SCHEDULE FOR ALL OTHER ENTITIES—Continued

Entities required to file	Filing period (anytime during the month)	Study period
All others in Southeast that did not file in June including all power marketers that sold in the Southeast and have not already been found to be Category 1 sellers.	December 2008	Dec. 1, 2005–Nov. 30, 2006.
All others in Central that did not file in December including all power marketers that sold in the Central and have not already been found to be Category 1 sellers.	June 2009	Dec. 1, 2006–Nov. 30, 2007.
All others in SPP that did not file in June including all power marketers that sold in SPP and have not already been found to be Category 1 sellers.	December 2009	Dec. 1, 2006–Nov. 30, 2007.
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June 2010	Dec. 1, 2009–Nov. 30, 2010.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December 2010	Dec. 1, 2009–Nov. 30, 2010.
Others in Northeast that did not file in December and have not been found to be Category 1 sellers.	June 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Southeast that did not file in June and have not been found to be Category 1 sellers.	December 2011	Dec. 1, 2008–Nov. 30, 2009.
Others in Central that did not file in December and have not been found to be Category 1 sellers.	June 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in SPP that did not file in June and have not been found to be Category 1 sellers.	December 2012	Dec. 1, 2009–Nov. 30, 2010.
Others in Southwest that did not file in December and have not been found to be Category 1 sellers.	June 2013	Dec. 1, 2010–Nov. 30, 2011.
Others in Northwest that did not file in June and have not been found to be Category 1 sellers.	December 2013	Dec. 1, 2010–Nov. 30, 2011.

[FR Doc. E9–14784 Filed 6–26–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 1

46 CFR Part 1

[USCG–2009–0314]

RIN 1625–ZA22

Establishment of Suspension and Revocation National Center of Expertise

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: This rule makes non-substantive, technical changes to Titles 33 and 46 of the CFR to reflect the authorization and establishment of the Coast Guard Suspension and Revocation National Center of Expertise (S&R NCOE). The S&R NCOE is responsible for performing suspension and revocation functions regarding Merchant Mariner Credentials. Investigating Officers (IOs), both military and civilian employees, are assigned to the S&R NCOE for this purpose. These changes affect internal Coast Guard organization and functioning only and will have no substantive effect on mariners or other members of the public.

DATES: Effective on June 29, 2009.

ADDRESSES: Documents mentioned in this preamble as being available in the docket, are part of USCG–2009–0314 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0314 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays, and at S&R COE co-located with the National Maritime Center, 100 Forbes Drive, Martinsburg, WV between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Commander Scott Budka, Supervisor, S&R NCOE, U.S. Coast Guard, telephone 304–433–3744. If you have questions on viewing the docket, call Ms. Renee V. Wright, Program Manager, Docket Operations, telephone or 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule, without prior notice and opportunity to comment, when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because is unnecessary. This rulemaking makes amendments to rules regarding agency organization and functioning. As such, comments are unnecessary because they would not change the Coast Guard's internal delegation of authority and duty regarding the Suspension and Revocation process or provide additional expertise regarding Coast Guard functioning.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register** because these changes affect internal Coast Guard organization and functioning only and will have no substantive effect on the public.

Background and Purpose

The Coast Guard published the Marine Safety Performance Plan for Fiscal Years 2009–2014 in November 2008. The plan is available at: *http://www.uscg.mil/hq/cg5/cg54/mspp.asp*. The plan announced the Coast Guard's intention to establish National Centers of Expertise to provide venues for professional development of Coast Guard personnel. One such National Center of Expertise is the Suspension and Revocation National Center of Expertise (S&R NCOE). The Coast Guard is charged by law to ensure that over 200,000 credentialed merchant mariners are competent and their conduct promotes marine safety, security and protection of the marine environment. *See* generally, 46 U.S.C. Part E. One of the mechanisms the Coast Guard utilizes to ensure the safe operation of the Maritime Transportation System (MTS) and protect the lives and safety of those at sea is our suspension and revocation (S&R) process regarding Merchant Mariner's Credentials (MMCs). *See* 46 U.S.C. Chapter 77. The Coast Guard recognizes that mariners spend a great deal of time and effort to receive and to maintain their MMCs, which provides them a livelihood. The significant implications that result from the suspension or revocation of an MMC demand that Coast Guard investigating officers (IOs) be properly trained and proficient in the S&R process and administrative hearing procedures. The creation of an S&R NCOE will help to improve the professionalism and proficiency of IOs involved in the S&R process and administrative hearing procedures, but will not change the S&R process or procedures. The S&R NCOE will initially operate as a detached duty office of the Coast Guard's Office of Quality Assurance and Traveling Inspections (CG–546), with future plans to operate under the Commander, Coast Guard Force Readiness Command (FORCECOM).

Discussion of the Rule

This rule amends Coast Guard regulations to incorporate the S&R NCOE into the S&R process. Specifically, changes to 33 CFR 1.01–20 and 46 CFR 1.01–15 update the authority of the Commanding Officer of the National Maritime Center to refer issues regarding MMCs to the S&R NCOE, in addition to the current process of referring such cases to the processing Regional Examination Center or the cognizant Officer in Charge, Marine Inspection (OCMI). This update broadens the team of Coast Guard personnel who may handle a S&R case, but will not affect the process or procedures for a mariner who is the subject of an S&R case.

This rule also updates the S&R process to reflect that the IOs at the S&R NCOE are authorized to initiate S&R proceedings by issuing complaints directly to mariners and handle all other aspects of S&R case processing. Current regulations authorize an OCMI, or an IO under the supervision of an OCMI, to initiate an S&R action. Under 46 CFR 5.15, IOs are Coast Guard officials designated by either an OCMI, a District Commander, or Commandant for the purpose of conducting investigations of matters pertaining to the conduct or persons applying for or holding MMCs, among other matters. In accordance with internal delegation of authority and duty, IOs assigned to the S&R NCOE will be designated as IOs by the Commandant, and as such will be authorized to initiate S&R actions under existing authority in 46 CFR 5.15. To reflect this, 46 CFR 1.01–25 is amended by replacing specific language regarding the IOs with a cross-reference to the definition of IOs in 46 CFR 5.15. This update also broadens the team of Coast Guard personnel who may handle a S&R case, but will not affect the process or procedures for a mariner who is the subject of an S&R case.

Section 1.01–25 is also amended by updating specific terms used to describe the S&R process, but these changes are nonsubstantive and reflect only changes in current term usage. This amendment will make the general flow of functions information found in Part 1 compatible with the existing definition and authorities of an IO found in Part 5. Additionally, 46 CFR 1.01–25(c)(1)(i) is updated to accurately reflect that, under existing authority in 46 CFR part 5 and 33 CFR part 20, either party (the Coast Guard or the respondent) may appeal an Administrative Law Judge's decision. Currently, paragraph 1.01–25(c)(1)(i) only addresses appeals filed by a respondent, and a new cross-reference to 33 CFR 20.1001 points the reader to the existing procedures for filing such an appeal.

Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on 13 of these statutes or executive orders.

Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. We expect the economic impact of this rule to be so minimal that a full Regulatory analysis is not necessary. As this rule involves only non-substantive changes involving *internal Coast Guard organization and functioning*, it will not impose any costs on the public.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. It is not expected that this amendment will have a significant economic impact on any small entities. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this technical amendment will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This amendment will not effect a taking of private property or otherwise have taking implications under

Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a ''significant energy action'' under that Order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Technical Standards

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(b), of the Instruction, which excludes regulatory actions concerning internal agency functions or organization, such as delegation of authority. This rule concerns Coast Guard internal functioning and organization. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 1

Administrative practice and procedure, Organization and functions, Delegation of authority.

46 CFR Part 1

Administrative practice and procedure, Organization and functions, General flow of functions.

■ For the reasons set forth in the preamble, the Coast Guard amends 33 CFR part 1 and 46 CFR part 1 as follows:

Title 33

PART 1—GENERAL PROVISIONS

■ 1. The authority citation for 33 CFR part 1 continues to read as follows:

Authority: 14 U.S.C. 633; 33 U.S.C. 401, 491, 525, 1321, 2716, and 2716a; 42 U.S.C. 9615; 49 U.S.C. 322; Department of Homeland Security Delegation No. 0170.1; section 1.01–70 also issued under the authority of E.O. 12580, 3 CFR, 1987 Comp., p. 193; and sections 1.01–80 and 1.01–85 also issued under the authority of E.O. 12777, 3 CFR, 1991 Comp., p. 351.

■ 2. Revise § 1.01–20(b)(2) to read as follows:

§ 1.01–20 Officer in Charge, Marine Inspection.

* * * * *

(b) * * *

(2) Referring to the processing Regional Examination Center (REC), the Suspension and Revocation National Center of Expertise, or cognizant OCMI potential violations of law, negligence, misconduct, unskillfulness, incompetence or misbehavior of persons holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard, and recommending suspension or revocation under 46 U.S.C. Chapter 77 when deemed appropriate; and

* * * * *

Title 46

PART 1—ORGANIZATION, GENERAL COURSE AND METHODS GOVERNING MARINE SAFETY FUNCTIONS

■ 3. The authority citation for 46 CFR part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633; 46 U.S.C. 7701; 46 U.S.C. Chapter 93; Pub. L. 107–296, 116 Stat. 2135; Department of Homeland Security Delegation No. 0170.1; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

■ 4. Revise § 1.01–15(c)(2) to read as follows:

§ 1.01–15 Organization; Districts; National Maritime Center.

* * * * *

(c) * * *

(2) Refer to the processing Regional Examination Center (REC), the Suspension and Revocation National Center of Expertise, or cognizant OCMI potential violations of law, negligence, misconduct, unskillfulness, incompetence or misbehavior of persons holding merchant mariner's documents, licenses, certificates or credentials issued by the Coast Guard, and recommend suspension or revocation under 46 U.S.C. Chapter 77 when deemed appropriate; and

* * * * *

■ 5. Revise § 1.01–25(c)(1) and (c)(1)(i) to read as follows:

§ 1.01–25 General flow of functions.

* * * * *

(c) * * *

(1) In the United States, the Commonwealth of Puerto Rico, Territory of Guam, the Virgin Islands, and other possessions, the proceedings are initiated by the issuance of a complaint against the holder of the Coast Guard credential. A Coast Guard Investigating Officer, as defined in 46 CFR 5.15, causes the complaint to be served on the person described therein (respondent) who is a holder of a Coast Guard credential. At a hearing the Coast

Guard submits evidence to support the allegations of the complaint, while the respondent may submit evidence in rebuttal or mitigation. The Administrative Law Judge renders a decision on the basis of the evidence adduced at the hearing and the law. The Administrative Law Judge's decision is given to the respondent.

(i) In a case where an appeal is made by either party (Coast Guard or respondent), the notice of appeal is filed in accordance with the procedures of 33 CFR 20.1001(a).

* * * * *

Dated: June 22, 2009.

Stefan G. Venckus,

Chief, Office of Regulations and Administrative Law, United States Coast Guard.

[FR Doc. E9–15195 Filed 6–26–09; 8:45 am]

BILLING CODE 4910–15–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3007

[Docket No. RM2008–1; Order No. 225]

Treatment of Non-Public Materials Submitted by the Postal Service

AGENCY: Postal Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting a final rule on the treatment of non-public material submitted by the Postal Service. This action is consistent with Commission obligations under a recent change in law.

DATES: Effective July 29, 2009.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov.*

SUPPLEMENTARY INFORMATION:

Regulatory History

73 FR 50532 (August 26, 2008).
74 FR 13370 ((March 27, 2009).

I. Introduction
II. Statutory Standards for According Confidentiality to Materials Filed With the Commission
III. Analysis of Comments on Order No. 194
IV. Section-by-Section Analysis
V. Ordering Paragraphs

I. Introduction

In this order, the Postal Regulatory Commission (Commission) adopts rules which implement 39 U.S.C. 504(g) of the Postal Accountability and Enhancement Act (PAEA), Public Law 109–435, 120 Stat. 3218 (2006). These final rules establish a procedure for according appropriate confidentiality for non-public materials [1] filed with the Commission.

These rules lay a foundation for the Commission's treatment of non-public materials filed by the Postal Service and other parties. This order focuses primarily on comments which suggest a need for changes, and the Commission incorporates its discussion of the proposed rules, especially for those issues that did not receive comments published in PRC Order No. 194, March 20, 2009, located at 74 FR 13370 (March 27, 2009). The remainder of part I of this order includes background information and sets forth the procedural history of this docket. Part II of this order briefly recapitulates the statutory standards for according confidentiality. Part III gives an overview of the comments and presents a discussion of the issues raised by the parties in response to the second notice of proposed rulemaking. Part IV provides a section-by-section analysis of each final rule. The complete final rules are set forth at the end of this order.

On August 13, 2008, the Commission issued a notice and order of proposed rulemaking to establish rules governing the treatment of non-public materials.[2] Order No. 96 proposed rules to meet the statutory standards for according confidentiality to Postal Service materials. The rules proposed in that order only applied to materials filed by the Postal Service and claimed to be non-public. *Id.* at 5–6. The rules used one test applicable to discovery requests and requests to publicly disclose Postal Service non-public materials. *Id.* at 7.

The Commission received eight comments and five reply comments on the proposed rules. Comments identified two main shortcomings in the proposed rules. Several commenters requested a mechanism to protect third-party non-public materials. *See, e.g.,* Comments of Pitney Bowes Inc., September 25, 2008, at 6–7. Several comments also addressed the Commission's departure from the test articulated in 39 U.S.C. 504(g)(3)(A), which is designed to balance the Postal Service's interest in avoiding commercial injury against the public's interest in financial transparency of a government agency competing in commercial markets. *See, e.g.,* Valpak Direct Marketing Systems, Inc. and Valpak Dealers' Association, Inc. Comments Regarding Regulations to Establish a Procedure for According Appropriate Confidentiality, September 25, 2008, at 11. On review, the Commission found those comments persuasive and subsequently issued a second notice of proposed rulemaking.[3]

In Order No. 194, the Commission modified its proposed rules to address commenter issues and respond to developments in ongoing proceedings. First, the Commission proposed procedures for any person to request early termination of non-public treatment of materials. The proposed rule's standard for decision was the balancing test set forth in 39 U.S.C. 504(g)(3)(A). *See id.* at 18. Second, the Commission proposed rules to govern the submission of third-party non-public materials and to establish procedures for challenging those assertions of confidentiality. *Id.* at 16, 18–20.

Because 39 U.S.C. 504(g) is silent as to the treatment of materials belonging to parties other than the Postal Service, the Commission proposed a different framework, under its general rulemaking authority in 39 U.S.C. 503, for assessing challenges to third-party assertions of confidentiality. *See* § 3007.33(b). *Id.* As 39 U.S.C. 504(g)(3)(B) directs the Commission to establish procedures for ensuring appropriate confidentiality for information furnished to any party, the Commission created §§ 3007.40–.42 and 3007.50–.52 to develop a framework for requests for access to non-public materials. *Id.* Other changes proposed in Order No. 194 include provision for ongoing access to non-public materials which are relevant to compliance and a mechanism for a person to make a data or information request to the Postal Service. *Id.* at 20.

II. Statutory Standards for According Confidentiality to Materials Filed With the Commission

As discussed in detail in Order No. 96 and Order No. 194, the PAEA directs the Commission to develop procedures for handling materials the Postal Service claims are non-public.

39 U.S.C. 504(g)(1) provides that the Postal Service may determine "that any document or other matter it provides to the Postal Regulatory Commission" is

[1] The term "non-public materials" as used in this order is defined in 39 CFR 3007.1(b). Essentially "non-public materials" means any document, information, or thing filed with the Commission and claimed exempt from disclosure under applicable sections of the United States Code by the Postal Service or protected from disclosure under Federal Rule of Civil Procedure 26(c) by a third party with a proprietary interest in the materials.

[2] PRC Order No. 96, Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, August 13, 2008 (Order No. 96).

[3] PRC Order No. 194, Second Notice of Proposed Rulemaking to Establish a Procedure for According Appropriate Confidentiality, March 20, 2009 (Order No. 194).