

TABLE 1 OF § 1065.915—RECOMMENDED MINIMUM PEMS MEASUREMENT INSTRUMENT PERFORMANCE—Continued

| Measurement | Measured quantity symbol | Rise time, t_{10-90} , and Fall time, t_{90-10} | Recording update frequency | Accuracy ¹ | Repeat-ability ¹ | Noise ¹ |
|--|--------------------------|---|----------------------------|------------------------------|-------------------------------|--------------------|
| General temperature sensor (not a part of another instrument). | T | 5 s | 1 Hz | 1.0% of pt. K or 5 K | 0.5% of pt. K or 2 K. | 0.5% of max 0.5 K. |
| General dewpoint sensor | T_{dew} | 50 s | 0.1 Hz | 3 K | 1 K | 1 K. |
| Exhaust flow meter | \dot{n} | 1 s | 1 Hz means | 5.0% of pt. or 3.0% of max | 2.0% of pt. | 2.0% of max. |
| Dilution air, inlet air, exhaust, and sample flow meters. | \dot{n} | 1 s | 1 Hz means | 2.5% of pt. or 1.5% of max | 1.25% of pt. or 0.75% of max. | 1.0% of max. |
| Continuous gas analyzer | x | 5 s | 1 Hz | 4.0% of pt. or 4.0% of meas. | 2.0% of pt. or 2.0% of meas. | 1.0% of max. |
| Gravimetric PM balance | m_{PM} | N/A | N/A | See § 1065.790 | 0.5 μ g | N/A. |
| Inertial PM balance | m_{PM} | N/A | N/A | 4.0% of pt. or 4.0% of meas. | 2.0% of pt. or 2.0% of meas. | 1.0% of max. |

¹ Accuracy, repeatability, and noise are all determined with the same collected data, as described in § 1065.305, and based on absolute values. "pt." refers to the overall flow-weighted mean value expected at the standard; "max." refers to the peak value expected at the standard over any test interval, not the maximum of the instrument's range; "meas" refers to the actual flow-weighted mean measured over any test interval.

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(d) * * *

(5) *ECM signals for determining brake-specific emissions.* You may use any combination of ECM signals, with or without other measurements, to estimate engine speed, torque, brake-specific fuel consumption (BSFC, in units of mass of fuel per kW-hr), and fuel rate for use in brake-specific emission calculations. We recommend that the overall performance of any speed, torque, or BSFC estimator should meet the performance specifications in Table 1 of this section. We recommend using one of the following methods:

* * * * *

(iv) *ECM fuel rate.* Use the fuel rate signal directly from the ECM and chemical balance to determine the molar flow rate of exhaust. Use § 1065.655(d) to determine the carbon mass fraction of fuel. You may alternatively develop and use your own combination of ECM signals to determine fuel mass flow rate.

(v) *Other ECM signals.* You may ask to use other ECM signals for determining brake-specific emissions, such as ECM air flow. We must approve the use of such signals in advance.

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■ 39. Section 1065.920 is amended by revising the section heading and paragraph (a) to read as follows:

§ 1065.920 PEMS calibrations and verifications.

(a) *Subsystem calibrations and verifications.* Use all the applicable calibrations and verifications in subpart D of this part, including the linearity verifications in § 1065.307, to calibrate and verify PEMS. Note that a PEMS

does not have to meet the system-response and updating-recording verifications of § 1065.308 and § 1065.309 if it meets the overall verification described in paragraph (b) of this section. This section does not apply to ECM signals.

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■ 40. Section 1065.925 is amended by revising paragraph (h) introductory text to read as follows:

§ 1065.925 PEMS preparation for field testing.

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(h) Verify the amount of contamination in the PEMS HC sampling system before the start of the field test as follows:

* * * * *

■ 41. Section 1065.940 is revised to read as follows:

§ 1065.940 Emission calculations.

(a) Perform emission calculations as described in § 1065.650 to calculate brake-specific emissions for each test interval using any applicable information and instructions in the standard-setting part.

(b) You may use a fixed molar mass for the diluted exhaust mixture for field testing. Determine this fixed value by engineering analysis.

[FR Doc. 2010-27892 Filed 11-5-10; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

49 CFR Part 39

[Docket OST-2007-26829]

RIN 2105-AB87

Transportation for Individuals With Disabilities: Passenger Vessels

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Response to comments; stay of effective date.

SUMMARY: On July 6, 2010, the Department of Transportation issued a new Americans with Disabilities Act (ADA) final rule to ensure nondiscrimination on the basis of disability by passenger vessel operators (PVOs). The final rule requested comment on three issues: Service animals, mobility devices, and the consistency of the rule with recent Department of Justice ADA rules. This document responds to those comments and makes certain adjustments in effective dates for the final rule.

DATES: 49 CFR 39.39 is stayed effective from November 8, 2010 through January 3, 2012; the remainder of 49 CFR part 39 is stayed effective from November 8, 2010 through January 3, 2011.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 1200 New Jersey Avenue, SE., Room W94-302, Washington, DC 20590. (202) 366-9310 (voice); (202) 366-7687 (TDD); bob.ashby@dot.gov (e-mail).

SUPPLEMENTARY INFORMATION: After a lengthy, open, and inclusive rulemaking process including an advance notice of proposed rulemaking (ANPRM), a notice of proposed rulemaking (NPRM), public meetings, and consultation with the Access Board and the Department of Justice (DOJ), the Department of Transportation issued a final rule (49 CFR part 39) applying the ADA to the policies and practices of passenger vessel operators (PVOs). The rule was issued on July 6, 2010 (75 FR 38878) with an effective date of November 3, 2010. The final rule included a request for comment on three issues: service animals, mobility aids, and the general consistency of Part 39 with recent DOJ rules under Titles II and III of the ADA. The Department worked closely with DOJ to ensure that part 39, as published, is fully consistent with DOJ ADA rules. The question raised in the request for comments was whether it would be appropriate for the Department to make changes to the rule that could differ from the DOJ rules in some respects.

The Department received over 30 comments. About two-thirds of these were from advocates of psychiatric service animals (PSAs). They supported considering such animals to be service animals and opposed permitting emotional service animals (ESAs) to be considered as service animals. Two disability organizations supported the use of ESAs on ships and urged the Department to permit them to travel with their users. The Department is not making any changes in its rules in response to these comments. Part 39's existing definition of service animals encompasses PSAs. The preamble to the final rule made clear that ESAs, consistent with DOJ rules, are not considered to be service animals that PVOs are required to accommodate, though the Department said that it is a good idea for PVOs to accept ESAs.

Two organizations representing PVOs commented on the rule. Both urged that the Department's rules be consistent with those of DOJ. DOT regards its existing rules as being consistent with those of DOJ, in general as well as with respect to particular matters such as service animals and mobility aids. The Department is not making any substantive changes to its rules, which consequently will remain consistent with those of DOJ.

One of these organizations pointed out that the DOJ ADA rules become effective in six months rather than four, and that a DOJ provision on hotel reservations had an 18-month effective date. It asked that DOT change its effective dates to be consistent with these DOJ dates. The Department

believes that these requests are reasonable. Consequently, we are changing the effective date for most provisions of the rule from November 3, 2010, to January 3, 2011. In addition to being consistent with the DOJ time frame, this extension will permit more time for the Department to work on guidance and interpretations that will assist regulated parties and the public to implement the new rules smoothly. We will also extend the effective date for the cabin reservations section of the rule to January 3, 2012. In addition to being consistent with the DOJ time frame for hotel reservations, this extension will provide additional time for PVOs to make necessary changes to their computer systems to carry out the regulatory requirements.

Some commenters made comments outside the scope of the Department's request for comment. One of the PVO organizations expressed its disagreement with various provisions of the final rule and sought clarification of others. Other comments asked for clarifications on some issues, such as where complaints should be sent or coverage of coastwise vessels carrying passengers not for hire. We will not respond to those comments here, since they are beyond the scope of the Department's request for comments, but we would note that, in the normal course of business, the Department regularly provides interpretations of or guidance concerning new regulatory provisions. We will do so in the case of Part 39 where necessary and appropriate.

Regulatory Process Matters

This stay of effective dates relates to an underlying final rule that was significant for purposes of Executive Order 12886 and the Department's Regulatory Policies and Procedures. However, this notice makes no changes in the text of the final regulation, and the changes to the effective date of the rule are not themselves significant. These changes do not impose any additional costs or burdens on any regulated parties, and they provide regulated entities, including small entities, additional time to comply with the regulations. For this reason, the Department certifies that these changes to the effective dates do not impose significant economic effects on a substantial number of small entities.

Issued at Washington, DC, November 2, 2010.

Ray LaHood,

Secretary of Transportation.

[FR Doc. 2010-28236 Filed 11-5-10; 8:45 am]

BILLING CODE 4910-9X-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 100216088-0454-02]

RIN 0648-AY69

List of Fisheries for 2011

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes its final List of Fisheries (LOF) for 2011, as required by the Marine Mammal Protection Act (MMPA). The final LOF for 2011 reflects new information on interactions between commercial fisheries and marine mammals. NMFS must classify each commercial fishery on the LOF into one of three categories under the MMPA based upon the level of serious injury and mortality of marine mammals that occurs incidental to each fishery. The classification of a fishery on the LOF determines whether participants in that fishery are subject to certain provisions of the MMPA, such as registration, observer coverage, and take reduction plan requirements.

DATES: This final rule is effective January 1, 2011.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for a listing of all Regional Offices. Comments regarding the burden-hour estimates, or any other aspect of the collection of information requirements contained in this final rule, should be submitted in writing to Chief, Marine Mammal and Sea Turtle Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, or to Nathan Frey, OMB, by fax to 202-395-7285 or by e-mail to Nathan_Frey@omb.eop.gov.

FOR FURTHER INFORMATION CONTACT:

Melissa Andersen, Office of Protected Resources, 301-713-2322; David Gouveia, Northeast Region, 978-281-9280; Laura Engleby, Southeast Region, 727-551-5791; Elizabeth Petras, Southwest Region, 562-980-3238; Brent Norberg, Northwest Region, 206-526-6733; Bridget Mansfield, Alaska Region, 907-586-7642; Lisa Van Atta, Pacific Islands Region, 808-944-2257.

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