

**242.705-2 Auditor determination procedure.**

(a) Auditor determination procedures will be used for commercial contractor locations where DoD has the predominant interest (on the basis of unliquidated dollar amount). Transition years for contractor locations will be published at a later date. This procedure, as it applies to DoD contractor locations meeting the FAR criteria for contracting officer determination will be reevaluated at a subsequent date.

(b)(1) For multidivisional contractors, the proposal for each segment shall be submitted to the auditor responsible for conducting audits of that division and the divisional ACO. The cognizant auditor shall forward copies of the proposal to the corporate ACO and auditor. The contractor's proposal must contain an executed Certificate of Overhead Costs.

(b)(2)(i) Upon completion of the audit, the auditor will issue to the contractor a written notification setting forth audit exceptions to the contractor's proposal. The notification will state that the contractor has 90 days to provide its agreement or rebuttal comments. A copy of the notification will be furnished to the cognizant ACO. The auditor may grant the contractor one 30-day extension upon receipt of a written request from the contractor. Upon receipt of the contractor's response to the written notification of audit exceptions, the auditor will evaluate the response and issue the audit report required in FAR 42.705-2(b)(2)(iv) to the cognizant ACO within 60 days. If the contractor fails to respond to the notification by the required date (initial or extended), the auditor will issue the audit report. Regardless of agreement or disagreement, the audit report will cover, as a minimum:

(A) The contractor's indirect cost rate proposal;

(B) The audit findings;

(C) Reconciliation of all costs questioned, with identification of all individual elements of cost and amounts allowed or disallowed in the final settlement if agreement was reached, or recommended for disallowance if agreement was not reached;

(D) Disposition of period costing or allocability issues; and

(E) Identification of cost or pricing date submitted subsequent to the proposal and relied upon in reaching a settlement.

(ii) See paragraph (b)(2)(iii) of this section.

(iii) If the audit report details that agreement has been reached, the auditor will obtain from the contractor the

Certificate of Current Cost or Pricing Date required in FAR 42.705-2(b)(2)(ii) and prepare an indirect cost rate agreement in accordance with FAR 42.705-2(b)(2)(iii). The agreement shall be signed by the contractor and the designated audit official.

(iv) See paragraph (b)(2)(i) of this section.

(v) If the audit report details that agreement with the contractor cannot be reached, the auditor will also issue DCAA Form 1 detailing the items of exception. Upon receipt of a DCAA Form 1, the contractor can submit a request, in writing, to the cognizant ACO to reconsider the auditor's determination and /or file a claim under the Disputes Clause. Such request or claim shall be submitted within 60 days. In considering the contractor's request, the ACO will not resolve any questioned cost without obtaining adequate documentation and the opinion of the auditor. To the maximum extent practicable, the auditor should be present at any negotiation or meeting between the ACO and contractor regarding the questioned costs. If agreement between the parties is reached, the ACO will obtain the Certificate of Current Cost or Pricing Data, prepare the indirect cost rate agreement, and prepare a negotiation memorandum containing the elements set forth in FAR 42.705-1(b)(5)(iii). Failure of the parties to reach agreement will be treated in accordance with FAR Subpart 33.2..

5. Section 242.706 is amended by revising paragraph (a), by removing paragraph (b)(1), and adding paragraph (b) to read as follows:

**242.706 Distribution of Documents.**

(a) When the auditor executes the overhead rate agreement (see 242.705-2(b)(2)(iii)), copies of the agreement will be furnished to the contractor, the cognizant CACO (if assigned), and the cognizant ACO. In addition, copies will be distributed to other Departments, and (upon specific request) any other interested Government agencies. Department may make further distribution to activities within their Departments and shall insert one copy in each contractor general file (see S2-101.2 and S2-102.4). When the ACO executes the overhead rate agreement (see 242.705-2(b)(2)(v)), distribution is the same except that a copy will also be provided to the cognizant auditor.

(b) The audit report issued to the cognizant ACO pursuant to 242.705-2(b)(2)(i) will also be furnished to the cognizant CACO (if assigned). If the ACO prepares a negotiation

memorandum pursuant to 242.705-2(b)(2)(v), copies will be furnished to the cognizant auditor and the cognizant CACO (if assigned). Upon specific request, a copy of the auditor's report and/or the contracting officer's negotiation memorandum will be furnished to other Departments or Government agencies.

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**DEPARTMENT OF TRANSPORTATION****Research and Special Programs Administration****49 CFR Part 173**

[Docket No. HM-149E, Notice No. 87-1]

**Exceptions for Specified Quantities of Radioactive Materials**

**AGENCY:** Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Research and Special Programs Administration (RSPA) proposes to renew for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421-1 and 173.421-2. This action is necessary to update the exceptions in these sections which permit the transportation by passenger-carrying aircraft of certain quantities of radioactive material under the existing restrictions. Updating these exceptions will prevent the disruption of routine and ongoing shipments which have been made safely for 12 years under the existing exceptions. These materials do not present a significant hazard to passengers or crew on an aircraft.

**DATE:** Comments must be received on or before April 1, 1987.

**ADDRESS:** Address comments to Docket Branch (DHM-30), Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should identify the docket and be submitted, when possible, in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Branch is located in Room 8426 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-5046. Public dockets may be reviewed between the hours of 8:30 a.m. to 5:00 p.m., Monday through Friday.

**FOR FURTHER INFORMATION CONTACT:** Lee Jackson (202) 366-4488, Office of Hazardous Materials Transportation, RSPA, Washington, DC. 20590.

**SUPPLEMENTARY INFORMATION:** On May 2, 1985, RSPA published an emergency final rule under Docket HM-149D [50 FR 18667]. In this final rule, RSPA renewed for two years the exceptions (statutory exemptions) for specified quantities of radioactive materials found in 49 CFR 173.4, 173.421-1 and 173.421-2. This action was taken on an emergency basis because the existing exceptions were due to expire on May 3, 1985.

In accordance with section 107 of the Hazardous Materials Transportation Act (HMTA 49 U.S.C. 1806) governing exemptions, the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2 are limited to two years unless reexamined and renewed. These exceptions expire on May 2, 1987. Historically, these exceptions have been issued and subsequently renewed under Docket HM-149. The legal background and regulatory history of these exceptions can be found in Docket HM-149C [46 FR 24184] published on April 30, 1981, and in preceding amendments dating back to April 17, 1975 [40 FR 17141].

In accordance with 49 CFR 106.13 and 49 U.S.C. 1806, RSPA is once again reexamining the provisions of the exceptions provided in §§ 173.4, 173.421-1 and 173.421-2 and proposes to extend the effective dates of these exceptions. Specifically, in §§ 173.4(b), 173.421-1(b)(2) and 173.421-2(d), the date May 2, 1987 would be amended to read "May 2, 1989". These amendments would permit the continued transportation of specified quantities of radioactive material by passenger-carrying aircraft.

#### Administrative Notices

##### *Executive Order 12291*

The RSPA has determined that the effect of this proposed 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 of 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.

#### List of Subjects in 49 CFR Part 173

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Part 173 of Title 49 of the Code of Federal Regulations would be amended as follows:

#### **PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

1. The authority citation for Part 173 would be revised to read as follows:

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

##### § 173.4 [Amended]

2. In paragraph (b) of § 173.4, the year "1987" would be changed to read "1989".

##### § 173.421-1 [Amended]

3. In paragraph (b)(2) of § 173.421-1, the year "1987" would be changed to read "1989".

##### § 173.421-2 [Amended]

4. In paragraph (d) of § 173.421-2, the year "1987" would be changed to read "1989".

Issued in Washington, DC, on February 25, 1987, under the authority delegated in 49 CFR Part 1, Appendix A.

Alan I. Roberts,  
Director, Office of Hazardous Materials Transportation.

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## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR-Parts 217, 222 and 227

[Docket No. 70227-7027]

#### Sea Turtle Conservation; Shrimp Trawl Requirements

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

**ACTION:** Proposed rule.

**SUMMARY:** The Secretary of Commerce proposes to adopt rules that require shrimp trawlers in the Gulf of Mexico and the Atlantic Ocean off the coast of the Southeastern United States to use qualified gear in specified locations and at specified times in order to reduce incidental captures of endangered and threatened species of sea turtles during fishing operations. These proposed rules

were jointly recommended to the Secretary by representatives of affected shrimp fishermen and several environmental groups as offering the best prospect for reducing mortalities of sea turtles incidentally captured in shrimp trawls as near to zero as possible while avoiding, to the greatest extent possible, adverse economic effects for the shrimp fishing industry. The proposed rules contain criteria and procedures for testing and qualifying turtle excluder devices (TEDs), specify areas and seasons in which qualified TEDs must be used, extend current reporting requirements, extend present measures for resuscitation and release of captured sea turtles, continue present designation of critical habitat, and state the enforcement policy of the Secretary with respect to violations of the Endangered Species Act and these rules.

**DATE:** Written comments will be accepted until April 16, 1987.

**ADDRESS:** Comments on these proposed rules should be addressed to the Regional Director, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702. Comments on the collection-of-information requirement subject to the Paperwork Reduction Act should be directed to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503, Attention: Desk Officer for NOAA. Public hearings are scheduled during February and March 1987 at 13 locations (See "SUPPLEMENTARY INFORMATION").

**FOR FURTHER INFORMATION CONTACT:** Charles A. Oravetz (813) 893-3366 or David Cottingham (202) 377-5181.

**SUPPLEMENTARY INFORMATION:** All five species of sea turtles that are found in marine waters adjacent to the Southeastern United States and the Gulf of Mexico are protected by the Endangered Species Act of 1973, 16 U.S.C. 1531 *et seq.*, (the Act). The Kemp's ridley, leatherback, hawksbill, and some populations of green sea turtles are listed as endangered species under the Act. The loggerhead and all other populations of green sea turtles are listed as threatened species.

The Act prohibits captures of endangered sea turtles within the United States, within the U.S. territorial sea, and on the high seas, except as authorized by the Secretary of Commerce or the Secretary of the Interior. The Secretary of Commerce has authority over sea turtles in the marine environment and the Secretary of the Interior has authority over sea turtles in the terrestrial environment. The Act authorizes the respective Secretaries, by regulation, to extend to threatened