

§ 995.6

IHO International Hydrographic Organization
IMO International Maritime Organization
ISO International Organization for Standardization
NOAA National Oceanic and Atmospheric Administration
NOS National Ocean Service
OCS Office of Coast Survey
SENC System Electronic Navigational Chart
SOLAS Safety of Life at Sea
VAD Value Added Distributor

§ 995.6 Fees.

(a) The Office of Coast Survey, NOAA, may charge a fee for costs incurred to process each request for certification pursuant to 33 U.S.C. 892b(b)(1)(C) and 892b(b)(2). The amount of the fee, if one is charged, will be determined by the Director, Office of Coast Survey, and charged to all Applicants based on the time and effort involved.

(b) If a fee is charged, it will be charged for each application for certification submitted by an Applicant. A fee may also be charged for resubmissions of revised requests that were initially unacceptable and are sent in within 90 days as described in § 995.11(b)(2).

§ 995.7 Liability.

Distributors and value added distributors certified under this part shall indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind, the extent caused by the negligence of certified distributors or value added distributors or their employees, arising out of the use by a distributor or value added distributor, or any party acting on its behalf or under its authorization, of NOAA data.

Subpart B—Certification and Procedures

§ 995.10 Correspondence and applications.

(a) Distributors or value-added distributors desiring certification from NOAA shall provide a written request and application for certification to the Office of Coast Survey, Attention: Dis-

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tribution Certification, N/CS, 1315 East West Highway, Silver Spring, Maryland 20910. Such a distributor or value-added distributor is hereafter referred to as Applicant. The Office of Coast Survey (OCS) is the approving office for certification under these requirements.

(b) Applicant shall provide an application for certification that describes how each element in the applicable sections of this part has been met. The application will also contain an acknowledgment, signed by a company principal, of all terms and conditions described in this part.

(c) Applicant shall use the appropriate template provided in Appendix A to subpart C of this part to prepare their request for certification.

(d) Applicant shall provide, with its application, a point of contact with mailing address, phone number, and e-mail address. Applicant shall immediately notify NOAA, through the Office of Coast Survey, of any changes to point of contact information. Failure to do so will be considered a violation of this part and may lead to termination of certification.

§ 995.11 Government review and approval.

(a) An application will be reviewed by NOAA within 90 days of receipt. If all requirements, as defined by this part, are adequately addressed, certification will be granted. If for any reason NOAA will be unable to process the application for certification within the 90-day time frame, Applicant will be notified and a revised date will be provided for a decision on the request.

(b)(1) NOAA will determine if the request for certification is complete and that it demonstrates that Applicant has met all of the applicable requirements described in this part.

(2) In the event that a request is incomplete or does not demonstrate that Applicant has met all of the applicable requirements, NOAA will consider the application unacceptable. NOAA will notify the Applicant of the deficiencies in writing. Applicant may re-submit a revised application within 90 days of receipt of NOAA's denial notice. NOAA will review applications received within the 90-day resubmission period in the time frame described in paragraph

(a) of this section. After the second review, if the application is still unacceptable, Applicant will be again notified of the deficiencies in writing and the process continues as stated in this section.

§ 995.12 Certification designation.

An Applicant that has been certified by NOAA as a CED may use the phrase "Certified NOAA ENC Distributor" on products and marketing materials. An Applicant that has been certified by NOAA as a CEVAD may use the phrase "Certified NOAA ENC Value Added Distributor" on products and marketing materials. Use of these phrases must include labeling to identify the product's contents and suitable use. (See § 995.24(a)(4), (5) and (6) and (b)(3), (4) and (5)). Use of the NOAA emblem is described in § 995.28 and is not automatically granted with certification.

§ 995.13 Transfer of certification.

A CED or CEVAD may not transfer its certification to another entity. If it is transferred the existing certification will be terminated.

(a) If prior to certification it is known that another entity will be assisting the entity applying for certification in the production or redistribution of the data, that other entity must be documented in the application process. Listed entities will be considered as falling under the umbrella of the parent company's certification. The name of the entity and its duties should be included as part of the application.

(b) If, subsequent to certification, a CED or CEVAD wishes to add another entity to assist it, a request in writing with the name of the entity and its duties shall be provided to the Office of Coast Survey, NOAA for acceptance. The Office of Coast Survey, NOAA will provide written notification of acceptance to the CED or CEVAD within 30 days of receipt of the request.

§ 995.14 Auditing.

NOAA reserves the right to audit CED or CEVAD to ensure that the certification requirements are being met. Such an audit may consist of: visits to the production facilities, product testing, confirmation of ISO 9001 certifi-

cation, or confirmation of type approval for conversion software, and so forth.

§ 995.15 Termination of certification.

(a) In the event that NOAA determines that a CED or CEVAD is not meeting the requirements described in this part, the Office of Coast Survey, NOAA (OCS) will provide initial written notification of potential termination to the CED or CEVAD. OCS/NOAA will state in its notification to CED or CEVAD that termination of certification is under consideration.

(b) The initial notification of potential termination will be provided in writing by OCS to the CED or CEVAD, and shall state the reason for the potential termination. Reasons for termination may include, but are not limited to:

(1) CED or CEVAD contracts or in any way seeks to transfer the production or redistribution of all or part of the NOAA official data in the product to another entity.

(2) CED or CEVAD fails to, or is unable (in the opinion of NOAA) to carry out its responsibilities as described in this part.

(c) CED or CEVAD may submit written comments to OCS within 30 days of receipt of the OCS's initial written notification of potential termination, explaining why CED or CEVAD's certification should not be terminated.

(1) The written comments shall be submitted to: Director, Office of Coast Survey, National Ocean Service, NOAA (N/CS), 1315 East West Highway, Silver Spring, MD 20910.

(2) The written comments shall contain at least:

(i) Identification and contact information of the CED or CEVAD;

(ii) A statement that CED or CEVAD is responding to an initial written notification of potential termination by OCS; and

(iii) A thorough but concise argument as to why CED or CEVAD believes that its certification should not be terminated.

(d) The Director of OCS will take all timely written comments into account before taking final action, and in no case will the Director take final action until at least 45 days after CED or