

an allowance in lieu of substantiating the actual cost of meals.

Under this authority, the Commissioner has provided a method for taxpayers to substantiate deductible costs of business meal and incidental expenses while away from home by means of an allowance. *See* Rev. Proc. 2001-47 (2001-42 I.R.B. 332). These temporary regulations amend § 1.274-5T to authorize the Commissioner to establish a method under which a taxpayer may substantiate the amount of incidental expenses paid or incurred while traveling away from home by means of an allowance in lieu of substantiating the actual cost. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place and business purpose of the travel.

### Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that these regulations do not require a collection of information and do not impose any new or different requirements on small entities. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact.

### Drafting Information

The principal author of these regulations is John Moriarty, Office of Associate Chief Counsel (Income Tax & Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

### List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

### PART 1—INCOME TAXES

1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

**Authority:** 26 U.S.C. 7805 \* \* \*  
Section 1.274-5 also issued under 26 U.S.C. 274(d). \* \* \*

2. Section 1.274-5 is amended by adding paragraph (j)(3) to read as follows:

#### § 1.274-5 Substantiation requirements.

\* \* \* \* \*

(j) \* \* \*

(3) [Reserved]. For further guidance, see § 1.274-5T(j)(3).

\* \* \* \* \*

3. Section 1.274-5T is amended by revising paragraph (j) and the last sentence of paragraph (m) to read as follows:

#### § 1.274-5T Substantiation requirements (temporary).

\* \* \* \* \*

(j)(1) and (2) [Reserved]. For further guidance, see § 1.274-5(j)(1) and (2).

(3) *Incidental expenses while traveling away from home.* The Commissioner may establish a method under which a taxpayer may use a specified amount or amounts for incidental expenses paid or incurred while traveling away from home in lieu of substantiating the actual cost of incidental expenses. The taxpayer will not be relieved of the requirement to substantiate the actual cost of other travel expenses as well as the time, place, and business purpose of the travel.

\* \* \* \* \*

(m) \* \* \* Paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002.

**Robert E. Wenzel,**

*Deputy Commissioner of Internal Revenue.*

Approved: October 31, 2002.

**Pamela F. Olson,**

*Assistant Secretary of the Treasury.*

[FR Doc. 02-28543 Filed 11-8-02; 8:45 am]

**BILLING CODE 4830-01-P**

## DEPARTMENT OF THE TREASURY

### Fiscal Service

### 31 CFR Part 356

[Department of the Treasury Circular, Public Debt Series No. 1-93]

### Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds; Reporting of Net Long Position and Application of the 35 Percent Limit

**AGENCY:** Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

**ACTION:** Final rule.

**SUMMARY:** The Department of the Treasury (“Treasury,” “We,” or “Us”) is issuing in final form an amendment to the regulation “Uniform Offering Circular for the Sale and Issue of Marketable Book-Entry Treasury Bills, Notes, and Bonds.” This amendment modifies the net long position (“NLP”) reporting threshold for all Treasury marketable securities auctions. The threshold, currently \$1 billion for Treasury bill auctions and \$2 billion for Treasury note auctions, is being changed to 35 percent of the offering amount in each auction. This modification will reduce the number of auction bidders that are required to report their NLPs, while ensuring that we can still effectively administer the 35 percent award limit.

The amendment also incorporates certain changes in Treasury’s marketable securities auction program that have already been implemented. First, the amendment modifies the competitive bid format for auctions of Treasury cash management bills to conform to a policy change that was made in April 2002. The current two-decimal bid format is being changed to three decimals in .005 percent increments, which is the format in all other Treasury bill auctions.

Second, the amendment makes several changes to reflect the current treatment in all Treasury marketable securities auctions of bids from Federal Reserve Banks for their own accounts and for the accounts of foreign and international monetary authorities. Specifically, the amendment deletes the defined term “public offering,” adds “offering amount” as a new defined term, revises the definition of “bid-to-cover ratio,” and makes conforming changes within the text of the Uniform Offering Circular. These changes make the terminology consistent between the Uniform Offering Circular and auction offering announcements.

**EFFECTIVE DATE:** December 12, 2002.

**ADDRESSES:** You may download this final rule from the Bureau of the Public Debt’s Web site at <https://treasurydirect.gov/laws-and-regulations/auction-regulations-uoc/>. It is also available for public inspection and copying at the Treasury Department Library, Room 1428, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. To visit the library, call (202) 622-0990 for an appointment.

**FOR FURTHER INFORMATION CONTACT:** Lori Santamorenna (Executive Director), Chuck Andreatta (Senior Financial Advisor), or Lee Grandy (Associate Director), Bureau of the Public Debt,

Government Securities Regulations Staff, (202) 691-3632.

**SUPPLEMENTARY INFORMATION:** The Uniform Offering Circular, in conjunction with the offering announcement for each auction, provides the terms and conditions for the sale and issuance to the public of marketable Treasury bills, notes, and bonds.<sup>1</sup> In this document, we provide some background on the NLP and its reporting requirements. Next we discuss the public comments we received in response to an Advance Notice of Proposed Rulemaking ("ANPR") regarding NLP reporting, published on April 29, 2002.<sup>2</sup> We then describe the final amendment.

### I. Background on Net Long Position Reporting

One of the requirements of the Treasury auction process is the reporting of NLPs, which we use to limit the amount that we will award to any one bidder in an auction ("the 35 percent rule"). This rule ensures that awards in our auctions are distributed to a number of auction participants. This goal of broad distribution is intended to encourage participation by a significant number of competitive bidders in each auction. Broad participation keeps our borrowing costs to a minimum, helps ensure that Treasury auctions are fair and competitive, and makes it less likely that ownership of Treasury securities will become overly concentrated.

A bidder in an auction must report its NLP if, in the security being auctioned, the bidder's NLP plus its bids in the auction meet or exceed a certain dollar-amount threshold as stated in the security's offering announcement. The NLP reporting threshold currently is \$1 billion for Treasury bills and \$2 billion for Treasury notes. In addition, if the sum of a bidder's bids equals or exceeds the NLP reporting threshold, but the bidder has no position or has a net short position, it must report an NLP of zero. A bidder must determine its NLP as of one-half hour prior to the deadline for receipt of competitive bids. If a bidder meets or exceeds the reporting threshold as of the NLP determination time in the auction offering announcement, the bidder must report its NLP prior to the competitive bidding deadline.

The NLP is generally the amount of the security being auctioned that a bidder has obtained, or has arranged to

obtain, outside of the auction in the secondary market. The components of the NLP are intended to capture the various ways that a bidder can acquire a Treasury security.<sup>3</sup> The term "net long" refers to the extent to which an investor has bought (or has agreed to buy) more of a security than it has sold (or has agreed to sell). For example, if an investor has bought \$900 million of a security in the when-issued market, and it has sold \$300 million of the same security in the when-issued market, it has a net long position of \$600 million in that security, assuming it has no other positions.

We published an ANPR for public comment on April 29, 2002,<sup>4</sup> to solicit comments on four alternatives for addressing the half-hour time lag between the time as of which the NLP is calculated (the "NLP as-of time") and the competitive bidding deadline. It was pointed out in the ANPR that, because a bidder's NLP can change significantly during this time period, the reported NLP may not provide an accurate, or even approximate, measure of a bidder's position at the time that a bidder actually submits its bids. As a result, a bidder's award may be cut back to the 35 percent award limit based on NLP information that no longer reflects the bidder's actual NLP. Conversely, a bidder's award may not be cut back if it builds a large position in the security being auctioned between the NLP as-of time and the competitive bidding deadline. We also stated in the ANPR that we were more fundamentally reconsidering the rule. In addition, we invited comments on potential changes to the NLP reporting threshold amount, and indicated that we were considering changes in this area regardless of whether or not we implement any modifications to the NLP as-of reporting timeframes.

*The four alternatives were as follows:*

*Alternative 1:* Reduce the half-hour interval between the NLP as-of time and the competitive bidding deadline.

*Alternative 2:* Make the NLP as-of time the same as the competitive bidding deadline, with the NLP reporting time to follow (for example, one-half hour later). Bidders would be responsible for ensuring that their bids plus their positions, if they are net long, do not exceed the 35 percent award limit.

*Alternative 3:* Eliminate the NLP reporting requirement, and either maintain or reduce the 35 percent limit. Treasury would rely on its Large Position Reporting rules<sup>5</sup> and other mechanisms to monitor the market and address concentrations of ownership.

*Alternative 4:* Retain both the 35 percent limit and the NLP as-of and reporting timeframes as they exist now.

*Potential change to NLP reporting threshold amount.* Regarding this potential change, we stated in the ANPR that we are considering changing the NLP reporting threshold from \$1 billion for Treasury bills and \$2 billion for Treasury notes to the actual 35 percent award limit for each auction. This rule change would apply to all marketable Treasury securities auctions. We also stated that we would provide the 35 percent award limit on the auction offering announcement in each auction. Bidders whose bids plus NLPs equal or exceed the limit would be required to report their positions. For example, if the 35 percent award limit for a particular auction is \$3 billion, and the total of a bidder's bids is \$2.5 billion and its NLP is \$1 billion, the bidder would have to report its \$1 billion NLP. Bidders whose bids plus NLPs do not equal or exceed the limit would not be required to report any positions. Bidders whose total bids equal or exceed the limit but either have no position or a net short position would not have to report a zero as their NLP.

### II. Comments Received in Response to the Advance Notice of Proposed Rulemaking

We received one comment in response to the ANPR, which was from The Bond Market Association (TBMA).<sup>6</sup> The commenter recommended that we make three changes to the NLP rules.

First, TBMA supported Alternative 1 by advocating reducing the half-hour interval between the NLP as-of time and the competitive bidding deadline. Specifically, the commenter suggested requiring bidders to calculate their NLPs as of 12:40 p.m. rather than 12:30 p.m. TBMA stated that this modification would take advantage of technological advances by dealers while still ensuring the accuracy of submitted bids and NLPs. The commenter pointed out a disadvantage of this alternative, which is, "Because auction support staff will have less time to work with, there is certainly the possibility that Treasury

<sup>1</sup> The Uniform Offering Circular was published as a final rule on January 5, 1993 (58 FR 412). The Uniform Offering Circular, as amended, is codified at 31 CFR Part 356.

<sup>2</sup> 67 FR 20934 (April 29, 2002).

<sup>3</sup> See 31 CFR 356.13(b) for details on the components of the NLP. See also the amendment to the Uniform Offering Circular published on November 13, 2001 (66 FR 56759), which provided an optional exclusion amount in the NLP calculation for reopenings.

<sup>4</sup> See supra, note 2.

<sup>5</sup> 17 CFR 420.

<sup>6</sup> The ANPR and comment letter, dated June 27, 2002, are available for downloading on the Internet, and for inspection and copying at the Treasury Department Library at the addresses provided earlier in this final rule.

may initially see a small spike in the number of NLP submission errors.” The commenter opposed providing bidders with less than 20 minutes to determine, verify and report their NLPs, primarily because “moving the time up further would put substantial strain on existing personnel,” particularly for those securities dealers with numerous domestic and foreign affiliates.

Second, TBMA strongly supported modifying the NLP reporting thresholds for bill and note auctions to 35 percent of the issuance amount, because it would “better capture only those bidders that are most likely to exceed the 35 percent limit.” The commenter maintained that the current reporting thresholds are “unnecessarily low” and that, “Any benefit Treasury derives from maintaining a low reporting threshold is outweighed by the additional bidder submission errors that result.”

Third, TBMA recommended that we discontinue requiring bidders to report a zero NLP when their bids equal or exceed the applicable reporting threshold but they have either no net long position or a net short position. The commenter advocated that such bidders be given the choice of either reporting a zero NLP or leaving the field blank. TBMA acknowledged that, “requiring bidders to report their negative NLP as zero does theoretically act as a check that a bidder realized that it was over the threshold.” However, TBMA asserted that inadvertent failures by bidders to report a zero have resulted in “serious violation letters” from Treasury, where in fact such instances are “a technical violation of the auction rules that in no way could have impacted the results of the auction.”

In addition to the modifications it favored, TBMA also advised against adopting either Alternative 2 or 3. In particular, TBMA argued against post-auction reporting of NLPs (Alternative 2), primarily because it would discourage aggressive bidding since “large bidders would have to allow themselves a substantial ‘margin for error’ with respect to the 35 percent rule.”

### III. Amendment to the Rule

#### *Net Long Position Reporting Threshold*

After considering the comment letter we received, we are modifying the NLP reporting threshold to 35 percent of the offering amount in each auction. We agree with the commenter that this change will more precisely apply only to those bidders whose bids are most likely to equal or exceed the 35 percent award limit in an auction. Accordingly, § 356.13(a) is revised to reflect that the

net long position reporting threshold amount will be 35 percent of the offering amount. The NLP reporting threshold will be provided on the offering announcement for each auction.

We are not considering any other changes to the NLP reporting requirement at this time. The NLP as-of reporting time will continue to be one half-hour prior to the deadline for receiving competitive bids. We agree with TBMA that shortening this time interval could result in an increase in NLP reporting errors. Since shortening the time interval to 20 minutes would still leave a significant time period in which bidders’ positions in the securities being auctioned could change significantly prior to the deadline for receiving competitive bids, we believe that the disadvantages of a likely increase in NLP reporting errors outweigh the benefits of a shorter time period for calculating and reporting NLPs.

We also have decided to maintain the requirement for bidders to report an NLP of zero when their bids equal or exceed the applicable reporting threshold but they have either no net long position or a net short position. We believe that this requirement acts as an important check to ensure that bidders with very large bids in an auction calculated their NLPs for possible reporting in the auction.

#### *Conforming Technical Changes*

We are also making a conforming technical change to § 356.12(c)(1)(i) of the auction rules to reflect that competitive bids in all cash management bill auctions must now be expressed as a discount rate with three decimals in increments of .005 percent, for example, 3.100%, 3.105%.<sup>7</sup> This change will make the competitive bid format for cash management bills the same as for all other types of Treasury bills. This change will enable competitive bidders to better fine-tune their bids in cash management bill auctions.

We are deleting from § 356.12 the defined term “public offering” and adding the defined term “offering amount.” In the past, “public offering” had a different meaning from “offering amount” as used on the offering announcement because of the treatment of amounts bid by the Federal Reserve’s

<sup>7</sup> Treasury announced this policy change in a Press Release dated April 2, 2002, that announced several offerings of cash management bills. Subsequent cash management bill offering announcements also stated this bidding requirement. The offering announcement governs in cases where it is inconsistent with the Uniform Offering Circular. (See § 356.10)

System Open Market Account (SOMA) and by foreign and international monetary authorities (FIMA). In March 1997, Treasury announced that awards to SOMA in Treasury bill auctions would be treated as additions to the announced offering amount, the same treatment as for note and bond auctions.<sup>8</sup> Since February 2001, when specific noncompetitive bidding and award limitations were placed on FIMA accounts,<sup>9</sup> awards to FIMA accounts are made within the offering amount, as are those to the public in general. Since these changes, the treatment of FIMA and SOMA is consistent for all Treasury securities auctions. Awards to SOMA are made in addition to the offering amount; FIMA awards are within the offering amount.

The definition of “public offering” in § 356.2 is no longer accurate to the extent that the definition continues to exclude FIMA bids up to the amount of maturing securities in those accounts. Since there is no longer any difference in the meaning of “public offering” and “offering amount,” and the offering announcements use the term “offering amount,” we are deleting the term “public offering” and adding the term “offering amount” to the Uniform Offering Circular, and making conforming changes within the text. One of these conforming changes is to the definition of “bid-to-cover ratio,” which previously excluded both SOMA and FIMA bids and awards, and now only excludes SOMA bids and awards.

Finally, this amendment incorporates technical changes in §§ 356.20 and 356.21 to conform to our policy for prorating competitive bids at the highest accepted yield or discount rate. In the weekly bill auctions of April 30, 2001, we changed the rounding convention for the allocation percentage from rounding up to the next whole percentage point to rounding up to the next hundredth of a whole percentage point.

### IV. Procedural Requirements

This final rule is not a significant regulatory action for purposes of Executive Order 12866. Although we issued an Advance Notice of Proposed Rulemaking on April 29, 2002, to benefit from public comment, the notice and public procedures requirements of the Administrative Procedure Act do not apply, under 5 U.S.C. 553(a)(2).

Since no notice of proposed rulemaking is required, the provisions

<sup>8</sup> Treasury Press Release dated March 18, 1997.

<sup>9</sup> The policy change was announced in a Treasury Press Release dated November 14, 2000, and became effective on February 1, 2001.

of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

The collections of information in this final rule amendment have been previously approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995. This final rule is technical in nature and imposes no additional burdens on auction bidders.

#### List of Subjects in 31 CFR Part 356

Bonds, Federal Reserve System, Government securities, Securities.

For the reasons stated in the preamble, 31 CFR Part 356 is amended as follows:

#### PART 356—SALE AND ISSUE OF MARKETABLE BOOK-ENTRY TREASURY BILLS, NOTES, AND BONDS (DEPARTMENT OF THE TREASURY CIRCULAR, PUBLIC DEBT SERIES NO. 1–93)

1. The authority citation for Part 356 continues to read as follows:

**Authority:** 5 U.S.C. 301; 31 U.S.C. 3102 *et seq.*; 12 U.S.C. 391.

2. Section 356.2 is amended by removing the definition of “Public offering,” revising the definition of “Bid-to-cover ratio,” and adding the defined term “Offering amount” between the defined terms “Noncompetitive bid” and “Par” to read as follows:

#### § 356.2 Definitions.

\* \* \* \* \*

Bid-to-cover ratio means the total par amount of securities bid for by the public divided by the total par amount of securities awarded to the public. The bid-to-cover ratio excludes any bids or awards for the account of the Federal Reserve Banks.

\* \* \* \* \*

Offering amount means the par amount of securities offered to the public for purchase in an auction, as specified in the offering announcement.

\* \* \* \* \*

3. Section 356.12 is amended by revising paragraphs (c)(1)(i) and (c)(2) to read as follows:

#### § 356.12 Noncompetitive and competitive bidding.

\* \* \* \* \*

(c) Competitive. \* \* \*

(1) Bid format—(i) Treasury bills. A competitive bid must show the discount rate bid, expressed with three decimals in .005 percent increments. The third decimal must be either a zero or a five, *e.g.*, 5.320 or 5.325. Fractions may not be used.

\* \* \* \* \*

(2) Maximum recognized bid. There is no limitation on the maximum dollar amount that a bidder may bid for competitively, either at one yield or discount rate, or at different yields or discount rates. However, a competitive bid at a single yield or discount rate that exceeds 35 percent of the offering amount will be reduced to that amount. For example, if the offering amount is \$10 billion, the maximum bid amount that will be recognized at any one yield or discount rate from any bidder is \$3.5 billion. (See § 356.22 for award limitations.)

4. Section 356.13 is amended by revising paragraph (a) to read as follows:

#### § 356.13 Net long position.

(a) *Reporting net long positions.* When bidding competitively, a bidder must report the amount of its net long position when the total of all of its bids in an auction plus the bidder's net long position in the security being auctioned equals or exceeds the net long position reporting threshold amount. The net long position reporting threshold amount for any particular security will be stated in the offering announcement for that security. (See § 356.10.) That amount will be 35 percent of the offering amount, unless otherwise stated in the offering announcement. If the bidder either has no position or has a net short position and the total of all of its bids equals or exceeds the net long position reporting threshold amount, a net long position of zero must be reported. In cases where a bidder that is required to report the amount of its net long position has more than one bid, the bidder's total net long position should be reported in connection with only one bid. A bidder that is a customer must report its reportable net long position through only one depository institution or dealer. (See § 356.14(c).)

\* \* \* \* \*

5. Section 356.20 is amended by revising paragraph (a) to read as follows:

#### § 356.20 Determination of auction awards.

(a) *Determining the range and amount of accepted competitive bids—(1) Accepting bids.* Determinations of awards in auctions are made after the closing time for receipt of bids. In determining auction awards, all noncompetitive bids received by the closing time specified in the offering announcement are accepted in full. Then competitive bids are accepted, starting with those at the lowest yields or discount rates through successively higher yields or discount rates, up to the amount required to meet the offering amount. Bids at the highest accepted

yield or discount rate will be prorated (as described in paragraph (a)(2) of this section), if necessary. If the amount of noncompetitive bids would absorb most or all of the offering amount, competitive bids will be accepted in an amount determined by Treasury to be sufficient to provide a fair determination of the yield or discount rate for the securities being auctioned.

(2) *Accepting bids at the high yield or discount rate.* When the total amount of bids at the highest accepted yield or discount rate exceeds the amount of the offering amount remaining after acceptance of noncompetitive bids and competitive bids at the lower yields or discount rates, a percentage of the bids received at the highest accepted yield or discount rate will be awarded. This proration is performed for the purpose of awarding a par amount of securities close to the offering amount. The percentage is derived by dividing the remaining par amount needed to fill the offering amount by the par amount of the bids recognized at the high yield or rate and rounding up to the next hundredth of a whole percentage point, for example, 17.13%.

\* \* \* \* \*

6. Section 356.21 is amended by revising paragraph (a) and the second sentence of paragraph (b) to read as follows:

#### § 356.21 Proration of awards.

(a) *Awards to submitters.* In auctions where bids at the highest accepted yield or discount rate are prorated under § 356.20(a)(2) of this part, the Federal Reserve Banks are responsible for prorating awards for submitters at the percentage announced by the Department. For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each bid at that rate or yield shall be awarded 80.15% of the amount bid. Hence, a bid for \$100,000,000 at the highest accepted yield or discount rate would be awarded \$80,150,000. In all cases, awards will be for at least the minimum to hold, and awards must be in an appropriate multiple to hold. Awards at the highest accepted yield or rate are adjusted upwards, if necessary, to an appropriate multiple to hold. For example, Treasury bills may be issued with a minimum to hold of \$1,000 and multiples of \$1,000. Where an \$18,000 bid is accepted at the high discount rate, and the percent awarded at the high discount rate is 88.27%, the award to that bidder will be \$16,000, representing an upward adjustment from \$15,888.60 (\$18,000 × .8827) to an appropriate multiple to hold. If tenders at the

highest accepted discount rate are prorated at, for example, a rate of 4.65%, the award for a \$10,000 bid will be \$1,000, instead of \$465, in order to meet the minimum to hold for a bill issue.

(b) *Awards to customers.* \* \* \* For example, if 80.15% is the announced percentage at the highest yield or discount rate, then each customer bid at that rate or yield shall be awarded 80.15%.\* \* \*

7. Section 356.22 is amended by revising paragraph (b) to read as follows:

**§ 356.22 Limitation on auction awards.**

\* \* \* \* \*

(b) *Awards to competitive bidders.* The maximum award that will be made to any bidder is 35 percent of the offering amount less the bidder's net long position as reportable under § 356.13. For example, in a note auction with a \$10 billion offering amount, a bidder with a reported net long position of \$1 billion could receive a maximum auction award of \$2.5 billion. When the bids and net long positions of more than one person or entity must be combined as required by § 356.15(c), such combined amount will be used for the purpose of this award limitation.

Dated: November 5, 2002.

**Donald V. Hammond,**

*Fiscal Assistant Secretary.*

[FR Doc. 02-28662 Filed 11-8-02; 8:45 am]

BILLING CODE 4810-39-P

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## DEPARTMENT OF TRANSPORTATION

### Coast Guard

#### 33 CFR Part 110

[CGD 01-02-027]

RIN 2115-AA98

#### **Anchorage Grounds; Frenchman Bay, Bar Harbor, ME**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Final rule.

**SUMMARY:** The Coast Guard hereby establishes two anchorage areas in Frenchman Bay near Bar Harbor, Maine. This action is necessary to provide designated anchorage grounds on Frenchman Bay allowing safe and secure anchorage for an increasing number of large passenger vessels calling on the Port of Bar Harbor. This action is intended to increase safety for vessels through enhanced voyage planning and also by clearly indicating the location of anchorage grounds for ships proceeding along the Frenchman

Bay Recommended Route for Deep Draft vessels.

**DATES:** This rule is effective December 12, 2002.

**ADDRESSES:** Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket CGD01-02-027 and are available for inspection or copying at First Coast Guard District, 408 Atlantic Ave., Boston, Massachusetts 02110 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Mr. J.J. Mauro, Commander (oan), First Coast Guard District, 408 Atlantic Ave., Boston, MA 02110, Telephone (617) 223-8355, email: [jmauro@d1.uscg.mil](mailto:jmauro@d1.uscg.mil).

**SUPPLEMENTARY INFORMATION:**

#### **Regulatory Information**

On July 8, 2002, we published a notice of proposed rulemaking (NPRM) entitled Anchorage Grounds; Frenchman Bay, Bar Harbor, ME in the **Federal Register** (67 FR 45071). We received one letter commenting on the proposed rule. No public hearing was requested, and none was held.

#### **Background and Purpose**

In November 1999, the Maine Department of Transportation contracted with a local firm to produce a cruise ship traffic demand management study for the Town of Bar Harbor, Maine. One of the purposes was to develop a scheduling and reservation system for arriving cruise ships so that Town facilities would not be overburdened. The study included basic research into the history and outcomes of past cruise ship visits, observation of present cruise ship operations and anchorages. Based on the findings and recommendations of this study, the Penobscot Bay and River Pilots Association requested that the Coast Guard establish two federal anchorage grounds in Frenchman Bay near Bar Harbor, Maine.

Presently, there are no designated anchorage grounds in this area. However, large vessels calling on Bar Harbor have traditionally anchored both north and south of Bar Island. These new anchorage areas coincide with the traditional areas used for large ship anchorage. The size and shape of the anchorage areas are minimal and the purpose is to conform to the changing use of the harbor and to make best use of available water.

The Coast Guard has defined the anchorage areas contained herein with the advice and consent of the Army Corps of Engineers, New England

District, located at 696 Virginia Rd., Concord, MA 01742.

This regulation does not intend to exclude fishing activity or the transit of vessels in the anchorage areas. The Coast Guard anticipates minimal transit interference through the proposed anchorages by way of increased vessel anchorage.

#### **Discussion of Comments and Changes**

We received one letter from the Army Corps of Engineers commenting on the proposed rule. They recommended that no seasonal mooring buoys be established in these anchorages. Their concerns were addressed in the NPRM. The final rule has not been changed from the NPRM language except to correct two typographical errors to the latitude and longitude as follows:

For Anchorage "A", 68°-11'-00"W is changed to read 68°-12'-00"W.

For Anchorage "B", 44°-23'-02"N is changed to read 44°-24'-02"N.

#### **Regulatory Evaluation**

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. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full regulatory evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This conclusion is based upon the fact that there are no fees, permits, or specialized requirements for the maritime industry to utilize these anchorage areas. The regulation is solely for the purpose of advancing safety of maritime commerce.

#### **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.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have