

that, before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective [January 22, 2002].

*K. Executive Order 13211: Energy Effects*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects**

*40 CFR Part 257*

Environmental protection, Waste treatment and disposal.

*40 CFR Part 258*

Environmental protection, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

Dated: September 28, 2001.

**Christine Todd Whitman,**  
*Administrator.*

For reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

**PART 257—[AMENDED]**

1. The authority citation for part 257 is revised to read as follows:

**Authority:** 42 U.S.C. 6907(a)(3), 6912(a)(1), 6944(a), and 6949a(c); 33 U.S.C. 1345(d) and (e).

2. Section 257.2 is amended:

a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste".

b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit".

The revision and additions read as follows:

**§ 257.2 Definitions.**

\* \* \* \* \*

*Construction and demolition (C&D) landfill* means a solid waste disposal facility subject to the requirements of subparts A or B of this part that receives

construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste (defined in § 261.5 of this chapter), or industrial solid waste (defined in § 258.2 of this chapter). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

\* \* \* \* \*

*Municipal solid waste landfill (MSWLF) unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined in this section. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

\* \* \* \* \*

*Residential lead-based paint waste* means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

\* \* \* \* \*

**PART 258—[AMENDED]**

1. The authority citation for part 258 continues to read as follows:

**Authority:** 33 U.S.C. 1345(d) and (e); 42 U.S.C. 6902(a), 6907, 6912(a), 6944, 6945(c) and 6949a(c).

2. Section 258.2 is amended:

a. By adding in alphabetical order the definitions for "Construction and demolition (C&D) landfill" and "Residential lead-based paint waste".

b. By revising the definition of "Municipal solid waste landfill (MSWLF) unit".

The revision and additions read as follows:

**§ 258.2 Definitions.**

\* \* \* \* \*

*Construction and demolition (C&D) landfill* means a solid waste disposal

facility subject to the requirements of part 257, subparts A or B of this chapter that receives construction and demolition waste and does not receive hazardous waste (defined in § 261.3 of this chapter) other than conditionally exempt small quantity generator waste, (defined in § 261.5 of this chapter), or industrial solid waste (defined in this section). A C&D landfill typically receives any one or more of the following types of solid wastes: roadwork material, excavated material, demolition waste, construction/renovation waste, and site clearance waste.

\* \* \* \* \*

*Municipal solid waste landfill (MSWLF) unit* means a discrete area of land or an excavation that receives household waste, and that is not a land application unit, surface impoundment, injection well, or waste pile, as those terms are defined under § 257.2 of this chapter. A MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, and industrial solid waste. Such a landfill may be publicly or privately owned. A MSWLF unit may be a new MSWLF unit, an existing MSWLF unit or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not a MSWLF unit.

\* \* \* \* \*

*Residential lead-based paint waste* means waste generated as a result of lead-based paint activities (including abatement, rehabilitation, renovation and remodeling) in homes and other residences. The term residential lead-based paint waste includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

\* \* \* \* \*

[FR Doc. 01-26094 Filed 10-22-01; 8:45 am]  
**BILLING CODE 6560-50-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Part 126**

**[USCG-2001-10164]**

**RIN 2115-AG17**

**Alternate Compliance Program; Incorporation of Offshore Supply Vessels**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Direct final rule; request for comments.

**SUMMARY:** By this direct final rule, the Coast Guard is amending regulations to incorporate Offshore Supply Vessels (OSVs) into the Alternate Compliance Program (ACP). The action will improve the flexibility of regulations governing OSVs by providing an alternative method to fulfill the requirements for vessel design, inspection, and certification without compromising existing safety standards.

**DATES:** This rule is effective January 22, 2002, unless an adverse comment, or notice of intent to submit an adverse comment, reaches the Docket Management Facility on or before December 24, 2001. If an adverse comment, or notice of intent to submit an adverse comment, is received, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

**ADDRESSES:** To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG-2001-10164), U.S. Department of Transportation, room PL-401, 400 Seventh Street SW., Washington, DC 20590-0001.

(2) By delivery to room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202-366-9329.

(3) By fax to the Docket Management Facility at 202-493-2251.

(4) Electronically through the Web site for the Docket Management System at <http://dms.dot.gov>.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and related material received from the public, as well as documents mentioned in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington DC, 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, contact Lieutenant Benjamin Nicholson, United States Coast Guard Office of Design and Engineering Standards (G-MSE), at 202-267-0143, or e-mail him at [BNicholson@comdt.uscg.mil](mailto:BNicholson@comdt.uscg.mil). If you have questions on viewing or submitting material to the docket, call Dorothy

Beard, Chief, Dockets, Department of Transportation, at 202-366-5149.

#### **SUPPLEMENTARY INFORMATION:**

##### **Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG-2001-10164), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments by only one means. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope.

##### **Regulatory Information**

We are publishing this direct final rule, amending 46 CFR part 126, because we do not expect an adverse comment. An "adverse" comment explains why this rule or a part of it would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change. If no adverse comment or notice of intent to submit an adverse comment is received by December 24, 2001 this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comment was received and confirming that this rule will become effective as scheduled. However, if we receive an adverse comment or notice of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule before it becomes effective. If an adverse comment applies only to part of this rule (e.g., to an amendment, a paragraph, or a section) and it is possible to remove that part without defeating the purpose of this rule, we may adopt, as final, those parts of this rule on which no adverse comment was received. We will withdraw the part of this rule that was the subject of an adverse comment. If we decide to proceed with a rulemaking following receipt of an adverse comment, we will

publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

##### **Background and Purpose**

The Coast Guard is amending 46 CFR part 126 (subchapter L) to authorize Offshore Supply Vessels (OSVs) to be eligible for the Alternate Compliance Program (ACP). Recent interest by the offshore industry to construct OSVs in compliance with international standards, specifically the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS), has provided the impetus for this regulatory amendment. Current regulations permit tank vessels, passenger vessels, cargo vessels, miscellaneous vessels, and mobile offshore drilling units to enroll in the ACP. OSVs are presently not authorized to participate in the program.

OSVs were not originally included in the ACP's framework because they were not generally intended or designed for international service. During development of the ACP in the mid 1990's, industry did not demonstrate an interest in conforming OSVs to SOLAS requirements. The operational climate of the offshore industry has since changed and the Coast Guard sees a legitimate need to amend the regulations.

This rule expands the ACP's applicability. The ACP is intended to provide regulatory flexibility for U.S. Flag vessels while providing a progressive level of safety that is aligned with recognized international standards. Furthermore, the ACP allows the Coast Guard to be more efficient with its resources; thus enabling the allocation of resources to high-risk marine safety concerns.

The Coast Guard has been a proponent for increasing regulatory flexibility while also progressively improving marine safety. The ACP has proven successful over the last five years and its expansion to include OSVs has the potential to significantly increase the program's vessel enrollment as well as to provide a stimulus for SOLAS conformity within the OSV fleet. The Coast Guard considers this amendment to be a safe and non-controversial course of action.

##### **Discussion of Rule**

This rule does not change any substantive requirements of the existing regulations. This rule applies to U.S. Flag OSVs certificated for international voyages and classed by a recognized classification society that is authorized by the Coast Guard to participate in the ACP as specified in 46 CFR part 8.

Specifically, this rule is intended to amend 46 CFR part 126, subpart B, concerning the compliance standards for a Certificate of Inspection (COI) for OSVs. This rule provides a means of alternate compliance for OSVs in place of compliance with the subchapter's other applicable provisions. Under this rule, the owner or operator of a vessel subject to plan review and inspection under subchapter L for initial issuance or renewal of a COI may comply with the ACP provisions of 46 CFR part 8 including approved classification society rules and supplements as referenced.

### Regulatory Evaluation

This rule is not considered to be a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)[44 FR 11040 (February 26, 1979)]. The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. It will not impose any costs on the public because it enables a voluntary alternative to another prescribed method of inspection.

### Small Entities

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

This rule does not change any requirements in the regulations. It is simply updating information to facilitate continuation of the Coast Guard's Alternate Compliance Program. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of the preamble.

### Collection of Information

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

### Federalism

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

### Unfunded Mandates Reform Act

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

### Taking of Private Property

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

### Civil Justice Reform

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

### Protection of Children

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

### Indian Tribal Governments

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

responsibilities between the Federal Government and Indian tribes.

### Energy Effects

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

### Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraphs (34)(d) and (e) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. This exclusion is in accordance with section 2.B.2. and figure 2–1 of the NEPA implementing Procedures, Commandant Instruction M16475.1D, concerning regulations that are based on vessel inspection and equipment aspects. A "Categorical Exclusion Determination" is available in the docket where indicated under ADDRESSES.

### List of Subjects in 46 CFR Part 126

Authority delegation, Hazardous materials transportation, Marine safety, Offshore Supply Vessels, Oil and gas exploration, Reporting and recordkeeping requirements, Vessels.

For the reasons discussed in the preamble, the Coast Guard amends 46 CFR part 126 as follows:

### PART 126—[AMENDED]

1. The citation of authority for part 126 continues to read as follows:

**Authority:** 46 U.S.C. 3205, 3306, 3307; 33 U.S.C. 1321(j); E.O. 11735, 38 FR 21243, 3 CFR 1971–1975 Comp., p. 793; 49 CFR 1.46.

2. Add § 126.235 to read as follows:

#### § 126.235 Alternate compliance.

(a) In place of compliance with other applicable provisions of this subchapter, the owner or operator of a vessel subject to plan review and inspection under this subchapter for initial issuance or renewal of a Certificate of Inspection (CG–841 rev. 3/85) may comply with the

Alternate Compliance Program provisions of 46 CFR part 8.

(b) For the purposes of this section, a list of authorized classification societies, including information for ordering copies of approved classification society rules and supplements, is available from Commandant (G-MSE), 2100 Second St., SW., Washington, DC 20593-0001; telephone (202) 267-6925; or fax (202) 267-4816. Approved classification society rules and supplements are incorporated by reference into 46 CFR 8.110(b).

Dated: August 1, 2001.

**Paul J. Pluta,**

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 01-26563 Filed 10-22-01; 8:45 am]

BILLING CODE 4910-15-U

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 64

[CC Docket No. 96-115; CC Docket No. 96-149; FCC 01-247]

#### Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; Implementation of the Non-Accounting Safeguards

**AGENCY:** Federal Communications Commission.

**ACTION:** Clarification.

**SUMMARY:** This document is intended to clarify the status of the Commission's CPNI rules after the Tenth Circuit's opinion and explains how parties may obtain customer consent for use of their CPNI.

**FOR FURTHER INFORMATION CONTACT:** Marcy Greene, Attorney Advisor, Policy and Program Planning Division, Common Carrier Bureau, (202) 418-2410.

**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's Clarification Order in CC Docket Nos. 96-115 and 96-149, FCC 01-247, adopted August 28, 2001, and released September 7, 2001. The complete text of this Clarification Order is available for inspection and copying during normal business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY-A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY-B402, Washington, DC 20554, telephone 202-

863-2893, facsimile 202-863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). It is also available on the Commission's website at <http://www.fcc.gov>.

#### Synopsis of the Clarification Order

1. In the *Customer Proprietary Network Information (CPNI) Order* (63 FR 20364, April 24, 1998), the Commission stated that section 222(c)(1) of the Act allows a carrier to use, without the customer's prior approval, the customer's CPNI derived from the complete service that the customer subscribes to from that carrier and its affiliates, for marketing purposes within the existing service relationship. This is known as the "total service approach." The Commission also concluded that carriers must notify the customer of the customer's rights under section 222 and then obtain express written, oral or electronic customer approval—a "notice and opt-in" approach—before a carrier may use CPNI to market services outside the customer's existing service relationship with that carrier. US West appealed this order to the Tenth Circuit. On August 16, 1999, the Commission adopted the *CPNI Reconsideration Order* (64 FR 53242, October 1, 1999) in response to a number of petitions for reconsideration, forbearance, and clarification of the *CPNI Order*. The *CPNI Reconsideration Order*, among other things, further clarified the total service approach. It also retained the opt-in approach.

2. After the Commission adopted the *CPNI Reconsideration Order*, the Tenth Circuit issued its decision in *US WEST v. FCC*, vacating a portion of the *CPNI Order* "and the regulations adopted therein." In *US WEST v. FCC*, US WEST contended that the opt-in approach for customer approval in the *CPNI Order* violated the First and Fifth Amendments of the Constitution. The Tenth Circuit first questioned whether the government had demonstrated that the interests it put forward in regulating CPNI—protecting customer privacy and fostering competition—are substantial. The court agreed that the government had asserted a substantial interest in protecting customers' privacy, but declined to find that promoting competition was a significant consideration in Congress' enactment of section 222. The court nonetheless concluded that the government did not demonstrate that the CPNI regulations requiring opt-in customer approval "directly and materially advanc[ed] its interests in protecting privacy and promoting competition." The court concluded that the Commission's determination that an opt-in requirement would best protect a

consumer's privacy interests was not narrowly tailored as required by the First Amendment because the Commission had failed to adequately consider an opt-out option.

#### Effect of the US WEST Decision on the CPNI Rules

3. The court's opinion in *US WEST v. FCC* analyzed only the constitutionality of the Commission's interpretation of the customer approval requirement of section 222(c)(1) of the Act by enacting the opt-in regime discussed above. As the Commission has found previously, the court's vacatur order related only to the discrete portions of the *CPNI Order* and rules requiring opt-in customer approval. Had the court intended to take the unusual step of vacating portions of the order and rules not before it, the Commission believes it would have said so explicitly. Accordingly, we conclude that the court sought to eliminate only the specific section of our rules that was before it, and that its vacatur order applied only to § 64.2007(c), the only provision inextricably tied to the opt-in mechanism. The remainder of the Commission's CPNI rules remain in effect.

Federal Communications Commission.

**Magalie Roman Salas,**

Secretary.

[FR Doc. 01-26579 Filed 10-22-01; 8:45 am]

BILLING CODE 6712-01-P

## NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

**48 CFR Parts 1804, 1807, 1808, 1815, 1816, 1817, 1819, 1822, 1832, 1835, 1836, 1837, 1842, 1843, 1844, and 1852**

#### Miscellaneous Administrative Revisions to the NASA FAR Supplement

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 97-20, 97-22 and 97-26, and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

**EFFECTIVE DATE:** October 23, 2001.

**FOR FURTHER INFORMATION CONTACT:** Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358-1645, e-mail: [celeste.dalton@hq.nasa.gov](mailto:celeste.dalton@hq.nasa.gov).

**SUPPLEMENTARY INFORMATION:**