

procedures for Office of Management and Budget (OMB) Circular A-76 comparisons of retirement costs.

2. *Background.* On October 29, 1986, OMB issued Transmittal Memorandum No. 4 which revised OMB Circular A-76 procedures for calculation and comparison of retirement costs. The new procedure provides for the deduction of social security (except medicare) and thrift/profit sharing plan contributions from the price offered by the contractor selected for comparison with the Government's in-house bid. A solicitation provision has been developed and is being prescribed for use in order to obtain the retirement costs and substantiating documentation from contractors.

3. *Effective date.* March 9, 1987.

4. *Expiration date.* This circular expires September 8, 1987, unless canceled earlier.

5. *Explanation of changes.*

a. Section 507.305 is amended to designate the current text as paragraph (a) and to add paragraph (b) to read as follows:

507.305 Solicitation provisions and contract clauses.

(a) * * *

(b) The contracting officer shall insert the provision at section 552.207-71, Social Security (except Medicare) and Thrift/Profit Sharing Plan Contributions, in all solicitations issued for the purpose of comparing the costs of contractor and Government performance of work.

b. Section 507.306 is added to read as follows:

507.306 Evaluation.

(a) The social security and thrift/profit sharing plan contributions will not affect the determination of the low responsive offer and should not be included on the abstract of offers. The contributions should not be announced at the public bid opening, but should be included on the cost comparison form and made available during the public review period.

(b) Contracting officers shall request documentation verifying contributions from the low responsive responsible offeror only if the contributions will affect the outcome of the cost comparison. The documentation provided by the low offeror should not be released to other offerors.

c. Section 552.207-71 is added to read as follows:

552.207-71 Social Security (Except Medicare) and Thrift/Profit Sharing Plan Contributions.

As prescribed in section 507.305(b), insert the following provision:

Social Security (Except Medicare) and Thrift/Profit Sharing Plan Contributions

(a) To provide for consistency of comparison between Government and Contractor costs, contributions to the Social Security Fund (except medicare) and any thrift/profit sharing plan costs included in the price submitted by the offeror selected to compare costs with the Government, may be deducted from that price for purposes of comparison with the Government's in-house bid.

(b) Offerors may provide, in the space provided in paragraph (h), the estimated contributions discussed above. The estimated contributions must be limited to those costs that would be allocable to a contract awarded under this solicitation for each year of the contract period, including option years.

(c) Estimated contributions to thrift/profit sharing plans to be deducted from the offeror's price shall be limited to the historical costs incurred by the offeror in the tax year previous to the solicitation date on a per employee basis. Thrift/profit sharing plans must be recognized by the Internal Revenue Service (IRS). Cost estimates that reflect improved plans will be accepted to the extent that the historical data justify the estimates used.

(d) For purposes of this provision, a thrift/profit sharing plan is defined as:

A deferred compensation arrangement in which an employee can contribute after-tax contributions to an individual account maintained in his/her behalf which may also receive matching employer contributions at some specified rate up to a maximum. A "thrift/profit sharing plan" includes a profit sharing plan as defined by 26 CFR 1.401-1(b)(1)(ii) and a stock bonus plan as defined by 26 CFR 1.401-1(b)(1)(iii). A thrift/profit sharing plan is not a "pension plan" as defined in 26 CFR 1.401-1(b)(1)(i).

(e) Upon the request of the Contracting Officer, the low responsive offeror selected to compare costs with the Government agrees to provide, within 5 working days of the request, all documentation necessary to verify the reasonableness of the social security and the thrift/profit sharing plan cost estimates submitted. Such documentation shall include, but is not limited to, the relevant pages of the corporate IRS submission for the tax year immediately prior to the date of the request, the number of contractor employees, the number of employees in the thrift/profit sharing plan, the number of employees included in the price offered and any labor hour worksheets used to develop the social security or thrift/profit sharing plan contributions submitted with the offer.

(f) Failure to submit the estimated contributions or to provide the requested documentation supportive of the estimated contributions will not make the offer nonresponsive. Such failure will, however, negate the offeror's opportunity to have such costs deducted in whole or in part from the price offered in the cost comparison with the Government's in-house bid.

(g) Disagreements between the offeror and the Contracting Officer over the validity of estimated social security or thrift/profit sharing plan contributions, which cannot be

resolved by the offeror and the Contracting Officer, will be resolved through the General Services Administration A-76 Administrative Appeal Process, established under OMB Circular A-76 and Section 7.307, Chapter 1, Title 48, Code of Federal Regulations.

(h) Offeror social security and thrift/profit sharing plan contributions by year. The contributions indicated below will not be used in the Government's determination of either responsiveness or responsibility.

Year	Social Security contribution (excluding medicare)	Thrift/profit sharing plan contribution
1.....	\$.....	\$.....
2.....
3.....
4.....
5.....
Total

(i) The successful commercial offer will be determined on the basis of the price offered and a determination that the low offer is responsive and the offeror responsible. The offer will then be compared with the Government bid, after the appropriate social security (except medicare) and thrift/profit sharing plan deductions have been made.

(End of provision)

Dated: March 9, 1987.

Patricia A. Szervo,
Associate Administrator for Acquisition Policy.

[FR Doc. 87-5884 Filed 3-18-87; 8:45 am]

BILLING CODE 6820-61-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171, 173, 174, 175, 176, and 177

[Docket No. HM-145E, Amdt. Nos. 171-92, 173-200, 174-62, 175-40, 176-25, and 177-69]

Reportable Quantity of Hazardous Substances

AGENCY: Research and Special Programs Administration, (RSPA), DOT.

ACTION: Final rule.

SUMMARY: This document removes an obsolete hazardous substance discharge reporting requirement from the Hazardous Materials Regulations and adopts a note in place thereof that draws attention to existing reporting requirements contained in U.S. Environmental Protection Agency Regulations. This action is necessary to

remove an obsolete and misleading requirement from the regulations.

EFFECTIVE DATE: April 20, 1987.

FOR FURTHER INFORMATION CONTACT: Thomas Charlton, Standards Division Office of Hazardous Materials Transportation, RSPA, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-4488.

SUPPLEMENTARY INFORMATION: On June 23, 1986, RSPA published a notice of proposed rulemaking (NPRM) under Docket HM-145E (51 FR 22902) entitled: Reportable Quantity of Hazardous Substances. The notice proposed to amend DOT's Hazardous Materials Regulations (HMR, 49 CFR Parts 171 through 179) by incorporating into the HMR many new hazardous substances with their reportable quantities and adjusting the reportable quantities of hazardous substances already in the HMR. In addition, the NPRM proposed to change the definition of "hazardous substance", as it is defined in § 171.8 of the HMR, and to change the reporting requirement for discharges of hazardous substances found at § 171.17. Both proposals were in response to actions taken by the U.S. Environmental Protection Agency (EPA) in a final rule published in the Federal Register on April 4, 1985, (50 FR 13456) pursuant to that agency's authority under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

On October 18, 1986, the President signed the Superfund Amendment and Reauthorization Act (SARA) of 1986 (Pub. L. 99-499). In amending CERCLA, Congress required, *inter alia* that within 30 days the Secretary of Transportation list and regulate all hazardous substances designated under section 101(14) of CERCLA. In response to this Congressional mandate, RSPA published a final rule on November 21, 1986, under Docket HM-145F (51 FR 42174). The rule listed and regulated all hazardous substances at the reportable quantities designated by EPA pursuant to their authorities under section 102 of CERCLA and incorporated all hazardous substances into the HMR. It dealt with most of the issues raised in Docket HM-145E with the exception of the reporting requirement at § 171.17. The amendments adopted herein deal with that issue.

Hazardous substances first appeared in the HMR in 1980. They were designated by EPA, each with a reportable quantity, in 1978 pursuant to section 311 of the Federal Water Pollution Control Act (FWPCA). While the original FWPCA substances were

later incorporated into the list of CERCLA hazardous substances, they were water pollutants, and the FWPCA required that "discharges" of these materials be reported. "Discharges" were defined in the FWPCA as spills to the waters of the United States or adjoining shorelines. EPA and the Coast Guard, who have spill response and clean up responsibility for both oil and hazardous substances under the FWPCA, published separate regulations requiring that discharges of these materials be reported to the Coast Guard's National Response Center (NRC). The Coast Guard reporting requirements are found at 33 CFR Part 153, and EPA's at 40 CFR Part 117. When RSPA placed these original hazardous substances in the § 172.101 Table in 1980, it also placed a reporting requirement for their discharge in the HMR at § 171.17 which was similar to the EPA and the Coast Guard requirements. Section 171.17 presently requires that the owner or operator of a facility (including a transport vehicle) report to the NRC any discharge of a hazardous substance into the navigable waters or upon adjoining shorelines as soon as he has knowledge of the discharge.

In addition to adding many hazardous substances to those already designated pursuant to the FWPCA, CERCLA expanded the scope of spill reporting to the biosphere (i.e., navigable waters, ground water, earth, and air). Under CERCLA, a "release" (a term which replaced "discharge") of a hazardous substance in a reportable quantity to any of these environmental media must be reported under CERCLA. With advent of CERCLA, the reporting requirement at § 171.17 has become both obsolete and misleading, since it references only spills threatening water. Section 103 of CERCLA contains specific requirements to report "releases" to the NRC. In addition, EPA published a second hazardous substance reporting regulation in 40 CFR Part 302 requiring reporting of "releases" of hazardous substances to the NRC.

In its NPRM (Docket HM-145E), RSPA proposed either to revise § 171.17 to reflect the expanded reporting media, or to remove § 171.17 from the HMR. RSPA received one comment on the proposed revisions to § 171.17 from EPA, urging that § 171.17 be retained but corrected to reflect the CERCLA requirements. No other persons commented on hazardous substances reporting. Based on a review of this issue, RSPA is removing § 171.17 and references to that section from the HMR. However, RSPA is incorporating a note drawing attention to existing EPA regulations requiring that an owner or

operator of a CERCLA-covered facility report each hazardous substance release to the NRC. RSPA has taken this action because § 171.17 duplicates rules promulgated by both EPA and Coast Guard. There is no basis to conclude another reporting requirement, using the authority of the Hazardous Materials Transportation Act (HMTA), would enhance safety or environmental protection. Indeed, it could confuse the regulated community. RSPA believes that it is better to reference EPA regulatory requirements than to attempt to duplicate them in the HMR.

Review by Sections

Section 171.15, which requires immediate reporting of certain hazardous materials spills, is revised by including a note drawing attention to EPA requirements at 40 CFR Part 302 to report releases of hazardous substances to the National Response Center.

Section 171.17 is removed and reserved.

Section 173.118a is revised by removing the reference to § 171.17 in paragraph (b)(6).

Section 174.45 is revised by removing the reference to § 171.17.

Section 175.45 is revised by removing paragraph (d) which references § 171.17.

Section 176.48 is revised by removing the reference to § 171.17 in paragraph (b).

Section 177.807 is revised by removing the reference to § 171.17.

Administrative Notices

Executive Order 12291

The RSPA has determined that the effect of this final rule will not meet the criteria specified in section 1(b) of Executive Order 12291 and is, therefore, not a major rule. This is not a significant rule under DOT regulatory procedures [44 FR 11034] and requires neither a Regulatory Impact Analysis, nor an environmental impact statement under the National Environmental Policy Act [49 U.S.C. 4321 *et seq.*]. A regulatory evaluation is available for review in the Docket.

Impact on Small Entities

Based on limited information concerning the size and nature of the entities likely to be affected, I certify this rule will not, as promulgated, have a significant economic impact on a substantial number of small entities under criteria of the Regulatory Flexibility Act.

The following list of Federal Register Thesaurus of Indexing Terms apply to this rulemaking:

List of Subjects

49 CFR Part 171

Hazardous materials transportation, Definitions.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

49 CFR Part 174

Hazardous materials transportation, Rail carriers.

49 CFR Part 175

Hazardous materials transportation, Air carriers.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

In consideration of the foregoing, Parts 171, 173, 174, 175, 176, and 177 of Title 49, Code of Federal Regulations would be amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, and 1808; and 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, a note is added after paragraph (c), as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

* * * * *

(c) * * *
 Note.—Under 40 CFR 302.6 EPA requires persons in charge of facilities (including transport vehicles, vessels, and aircraft) to report any release of a hazardous substance in a quantity equal to or greater than its reportable quantity, as soon as that person has knowledge of the release, to the U.S. Coast Guard National Response Center at (toll free) 800-424-8802 or (toll) 202-267-2675.

§ 171.17 [Removed and reserved]

3. Section 171.17 is removed and reserved.

PART 173—SHIPPERS-GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

4. The authority citation for Part 173 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808, 1809; 49 CFR 1.53(e), 1.53, App. A to Part 1, 49 U.S.C. 1655, 1655(c).

5. In § 173.118a, paragraph (b)(6) is revised to read as follows:

§ 173.118a Exceptions for combustible liquids.

* * * * *

(b) * * *
 (6) Reporting incidents as prescribed by §§ 171.15 and 171.16 of this subchapter; and

* * * * *

PART 174—CARRIAGE BY RAIL

6. The authority citation for Part 174 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to Part 1.

7. Section 174.45 is revised to read as follows:

§ 174.45 Reporting hazardous materials incidents.

When any incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

PART 175—CARRIAGE BY AIRCRAFT

8. The authority citation for Part 175 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1806, 1807, 1808; 49 CFR 1.53(c), 1.53, App. A to Part 1.

9. In § 175.45, paragraph (d) is removed as follows:

§ 175.45 Reporting hazardous materials incidents.

* * * * *

(d) [Reserved]

PART 176—CARRIAGE BY VESSEL

10. The authority citation for Part 176 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to Part 1.

11. In § 176.48, paragraph (b) is revised to read as follows:

§ 176.48 Situation requiring report.

* * * * *

(b) When an incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

* * * * *

PART 177—CARRIAGE BY PUBLIC HIGHWAY

12. The authority citation for Part 177 is revised to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53(e), 1.53, App. A to Part 1.

13. Section 177.807 is revised to read as follows:

§ 177.807 Reporting hazardous materials incidents.

When an incident occurs during transportation in which a hazardous material is involved, a report may be required (see §§ 171.15 and 171.16 of this subchapter).

Issued in Washington, DC, on March 12, 1987, under authority delegated in 49 CFR 1.53.

M. Cynthia Douglass,
Administrator, Research and Special Programs Administration.

[FR Doc. 87-5901 Filed 3-18-87; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 61225-7052]

Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues a final rule to implement Amendment 10 to the Fishery Management Plan for the Groundfish Fishery in the Bering Sea and Aleutian Islands Area (FMP). Amendment 10 contains four parts which will (1) close an area of the exclusive economic zone (EEZ) in the Bering Sea to all commercial fishing with trawl gear, set limits on incidental catches of Tanner and red king crabs and Pacific halibut in Bering Sea foreign and domestic fisheries for yellowfin sole and other flatfish, and require that these fisheries cease when the incidental catch limits are reached; (2) require weekly catch reports from catcher/processor and mothership vessels regardless of when their catch is landed; (3) provide authority to the Secretary of Commerce (Secretary) to make certain inseason changes to gear regulations, seasons, and harvest quotas, and (4) provide the Secretary with specific inseason authority to reapportion surplus amounts of groundfish within the domestic allowable harvest category. These measures are intended to respond to biological, socioeconomic, and administrative problems that have been identified by the North Pacific Fishery Management Council (Council).

In addition, NOAA is making other regulatory changes to clarify domestic reporting requirements. These additional regulatory changes are not part of