

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****15 CFR Part 995**

[Docket No: 040608174-4174-01]

RIN 0648-AR87

Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) proposes to promulgate certification requirements with standards for applicants who want to distribute NOAA Electronic Navigational Charts (NOAA ENC[®]) as official data. NOAA intends to offer two types of certification. The first type, "Certified NOAA ENC Distributor" (CED), would be for NOAA ENC[®]s downloading, exact copying, and redistribution of those copies of NOAA ENC[®]s data. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), would permit reformatting official NOAA ENC[®]s into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification would result in products that meet federal chart carriage regulations. Both types of certification would permit, but would not require, compression, encryption, and packaging with other data.

NOAA intends by this action to assure that quality official NOAA ENC data is offered to the public in support of safe navigation on U.S. waters.

DATES: Comments must be received by November 15, 2004.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Written comments may be faxed to (301) 713-4516. Comments by e-mail should be submitted to ECDIS@noaa.gov.

Electronic Access

A digital copy of the proposed certification requirements for NOAA ENC distribution, with application templates, is accessible via the Internet at NOAA's Web site: <http://>

nauticalcharts.noaa.gov/mcd/enc/index.htm.

FOR FURTHER INFORMATION CONTACT: Captain Jim Gardner, Chief, Marine Chart Division, Office of Coast Survey, NOS/NOAA, (301) 713-2724, Jim.Gardner@noaa.gov.

SUPPLEMENTARY INFORMATION:**Background**

NOAA produces electronic navigational charts (ENCs) that may be used in a type-approved Electronic Chart Display and Information System (ECDIS) to meet federal nautical chart carriage regulations. NOAA distributes these official ENCs to the public for free over the Internet. This proposed rule would establish the requirements by which entities may be certified to download, redistribute, repackage, or in some cases reformat, official ENCs while retaining their official status for meeting chart carriage regulations. No other processes would result in redistributed NOAA ENC[®] products that meet chart carriage regulations.

NOAA developed these proposed certification requirements to satisfy directives contained in Section 104 of the Hydrographic Services Improvement Act Amendments of 2002, 33 U.S.C. 892b(b)(1). The Act states that the Administrator of NOAA shall develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under the Hydrographic Services Improvement Act.

Hydrographic products include non-federal publicly or commercially available nautical charts, nautical information databases, and other products derived from hydrographic data. These certification requirements would ensure the quality of the data and its timely and accurate dissemination, for safe navigation, and would provide the public with a wider variety of specialized products that are considered official NOAA data for regulatory purposes.

To obtain a written copy of the proposed certification requirements for NOAA ENC distribution, refer to **ADDRESSES** section or visit the Internet at NOAA's Web site: <http://nauticalcharts.noaa.gov/mcd/enc/index.htm>.

In addition to the rules set forth in the NOAA certification process, if the Value Added Distributor converts NOAA ENC data to other formats, it would need to comply with the International Hydrographic Organization (IHO)

Technical Resolution A3.11 published in M-3 Resolutions of the IHO, Chapter A, Section 3. This resolution is available from the IHO Web site: <http://www.iho.shom.fr>. Also, for reference, it is advised that Distributors be familiar with the International Electrotechnical Commission (IEC) Publication 61174 and the IHO Special Publication S57. IEC Publication 61174 is the basis for type-approval specifications related to operational methods of testing and required test results for an IMO-compliant ECDIS. The IEC Publication 61174 can be ordered from the IEC Web site: <http://www.iec.ch>. The IHO Special Publication S57 includes a description of the data structure and format to be used for the exchange of ENC data, product specification for the production of ENC data, and an updating profile. The IHO Special Publication S57 is available at the IHO Web site: <http://www.iho.shom.fr>.

Classification*A. Executive Order 12866*

This proposed rule has been determined to be not significant for the purposes of Executive Order 12866.

B. Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certifies to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule would not have a significant economic impact on a substantial number of small entities. The purpose of this rule is to provide the procedures and requirements necessary for an entity to be certified as "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor." Both types of certification would result in products that meet federal chart carriage regulations. Both types of certification would permit, but do not require, compression, encryption, and packaging with other data.

This certification process would be voluntary. Only those applicants who wish to distribute ENC data with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials would need to apply.

NOAA proposes this certification process under the authority of 33 U.S.C. 892b(b)(1).

The Small Business Administration guideline to separate small from large businesses is \$4 million for Mapmaking firms and \$5 million for Navigational Services to Shipping and Other Support Activities for Water Transportation.

NOAA is unable to determine the total number of small entities that will be affected by this rule, as it does not specifically track this type of information. However, based upon knowledge of the nature of the industry, NOAA believes the majority of the entities affected will be small businesses.

The total estimated economic impact to small entities associated with startup costs, software and equipment upgrades, the application process, reporting, record keeping, and compliance requirements is not expected to amount to sums greater than \$5,228 per entity annually. However, NOAA does not believe this cost would have a negative impact on small companies, as only those companies that believe they can profit would seek certification. This estimate of costs incurred associated with these requirements should be offset through the benefits in increased sales. NOAA would require only bi-annual reporting and record keeping, balancing the burden to the distributor with the assurance of maintaining safe navigation through data quality verification for public safety. Also, to lessen the economic impact, the duration of certification would be five years from the date of issuance.

It is anticipated the effects of this rule if adopted would be largely positive to small entities, with potential economic benefits. The proposed rule will allow certified businesses to sell a new product that is considered official NOAA data, with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" on products and marketing materials. Federal regulation and reporting would be extremely limited. Startup costs would be minimal. There would be no charge to small businesses for this official product, which they could use, alter, and/or resell for profit. The rule would create a new market for electronic chart products that are recognized by NOAA through the proposed certification process.

C. Paperwork Reduction Act

This proposed rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The following requirements have been submitted to OMB for approval; the total estimate of burden hours annually for all distributors is 535 hours. The total estimate of burden hours per distributor is approximately 60 hours a year.

These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed,

completing and reviewing the collection of information, sending the initial application to OCS to become a certified distributor, and sending the bi-annual reports to OCS.

Public comment is sought regarding whether these proposed collections of information are necessary for the proper performance of the functions of the agency and whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments on these or any other aspects of the collection of information to NOS (see **ADDRESSES**) and to David Rostker at the Office of Information and Regulatory Affairs, OMB, by e-mail to David_Rostker@omb.eop.gov or by fax to (202) 395-7285.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

There are no duplicative, overlapping, or conflicting Federal rules associated with this proposed rule.

List of Subjects in 15 CFR Part 995

Navigation (water), Navigational charts, Certification requirements, Incorporation by reference.

For the reasons stated in the preamble, NOS proposes to amend 15 CFR chapter IX by adding Subchapter F, Part 995 to read as follows:

SUBCHAPTER F—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES

PART 995—CERTIFICATION REQUIREMENTS FOR DISTRIBUTORS OF NOAA HYDROGRAPHIC PRODUCTS

Subpart A—General

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- 995.25 Quality Management System.
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Appendix A to Subpart C of Part 995—Certification Application Templates

Authority: 33 U.S.C. 892b(b)(1).

Subpart A—General

§ 995.1 Purpose and scope.

(a) The National Oceanic and Atmospheric Administration (NOAA) produces electronic navigational charts (ENCs) that may be used in a type-approved Electronic Chart Display and Information System (ECDIS) to meet federal nautical chart carriage regulations. NOAA distributes these official ENCs for free over the Internet. This part establishes the requirements by which entities may be certified to download, redistribute, repackage, or in some cases reformat, official NOAA ENCs® while retaining their official status for meeting chart carriage regulations. No other processes result in redistributed NOAA ENC products that meet chart carriage regulations.

(b) Two types of certification are offered. The first type, "Certified NOAA ENC Distributor" (CED), covers NOAA ENC downloading, exact copying, and redistribution of those copies. The second type, "Certified NOAA ENC Value Added Distributor" (CEVAD), permits reformatting official NOAA ENCs into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC. Both types of certification result in products that meet federal chart carriage regulations. Both types of certification permit, but do not require, compression, encryption, and packaging with other data.

(c) Entities without certification may continue to download official ENCs and use, alter, and/or distribute that data, but the result does not meet federal nautical chart carriage regulations. Individuals may download official ENCs for their own use. If imported unaltered into a type-approved ECDIS, the result

meets federal nautical chart carriage regulations.

(d) This part defines the minimum requirements regarding the process for ensuring the quality of products produced by re-distributing NOAA ENC data or incorporating it into value-added navigational products. These requirements apply to entities wishing to have products and services for the re-distribution of NOAA ENC data authorized as "Certified NOAA ENC Distributor" and/or as "Certified NOAA ENC Value Added Distributors."

§ 995.2 Incorporation by reference.

Certain material listed in this section is incorporated by reference with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. The materials listed in this section are incorporated by reference in the corresponding sections noted. The materials are available for purchase at the corresponding addresses noted below, and all are available for inspection at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC, or at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

(a) The material listed below is available for purchase from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; fax: (377) 93.10.81.40; e-mail : info@ihb.mc. Orders may be submitted by letter, fax, or e-mail.

(1) IHO Technical Resolution A3.11—ENC/SENC Distribution Option, updated September 2002, § 995.25.

(2) [Reserved]

(b) [Reserved]

§ 995.3 Availability of other publications.

(a) For further guidance you may obtain the following:

(1) IEC 61174—The International Electrotechnical Commission identified and described the necessary performance tests and checks for an International Maritime Organization compliant ECDIS. The IMO Performance Standards permit National Maritime Safety Administrations to consider ECDIS as the functional equivalent to charts required by Regulation V, Chapter 20 of the 1974 SOLAS Convention. IEC Publication 61174, dated August 1998, can be purchased from the IEC website: <http://www.iec.ch>.

(2) IHO Special Publication S57—The IHO Transfer Standard for Hydrographic Data, edition 3, dated November 1996, describes the data structure and format to be used for the exchange of ENC data,

product specification for the production of ENC data, and an updating profile.

IHO S-57 documentation is available on CD ROM from the International Hydrographic Bureau, 4 quai Antoine 1er, B.P. 445, MC 98011 MONACO CEDEX; telephone: (377) 93.10.81.00; e-mail: info@ihb.mc.

(b) [Reserved]

§ 995.4 Definitions.

Certified NOAA ENC Distributor (CED) means an entity that is certified as a distributor of NOAA ENC files by NOAA. This certification indicates that the distributor meets certain requirements (in Subparts A, B, and D of this document) that ensure timely and accurate dissemination of NOAA ENC data.

Certified NOAA ENC Value Added Distributor (CEVAD) means an entity that creates a derived product that has been produced from NOAA ENC files using a process certified by NOAA. This certification indicates that the CEVAD meets certain requirements (in Subparts A, C, and D of this document) that ensure timely and accurate dissemination of NOAA ENC data in a non-ENC format.

Derived product means a navigational product produced by transforming the NOAA ENC files to another format while preserving the content and accuracy. It may contain information from other sources.

Distributor means a company that re-distributes a NOAA hydrographic product to end users in its original format.

Electronic Chart Display and Information System (ECDIS) means the internationally adopted computer-assisted navigation system which, when complying with all of the required specifications, can be accepted as the up-to-date chart required by V/20 of the 1974 SOLAS Convention.

Electronic Navigational Chart (ENC) means a database, standardized as to content, structure, and format, issued for use with ECDIS on the authority of government authorized hydrographic offices. The ENC contains all the chart information necessary for safe navigation and may contain supplementary information in addition to that contained in the paper chart (e.g. sailing directions), which may be considered necessary for safe navigation.

NOAA ENC® means Electronic Navigational Charts produced by the National Oceanic and Atmospheric Administration. NOAA ENC files comply with the IHO S-57 standard, Edition 3.1 and the ENC Product Specification. The phrase "NOAA ENC"

is a registered trademark and may not be used without permission.

System Electronic Navigational Chart (SENC) means a database resulting from the transformation of the ENC by ECDIS for appropriate use, updates to the ENC by appropriate means and other data added by the mariner. It is this database that is actually accessed by ECDIS for the display generation and other navigational functions, and is equivalent to an up-to-date paper chart. The SENC may also contain information from other sources.

Value Added Distributor means a company that may use the NOAA ENC to create derived products used by end users.

§ 995.5 Abbreviations.

CED Certified NOAA ENC Distributor
 CEVAD Certified NOAA ENC Value Added Distributor
 CRC Cyclical Redundancy Checksum
 ECDIS Electronic Chart Display and Information System
 ENC Electronic Navigational Chart
 IEC International Electrotechnical Commission
 IHO International Hydrographic Organization
 IMO International Maritime Organization
 ISO International Standards Organization
 NOAA National Oceanic and Atmospheric Administration
 NOS National Ocean Service
 OCS Office of Coast Survey
 SENC System Electronic Navigational Chart
 SOLAS Safety of Life at Sea
 VAD Value Added Distributor

§ 995.6 Fees.

The Office of Coast Survey, NOAA, may charge a fee for costs incurred to process the request for certification pursuant to 33 U.S.C. 892b(b)(1)(C) and 892b(b)(2). The amount of the fee, if one is charged, will be determined by the Director, Office of Coast Survey, and charged to all Applicants based on the time and effort involved. Any fee shall not exceed the costs of conducting the quality assurance testing, evaluation, or studies necessary to determine whether the hydrographic product satisfies the standards.

If a fee is charged, it will be charged for each application for certification submitted by an Applicant. The only exception is for resubmissions of revised requests that were initially unacceptable and are sent in within 90 days as described in § 995.11(b)(2).

§ 995.7 Liability.

Distributors and value added distributors certified under this section

shall indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of certified distributors or value added distributors or their employees, arising out of the use by a distributor or value added distributor, or any party acting on its behalf or under its authorization, of NOAA data.

§ 995.8 Alterations.

NOAA reserves the right to change these requirements at any time.

Subpart B—Certification and Procedures

§ 995.10 Correspondence and applications.

(a) Distributors or value-added distributors desiring certification from NOAA shall provide a written request and application for certification to the Office of Coast Survey, Attention: Distribution Certification, N/CS, 1315 East West Highway, Silver Spring, Maryland 20910. Such a distributor or value-added distributor is hereafter referred to as Applicant. The Office of Coast Survey (OCS) is the approving office for certification under these requirements.

(b) Applicant shall provide an application for certification that describes how each element in the applicable sections of these requirements has been met. The application will also contain an acknowledgment, signed by a company principal, of all terms and conditions described in these requirements.

(c) Applicant shall use the appropriate template provided in Appendix A to these requirements to prepare their request for certification.

(d) Applicant shall provide, with its application, a point of contact with mailing address, phone number, and e-mail address. Applicant shall immediately notify NOAA, through the Office of Coast Survey, of any changes to point of contact information. Failure to do so will be considered a violation of these requirements and may lead to termination of certification.

§ 995.11 Government review and approval.

(a) An application will be reviewed by NOAA within 90 days of receipt. If all requirements, as defined by these document, are adequately addressed, certification will be granted. If for any reason NOAA will be unable to process the application for certification within the 90-day time frame, Applicant will be notified and a revised date will be provided for a decision on the request.

(b)(1) NOAA will determine if the request for certification is complete and

that it demonstrates that Applicant has met all of the applicable requirements described in this document.

(2) In the event that a request is incomplete or does not demonstrate that Applicant has met all of the applicable requirements, NOAA will consider the application unacceptable. NOAA will notify the Applicant of the deficiencies in writing. Applicant may re-submit a revised application within 90 days of receipt of NOAA's denial notice. Resubmissions received after the 90-day resubmission period will automatically be denied. NOAA will review applications received within the 90-day resubmission period in the time frame described in § 995.11(a). After the second review, if the application is still unacceptable, Applicant will be again notified of the deficiencies in writing. At that point, Applicant may not re-submit the application for certification for a period of one year from the date of the second notification of an unacceptable application.

§ 995.12 Certification designation.

(a) An Applicant that has been certified by NOAA as a CED may use the phrase "Certified NOAA ENC Distributor" on products and marketing materials. An Applicant that has been certified by NOAA as a CEVAD may use the phrase "Certified NOAA ENC Value Added Distributor" on products and marketing materials.

(b) [Reserved]

§ 995.13 Transfer of certification.

If, subsequent to certification, a distributor or value added distributor of NOAA hydrographic products contracts or in any way transfers the production or distribution of all or part of the certified products to another entity, the existing certification is terminated and the process must be re-certified.

§ 995.14 Auditing.

NOAA reserves the right to audit certified distributors and value added distributors of NOAA hydrographic products to ensure that these requirements are being met. Such an audit may consist of: visits to the production facilities, product testing, confirmation of ISO 9001 certification, confirmation of type approval for conversion software, and so forth.

§ 995.15 Termination of certification.

(a) NOAA reserves the right to audit certified distributors. In the event that NOAA determines that a certified distributor or value added distributor of NOAA hydrographic products is not meeting the requirements described in these regulations, the Office of Coast

Survey, NOAA will provide written notification of any deficiencies to the distributor. The distributor or value added distributor's certification will be immediately suspended and the distributor or value added distributor shall have thirty (30) working days to correct the deficiencies. If the deficiencies are not corrected within this time, the Director, Office of Coast Survey, may terminate the certification.

(b) Notice of termination will be provided to the distributor or value added distributor in writing and will also be released to the public.

(c) Certification may also be terminated if the distributor or value added distributor:

(1) Contracts or transfers the production or distribution of all or part of the certified products to another entity without the approval of NOAA, or

(2) Fails to, or is unable (in the opinion of NOAA) to carry out its responsibilities as described in these requirements.

(d) After a distributor or value added distributor's certification has been terminated, it may not resubmit a request for certification for a period of one year from the date of termination.

§ 995.16 Term of certification.

The duration of certification is five years from the date of issuance. At the end of the certification's duration, the process must be re-certified by the distributor or value added distributor submitting a request for certification as described in § 995.10. It may also be revoked prior to the duration under the conditions described in § 995.15.

Subpart C—Requirements for Certified Distributors and Value Added Distributors of NOAA ENC Products

§ 995.20 General.

The requirements for certification as a "Certified NOAA ENC Distributor" (CED) and "Certified NOAA ENC Value Added Distributor" (CEVAD) are described below.

§ 995.21 Registry of data users.

(a) CED or CEVAD shall maintain a registry of customers receiving NOAA ENC data. CED or CEVAD shall provide said registry to NOAA on a biannual basis for internal NOAA planning and product evaluation use. NOAA agrees to treat such information as proprietary (if requested to do so by the CED or CEVAD).

(b)(1) The registry shall include, but not be limited to:

(i) Which NOAA ENC® cells were provided to each customer;

(ii) Edition number of each cell provided;

(iii) Updates provided for each cell;
 (iv) Method of distribution for each customer.

(2) The registry may also include information about the type and size of vessel that the NOAA ENC data has been provided for as well as an anonymous unique identifier for the vessel.

§ 995.22 Training of data users.

CED or CEVAD shall, by providing appropriate training and/or adequate documentation, ensure that the recipient has a sufficient level of knowledge about the NOAA ENC and the service provided by CED or CEVAD, including:

(a) Any time delays that may occur between official release of a NOAA ENC or update, and CED or CEVAD providing same to end users;

(b) Any non-NOAA ENC data or information that is provided by CED or CEVAD in addition to the NOAA ENC.

§ 995.23 Acquisition of data.

(a) CED or CEVAD shall obtain official NOAA ENC® files only by directly downloading them from an official NOAA ENC site on the Internet.

(b)(1) After downloading NOAA ENC files, CED or CEVAD shall uncompress the files and compute a CRC checksum value for each NOAA ENC file and verify that it matches the CRC checksum value contained in the CATALOG.031 file provided with the NOAA ENC files by NOAA. This is to ensure that no NOAA ENC files have been corrupted during the download process.

(2) In the event that said CRC checksum value does not match that in the CATALOG.031 file, CED or CEVAD agrees to:

(i) Repeat the download process;

(ii) In the event that said CRC checksum value for the repeat download does not match that in the CATALOG.031 file, immediately notify the NOAA ENC Production Manager at enc.chartproduction@noaa.gov, and;

(iii) Not distribute any NOAA ENC that does not have a valid CRC checksum.

§ 995.24 Distribution of data.

(a) *Distribution of data by CED*—(1) *Format of distributed data*—(i) *General*. Except as listed in § 995.24(a)(1)(ii) and (iii), CED agrees to distribute NOAA ENC data only in the original form provided by NOAA after uncompressing and shall not change the file format (S-57 Edition 3.1 ENC or other formats specified by NOAA), or contents, or alter the NOAA ENC data in any way.

(ii) *Compression*. The NOAA ENC files may be compressed using a lossless

compression technique provided that CED makes the decompression software available to the end user as part of the distribution service. Decompressed files must have the same CRC checksum value as the original files. The CED agrees to make the compression/decompression software and documentation available to NOAA for testing.

(iii) *Encryption*. The NOAA ENC files may be encrypted by CED, providing that the encryption/decryption process does not result in any information loss and that CED makes the decryption software available to the end user as part of the distribution service. Decrypted files must have the same CRC checksum value as the original files. CED shall make the encryption/decryption software and documentation available to NOAA for testing.

(2) *Frequency of distribution*. CED shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA.

(3) *Distribution report*. CED shall provide a quarterly report on when NOAA ENC files were downloaded and when they were distributed to end users.

(4) *Additional data*. (i) If CED provides other data to customers in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CED shall provide a clear indication to the customer which files are official NOAA ENC data and which files are not. This may be accomplished through means such as package labeling, notifications in software, or other means.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department of Commerce or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CED.

(5) *Identification of contents*. CED shall ensure that NOAA ENC® files provided to an end user are clearly identified as to the contents (cells, updates, and ancillary files) and authenticity of the exchange set.

(b) *Distribution of Data by CEVADs*—(1) *Frequency of distribution*. CEVAD shall make all current editions of NOAA ENC files and all updates to or new editions of NOAA ENC files available to its customers within five working days of the files or updates being posted by NOAA.

(2) *Distribution report*. CEVAD shall provide a quarterly report to NOAA on when NOAA ENC files were downloaded and when they were distributed or made available to end users.

(3) *Additional data*. (i) If CEVAD provides products to customers that incorporate other data in addition to NOAA ENC data (e.g., ENC data from other nations, raster chart data, privately produced data, etc.), CEVAD shall provide a clear indication in the product which data are from official NOAA ENC data and which data are not. This shall be done in a way that allows the navigation system to give the end user an automatic notification or warning that particular data elements within the product are not from the official NOAA ENC. Any such data shall not degrade the official NOAA ENC data or information.

(ii) Additionally, any data that is included with NOAA ENC data must not result in embarrassment to the Department or NOAA. There must be no conflict with any trademark rights and the inclusion of non-NOAA data will not constitute any endorsement of or favoritism toward the non-NOAA data or CEVAD.

(4) *Identification of contents*. CEVAD shall ensure that data provided to an end user clearly identify which NOAA ENC® files are included in the product as to the contents (cells, updates, and ancillary files) and authenticity of the NOAA ENC files used.

§ 995.25 Quality Management System.

(a) *Quality Management System for CEVADs*. (1) CEVAD shall operate a quality management system, based on ISO 9001-2000 or equivalent, which embraces all elements of the process used to process and distribute NOAA ENC files. The minimum requirements for such a quality management system are those defined in this document. The quality management system must ensure that the production process complies with all relevant requirements of this document.

(2) The quality management system must, at a minimum, include an adequate account of:

(i) The quality objectives and the organizational structure, responsibilities, and powers of management with regard to production quality;

(ii) The techniques, processes, and systematic actions that will be used for quality management throughout the production process, including NOAA ENC conversion and the quality of the product being distributed;

(iii) The examination and tests that will be carried out before, during, and after processes essential for the quality of the product, and the frequency with which they will be carried out;

(iv) The quality records, such as inspection records and test data, qualification reports of personnel concerned resulting from the program specified herein; and

(v) The means for monitoring the achievement of the required quality of the product and the effective operation of the quality management system.

(3) Design and development changes shall be reviewed, verified, and validated as appropriate and approved by the ISO 9001 certification authority (or equivalent if another quality management system is used) before implementation.

(4) If the type approved conversion software is maintained by a third party, CEVAD shall ensure that no changes made to the conversion software render the type approval of the conversion software invalid, and shall evaluate the effects of such changes on the end users of the product.

(5) CEVAD shall analyze both internal information and that received from external parties in order to continually monitor and improve the production process and the product being distributed.

(6) CEVAD shall ensure that personnel performing work affecting the production process are competent with regard to appropriate education, training, skills, and expertise.

(7) CEVAD shall conduct internal audits at planned intervals to determine whether the quality management system conforms to the requirements of this document and is effectively implemented and maintained. The audit program shall take into consideration the individual processes' importance in relation to the product quality, as well as results of previous audits. Selection of auditors and conducting of audits shall, as far as practicable, insure objectivity and impartiality in the audit process.

(8) CEVAD shall ensure that actions are taken without undue delay to eliminate detected non-conformities and their causes. Follow-up activities shall include the verification of the actions taken and the reporting of verification results.

(9) Format validation software testing. Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification.

These tests may be combined with testing of the conversion software.

(b) [Reserved]

§ 995.26 Conversion of NOAA ENC files to other formats.

(a) *Conversion of NOAA ENC files to other formats*—(1) *Content.* CEVAD may provide NOAA ENC data in forms other than that provided by NOAA. However, CEVAD shall not change the information content provided by the NOAA ENC. This means that all features and their associated attribution must be preserved in the CEVADs data files without degradation to positional accuracy or informational content.

(2) *Software certification.* Conversion of NOAA ENC data to other formats must be accomplished within the constraints of "IHO Technical Resolution A3.11 (Incorporation by Reference see § 995.2)—ENC/SENC Distribution Option," in particular, paragraph three:

Distributors who are to supply the SENC service must operate under the regulations of the issuing authority. The onshore ENC to SENC conversion must be performed using type-approved software.

(3) *Error reporting.* Any errors detected during the conversion process shall be logged and investigated prior to releasing the data in which the errors occurred. Any errors that apparently originate in the NOAA ENC files shall be immediately reported to NOAA.

(4) *Format check.* CEVAD shall ensure that the converted data conforms to the CEVAD's own format specifications and shall test load the converted data to ensure that it will correctly load and display on the intended equipment.

(b) [Reserved]

§ 995.27 Format validation software testing.

Tests shall be performed verifying, as far as reasonable and practicable, that CEVAD's data testing software performs the checks, as specified by CEVAD, for verifying that the converted data conforms to its own proprietary product specification. These tests may be combined with testing of the conversion software.

§ 995.28 Use of NOAA emblem.

(a) Permission for the use of the NOAA emblem must be obtained by formally requesting such permission from NOAA and the Department of Commerce through NOAA's Office of Coast Survey.

(b) Use of the NOAA emblem must satisfy an interest of the Department; the use may not result in embarrassment to the Department; there must be no conflict with any trademark rights, as

stated in § 995.24(a)(4)(ii) and (b)(3)(ii); and there can be no endorsement or favoritism toward the distributor or value added distributor using the emblem, or other appearance of impropriety.

(c) Certification under these regulations does not automatically grant the distributor or value added distributor the right to use the NOAA logo. Use of the NOAA logo without express permission from NOAA and the Department of Commerce will be considered grounds for denial of an application for certification or termination of certification.

(d) *Emblem use by certified distributors or certified value added distributors of NOAA electronic products.* (1) A CED or CEVAD may use the NOAA emblem in product labeling and advertising materials but only in conjunction with the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor," as applicable, and only after receiving separate, written permission from NOAA and the Department of Commerce as described below.

(2) If the NOAA emblem is used with products that include other data, clear indication must be provided to the customer indicating that the emblem and the phrase "Certified NOAA ENC Distributor" or "Certified NOAA ENC Value Added Distributor" does not apply to the entire product delivered. Information on the effects of such limitation must be provided to the customer. (See § 995.24(a)(4) and (5), and (b)(3) and (4)).

§ 995.29 Limitation on endorsements.

By certifying compliance with these requirements, NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by distributor or value added distributor or its successors, assignees, or licensees. The distributor or value added distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission from NOAA and the Department of Commerce.

Appendix A to Subpart C of Part 995— Certification Application Templates

Notice to respondents:

This information is being collected by NOAA to ascertain qualifications for certification as an authorized distributor of official NOAA ENC® data. NOAA developed this certification process under the authority of 33 U.S.C. 892b(b)(1), which states that the Administrator of NOAA is directed to develop and implement a quality assurance program that is equally available to all

applicants, under which the Administrator may certify hydrographic products that satisfy the standards promulgated by the Administrator under section 892a(a)(3) of the Hydrographic Services Improvement Act.

The information on these forms is not associated with performance of agency functions.

Public reporting burden for this collection of information is estimated to average 16 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to

Jim.Gardner@noaa.gov.

Responses to this collection are considered voluntary, though they are required for certification.

The information requested on these forms will not be disseminated to the public or used to support information that will be disseminated to the public. Any disclosure of proprietary information will be held in confidentiality as regulated under the Trade Secrets Act. NOAA will not violate that Act's prohibitions against unauthorized agency disclosures of trade secrets or other confidential business information.

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to a penalty for failure to, comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

OMB Control # _____ Expires _____

Application for Certification as "Certified NOAA ENC Distributor"

Company Name
Company Address
Company Phone Number
Company Fax Number
Company E-Mail Address
Point of Contact
Point of Contact Address
Point of Contact Phone Number
Point of Contact Fax Number
Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Distributor to be certified as a "Certified NOAA ENC Distributor" (CED). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis correspond to section titles in the rule.

(1) Registry of data users

Include a description of the data user registry, including:

(a) What data elements it contains, specifically showing how the required elements are included;

(b) A hardcopy sample of the report that will be periodically submitted to NOAA;

(c) A short description of how the registry is maintained.

(2) Training of data users

Include a description of any training and a copy of any documentation provided to users that is intended to meet this requirement.

(3) Acquisition of data

Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for distribution are being followed.

(4) Distribution of data/General

Distributor asserts that all NOAA ENC® data distributed will be in the format described by this requirement.

(5) Distribution of data/Compression

Distributor shall indicate if data compression techniques are used. If Distributor uses data compression techniques, Distributor asserts that the process meets the requirements of this section.

(6) Distribution of data/Encryption

Distributor shall indicate if data encryption techniques are used. If Distributor uses data encryption techniques, Distributor asserts that the process meets the requirements of this section.

(7) Distribution of data/Frequency of distribution

Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(8) Distribution of data/Distribution report

Distributor shall provide an example of the distribution report described by this requirement.

(9) Distribution of data/Additional data

Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

(10) Distribution of data/Identification of contents

Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(11) Use of NOAA emblem

Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in § 995.28.

(12) Limitation on Endorsements

Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Distributor, its successors, assignees, or licensees. Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(13) Correspondence and Applications/Requests for Certification

Distributor acknowledges and agrees to all procedures and requirements described pertaining to the certification process.

(14) Correspondence and Applications/Point of contact

Distributor agrees to immediately notify the Government of any changes to point of contact information.

(15) Auditing

Distributor acknowledges that NOAA reserves the right to audit Distributor to ensure that these requirements are being met.

(16) Termination of certification

Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in the requirements.

(17) Term of certification

Distributor acknowledges that the duration of certification is five years from the date of issuance.

(18) Liability

By signing this request for certification, Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Distributor or its employees, arising out of the use by the Distributor, or any Party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Distributor of ALL applicable terms and conditions described in the certification requirements.

Signed:

Title:

Date:

OMB Control # _____ Expires _____

Application for Certification as "Certified NOAA ENC Value Added Distributor"

Company Name
Company Address
Company Phone Number
Company Fax Number
Company E-Mail Address
Point of Contact
Point of Contact Address
Point of Contact Phone Number
Point of Contact Fax Number
Point of Contact E-Mail Address

This is a request for the above named company (hereinafter referred to as Value Added Distributor) to be certified as a "Certified NOAA ENC Value Added Distributor" (CEVAD). This document describes how each of the requirements for certification is being met. Descriptive titles after each number in parenthesis correspond to section titles in the rule.

(1) Registry of data users

Include a description of the data user registry, including:

(a) What data elements it contains, specifically showing how the required elements are included;

(b) A hardcopy sample of the report that will be periodically submitted to NOAA;

(c) A short description of how the registry is maintained.

(2) Training of data users

Include a description of any training and a copy of any documentation provided to

users that is intended to meet this requirement.

(3) Acquisition of data

Value Added Distributor asserts that all procedures described in this requirement for the acquisition of NOAA ENC® data for distribution are being followed.

(4) Quality Management System

Value Added Distributor shall provide a copy of the ISO 9001–2000 certification or certification of compliance with an equivalent program of quality management that covers the processes described in this section of the requirements.

(5) Conversion of NOAA ENC® files to other formats

Value Added Distributor asserts that all NOAA ENC® content and accuracy are preserved during the conversion process as described in this section of the requirements.

(6) Conversion of NOAA ENC® files to other formats/Software certification

Value Added Distributor shall provide a copy of the type approval certificate for the software used to convert the NOAA ENC® files to the Value Added Distributor's format.

(7) Conversion of NOAA ENC® files to other formats/Error reporting Value Added

Distributor asserts that they shall log and report any errors in the NOAA ENC® data detected during the conversion process. Value Added Distributor shall provide an example of the report format that they will use.

(8) Conversion of NOAA ENC® files to other formats/Format check

Value Added Distributor asserts that all data shall be checked for conformance with Value Added Distributor's own format specifications and shall test load the converted data as described in this section of the requirements.

(9) Distribution of data/Frequency of distribution

Value Added Distributor asserts that any updates will be transmitted to their users within the time constraints described by this requirement.

(10) Distribution of data/Distribution report

Value Added Distributor shall provide an example of the distribution report described by this requirement.

(11) Distribution of data/Additional data

Value Added Distributor shall indicate if additional data is to be distributed with the NOAA ENC® data. If so, Value Added Distributor shall provide examples of how the data users will be informed as to the official and unofficial contents of the data as described in this requirement.

(12) Distribution of data/Identification of contents

Value Added Distributor shall provide examples of how the contents of the NOAA ENC® files will be identified to the users.

(13) Format validation software testing

The validation software used by Value Added Distributor shall be tested according

to this requirement and the results stated in this section of the request for certification.

(14) Use of NOAA emblem

Value Added Distributor acknowledges that a separate request for the use of the NOAA emblem must be submitted according to the procedure described in § 995.28.

(15) Limitation on Endorsements

Value Added Distributor acknowledges that NOAA does not automatically, directly, or indirectly endorse any product or service provided, or to be provided, by Value Added Distributor, its successors, assignees, or licensees. Value Added Distributor shall not in any way imply that this certification is an endorsement of any such product or service without separate, written permission.

(16) Correspondence and Applications/Requests for Certification

Value Added Distributor acknowledges and agrees to all procedures and requirements described pertaining to the certification process.

(17) Correspondence and Applications/Point of contact

Value Added Distributor agrees to immediately notify the Government of any changes to point of contact information.

(18) Auditing

Value Added Distributor acknowledges that NOAA reserves the right to audit Value Added Distributor to ensure that these requirements are being met.

(19) Termination of certification

Value Added Distributor acknowledges the conditions leading to and procedures for the termination of certification as described in the requirements.

(20) Term of certification

Value Added Distributor acknowledges that the duration of certification is five years from the date of issuance.

(21) Liability

By signing this request for certification, Value Added Distributor pledges to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of Value Added Distributor or its employees, arising out of the use by the Value Added Distributor, or any party acting on its behalf or under its authorization, of NOAA ENC® data.

Signature of this request constitutes an acknowledgement by Value Added Distributor of ALL applicable terms and conditions described in the certification requirements.

Dated: October 4, 2004.

Richard W. Spinrad,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Oceanic and Atmospheric Administration.

[FR Doc. 04–23167 Filed 10–14–04; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 996

[Docket No: 040908256425601]

RIN 0648-AS50

Quality Assurance and Certification Program for NOAA Hydrographic Products

AGENCY: National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Proposed rule; request for comments.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) has been mandated to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator may certify hydrographic products that satisfy standards promulgated by the Administrator. "Hydrographic products" are any publicly or commercially available products produced by a non-Federal entity that include or display hydrographic data. The Administrator proposes to fulfill this mandate by establishing procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, adopted, and applied for those products; and by which certification may be awarded or denied. These procedures would be the mandated Quality Assurance Program, and the implementation of the program would be the execution of those procedures for specific hydrographic products.

DATES: Comments must be received by November 15, 2004.

ADDRESSES: Comments in writing should be submitted to Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910. Written comments may be faxed to (301) 713-4019. Comments by e-mail should be submitted to HydrographicProducts@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Mr. David B. Enabnit, Office of Coast Survey, NOAA (N/CSx2), 1315 East-West Highway, Silver Spring, MD, 20910, (voice phone) 301-713-2770 x132, (fax phone) 301-713-4019, (e-mail) Dave.Enabnit@noaa.gov.

SUPPLEMENTARY INFORMATION: