

TABLE TWO

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Vessel	Number	Masthead lights, distance to stbd of keel in meters; Rule 21(a)	Forward anchor light, distance below flight dk in meters; § 2(K), Annex I	Forward anchor light, number of; Rule 30(a)(i)	AFT anchor light, distance below flight dk in meters; Rule 21(e), Rule 30(a)(ii)	AFT anchor light, number of; Rule 30(a)(ii)	Side lights, distance below flight dk in meters; § 2(g), Annex I	Side lights, distance forward of forward masthead light in meters; § 3(b), Annex I	Side lights, distance inboard of ship's sides in meters; § 3(b), Annex I
USS DALLAS .....	SSN 700 ....	0.41 .....	.....	.....	.....	.....	.....	.....	

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Approved: November 19, 2008.

**M. Robb Hyde,**  
*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*  
 Dated: November 25, 2008.

**T.M. Cruz,**  
*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*  
 [FR Doc. E8-28647 Filed 12-2-08; 8:45 am]  
**BILLING CODE 3810-FF-P**

**DEPARTMENT OF DEFENSE**

**Department of the Navy**

**32 CFR Part 706**

**Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972**

**AGENCY:** Department of the Navy, DoD.  
**ACTION:** Final rule.

**SUMMARY:** The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy has determined that USS DWIGHT D. EISENHOWER (CVN 69) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this

rule is to warn mariners in waters where 72 COLREGS apply.

**DATES:** This rule is effective December 3, 2008 and is applicable beginning 4 November 2008.

**FOR FURTHER INFORMATION CONTACT:** Commander M. Robb Hyde, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE., Suite 3000, Washington Navy Yard, DC 20374-5066, telephone number: 202-685-5040.

**SUPPLEMENTARY INFORMATION:** Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706.

The Secretary of the Navy previously certified that USS DWIGHT D. EISENHOWER (CVN 69) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with 72 COLREGS. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty and Maritime Law) of the Navy, under authority delegated by the Secretary of the Navy, has amended that certification to reflect that certain anchor lights on USS DWIGHT D. EISENHOWER (CVN 69), previously certified as not in compliance with 72 COLREGS, now comply with the applicable 72 COLREGS requirements, to wit: The two aft anchor lights located below the flight deck were removed and replaced by a single new aft anchor light above the hull and near ship's fore-aft centerline, as required by Rules 21(e), 30(a)(i) and 30(a)(ii). The side lights were also raised closer to compliance.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

**List of Subjects in 32 CFR Part 706**

- Marine Safety, Navigation (Water), and Vessels.
- For the reasons set forth in the preamble, amend part 706 of title 32 of the Code of Federal Regulations as follows:
- PART 706—CERTIFICATIONS AND EXEMPTIONS UNDER THE INTERNATIONAL REGULATIONS FOR PREVENTING COLLISIONS AT SEA, 1972**
- 1. The authority citation for 32 CFR Part 706 continues to read as follows:  
**Authority:** 33 U.S.C. 1605.
  - 2. Section 706.2 is amended as follows:  
    - A. In Table Two by revising, in numerical order, the following entry for USS DWIGHT D. EISENHOWER (CVN 69):  
**§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.**  
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USS DWIGHT D. EISENHOWER.	CVN-69	31.0					0.2		

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Approved: November 4, 2008.

**M. Robb Hyde,**  
*Commander, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).*

Dated: November 25, 2008.

**T.M. Cruz,**  
*Lieutenant Commander, Office of the Judge Advocate General, U.S. Navy, Federal Register Liaison Officer.*

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**DEPARTMENT OF VETERANS AFFAIRS**

**38 CFR Part 53**

**RIN 2900-AM26**

**Assistance to States in Hiring and Retaining Nurses at State Veterans Homes**

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Final rule.

**SUMMARY:** The Department of Veterans Affairs (VA) hereby establishes a final rule setting forth a mechanism for States to obtain payments from VA to assist a State veterans home in the hiring and retention of nurses for the purpose of reducing nursing shortages at the home. This rule implements provisions of the Veterans Health Programs Improvement Act of 2004.

**DATES:** *Effective Date:* This final rule is effective January 2, 2009.

**FOR FURTHER INFORMATION CONTACT:** Jacquelyn Bean, Chief, State Veterans Home Per Diem Program, at (202) 461-6771, or Christa M. Hojlo, PhD, Director, State Veterans Home Clinical and Survey Oversight, at (202) 461-6779; Veterans Health Administration (114), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. (These are not toll-free numbers.)

**SUPPLEMENTARY INFORMATION:** In a document published in the **Federal Register** (73 FR 19785) on April 11,

2008, we proposed to establish a new 38 CFR part 53 consisting of regulations captioned "PAYMENTS TO STATES FOR PROGRAMS TO PROMOTE THE HIRING AND RETENTION OF NURSES AT STATE VETERANS HOMES" (referred to below as the proposed regulations). This document adopts as a final rule, with changes discussed below, those proposed regulations. This final rule sets forth a mechanism and criteria for a State to obtain payments from VA to assist a State Veterans Home (SVH) in the hiring and retention of nurses for the purpose of reducing nursing shortages at that home. The final rule establishes regulations concerning provisions in section 201 of the Veterans Health Programs Improvement Act of 2004 (Pub. L. 108-422), which are codified at 38 U.S.C. 1744.

We provided a 60-day comment period that ended June 10, 2008. We received four submissions containing a number of comments that are all discussed below.

**Definition of Nurse**

The proposed regulations at § 53.02 defined the term "nurse" to include only those who are bedside care givers at least a majority of the time. Consequently, the proposed regulations would allow payments only to promote the hiring and retention of those nurses licensed or certified, as described in the proposed definition, and who are bedside care givers at least a majority of the time. In support of this definition, the proposed rule noted that the applicable legislative history (H. Rep. No. 108-538 at 5 (2004)) indicates that the statutory provisions were intended to assist State homes "in hiring nurses to care for veterans." Two commenters asserted that VA has misinterpreted 38 U.S.C. 1744 and its legislative history. With respect to the statute, the comments specifically discussed paragraphs (a) and (b), and the final sentence of paragraph (c), which states that when prescribing criteria for programs to be funded, the Secretary

shall "take into consideration the need for flexibility and innovation." They asserted that the proposed definition of nurse should be changed to remove its restriction to those who are bedside care givers at least a majority of the time, and should not generally exclude such individuals as those acting in the capacity of an advance practice nurse, an administrative nurse, or a director of nursing. We made no changes based on these comments.

Even if the statute and its legislative history are viewed as permitting VA to establish a more expansive definition of the term "nurse" than we proposed, we do not agree with the commenters' argument that the proposed definition is not a permissible one under the statute. The provisions of 38 U.S.C. 1744(c) and (j) authorize VA to establish criteria for the award of payments and we believe that VA therefore has authority for the provisions in the proposed rule that, through the definition of "nurse," limit the nurses for whom VA assistance may be provided. The greatest need for nurses is for those who are bedside care givers at least a majority of the time and we have determined that we can best use the available funding for recruiting and retaining such nurses. In establishing criteria for programs to be awarded payments, the need for flexibility and innovation is not the only permissible consideration. Our consideration of the need for flexibility and innovation has been reflected in the preambles and text of the proposed rule and of this final rule.

**Credible Evidence**

The provisions of proposed § 53.11(a)(3) would require, as a condition of receiving assistance, that the State applicant document by credible evidence that an individual SVH has a nursing shortage. One commenter raised a number of issues regarding the submission of such evidence.

The commenter questioned whether a State applicant would necessarily have to provide an application for each