



IHB File No. S3/8151/CHRIS

CIRCULAR LETTER 95/2005
26 September 2005

FINAL NOAA ENC DISTRIBUTION RULE

Dear Hydrographer,

Your attention is drawn to the information below which we have received from Captain Roger L. Parsons, Director, Office of Coast Survey, NOAA, USA.

On 6 September 2005, the United States National Oceanic and Atmospheric Administration (NOAA) published its final rule on *Certification Requirements for Distributors of NOAA Electronic Navigational Charts/NOAA Hydrographic Products* (see <http://www.iho.shom.fr/ECDIS/NOAA-ENC-Rule-Sept-05.pdf>). This rule specifies standards for applicants who wish to distribute NOAA Electronic Navigational Charts (NOAA ENCs) as official data. Two types of certification are offered:

1. **Certified NOAA ENC Distributor (CED)** - permits NOAA ENC downloading, exact copying, and redistribution of those copies.
2. **Certified NOAA ENC Value Added Distributor (CEVAD)** - permits reformatting NOAA ENCs into a System Electronic Navigational Chart (SENC) using type-approved software, and distribution of that SENC.

Both types of certification permit, but do not require, compression, encryption, and packaging with other data. Because NOAA ENC data are the primary concern of this rule, and it is mandatory for certification that the official NOAA ENCs remain unaltered for positional accuracy and informational content, NOAA is, in effect, certifying that a CED's or CEVAD's products contain official NOAA ENC data, and therefore meet chart carriage requirements.

NOAA intends by this rule to ensure that, though redistributed, official NOAA ENC data are offered to the public in support of safe navigation in U.S. waters. Certification procedures are described in the annexed Subpart B of the attached Rule.

Enquiries should be directed to:

NOAA/Office of Coast Survey
Chief, Marine Chart Division
jim.gardner@noaa.gov

On behalf of the Directing Committee
Yours sincerely,



Rear Admiral Kenneth BARBOR
Director

Annex: Subpart B of NOAA's ENC Rule (*English only*)

Subpart B of NOAA's ENC Rule

[Taken from US Federal Register / Vol. 70, No. 171 / Tue., Sept. 6, 2005 / Rules and Regulations]

Subpart B--Certification and Procedures

Sec. 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: Distribution 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.

Sec. 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.

Sec. 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 Sec. 995.24(a)(4), (5) and (6) and (b)(3), (4) and (5)). Use of the **NOAA** emblem is described in Sec. 995.28 and is not automatically granted with certification.

Sec. 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.

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

Sec. 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 CEVAD's receipt of the initial written notification. A decision to terminate by the Director of OCS will state the

reasons for termination and respond to all timely written comments submitted. Any final action taken by OCS constitutes final agency action on the matter.

(e) CED or CEVAD shall notify all recipients of its products that its certification has been revoked, and that the product may no longer be valid for use. In addition, the CED or CEVAD shall provide the dates of non-compliance.

Sec. 995.16 Term of certification.

The term of certification is five years from the date of issuance. At the end of the certification term, the process must be re-certified by the distributor or value added distributor submitting a request for certification as described in Sec. 995.10. It may also be revoked prior to the end of the term under the conditions described in Sec. 995.15.