

Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 9, Amdt 17

Covington, KY, Cincinnati/Northern Kentucky Intl, ILS OR LOC RWY 27, Amdt 16

Oakdale, LA, Allen Parrish, RNAV (GPS) RWY 36, Orig

Gulfport, MS, Gulfport-Biloxi Intl, VOR/DME OR TACAN RWY 32, Amdt 4

Gulfport, MS, Gulfport-Biloxi Intl, VOR RWY 14, Amdt 22

Gulfport, MS, Gulfport-Biloxi Intl, VOR/DME OR TACAN RWY 14, Amdt 3

Gulfport, MS, Gulfport-Biloxi Intl, NDB RWY 14, Amdt 12

Gulfport, MS, Gulfport-Biloxi Intl, RADAR-1, Amdt 6

Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 14, Orig

Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 32, Orig

Gulfport, MS, Gulfport-Biloxi Intl, ILS OR LOC RWY 14, Amdt 14

Gulfport, MS, Gulfport-Biloxi Intl, GPS RWY 14, Orig, CANCELLED

Gulfport, MS, Gulfport-Biloxi Intl, GPS RWY 18, Orig, CANCELLED

Gulfport, MS, Gulfport-Biloxi Intl, GPS RWY 32, Orig, CANCELLED

Gulfport, MS, Gulfport-Biloxi Intl, GPS RWY 36, Orig, CANCELLED

Gulfport, MS, Gulfport-Biloxi Intl, VOR RWY 32, Amdt 21

Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 18, Orig

Gulfport, MS, Gulfport-Biloxi Intl, RNAV (GPS) RWY 36, Orig

Gulfport, MS, Gulfport-Biloxi Intl, ILS OR LOC/DME RWY 32, Amdt 4

Tunica, MS, Tunica Muni, ILS OR LOC RWY 35, Orig

Fargo, ND, Hector Intl, RNAV (GPS) RWY 18, Orig

Fargo, ND, Hector Intl, RNAV (GPS) RWY 36, Orig

Fargo, ND, Hector Intl, RNAV (GPS) RWY 17, Orig, CANCELLED

Fargo, ND, Hector Intl, RNAV (GPS) RWY 35, Orig-B, CANCELLED

Lexington, OR, Lexington, RNAV (GPS)-A, Orig

Lexington, OR, Lexington, RNAV (GPS) RWY 8, Orig

\* \* \* *Effective 17 February 2005*

Hayden, CO, Yampa Valley, RNAV (GPS) RWY 28, Orig-B

Hayden, CO, Yampa Valley, RNAV (GPS) Z RWY 10, Orig-B

Lamar, CO, Lamar Muni, RNAV (GPS) RWY 8, Orig-A

Lamar, CO, Lamar Muni, RNAV (GPS) RWY 18, Orig-A

Lamar, CO, Lamar Muni, RNAV (GPS) RWY 26, Orig-A

Lamar, CO, Lamar Muni, RNAV (GPS) RWY 36, Orig-A

Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 28R, Orig-A

Boise, ID, Boise Air Terminal (Gowen Field), RNAV (GPS) RWY 28L, Amdt 1A

Bozeman, MT, Gallatin Field, RNAV (GPS)-A, Orig-A

Akron, OH, Akron-Canton Regional, RNAV (GPS) RWY 14, Orig, CANCELLED

Akron, OH, Akron-Canton Regional, RNAV (GPS) RWY 32, Orig, CANCELLED

McAlester, OK, McAlester Regional, VOR-A, Amdt 13

Sioux Falls, SD, Joe Foss Field, RNAV (GPS) RWY 15, Orig-B

\* \* \* *Effective 17 March 2005*

Kotzebue, AK, Ralph Wien Memorial, RNAV (GPS) RWY 8, Orig

Kotzebue, AK, Ralph Wien Memorial, RNAV (GPS) RWY 26, Orig

Kotzebue, AK, Ralph Wien Memorial, ILS OR LOC/DME RWY 8, Orig

Kotzebue, AK, Ralph Wien Memorial, VOR RWY 8, Amdt 3A

Kotzebue, AK, Ralph Wien Memorial, VOR RWY 26, Amdt 3

Kotzebue, AK, Ralph Wien Memorial, VOR/DME RWY 8, Amdt 4

Kotzebue, AK, Ralph Wien Memorial, VOR/DME Z RWY 26, Orig

Kotzebue, AK, Ralph Wien Memorial, VOR/DME Y RWY 26, Orig

Kotzebue, AK, Ralph Wien Memorial, ILS/DME RWY 8, Amdt 5, CANCELLED

Kotzebue, AK, Ralph Wien Memorial, GPS RWY 8, Orig, CANCELLED

Kotzebue, AK, Ralph Wien Memorial, GPS RWY 26, Orig-A, CANCELLED

Kotzebue, AK, Ralph Wien Memorial, VOR/DME 2 RWY 26, Orig, CANCELLED

Kotzebue, AK, Ralph Wien Memorial, VOR/DME RWY 26, Amdt 1B, CANCELLED

San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) RWY 12R, Orig

San Jose, CA, Norman Y. Mineta San Jose Intl, GPS RWY 12R, Orig-A, CANCELLED

San Jose, CA, Norman Y. Mineta San Jose Intl, RNAV (GPS) RWY 30L, Orig

San Jose, CA, Norman Y. Mineta San Jose Intl, GPS RWY 30L, Orig-A, CANCELLED

Eastport, ME, Eastport Muni, RNAV (GPS) RWY 15, Orig

Eastport, ME, Eastport Muni, RNAV (GPS) RWY 33, Orig

Eastport, ME, Eastport Muni, NDB RWY 15, Amdt 1

Eastport, ME, Eastport Muni, NDB RWY 33, Amdt 1

Eastport, ME, Eastport Muni, GPS RWY 15, Orig-B, CANCELLED

Oshkosh, WI, Wittman Regional, RNAV (GPS) RWY 36, Amdt 1C

Casper, WY, Natrona County Intl, RNAV (GPS) RWY 21, Amdt 1

Casper, WY, Natrona County Intl, VOR/DME RWY 3, Amdt 4

Casper, WY, Natrona County Intl, VOR/DME OR TACAN RWY 21, Amdt 8

The FAA published an Amendment in Docket No. 30430, Amdt No. 3110 to Part 97 of the Federal Aviation Regulations (Vol 69, FR No. 229, page 69508; dated November 30, 2004) under section 97.33 effective 20 JAN 2005, which is hereby rescinded:

Deadhorse, AK, Deadhorse, LOC/DME BC RWY 22, Amdt 10

[FR Doc. 05-106 Filed 1-4-05; 8:45 am]

BILLING CODE 4910-13-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 15 CFR Part 996

[Docket No: 040908256-4353-02]

RIN 0648-AS50

### National Ocean Service; 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:** Final rule.

**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 will 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. The implementation of the program would be the execution of those procedures for specific hydrographic products.

**DATES:** Effective Date: February 4, 2005.

**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](mailto: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](mailto:Dave.Enabnit@noaa.gov).

**SUPPLEMENTARY INFORMATION:**

### Discussion of Comments Received and Changes Made

On October 15, 2004, we published a notice of proposed rulemaking entitled, "Quality Assurance and Certification Program for NOAA Hydrographic Products" in the **Federal Register** (FR 69 FR 61172), and solicited comments. Eight sets of comments were received on this proposed rule and the policy statement that accompanied it. The substance of the comments and the resulting changes made to the regulation are summarized below. Most of the comments were made in the context of a single, specific hydrographic product. However, the Program has been established to accommodate the full range of potential products allowed by the law, which is extremely broad (see "Definitions" under the "Background" section below).

One set of comments stated that the Quality Assurance Program was an inappropriate activity for NOAA, and a number of reasons were listed. In response, NOAA cites the Hydrographic Services Improvement Act of 1998, as amended (codified as 33 U.S.C. 892b), which mandated the establishment of this program. Therefore, NOAA has no latitude in the matter. The comments further suggested that a substantial fee structure would be appropriate for the program. Again, NOAA refers to the enabling legislation that limits the fees NOAA may charge.

Comments were received that, in some instances, NOAA might adopt existing standards or compliance tests for purposes of the Quality Assurance Program. ISO 19379 and the RTCM standard for Electronic Chart Systems were two examples cited. NOAA recognizes this opportunity, and specifically refers to this possibility in paragraphs 2, 5, and 6 of the policy statement. New sections § 996.11(e) and § 996.12(e) have been added to the regulation, and subsequent subsections appropriately renumbered, to insure that this option is available when the program is implemented.

One set of comments stated that § 996.20, "Submission of a hydrographic product for certification," in which an applicant submits a hydrographic product to NOAA, was unnecessary and burdensome, and that applicants should submit products directly to the compliance testing body. Upon review, it was determined that the submission required by this section is only 4 items of administrative information and should impose little burden on an applicant. However, it serves an important purpose in allowing NOAA to advise applicants on the appropriate

standard and version against which to certify; identifying approved compliance testing organizations that are available; and other matters that may aid the applicant or avoid the cost of an inappropriate test. This section of the regulation was left unchanged.

One set of comments asserted that current standards for electronic charts, charting systems, distribution of digital chart data and updates, electronic charting system size and cost, and the support infrastructure had fatal shortcomings. These statements reflect obsolete information, and the writer is referred, for example, to IHO Technical Resolution A3.11—"ENC/SENC Distribution Option," and to IEC draft standard 62376 "Electronic chart systems (ECS)—Operational and performance requirements, methods of testing, and required test results." No specific change to the NOAA Quality Assurance Program was proposed with these comments, and none were made.

One set of comments offered that § 996.5, "Alterations," appeared to permit NOAA to change program regulations without following the Administrative Procedure Act that allows for public comment. NOAA's intent was to follow such procedures in executing this section, but since it is redundant with NOAA's existing authority under the Administrative Procedure Act, the section was deleted from the regulations to eliminate confusion.

One set of comments thought the regulations should contain criteria for the acceptance of testing bodies, and pointed to the Coast Guard's procedures for accepting independent laboratories. § 996.20(4) of the rule was enhanced to include characteristics of such laboratories that were suggested by the commenter, but the procedures used by the Coast Guard were thought to be excessive for the NOAA program and were not added to the rule.

One set of comments objected to that portion of § 996.33, "Acceptance of program by non-Federal entities" which states that "information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information." The comment stated that some products might be the result of proprietary processes that a producing company would not wish disclosed. After careful review of the information submission requirements in the regulation, it was determined that all were of an administrative nature necessary to run the program, and would be unlikely to contain any proprietary information.

The one exception might be § 996.23(3), "Audit and decertification of hydrographic products." A new section, § 996.23(c), was inserted in the regulation, and the subsequent subsections appropriately renumbered, to permit producing companies to not provide information during an audit, but at the risk of decertification due to a resulting lack of information.

One set of comments queried whether foreign governments or foreign companies could participate in the Quality Assurance Program. At this time, NOAA believes the program would be open to foreign governments and foreign companies.

Comments were received that NOAA should reconsider its policy only to certify hydrographic products as meeting a standard rather than certifying them for a particular use. NOAA's policy would mean, for example, that NOAA will not certify products as suitable for a specific purpose such as a backdrop in Automated Identification Systems, or for meeting chart carriage regulations. Under the program, certification only means that there is an adopted NOAA standard, documented compliance tests, and that a product had passed the tests and was compliant with the standard. The comments asserted that such a policy did not meet the requirements of the Hydrographic Services Improvement Act; would not support the mandatory carriage of electronic charts that the Coast Guard has been directed to establish; and that it violates the Regulatory Flexibility Act.

The policy of certifying for "standards-compliance" rather than "use" recognizes that in most cases, NOAA does not have the authority to make the determination of suitability for use. The determination of suitability of a backdrop for an Automated Identification System, for example, lies with the Coast Guard. In other cases, suitability cannot be determined. For example, sport fishing maps (a potential hydrographic product) can be certified as to their data content and data quality, but in no way could NOAA certify that such maps would improve one's catch. Finally, in the specific case of electronic nautical charts, the federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single, official nautical chart or publication where federal regulations mandate carriage. NOAA's policy was supported in comments from the Hydrographic Services Review Panel, a federal advisory committee of individuals who are especially qualified to advise the Administrator of NOAA on

hydrographic program matters, and which was established by Congress. The panel commented that NOAA was correct in not certifying privately made electronic charts as meeting chart carriage regulations. They cited safety as the reason and urged NOAA to continue to maintain the single, official nautical charts where federal regulations mandate chart carriage.

The comments asserting that NOAA's proposed program was not in compliance with the Hydrographic Services Improvement Act did not specify in what way the program was out of compliance. NOAA continues to believe that this policy is in full compliance with the Act. The Act only requires certification against standards promulgated by the Administrator, and makes no statement about certification for a particular use. In fact, an earlier version of the 2002 Hydrographic Services Improvement Act amendments legislation included such a mandate, but the provision was specifically removed before final passage. The Hydrographic Services Review Panel agreed with NOAA, commenting that, in its opinion, the proposed Quality Assurance Program satisfied the statutory requirement established by Congress.

NOAA has provided, however, in a separate rulemaking, a process whereby private companies may download from the NOAA Web site and market exact copies of official NOAA Electronic Navigational Charts (ENC), may reformat and market copies of NOAA ENCs, and may package additional data with those ENCs and market the result. After completing a self-certification process to become distributors, such products would comply with federal chart carriage requirements. (See *Certification Requirements for Distributors of NOAA Electronic Navigational Chart/NOAA Hydrographic Products*, 69 FR 61165 (Oct. 15, 2004).) This provides additional commercial opportunities for private companies while preserving the safety of navigation.

As to whether NOAA's policy would deny adequate electronic chart coverage to support the mandatory carriage of electronic charts, which the Coast Guard has been directed to implement, NOAA sees no cause for concern, nor was that necessarily the purpose of the Act. NOAA already provides 100 percent coverage of its area of responsibility with official raster navigational charts (one type of electronic chart), 45 percent coverage with official electronic navigational charts (a second type of electronic chart) with completion of the full suite scheduled during 2007, and the U.S. Army Corps of Engineers

anticipates completing full coverage of primary and secondary inland river routes with official electronic charts during 2007, thus serving vessels that carry 90 percent of the inland river shipping tonnage. Also, while the Coast Guard must promulgate electronic chart carriage regulations by January 1, 2007, the effective date of those regulations; exactly which vessels are to be covered; and what waivers may be issued is left to their discretion. NOAA, the Corps of Engineers, and the Coast Guard will continue to coordinate closely to insure that electronic chart carriage is not mandated before suitable, official charts are available.

One comment stated that the rule was contrary to the Regulatory Flexibility Act, in that, since the certified products would not be certified as meeting federal chart carriage regulations, a company supplying electronic charts would be unable to broaden their markets as fully as they would if chart carriage certification were part of the process. While NOAA appreciates that carriage-compliance certification could make the benefits of NOAA certification marginally greater, the proposed program still provides a net benefit to all companies wishing to participate. The program supports companies in making and selling electronic charts into the non-regulated market, which is 2 orders of magnitude larger than the regulated market. It supports the use of privately made electronic charts aboard regulated vessels if used as an aid to navigation, rather than as the means of meeting chart carriage regulations. It does not remove a market for privately made electronic charts since they never have been certified for regulatory carriage and do not have that market. Also, because NOAA and the Corps of Engineers give away, at no cost, official electronic charts for meeting carriage regulations, it appears that the portion of the market that the program does not make readily accessible to private companies would be small.

#### Changes From the Proposed Rule

Although NOAA intended from the outset to allow renewal of certification of products under subpart C, it became clear after the regulations were proposed that such a renewal process was not described in the regulations. NOAA considers inclusion of a renewal process to be an essential part and logical outgrowth of the certification process because it allows certified companies the option of renewing their certification for two additional years. The option to renew certifications will allow companies to continue to benefit from the increased sales of their product

resulting from "certified" status. Therefore, a renewal process is now included in § 996.22(d) and (e).

#### Background

##### Definitions

*Hydrographic products*—any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic data*—information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic services*—hydrographic services means:

- The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- The development of nautical information systems; and
- Related activities.

##### The Act

The Hydrographic Services Improvement Act of 1998, as amended by the Hydrographic Services Improvement Act Amendments of 2002 (codified as 33 U.S.C. 892b), directs:

#### 1. IN GENERAL—The Administrator—

A. By not later than 2 years after the date of enactment of the Hydrographic Services Improvement Act Amendments of 2002, shall, subject to the availability of appropriations, 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 303(a)(3) of the Act;

B. May authorize the use of the emblem or any trademark of the Administration on a hydrographic product certified under subparagraph (A); and

C. May charge a fee for such certification and use.

Section 303(a)(3) referenced above states that the Administrator shall "promulgate standards for hydrographic services provided by the administration."

## Statement of Policy

NOAA will act in accordance with the following policies in fulfilling its Quality Assurance Program responsibilities under the Hydrographic Services Improvement Act.

1. NOAA interprets the Act as primarily intending to stimulate the development of hydrographic products by the private sector. The intent of NOAA's participation in this private sector activity is to provide the public a measure of confidence in the content, quality, and adherence to published standards of the resulting hydrographic products. NOAA interprets the Act in a broad sense. Therefore, "standards" and "quality assurance program" are considered to be generic terms that apply to any means of satisfying the intent of the Act and the intent of NOAA's participation, and that are within NOAA's authorities.

2. Standards, and quality assurance tests and procedures, will preferably be written in collaboration with those affected, not just written and promulgated by NOAA. In some instances, NOAA may adopt an existing standard or quality assurance program, rather than originate one. NOAA may develop standards and quality assurance tests on its own initiative should, for example, it be deemed beneficial for those standards and tests to be established before the appearance of a particular hydrographic product. This approach may be used to stimulate the production of a product that NOAA anticipates would be beneficial.

3. The level to which standards are developed, and to which quality assurance is performed, may vary for different hydrographic products. For example, certification for manufacturers making exact copies of NOAA products may be implemented in a substantially differently manner from the certification of a complex cartographic product. NOAA considers all such "standards" and "certifications" as meeting the intent of the Act.

4. NOAA will work, to the extent practicable, through existing, recognized, standards and certification bodies. This will permit the use of proven methods of developing, documenting, and implementing standards and certification. It will leverage NOAA's resources with those of such bodies. It will provide a more widely accepted result than had NOAA promulgated a standard solely under its own name.

5. NOAA will establish the required Quality Assurance Program for hydrographic products. The Quality Assurance Program will be general

procedures that apply to all hydrographic products, and specific tests and procedures that apply to specific hydrographic products. The specific quality assurance tests and procedures for a particular hydrographic product will be based on the standards identified by NOAA or written collaboratively with the affected parties.

6. Certification of a specific hydrographic product under the Quality Assurance Program will be at the option of NOAA. However, certification will be the goal in cases where NOAA decides to write or adopt standards. Any non-Federal entity will be permitted to submit for certification hydrographic products that it asserts are compliant with the NOAA-adopted standards.

7. Certification of products under the Program will mean that the hydrographic product has been found to be compliant with the NOAA-adopted standards for that particular hydrographic product. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service. NOAA may audit hydrographic products it has certified, and may decertify hydrographic products based on its findings.

8. NOAA does not intend to write standards and perform quality assurance for every hydrographic product submitted by a non-Federal entity. NOAA will select those deemed appropriate for standards and certification by taking into account:

- The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of resources that would be required;
- The breadth of support for standards and certification among all the affected communities;
- The practicality of writing and enforcing an effective standard and compliance tests;
- The availability of suitable, similar products that may already meet the needs of the public;
- NOAA's expertise related to that needed to write an appropriate standard;
- Availability of resources; and
- Other relevant criteria as they become apparent.

In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage

requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single complying product for regulated carriage.

9. Use of the NOAA emblem on certified hydrographic products will require separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency. If the NOAA emblem is used on products that include other data or products, clear indication will be required as to what is NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA.

10. NOAA may charge for its standards and certification activities such sums as may be permitted or required under this Act, or under other statutory authorities.

11. NOAA will operate the Quality Assurance Program in an open and public manner. All standards, tests, and procedures will be publicly available. The public will be given ample notification of activities under the Quality Assurance Program, and will be given ample opportunity to comment and have their comments heard. This opportunity to participate in the Quality Assurance Program and the opportunity to submit hydrographic products for certification under that Program will be equally available to all.

12. In all matters, NOAA will proceed in a manner that maximizes public safety.

## Discussion of Selected Sections of the Policy

### Paragraph 1

NOAA interprets the Act as an attempt to increase the richness of the suite of hydrographic products available to the public, and to ensure the safety of those products. In addition, NOAA interprets the Act to include "services" as meeting the definition of "hydrographic products," and may choose to write or adopt standards, quality assurance tests and procedures, and to certify appropriate services. Nautical chart updating services, or an electronic navigational chart distribution service, are examples of services that NOAA may consider a "hydrographic product" under the Act.

Other tools within NOAA's authority may be used to meet the purposes of the Act. Depending on the complexity of the hydrographic product, and the amount of risk the public would be exposed to,

NOAA reserves the right to select any authorized means of establishing new products and providing a measure of confidence in the content, quality, and adherence to standards for those products. Thus, for purposes of accountability under the Act, NOAA is interpreting "standards," "quality assurance," and "certification" as generic terms describing an outcome rather than as a specific formalism or document. For example, some non-Federal entities may intend to reproduce exactly NOAA products such as the Tide Tables. In this case, a "standard" may be a simple agreement, in which the manufacturer agrees to certain standards of copy quality. Further, because the complexity is low, self-certification might be used as the means of compliance testing. Other such authorities available to NOAA that may be used include: business licenses, Agent Agreements, no-cost contracts, self-certification, adoption of industry standards, and the use of existing certification organizations.

#### Paragraph 2

Participation by the affected communities in writing standards and compliance tests provides an important guarantee that there is broad need for standards and certification, and that the resulting standard and certification meet the needs of the affected communities. Relevant communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

Participation in the drafting of standards and quality assurance tests and procedures must be substantive and continuing by the designated members of the affected communities. The responsibility will lie with the non-Federal entity submitting a hydrographic product for certification to propose a broadly based group of acknowledged representatives of affected groups, and to secure their participation in the writing of standards and compliance tests.

#### Paragraph 6

The Act leaves the certification of hydrographic products as optional for NOAA. The assumption will be, however, that if NOAA undertakes to write standards, it also intends to offer certification of the resulting hydrographic products. In general, NOAA will not undertake to write standards and compliance tests if it can foresee that certification will not be offered.

The decision to offer certification will be made on a case-by-case basis. Circumstances may arise that cause standards to be written, but certification to not be offered. Such circumstances might include:

- A resulting standard for which NOAA lacks confidence in the safety implications of products that might meet that standard;
- Lack of consensus among the affected organizations writing the standard and compliance tests;
- Failure of adoption of the draft standards by a participating standards-writing body;
- Standards that negatively impact the intent of the Act, such as those that might exclude existing, suitable products; or standards that benefit a single company;
- Adopted standards that are specious; or
- Other relevant reasons as they become apparent.

#### Paragraph 7

NOAA does not intend to certify products as suitable for any specific purpose such as for use as a backdrop in Automated Identification Systems. Certification only means that there is an adopted NOAA standard, documented compliance tests; and that the subject hydrographic product has been through the tests and was determined to be compliant with the standard.

#### Paragraph 8

NOAA does not interpret the Act as merely a way to provide manufacturers with a marketing claim for their product, or as a means for one manufacturer to differentiate his product from the competition, although that might be a resulting effect. Neither does NOAA interpret the Act as intending to result in "private standards" that may only apply to one manufacturer's product.

In addition, NOAA interprets the Act as intending to call forth new products, not substitutes for official ones being provided by the Administration. In general, NOAA does not intend to write standards and certify products that would be used to meet the nautical chart and publications carriage requirements mandated in the Code of Federal Regulations and elsewhere. The federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single, official nautical chart or publication where federal regulations mandate carriage, and for not certifying private products for that same purpose. These reasons include:

- Having all vessels making navigation decisions on exactly the same information, particularly in meeting situations or at night;
- Removing any confusion as to what products satisfy the federal regulations;
- Guaranteeing the timeliness and accuracy of updates to official charting products and their distribution;
- Removing ambiguity as to the status of non-certified data that may be included on or with certified private hydrographic products;
- Liability for other information when packaged with a certified "hydrographic product;" and
- The impracticality of NOAA policing all substitute official products—products on which data changes weekly.

Exceptions to this intention might include, for example, cases where NOAA specifically prepares a carriage-compliant product for manufacture and distribution by the non-Federal entities.

#### Paragraph 9

The presumption will be that use of the NOAA emblem will be permitted if NOAA proceeds with standards and certification. However, the use of the NOAA emblem will be carefully monitored. In particular, it will be monitored to insure that the use of the emblem is not done in a manner to imply the endorsement of any manufacturer; any other data, service, or product that may be packaged with a certified hydrographic product; or any particular use of a certified hydrographic product, and to monitor that its use not bring discredit upon the Agency or the Department.

#### 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 will not have a significant, economic impact on a substantial number of small entities. The purpose of this rule is to develop and implement a quality assurance program that is equally available to all applicants, under which the Administrator of NOAA may certify hydrographic products that satisfy standards promulgated by the Administrator. "Hydrographic

products” are any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data. The Administrator will 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. NOAA is required to develop this Quality Assurance Program under the authority of 33 U.S.C. 892b.

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, and because the law is extraordinarily broad in the range of hydrographic products that may be submitted for certification. However, based upon general knowledge of the industry, NOAA believes the majority of the entities affected may be small businesses.

Public comments were received on the proposed rule with respect to one proposed hydrographic product—electronic nautical charts intended for use by certain classes of regulated vessels. NOAA’s regulations are intended only to certify hydrographic products as meeting a standard rather than certifying them for a particular use. In evaluating the comments, NOAA concluded that in most cases NOAA does not have the authority to make the determination of suitability for use. The determination of suitability of a backdrop for an Automated Identification System, for example, lies with the Coast Guard. In other cases, suitability cannot be determined. For example, sport fishing maps can be certified as to their data content and data quality, but NOAA could not certify that such maps would improve one’s catch. Finally, in the specific case of electronic nautical charts, the federal government already provides official products for this purpose, and there are valid safety reasons for maintaining a single, official nautical chart or publication where federal regulations mandate carriage. NOAA’s policy was supported in comments from the Hydrographic Services Review Panel, a federal advisory committee of individuals who are especially qualified to advise the Administrator of NOAA on hydrographic program matters, and

which was established by Congress. The panel commented that NOAA was correct in not certifying privately made electronic charts as meeting chart carriage regulations. They cited safety as the reason and urged NOAA to continue to maintain the single, official nautical charts where federal regulations mandate chart carriage.

While NOAA appreciates that carriage-compliance certification could make the benefits of NOAA certification marginally greater, the proposed program still provides a net benefit to all companies wishing to participate. The program supports companies in making and selling electronic charts into the non-regulated market, which is 2 orders of magnitude larger than the regulated market. It supports the use of privately made electronic charts aboard regulated vessels if used as an aid to navigation rather than as the means of meeting chart carriage regulations. It does not remove a market for privately made electronic charts since they never have been certified for regulatory carriage and do not have that market. Also, because NOAA and the Corps of Engineers give away, at no cost, official electronic charts for meeting carriage regulations, it appears that the portion of the market that the program does not make readily accessible to private companies would be small. Finally, the number of companies that NOAA estimates might be affected by this certification for “standards compliance” as opposed to certification for “use” with respect to electronic nautical charts is between 3 and 9, not all of which may be small entities. Furthermore, the impact the program has on small entities will be positive. Thus the rule does not appear to rise to the level of causing a significant economic impact on a substantial number of small businesses.

The estimated economic impact to small entities for submitting hydrographic products under this program is not expected to be greater than \$600 per product submitted for labor to prepare the application. In addition, it is expected that there will be an average charge of \$5,000 per product submitted for compliance testing. This proposed rule is voluntary. Only those applicants who wish to submit hydrographic products and have them certified need apply. NOAA does not believe this cost will hurt small companies, and the estimated costs incurred should be offset through the benefits in increased sales of the product because of its “certified” status or else private companies would not choose to submit their products to this voluntary program.

### C. Paperwork Reduction Act

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), which OMB has approved under control number 0648–0507.

The following requirements have been submitted to OMB for approval: 4 hours to prepare the application to have standards and compliance tests developed; 4 hours to prepare the application to have a specific hydrographic product certified; and 4 hours for an estimated, single request for NOAA to reconsider a decision made under the program. These estimates include the time for reviewing instructions, searching existing data sources, writing the application information and/or request for reconsideration, and for sending the applications to NOAA. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NOS, (see **ADDRESSES**) and by e-mail to [David\\_Rostker@omb.eop.gov](mailto:David_Rostker@omb.eop.gov), or 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 996

Navigation (water), Hydrographic products, Certification requirements.

■ For the reasons stated in the preamble, NOS amends 15 CFR chapter IX by adding part 996 to read as follows:

#### Headings

#### Subchapter F—Quality Assurance and Certification Requirements for NOAA Hydrographic Products and Services

### PART 996—QUALITY ASSURANCE AND CERTIFICATION REQUIREMENTS FOR NOAA HYDROGRAPHIC PRODUCTS AND SERVICES

#### Subpart A—General

##### Sec.

- 996.1 Purpose and scope.
- 996.2 Definitions.
- 996.3 Fees.
- 996.4 Liability.

#### Subpart B—The Quality Assurance Program for Hydrographic Products

- 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.

- 996.11 Development of standards for a hydrographic product or class.
- 996.12 Development of standards compliance tests for a hydrographic product or class.
- 996.13 Determination of whether to offer certification for a hydrographic product or class.

**Subpart C—Certification of a Hydrographic Product and Decertification.**

- 996.20 Submission of a hydrographic product for certification.
- 996.21 Performance of compliance testing.
- 996.22 Certification.
- 996.23 Audit and decertification of hydrographic products.

**Subpart D—Other Quality Assurance Program Matters**

- 996.30 Use of the NOAA emblem.
- 996.31 Termination of the Quality Assurance Program.
- 996.32 Appeals.
- 996.33 Acceptance of program by non-Federal entities.

**Authority:** 33 U.S.C. 892b.

**Subpart A—General**

**§ 996.1 Purpose and scope.**

The National Oceanic and Atmospheric Administration (NOAA) was 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 procedures established here 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 are the mandated Quality Assurance Program. The execution of those procedures for specific hydrographic products is the implementation of the program.

**§ 996.2 Definitions.**

*Agency* means the National Oceanic and Atmospheric Administration.

*Applicant* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for certification.

*Certification* means a determination made by NOAA that a hydrographic product submitted by a non-Federal entity has met the requirements established by NOAA for a particular hydrographic product or class.

*Department* means the Department of Commerce.

*Hydrographic data* means information acquired through hydrographic or bathymetric surveying, photogrammetry, geodetic, geospatial, or geomagnetic measurements, tide and current observations, or other methods, that is used in providing hydrographic services.

*Hydrographic product* means any publicly or commercially available product produced by a non-Federal entity that includes or displays hydrographic data.

*Hydrographic product class* means a group of hydrographic products with similar traits, attributes, purposes, or users.

*Hydrographic services* means

- (1) The management, maintenance, interpretation, certification, and dissemination of bathymetric, hydrographic, geodetic, geospatial, geomagnetic, and tide and current information, including the production of nautical charts, nautical information databases, and other products derived from hydrographic data;
- (2) The development of nautical information systems; and
- (3) Related activities.

*Quality Assurance Program* means a set of procedures by which hydrographic products are proposed for certification; by which standards and compliance tests are developed, and, if suitable, are adopted by NOAA for those products; and by which certification of individual products may be awarded or denied.

*Quality Assurance Program implementation* means the execution of the Quality Assurance Program procedures for specific hydrographic products.

*Sponsor* means a non-Federal entity that is submitting a hydrographic product to the Quality Assurance Program for the development of standards and compliance tests.

**§ 996.3 Fees.**

NOAA may charge for its Quality Assurance Program activities such sums as may be permitted or required under this Act, or under other statutory authorities. Such sums are non-refundable. NOAA will attempt to identify any such charges upon first submission of a hydrographic product. However, the intent to charge and the amounts may change. NOAA will promptly notify the sponsor of any such changes, and will permit the sponsor to withdraw hydrographic products from consideration under the Quality Assurance Program should they so choose.

**§ 996.4 Liability.**

The Government of the United States shall not be liable for any negligence by producers of hydrographic products certified under this part.

**Subpart B—The Quality Assurance Program for Hydrographic Products**

**§ 996.10 Submission and selection of hydrographic products for the development of standards and compliance tests.**

(a) Any non-Federal entity may submit a hydrographic product to be considered for the development of standards and compliance tests under this Quality Assurance Program.

(b) Submission shall be made to the Quality Assurance Program address below, or to such other address as may be indicated in the future: Director (N/CS), ATTN: Hydrographic Product Quality Assurance Program, Office of Coast Survey, NOAA, 1315 East West Highway, Silver Spring, MD 20910.

(c) The submission shall include

- (1) Name and description of the proposed hydrographic product.
- (2) The non-Federal entity submitting the product for the development of standards and compliance tests, and contact information for that entity. This non-Federal entity shall be known as the sponsor.

(3) The names and contact information of proposed representatives of the affected communities who have committed to participate substantively in the writing of standards and compliance tests. Affected communities might include: manufacturers, users, regulators, resellers, developers of products that use certified hydrographic products such as datasets, and manufacturers of competing or substitute products.

(4) The names and contact information of the standards setting body, and the compliance testing body under whose authority it is proposed that the standards and compliance tests be written and adopted.

(5) Information deemed relevant by the sponsor for NOAA to consider in deciding whether to proceed with the development of standards, compliance tests, and certification. Such information should address at a minimum:

(i) The type and magnitude of the public benefits and enhancement of public safety that would be achieved;

(ii) The breadth of support for standards and certification among all the affected communities;

(iii) The practicality of writing and enforcing an effective and appropriate standard;

(iv) The availability of suitable, similar products that may already meet the needs of the public; and

(v) The required expertise needed to write an appropriate standard.

(d) NOAA may, at its option, define a hydrographic product class of which the proposed hydrographic product is a specific instance. Standards and compliance tests may then be prepared for the class rather than for an individual non-Federal entity's specific product.

(e) NOAA shall publicize, in the **Federal Register** or by other appropriate means, the hydrographic product or class in order to solicit comments on the proposal that standards and compliance tests be written and certification be offered for that hydrographic product or class. Comments might include, but are not limited to, general information; statements of interest in participating in the development of standards and compliance tests; or objections to acceptance of the hydrographic product or class into this Quality Assurance Program. Instructions for commenting and the duration of the comment period will be included in the announcement.

(f) NOAA shall decide, if its other obligations permit, within 60 calendar days of the close of the comment period whether to proceed with the development of standards, compliance tests, and certification for the proposed hydrographic product or class. NOAA may request further information, and shall have additional time as required to consider the information once received. NOAA's decision on whether to proceed shall be based on the following criteria:

(1) The magnitude of the public benefit and enhancement of public safety that would be achieved compared to the commitment of federal resources that would be required;

(2) The breadth of support for standards and certification among all the affected communities;

(3) The practicality of writing and enforcing an effective and appropriate standard;

(4) The availability of suitable, similar products that may already meet the needs of the public;

(5) NOAA's expertise related to the expertise needed to write an appropriate standard;

(6) Availability of resources; and

(7) Other relevant criteria as they become apparent.

(g) NOAA's decision as to whether the proposed hydrographic product or class is accepted into the Quality Assurance Program shall be publicly announced in the **Federal Register** or by other appropriate means, and a written notification shall be provided to the

sponsor. The response shall include NOAA's reason for its decision based on the criteria enumerated above.

(h) Any party, including the sponsor, shall have an opportunity to request reconsideration of NOAA's decision. Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(i) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

(j) NOAA itself may choose to identify a hydrographic product or class, which may or may not yet exist, but for which it intends to adopt standards, compliance tests, and to offer certification. In such cases, NOAA will be considered the sponsor. The procedures to be followed for NOAA-sponsored hydrographic products or classes shall be the same as for those sponsored by non-Federal entities, including the procedures for announcement, comment, and reconsideration.

#### **§ 996.11 Development of standards for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, standards bodies in the writing and adopting of standards for a hydrographic product or class that NOAA has accepted into this program. It shall be the responsibility of the sponsor to propose an appropriate standards writing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to submit the proposal for writing standards to, and to secure the cooperation of, the selected standards writing body.

(b) Once accepted as a work item by the standards writing body, NOAA shall undertake, jointly with representatives of the affected community, members of the standards body, other governmental representatives, and the sponsor as appropriate, to write standards for the hydrographic product or class according to the practices of the standards body and the technical needs of the product. Participation in the writing of standards shall be determined according to the

procedures of the standards writing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the standards body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting standard officially adopted by the standards body according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, standards body should it so choose. Such action might be taken, for example, if there were no appropriate standards body. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish standards for the proposed hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing a standard;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register** or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, the NOAA proposed standard and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available as a standard, the final version of the standard; and

(7) Provide the necessary administrative support.

(e) NOAA may, at its option, adopt an existing standard as the NOAA standard for this program. In this eventuality, NOAA shall adhere to the following general procedure.

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to adopt an existing standard for the proposed hydrographic product or class; and

(2) Solicit, via the **Federal Register** or by other appropriate means including public meetings, comment on the standard that NOAA proposes to adopt, and shall consider the comments received.

(f) Alternatively, NOAA may at its option, proceed by writing a standard by itself. Such action might be used, for example, in cases where the standard is

obvious. Producing exact copies of existing NOAA products might be one such case. Once written, this NOAA-authored standard shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final standard.

(g) At the conclusion of the standards writing, whether through an existing standards body, by a NOAA-convened working group, by adopting an existing standard, or by NOAA itself, NOAA shall consider the resulting standard and comments, and either adopt or reject the standard as the NOAA Quality Assurance Program Standard for the particular hydrographic product or class. NOAA's decision shall be publicly announced in the **Federal Register** or by other appropriate means.

(h) Any party may request NOAA to reconsider its decision to adopt or reject the standard by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

**§ 996.12 Development of standards compliance tests for a hydrographic product or class.**

(a) NOAA shall work, to the extent practicable, through existing, recognized, compliance testing bodies in the writing and adopting of compliance tests for a hydrographic product or class. It shall be the responsibility of the sponsor to propose an appropriate compliance testing body. NOAA may accept this body at its discretion, or may select an alternate body. NOAA will then undertake, jointly with the sponsor and acknowledged representatives of the affected communities, to secure the cooperation of the selected compliance testing body.

(b) NOAA shall undertake, jointly with representatives of the affected community, members of the compliance testing body, other governmental representatives, and the sponsor as appropriate, to write compliance tests for the hydrographic product or class according to the practices of the compliance testing body and the Quality Assurance Program standard adopted by NOAA. Participation in the writing of compliance tests may be determined according to the procedures of the compliance testing body.

(c) NOAA shall then undertake, jointly with representatives of the affected community, members of the compliance testing body and the body itself, other governmental representatives, and the sponsor as appropriate, to have the resulting compliance tests adopted according to the procedures of that body.

(d) NOAA may, at its option, proceed without the participation of an existing, recognized, compliance testing body should it so choose. Such action might be taken, for example, if there were no appropriate compliance testing body. In this eventuality, NOAA will adhere to the following general procedure:

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to organize and chair a working group to write and publish compliance tests for the hydrographic product or class;

(2) Solicit, via the **Federal Register** or by other appropriate means, participation and select, reject, and/or revoke permission to participate as NOAA deems appropriate so as to proceed in an orderly and representative manner in writing compliance tests;

(3) Initiate, schedule, host, and chair, or designate a chair for, the work of the working group;

(4) Circulate, via the **Federal Register**, or by other appropriate means, the drafts of the working group;

(5) Announce, via the **Federal Register** or by other appropriate means, a NOAA proposed final version of the compliance tests and provide an opportunity for public comment;

(6) Announce, via the **Federal Register** or by other appropriate means, and make available the final version of the compliance tests, and

(7) Provide the necessary administrative support.

(e) NOAA may, at its option, adopt existing compliance tests as the NOAA compliance tests for this program. In this eventuality, NOAA shall adhere to the following general procedure:

(1) Announce, in the **Federal Register** or by other appropriate means, NOAA's intention to adopt existing compliance tests for the proposed hydrographic product or class; and

(2) Solicit, via the **Federal Register** or by other appropriate means including public meetings, comment on the proposed compliance tests that NOAA proposes to adopt, and shall consider the comments received.

(f) Alternatively, NOAA may, at its option, proceed by writing compliance tests by itself. Such action might be used, for example, in cases where the tests are obvious. Producing exact copies of existing NOAA products might

be one such case. Once written, these NOAA-authored tests shall be made publicly available for comment, and comments shall be considered before NOAA publishes the final compliance tests.

(g) At the conclusion of the compliance test writing, whether through an existing body, by a NOAA-convened working group, by adopting existing compliance tests, or by NOAA itself, NOAA shall consider the resulting compliance tests and comments, and either adopt or reject them as the NOAA Quality Assurance Program compliance tests for the particular hydrographic product standard. NOAA's decision shall be publicly announced in the **Federal Register** or by other appropriate means.

(h) Any party may request NOAA to reconsider its decision to adopt or reject the compliance tests by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision. NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration shall be considered final.

**§ 996.13 Determination of whether to offer certification for a hydrographic product or class.**

(a) Certification of a hydrographic product or class shall be at the option of NOAA. NOAA may decide at any time whether or not to offer certification for a product or class. However, it is most likely that a determination will be made only after a non-Federal entity has submitted a specific product for certification. NOAA's decision shall be based on the following criteria:

(1) The suitability of the adopted standards and tests for their intended purpose;

(2) The availability of a qualified entity to perform the compliance tests;

(3) Availability of resources; and

(4) Other relevant criteria as they become apparent.

(b) NOAA's decision as to whether certification for a hydrographic product or class is offered shall be publicly announced in the **Federal Register** or by other appropriate means.

(c) Any entity may request NOAA to reconsider its decision to offer or not offer certification by submitting its request in writing to the Quality Assurance Program address within 30 days of NOAA's announcement of its decision. NOAA shall have, if its other

obligations permit, 60 calendar days after the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(d) NOAA's original decision if unappealed within 30 days, or its decision upon reconsideration, shall be considered final.

### Subpart C—Certification of a Hydrographic Product and Decertification.

#### § 996.20 Submission of a hydrographic product for certification.

(a) Upon adoption by NOAA of standards and compliance tests, any non-Federal entity may submit a hydrographic product for certification under a particular standard. This non-Federal entity shall be known as the applicant. Submission shall be made in writing to the Quality Assurance Program address. The submission shall include:

- (1) Name and description of the hydrographic product and its product class if any;
- (2) Identification and contact information for the non-Federal entity submitting the product for certification.
- (3) The identification of the standard and compliance tests adopted by this Quality Assurance Program under which the hydrographic product is to be certified;
- (4) A proposed, qualified, competent, independent compliance testing body to perform the compliance tests, which NOAA may accept at its discretion, or for which NOAA may select an alternative testing body;
- (5) Other information deemed relevant by the sponsor or requested by NOAA.

(b) [Reserved]

#### § 996.21 Performance of compliance testing.

(a) NOAA and the applicant shall submit the applicant's hydrographic product to the testing body for performance of the compliance tests. That body shall determine compliance or non-compliance of the hydrographic product with the NOAA-adopted standard, and shall provide to NOAA written documentation stating the results of the compliance tests according to its usual practices.

(b) Alternatively, NOAA may choose, at its option, to perform, have performed by a NOAA-designated entity, or waive the compliance tests for a hydrographic product. This alternative may be used, for example, when there is no qualified entity to perform the compliance tests, where the compliance tests are simple,

or when self-certification of compliance would be appropriate.

(c) Items failing the compliance tests may be changed by the applicant and retested. Items passing the compliance test upon retest shall be deemed compliant as if they had passed said tests initially.

#### § 996.22 Certification.

(a) A hydrographic product that has passed the compliance tests shall automatically be considered for certification by NOAA. NOAA shall make its certification determination, if its other obligations permit, within 60 calendar days following receipt of the compliance test results. NOAA shall make a certification determination based upon the following criteria:

- (1) The results of the compliance tests;
- (2) The potential for the hydrographic product to impair public safety;
- (3) Successful completion of any administrative requirements, including the payment of required fees, as may be specified by NOAA;
- (4) The potential for certification to cause embarrassment to the Agency or the Department;
- (5) Other relevant criteria as they become apparent.

(b) Hydrographic products receiving a certification determination in the affirmative shall be designated as "certified" by NOAA. NOAA shall provide a written document to the sponsor indicating such, and shall announce its determination in the **Federal Register** or by other appropriate means. Certification shall mean that the hydrographic product has been found to be in compliance with the NOAA-adopted standard for that hydrographic product or class. Certification conveys no express or implied warranty as to the merchantability or fitness for a particular purpose; conveys no express or implied liability on the part of the Government of the United States for the hydrographic products; and conveys no automatic, direct or indirect NOAA endorsement of any product or service.

(c) Certification shall be for a term of 3 years unless otherwise specified by the Administrator.

(d) A certification may be renewed, at the request of sponsor and the option of NOAA, for a period of 2 years. Sponsors may request the renewal of a certification by writing to the Quality Assurance Program address at least 120 calendar days before the expiration of an existing certification. The request shall include:

- (1) Identifying and contact information for the sponsor;

(2) Identifying information for the relevant hydrographic product(s) and the standard(s) under which they were certified;

(3) Evidence sufficient to assure NOAA that the hydrographic product still meets the standard under which it was certified; and

(4) Other information as may be requested by NOAA.

(e) NOAA shall decide within 60 calendar days, if its other obligations permit, whether to renew a certification. NOAA's decision shall be based on whether the hydrographic product continues to meet the applicable standard, and other relevant criteria as they become apparent.

(f) The sponsor shall have an opportunity to request reconsideration of NOAA's decision. Said request shall be submitted in writing, to the Quality Assurance Program address, postmarked within 30 days of NOAA's announcement of its decision, and shall contain written material supporting the requestor's position. NOAA shall have, if its other obligations permit, 30 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(g) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

#### § 996.23 Audit and decertification of hydrographic products.

(a) NOAA may audit hydrographic products it has certified. NOAA may conduct audits without advance notification. However, visits to companies' facilities will be scheduled. Audits may include, but are not limited to:

- (1) The producing companies as it may affect the certified product;
- (2) Certified products;
- (3) Processes used in making, distributing, and marketing certified products;
- (4) Use of the NOAA emblem;
- (5) Examination of manufacturers' public claims about certified hydrographic products;
- (6) Other relevant criteria as they become apparent.

(b) NOAA may decertify a hydrographic product based on the findings of an audit. In general, a hydrographic product may be decertified if:

- (1) The results of an audit indicate that the product no longer meets the standards under which it was certified;
- (2) The product has been substantively changed from the product that was tested and certified;

(3) Implied or actual claims about the product, and/or other data or products linked to the product, are judged by NOAA to be untrue or misleading;

(4) The NOAA emblem was improperly or inappropriately displayed;

(5) Other relevant reasons as they become apparent.

(c) A producing company may decline to reveal information during an audit that it declares to be proprietary or for other reasons. In this eventuality, NOAA reserves the right to decertify based on lack of information should it deem that action appropriate.

(d) The entity producing the certified hydrographic product shall be notified in writing of NOAA's intent to decertify that product. Said entity shall have 30 days to request reconsideration of that intended action in writing to the Quality Assurance Program address. Said request shall contain the identification of the hydrographic product, the requestor, and sufficient information for NOAA to make a determination on the request for reconsideration.

Alternatively, the entity may correct the deficiencies cited by NOAA within 30 days, notify NOAA in writing at the Quality Assurance Program address of the corrective action taken, and provide sufficient evidence for NOAA to judge the correctness and effectiveness of the corrective action taken.

(e) If a request for reconsideration is submitted, or if the producing entity asserts that the deficiencies have been corrected, NOAA shall have 60 calendar days, if its other obligations permit, to consider the request for reconsideration or the corrective action, at which time NOAA shall issue its decertification decision. The decision and NOAA's reason for its action shall be made public in the **Federal Register** or by other appropriate means, and the producing entity shall be notified in writing.

(f) NOAA's decertification, if unappealed or uncorrected within 30 days, shall be considered final. NOAA shall notify the producing entity of this action in writing, and announce the decertification in the **Federal Register** or by other appropriate means.

(g) Upon decertification, manufacturers shall discontinue all claims of certification, and shall discontinue use of the NOAA emblem.

#### Subpart D—Other Quality Assurance Program Matters

##### § 996.30 Use of the NOAA emblem.

(a) Use of the NOAA emblem on certified hydrographic products requires

separate written permission. Use of the NOAA emblem must satisfy an interest of the Agency, and must not result in embarrassment to the Agency or the Department. If the NOAA emblem is used on products that include other data or products, clear indication shall be made as to what is NOAA certified, and what is not NOAA certified. The inclusion of other data or products will not constitute any endorsement of, or favoritism toward, the other data or products by NOAA. Requests for use of the NOAA emblem shall be submitted in writing to the Quality Assurance Program address, and shall include:

(1) Name and description of the hydrographic product(s) on which the emblem will be displayed.

(2) Name and contact information for the entity requesting use of the NOAA emblem.

(3) Exact samples of all uses intended for the NOAA emblem including text claims with, within, or associated with the hydrographic product, its packaging, and advertising that a reasonable person might associate with the NOAA emblem.

(4) Proof of NOAA certification.

(5) Other relevant information as may later be specified.

(b) [Reserved]

##### § 996.31 Termination of the Quality Assurance Program.

(a) NOAA reserves the right to terminate the Quality Assurance Program for a particular hydrographic product or class at any time before certification is awarded if it is deemed to be in the public interest to do so. NOAA shall give written notification to the sponsor and other interested parties should it decide to exercise this option, and shall state the reasons for its action. Reasons for termination may include, but are not limited to:

(1) The inability of the standards-drafting group to reach a consensus on the content of the standard;

(2) Valid objections to the existence of NOAA-certification of a particular hydrographic product or class;

(3) A negative impact on public safety should the hydrographic product receive certification;

(4) Other relevant reasons as they become apparent.

(b) The sponsor or other interested parties shall have 30 days to request a reconsideration of the termination action. Said request shall be in writing to the Quality Assurance Program address, and shall include written material supporting the appeal. NOAA shall have, if its other obligations

permit, 60 calendar days from the receipt of a request for reconsideration to either deny the request, or to reconsider and announce its decision.

(c) NOAA's decision, either the original decision if unappealed within 30 days, or the decision after the request for reconsideration, shall be considered final.

##### § 996.32 Appeals.

(a) Any entity may appeal a final decision made by the Agency under this Quality Assurance Program. Said appeal shall be submitted in writing to the Quality Assurance Program address, and shall contain at least:

(1) Identification and contact information of the appealing entity;

(2) A statement that this is an appeal to a final decision of the Quality Assurance Program;

(3) A description of what decision is being appealed;

(4) A thorough but concise argument as to why the requestor believes the Quality Assurance Program decision being appealed should be set aside.

(5) Other information as may later be determined to be relevant.

(b) Appeals shall be arbitrated by the Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA, using procedures to be established at the time of the appeal, and which shall be appropriate to the nature and circumstances of the appeal. The determination from this arbitration shall be final for purposes of judicial review under the Administrative Procedure Act and other statutes.

##### § 996.33 Acceptance of program by non-Federal entities.

By their voluntary entrance or participation in this Quality Assurance Program or its activities, all parties acknowledge and accept the procedures established by this program, including the finality of decisions. All parties acknowledge and accept that information submitted to NOAA under this Program shall be deemed to be in the public domain, and no representation is made as to the protection of confidential, proprietary or otherwise restricted information.

Dated: December 27, 2004.

**Alan Neuschatz,**

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

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