proprietary, releasable data available through a web site; however this will not be possible in the near future due to the late implementation by many contracting activities and the need for a validation process and cycle using the Federal Procurement Data System database.

Comment: A member of the public suggested that the rule clarify how sub-contractors would report this information. In addition, a contractor suggested that sub-contracting its payroll system excluded it from the scope of the reporting requirement.

Response: Clarifying language is included in the Final Rule making clear that prime contractors may either require their sub-contractors to directly report the information required by this rule to the data collection web site; or the prime contractor may report subcontractor-provided information to the data collection web site (identifying the source of the numbers to the extent practicable). In addition, clarifying language is included in the Final Rule that sub-contracting the payroll system of a contractor is not a basis for exclusion of the contractor from the reporting requirement.

Comment: An Army contracting office queried whether the reporting

requirement applied to Army contracts awarded by them using General Services Administration (GSA) contract vehicles.

Response: Clarifying language is included in the Final Rule that the reporting requirement applies to Army contract actions, valued at greater than \$100,000, awarded by Army contracting offices using GSA contract vehicles.

Comment: Contractor suggested that the submission of an invoice with an additional attachment be allowed in lieu of the web-based data collection, at the option of the contractor.

Response: Using multiple data collection formats and methods is impracticable for the Government and would adversely affect the reliability and cost of the data collection. In addition, the inclusion of attachments on an invoice would, for all practical purposes, eliminate the access protections afforded by using a secure web site not associated with contracting channels, for all data collection.

Comment: Public sector union suggested that the reporting requirement be extended to cover manufacturing work analogous to the work performed at Army arsenals and some Army depots (primarily remanufacturing).

Response: The final rule applies only to services covered by federal supply class or service codes covered by the "Research and Development," and the "Other Services and Construction" codes. The final rule does not include a reporting requirement for the acquisition of supplies and equipment by purchase, lease or barter. However, when non-incident services are discretely included in such contract actions, and these services may be characterized under the Other Services and Construction codes or Research and Development codes, they shall be subject to the reporting requirement. Just as, in manufacturing work performed at Army arsenals, support services that the Arsenals contract for must be reported.

Comment: Public sector comments from overseas commands recommended that foreign vendors/contractors providing services to the Army overseas (such as in Contingency support in theaters of operation) be excepted from the reporting requirement. The concern is certain foreign contractors may not be able to connect to the Internet; may not be conversant with our language, our accounting rules and assumptions, and may be distrustful of providing potentially business- (or tax) sensitive information to a foreign government (*i.e.*, the United States), notwithstanding the stated purpose and pledge to protect such data as proprietary.

Response: One of the purposes of this minimal burden data collection effort is for Army Leadership to gain visibility over the total resources (manpower and associated costs) necessary to accomplish mission requirements, as reliance on contractor support has increased. A recent (October 19, 2000) Memorandum to all Army Commanders and Heads of Staff Agencies, signed by the Vice Chief of Staff, GEN John M. Keane, states: "Defined in both functional and appropriation terms by theater, this [CME] information will address a material weakness capturing the "contractor shadow workforce" support to our forces. This information is very important to Army planning and programming, the Quadrennial Defense Review, and for assuring full visibility of all costs in activity based costing initiatives." If foreign contractors are unable to comply with the entirety of the reporting requirement, without creating a whole new allocation system or system of records, they can exempt themselves from that part of the reporting which they can certify as infeasible. This must be supported with a written certification outlining the portion of the reporting which is impracticable and the reasons therefore. In certain extreme cases (*e.g.*, when the contractor has no capability to use the Internet), the Army contracting office shall be required to report the relevant data and estimates to the best of their ability.

General

The Interim Rule included an exception to the requirement for reporting when a contractor did not have an internal system for aggregating billable hours in the direct and indirect pools, or an internal payroll accounting system, and did not otherwise have to provide this information to the Government. Since these circumstances and facts are not known in advance by contracting officers, this "exemption" (as somewhat restated) has been moved from § 668.1 (which instructs contracting officers), to § 668.2, "Contract Reporting Requirements" (which will instruct offerors and contractors in solicitations and contracts). A corresponding requirement has been added for a written certification of these facts to be submitted by the offeror/contractor.

There were a number of suggestions from both public and private sector sources (some mentioned above) for total exemption from reporting for various circumstances, mostly irrelevant to the purpose of the data collection or its availability. The Rule has been amended to clarify that even partial

reporting of the data elements required is significantly more useful to the Army than no report at all.

a. Procedural Requirements

(1) Regulatory Flexibility Act

The rule does not require the preparation of a regulatory flexibility analysis since it is not expected to have a significant economic impact on a substantial number of small entities (*i.e.* small and small disadvantaged businesses).

(2) Unfunded Mandates Act

The rule does not impose an enforceable duty among small governments (*i.e.* States and local governments).

(3) Paperwork Reduction Act

Pursuant to the Paperwork Reduction Act of 1995, the reporting provisions of this rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0702-0112, with an expiration date of August 31, 2003.

(4) Executive Order 12866 (Regulatory Planning & Review)

This is not a significant regulatory action in that it is not likely to result in a rule that will have an annual effect on the economy of \$100 million or more or adversely affect productivity, the environment, public health or safety.

(5) Executive Order 13132 (Federalism)

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will have little or no direct effect on States or local governments.

(6) Submission to Congress and the General Accounting Office (GAO)

Pursuant to 5 U.S.C., Chapter 8, the rule will be forwarded to both Houses of Congress and the GAO in the final rule announcement together with the GAO prescribed special reporting form for this purpose.

In this document, the Army Department adopts the interim rule published March 15, 2000 as final with the above described changes as set forth below. (Because of the number of changes and the significant reorganization of the Rule, the amended part 668 is provided in full.)

List of Subjects in 32 CFR Part 668

Government contracts; Reporting and record keeping requirements.

Accordingly, the interim rule adding Subchapter L consisting of part 668 to

32 CFR chapter V, which was published in 65 FR 13906 (March 15, 2000), is adopted as a final rule and part 668 is revised to read as follows:

Subchapter L—Army Contracting

PART 668—CONTRACTOR MANHOURLY REPORTING REQUIREMENT

Sec.

668.1 General.

668.2 Contract reporting requirements.

Authority: Sec 343 of Pub.L. 106–65, 113 Stat. 569 (10 U.S.C. 129a and 2461(g)).

§ 668.1 General.

(a) *Scope.* This part sets forth reporting requirements, and related policies and procedures, for labor work year equivalents performed by contractors (also called Contractor Man-hour Equivalents (CMEs)) in support of the Army, pursuant to 10 U.S.C. 129a, 10 U.S.C. 2461(g), and Section 343 of Public Law 106–65.

(b) *Purpose and Background.* (1) *Purpose.* The purpose of this data collection and related contractor reporting is to respond to Congressional requests, and to internal Army manpower and force management planning information requirements, to quantify the extent of CMEs used to support Army operations and management broadly under the Federal Supply Class and Service Codes for “Research and Development” and “Other Services and Construction.” The data collected will provide unprecedented Departmental level visibility of the missions supported and functions performed by contractors in support of major Army organizational elements at the tactical level and higher, by linking the Federal Supply Class and Service Code data to appropriation data and organizational data on an Army-wide basis. This information will also provide visibility of contractor manpower capabilities and labor costs in support of Army missions and functions.

(2) *Background.* The lack of adequate and reliable data on the missions supported and functions performed by service contractors, as well as the resources expended by the Department on those contractors on an Army-wide basis, has resulted in uninformed assumptions and decisionmaking in the Planning, Programming and Budgeting System process. This, in turn, results in a failure to properly prioritize or validate the relative importance of missions performed or supported by contractors, as opposed to the very intense prioritization and mission validation decisions made with regard to the Department’s expenditures on the

more visible in-house performance of similar functions. This can unduly skew the prioritization of in-house resources and manpower. In addition, the CME data will provide information needed at HQDA to assess whether, and to what extent, contractors may be performing functions that the Army senior leadership has determined to be inherently Governmental, or commercial functions, which, when contracted out beyond a certain level of reliance, increase operational risks to overall Army mission capabilities and readiness. When evaluating military capabilities in the generating forces and operating forces under the Quadrennial Defense Review and Total Army Analysis simulations, a critical unit of analysis for assessing military capability is the manpower available to perform a function as linked to major Army organizational elements. The capabilities provided by service contractors consume at least one third of the Department’s obligation authority; and yet, due to lack of reliable data, senior Army planners lack the ability to assess the total manpower capabilities within a function and major Army organization to the extent that the organization and function may rely heavily on contractor support. The data collected under this reporting requirement will remedy these defects by compiling and integrating contractor manpower and cost data in aggregated functional categories associated with the major Army organizational elements, in order to make this critical information visible to HQDA planning and programming officials.

(c) *Applicability.* These reporting requirements apply to all Department of the Army agencies, commands, and activities and to contracting actions awarded by such activities Army-wide, except as set forth in paragraph (c)(3) of this section.

(1) *Policy.* These requirements shall be cited and further implemented as necessary in the Army Federal Acquisition Regulation Supplement, and shall be promulgated to procurement and manpower channels Army-wide. Changes to the administrative aspects of this section (such as reporting formats, methods of incorporation of the requirements into solicitations and contracts, waivers and exemptions), may be published in the Army FAR Supplement after coordination with the Deputy Assistant Secretary of the Army (Force Management, Manpower and Resources). The objective of this reporting requirement is to collect as much significant CME data as possible to allow accurate reporting to Congress

and for Army planning purposes. The reporting should not be viewed as an “all or nothing” requirement. Even partial reporting, e.g., direct labor hours, appropriation data, place of performance, Army customer, etc., will be helpful.

(2) *Contracting office responsibilities.* Contracting officers shall ensure that the reporting requirements set forth herein are included in all covered contract actions. Although every effort has been made to facilitate reporting and to reduce administrative burden on both contractors and contracting offices, there may be situations when a contractor is properly exempt in part or cannot comply with the requirement (e.g., foreign contractor who has no internet access or capability; or is unable to comply without extraordinary costs or effort not recoverable in normal overhead). At the discretion of the contracting officer, contractor self-exemption may be more liberally construed and applied in the case of small foreign contractors not reporting as sub-contractors, with contract values generally less than \$200,000, if they lack internet access or are a non-English speaking firm that would have to employ a translator and/or an English speaking financial specialist to calculate, collect and report all of the data. In such cases, and in those situations where the contracting officer failed to timely include this requirement in solicitations and contracts, the contracting office is required to report the required information, to the best of their ability, by the end of the reporting period (end of contract period or end of fiscal year). Army Heads of Contracting Activities and their Principal Assistants Responsible for Contracting shall ensure that contracting offices found to be significantly non-compliant with these requirements, are tasked to directly report the required data to the Army website. The secure Army website will support surrogate reporting of contract(or) data by contracting offices. Classified contract actions are not, per se, exempt from reporting (guidance at DoD FAR Supplement 48 CFR 202.670–8 applies). No classified information will be included in a contracting office report.

(3) *Covered actions.* The contract reporting requirements specified in § 668.2 below shall be included in all Army solicitations issued and contract actions awarded (including orders under GSA Schedule contracts and contracts awarded by other agencies that allow direct ordering by the Army), and all bilateral modifications of existing Army contracts, after March 15, 2000, except the following:

(i) *Contracts valued at \$100,000 or below.* Indefinite Delivery contracts estimated to exceed \$100,000 in value shall contain the requirement for reporting, for all orders placed in excess of \$25,000. Orders placed against GSA Schedule contracts or contracts awarded by non-Army agencies, shall contain the requirement if the value of the order exceeds \$100,000.

(ii) *Contracts awarded by an Army contracting office solely as a contracting agent in support of non-Army customer(s) and requirements.* The reporting requirement is limited to contractor labor hour and cost data in support of Army customers and requirements. If the organization receiving the benefit of the services is an Army organization, then the contractor labor hour data is reportable as an Army requirement, even though the appropriations funding all or part of the requirement may be other than Army appropriations.

(iii) *Contracts for the acquisition of supplies and equipment.* The reporting requirement applies only to services covered by Federal Supply Class or Service codes for "Research and Development," and "Other Services and Construction." However, when non-incident services are discretely included in a contract for supplies and equipment, and can be characterized as "Research and Development," or "Other Services and Construction," contractors shall be required to characterize and report such services under this requirement. (Example: Ongoing facility management or maintenance and quality assurance services separately priced under the contract.)

(4) *Effective dates for reporting.* For covered contracts in effect prior to March 15, 2000, including previously exempt contract actions (such as those entered into under FAR Part 12 (48 CFR Part 12) procedures prior to December 31, 2000), once a contract is modified to include this reporting requirement, reporting is required retroactive to October 1, 1999, or the start of the contract/order, whichever is later.

§ 668.2 Contract Reporting Requirements.

The below requirement will be included in all solicitations and contract actions (including orders) as specified in § 668.1:

Reporting of Contractor Manpower Data Elements

(a) *Scope.* The following sets forth contractual requirements, and related policies and procedures, for reporting of contractor labor work year equivalents (also called Contractor Man-year Equivalents (CMEs)) in support of the Army, pursuant to 10 U.S.C. 129a, 10 U.S.C. 2461(g), and

Section 343 of Public Law 106-65. Reporting shall be accomplished electronically by direct contractor submission to a secure Army Web Site: <https://contractormanpower.us.army.mil/>.

(b) *Purpose.* The purpose of this reporting requirement is to respond to Congressional requests; significantly improve reports to Congress and to internal Army manpower and force management planners and decisionmakers; and, to broadly quantify the extent of CMEs used to support Army operations and management under the Federal Supply Class and Service Codes for "Research and Development" and "Other Services and Construction." The Army's objective is to collect as much significant CME data as possible to allow accurate reporting to Congress and for Army planning purposes. The reporting data elements should not be viewed as an "all or nothing" requirement. Even partial reporting, e.g., direct labor hours, appropriation data, place of performance, Army customer, etc., will be helpful.

(c) *Applicability.* This reporting requirement applies only to services covered by Federal Supply Class or Service codes for "Research and Development," and "Other Services and Construction." If the contractor is uncertain of the coding of the services performed under this contract/order, or the scope and frequency of reporting, guidance may be obtained from the Army Web Site Help Desk, other HQDA contacts cited at the Web Site, or from the contracting officer. Classified contract actions are not, per se, exempt from this requirement. Report submissions shall not contain classified information.

(d) *Requirements.* The contractor is required to report the following contractor manpower information, associated with performance of this contract action in support of Army requirements, to the Office, Assistant Secretary of the Army (Manpower and Reserve Affairs), using the secure Army data collection web-site at <https://contractormanpower.us.army.mil/>:

(1) *Direct Labor.* Direct labor hours and the value of those hours;

(2) *Indirect Labor.* Composite indirect labor hours associated with the reported direct hours, and the value of those indirect labor hours plus compensation related costs for direct labor hours ordinarily included in the indirect pools; or two distinct, relevant annual composite or average indirect labor rates. If used in lieu of raw indirect labor hours and the value of those indirect hours, the rates may be annualized average estimates for the reporting contractor and need not be developed for each reporting period.

(i) *Composite Indirect Rate for Indirect Manhours.* If provided, the composite indirect labor rate will be used to grossly estimate the number of indirect hours associated with services reported in each period, when multiplied by the reported direct labor hours.

(ii) *Composite Indirect Rate for Compensation Value.* If provided, a different composite indirect labor rate will be used to grossly estimate the value of compensation related charges not included in the value of

direct labor charges, when multiplied by the reported direct labor value. This rate shall include: salaries and wages for indirect labor hours; directors' fees; bonuses (including stock); incentive awards; employee stock options; stock appreciation rights; employee insurance, fringe benefits (e.g., vacation, sick leave, holidays, military leave, supplemental unemployment benefit plans); contributions to pension plans (defined benefit, defined contribution); other post-retirement benefits, annuity, and employee incentive compensation and deferred compensation plans; early retirement plans; off-site pay; incentive pay; hardship pay; severance pay; and COLA differential;

(iii) *Actual Estimated Indirect Labor Hours and Value(s).* Contractors may choose to report estimated total hours and dollars for indirect labor (related to the reported direct labor) and compensation charges not reported as direct labor charges (as opposed to providing average composite rates). Either method chosen should be consistently reported.

(e) *Reporting Exemption(s).* In the rare event the contractor is unable to comply with these reporting requirements without creating a whole new cost allocation system or system of records (such as a payroll accounting system), or due to similar insurmountable practical or economic reasons, the contractor may claim an exemption to at least a portion of the reporting requirement by certifying in writing to the contracting officer the clear underlying reason(s) for exemption from the specified report data elements, and further certifying that they do not otherwise have to provide the exempted information, in any form, to the United States Government. This certification is subject to audit and potential legal action under Title 18, United States Code. The contractor may not claim an exemption on the sole basis that they are a foreign contractor; that services are provided pursuant to a firm fixed price or time and materials contract or similar instrument; or on the basis that they have sub-contracted their payroll system, or have too many subcontractors. If the contracting officer, by written notice, determines that the "self-exemption" is lacking in basis or credibility, the contractor shall comply with the subsequent direction of the contracting officer, whose decision is final in this matter.

(f) *Uses and Safeguarding of Information.* The information submitted will be treated as contractor proprietary information when associated with a contractor name or contract number. The Assistant Secretary of the Army (Manpower and Reserve Affairs) will oversee the aggregation of this information and will exclude contract number and contractor name from any use of this data (except as necessary for internal Army verification and validation measures). The planning factor(s) derived from this data by ASA (M&RA) and its contract support (if any) will be used solely for Army manpower planning purposes and will not be applied to any specific acquisition(s). Detailed data by contract number and name will not be released to any Governmental entity other than ASA (M&RA), except for purposes of assessing compliance with the reporting

requirement itself, and will only be used for the stated purposes (reporting and planning). Any potentially sensitive data released within the Army or to its contractor will be clearly marked as Contractor Proprietary. Non-sensitive roll-up information may eventually be published for public inspection after such data has been validated as deemed appropriate.

(g) *Sub-Contractor(s)*. The contractor shall ensure that all reportable sub-contractor data is timely reported to the data collection web site (citing this contract/order number). At the discretion of the prime contractor, this reporting may be done directly by subcontractors to the data collection site; or by the prime contractor after consolidating and rationalizing all significant data from their sub-contractors.

(h) *Report schedule*. The contractor is required to report the required information to the Office of the Assistant Secretary of the Army (Manpower and Reserve Affairs) data collection web site generally contemporaneous with submission of a request for payment (for example, voucher, invoice, or request for progress payment), but not less frequently than quarterly, retroactive to October 1, 1999, or the start of the contract/order, whichever is later. Deviation from this schedule requires approval of the contracting officer.

(i) *Reporting format*. The information required should be reported electronically to the M&RA data collection point, at <https://contractormanpower.us.army.mil>. This web site identifies and explains all the mandatory data elements and format required to assure reliable and consistent collection of the data required by law, and includes, but is not limited to, identification of the information collected pursuant to § 668.2(d)(1) and (2) as related to:

(1) *Reporting to Congress or Army Leadership*. Data elements required for reports to Congress and Army manpower planning, such as: the applicable federal supply class or service code, appropriation data (and estimated value for each appropriation where more than one appropriation funds a contract), major Army organizational element receiving or reviewing the work, and place of performance/theater of operation where contractor performs the work.

(2) *Data Credibility*. Data elements required for purposes of assuring credible and consistent reporting and general compliance with the reporting requirement, such as: beginning and ending dates for reporting period; contract number (including task or delivery order number); name and address of contracting office; name, address and point of contact for contractor; and total estimated value of contract.

(j) *Reporting Flexibility*. Contractors are encouraged to communicate with the help desk identified at the data collection web site to resolve reporting difficulties. The web site reporting pages include a "Remarks" field to accommodate non-standard data entries if needed to facilitate simplified reporting and to minimize reporting burdens arising out of unique circumstances. For example, contractors may use the remarks field to identify multiple delivery orders associated

with a single data submission or record, so long as the contract number, federal supply or service code, major Army organizational element receiving or reviewing the work, and contracting office are the same for the reporting period for that set of delivery orders, rather than entering a separate data submission or record for each individual delivery order. Subcontract data may also be consolidated in a single report for a reporting period. Other changes to facilitate reporting may be authorized by the contracting officer or the Help Desk (under Army policy direction and oversight).

Robert Bartholomew III,

Deputy Assistant Secretary (Force Management, Manpower and Resources).

Edward G. Elgart,

Acting Deputy Assistant Secretary of the Army (Procurement).

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00-017]

RIN 2115-AA97

Safety Zone; Tongass Narrows, Ketchikan, AK; correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register**, June 21, 1994, (59 FR 31933). The regulations related to the movement of vessels in Tongass Narrows, Ketchikan, AK during the annual fireworks display. That document contained a latitude/longitude position and a required safety fallout radius from the barge conducting fireworks display that has changed; thus, a correction is necessary.

DATES: Effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, United States Coast Guard Marine Safety Office Juneau, (907) 463-2470.

SUPPLEMENTARY INFORMATION:

Background

In final rule 59 FR 31933, the latitude/longitude position and safety fallout radius around the barge conducting fireworks display are no longer correct because the marine event sponsor has increased the fireworks display shell size (12 inches) and amount of fireworks display (600 lbs Division 1.3G UN 0335), causing an increase in the

required safety fallout radius of 300 yards around the barge conducting fireworks display activities and changing the latitude/longitude position.

Need for Correction

As published, the final regulations contain errors which may prove to be dangerous to the public and need to be amended. Accordingly, 33 CFR Part 165 is corrected by making the following correcting amendments:

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

§ 165.1708 [Amended]

2. In § 165.1708 paragraph (a), delete the word "100" and add the word "300" in its place, respectively.

3. In § 165.1708 paragraph (a) location, delete the words "55°20'20" N, 131°39'36" W" and add the words "55°20'32" N, 131°39'40" W" in its place, respectively.

Dated: December 5, 2000.

Robert Lorigan,

Captain, U.S. Coast Guard, Captain of the Port, Southeast Alaska.

[FR Doc. 00-32825 Filed 12-22-00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR 165

[COTP Southeast Alaska 00-018]

RIN 2115-AA97

Safety Zone; Gastineau Channel, Juneau, AK; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register**, June 21, 1994, (59 FR 31934). The regulations related to the movement of vessels in Gastineau Channel, Juneau, AK during the annual fireworks display. That document contained a required safety fallout radius from the barge conducting fireworks display that has changed; thus, a correction is necessary.

DATES: Effective on December 26, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Cecil McNutt, United States