

Actions	Compliance	Procedures
<p>(ii) If cracks and/or damage is found during any inspection required in paragraph (d)(2)(i) of this AD.</p> <p>(A) obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD and incorporate this repair scheme, or repair in accordance with FAA Advisory Circular (AC) 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99; or.</p> <p>(B) replace with a new or serviceable part .....</p>	<p>Prior to further flight after the inspection in which any crack and/or damage is found. Repetitively inspect as required in paragraph (d)(2)(i) of this AD.</p>	<p>Repair in accordance with AC 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99 or in accordance with the repair scheme obtained from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD. Replace in accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995, or AC 43.13-1B, Change 1, dated September 27, 2001, Chapter 4, Paragraph 4-99.</p>
<p>(iii) Bind the rear upper mount frame tubes with a high density polythene tape at the location where the cowl-ing support rod clip is secured.</p>	<p>Prior to further flight after the initial inspection required in paragraph (d)(1) of this AD.</p>	<p>In accordance with British Aerospace Aerostructures Limited (BAe Aircraft) Mandatory Technical News Sheet CT (C1) No. 190, Issue 2, dated April 1, 1995.</p>

(e) *Can I comply with this AD in any other way?* To use an alternative method of compliance or adjust the compliance time, follow the procedures in 14 CFR 39.13. Send these requests to the Manager, Atlanta Aircraft Certification Office (ACO). Contact Cindy Lorenzen, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1895 Phoenix Boulevard, Suite 450, Atlanta, Georgia; telephone: (770) 703-6078; facsimile: (770) 703-6097.

(f) *How do I get copies of the documents referenced in this AD?* You may get copies of the documents referenced in this AD from DeHavilland Support Limited, Duxford Airfield, Bldg. 213, Cambridgeshire, CB2 4QR, United Kingdom, telephone: +44 1223 830090, facsimile: +44 1223 830085, e-mail: [info@dhsupport.com](mailto:info@dhsupport.com). You may view these documents at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on April 10, 2003.

**Dorenda D. Baker,**

*Acting Manager, Small Airplane Directorate, Aircraft Certification Service.*

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**BILLING CODE 4910-13-P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 199

RIN 0720-AA77

#### **TRICARE; Changes Included in the National Defense Authorization Act for Fiscal Year 2002, (NDAA-02), and a Technical Correction Included in the NDAA-03**

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This rule proposes several changes to the TRICARE program that were enacted by Congress in the NDAA-02 (December 28, 2001). Specifically, revisions to the definition of durable medical equipment (DME); adoption of the same pricing methods for durable medical equipment, prosthetics, orthotics and supplies (DMEPOS) as are in effect for the Medicare program; clarification that rehabilitative therapy is a TRICARE benefit; addition of augmentative communication devices (ACD)/speech generating devices (SGD) as a TRICARE benefit; addition of hearing aids for family members of active duty members as a TRICARE benefit; revisions to the definition of prosthetics; permanent authority for transitional health care for certain members separated from active duty; and revisions to the time period of eligibility for transitional health care.

This proposed rule also addresses a technical correction found in section 706 of the NDAA-03 relating to transitional health care for dependents of certain members separated from active duty.

Public comments are invited and will be considered for possible revisions to the final rule.

**DATES:** Written comments will be accepted until June 16, 2003.

**ADDRESSES:** Forward comments to Medical Benefits and Reimbursement Systems, TRICARE Management Activity, 16401 East Centretch Parkway, Aurora, Colorado 80011-9066.

**FOR FURTHER INFORMATION CONTACT:** Ann N. Fazzini, Medical Benefits and

Reimbursement Systems, TRICARE Management Activity, telephone, (303) 676-3803. Questions regarding payment of specific claims should be addressed to the appropriate TRICARE contractor.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Durable Medical Equipment (DME)**

Section 703 of the NDAA-02, Pub. L. 107-107, provides authority for any durable medical equipment that can improve, restore, or maintain the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition. It also provides authority for any durable medical equipment that can maximize the patient's function consistent with the patient's physiological or medical needs. Although the wording is not identical, TRICARE's policies and definitions in place at this time currently provide coverage within these criteria. Nonetheless, we are revising the current DME definition by adding the phrases found in the NDAA-02 to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

Section 703 also makes available coverage to customize or accessorize durable medical equipment if it is essential for achieving therapeutic benefit for the patient; making the equipment serviceable; or otherwise assuring the proper functioning of the equipment. Our policies in place at this time provide coverage within these criteria. Specifically, TRICARE's current policy regarding Durable Medical Equipment includes a provision to allow customization, accessories, and

supplies that are essential to provide therapeutic benefit, or to assure the proper functioning of the equipment or to make the equipment serviceable. Nonetheless, we are revising the current DME definition by adding the NDAA-02 language to the regulatory definition of DME in order to ensure consistency between the law and the regulation.

## II. Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Reimbursement

Section 707 of the NDAA-02, Pub. L. 107-107, changed the statutory authorization (in 10 U.S.C. 1079(j)(2)) that TRICARE payment methods “may be” determined to the extent practicable in accordance with Medicare payment rules to a mandate that TRICARE payment methods “shall be” so determined. As a result, TRICARE proposes to adopt Medicare’s pricing of Durable Medical Equipment, Prosthetic, Orthotics, and Supplies (DMEPOS). Under Medicare, DMEPOS prices are established by using fee schedules, reasonable charge or average wholesale pricing (AWP). Most payments of DME are based on a fee schedule. A standard fee is established for each DMEPOS item by state. Payment is calculated using either the fee schedule amount or the actual charge submitted on the claim, whichever is lower. The fee schedule allowances include the application of national floors and ceilings. Reasonable charge allowances by Medicare are stipulated by Medicare law and not left to the discretion of the Medicare carrier. Medicare law specifically states that the amount allowed by Medicare must be the lowest of: The actual charge, the suppliers customary charge or the 50th percentile of arrayed and weighted customary charges in the absence of a customary charge for the specific service rendered; the prevailing charge, the Inflation-Indexed Charge or the Lowest Charge Level.

## III. Rehabilitative Therapy

Section 704 of the NDAA-02, Pub. L. 107-107, authorizes providing rehabilitative therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. We interpret the term “rehabilitative therapies” to include physical therapy, speech therapy, and occupational therapy. We are adding a definition of rehabilitative therapy to our regulation and incorporating the NDAA-02 language found in section 704 into the definition. Physical, speech, and occupational therapies are currently covered by TRICARE to improve and/or restore function.

Additionally, current policies provide no restrictions on medically necessary and appropriate therapies—in other words, there is no dollar limit on the care nor is care restricted to a specific number of visits.

Section 701 of the NDAA-02, Pub. L. 107-107, provides a definition of custodial care as treatment or services regardless of who recommends such treatment of services or where such services are provided that (a) can be rendered safely and reasonably by a person who is not medically skilled; or (b) is or are designed mainly to help the patient with activities of daily living. The definition was revised by the interim final rule published in the **Federal Register**, 67 FR 40602, June 13, 2002.

We read the language in section 704 of the NDAA-02 in conjunction with the language in Section 701(c) of the NDAA-02 and conclude when TRICARE will cover rehabilitative therapies. That is, rehabilitative therapies shall be covered to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitative therapy must be medically necessary and appropriate, necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and not custodial care.

## IV. Augmentative Communication Devices (ACD)/Speech Generating Device (SGD)

Section 702 of the NDAA-02, Pub. L. 107-107, provides that an “augmentative communication device may be provided as a voice prosthesis” under TRICARE. We propose a policy that is in line with the policy developed by the Centers for Medicare and Medicaid Services (CMS). We further propose using the same terminology used by Medicare when referring to this type of device—CMS refers to “augmentative communication devices” as “speech generating devices”. In order to facilitate consistent terminology in the industry, we propose adopting the term “speech generating device (SGD)”. In proposing this policy, we have also taken into consideration recommendations provided to us by the American Speech-Language-Hearing Association in defining this benefit.

## V. Hearing Aids

Section 702 of the NDAA-02, Pub. L. 107-107, provides for coverage of a hearing aid if a family member of an active duty member has a “profound” hearing loss as determined under

standards prescribed in regulations by the Secretary of Defense in consultation with the administering Secretaries. There is no industry standard or industry definition of “profound” hearing loss so we have developed one for TRICARE purposes and welcome comments regarding our proposed definition.

The policy proposed in this rule enhances current TRICARE coverage of hearing aids by: (1) Offering a hearing aid benefit via the TRICARE Basic Program to family members of an active duty member when the family member has a “profound” hearing loss; (2) differentiating hearing thresholds for adults and children; and, (3) revising the hearing threshold levels currently in TRICARE policy.

## VI. Prosthetics

Section 702 of NDAA-02, Pub. L. 107-107, gives the Department the discretion to provide a prosthetic device that includes the following: (1) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning. (2) Services necessary to train the recipient of the device in the use of the device. (3) Repair of the device for normal wear and tear or damage. (4) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement. (5) A prosthetic device customized for a patient may be provided under this section only by a prosthetic practitioner who is qualified to customize the device, as determined under regulations prescribed by the Secretary of Defense in consult with the other Secretaries.

TRICARE currently offers benefits for the above criteria 1, 2, 3, and 5. Regarding criterion (4), TRICARE currently allows for replacement when required due to growth or change in the patient’s condition. Nonetheless, our policies will be revised to ensure consistency with the language found in section 702.

Regarding criterion 5, TRICARE has no specific provider requirements for a prosthetic practitioner to be qualified to customize the device. Rather, otherwise authorized providers currently provide prostheses and customization of prostheses. We are aware that CMS has established a Negotiated Rulemaking Committee on Special Payment Provisions and Requirements for Prosthetics and Certain Custom-Fabricated Orthotics. The purpose of this committee is to advise CMS on developing a proposed rule that would establish payment provisions and

requirements for providers of prostheses and custom-fabricated orthotics under the Medicare program. Once the Committee provides their findings, we will review them for consideration under the TRICARE program. In the meantime, we will continue to allow prostheses customization by otherwise authorized TRICARE providers.

This proposed rule also updates the definition of prosthetic device, and adds definitions for prosthetics and prosthetic supplies. This brings us in line with industry standards.

## VII. Transitional Health Care

Section 736 of the NDAA-02, Pub. L. 107-107, makes permanent the authority for transitional health care benefits for certain members by deleting the expiration date that was in place for transitional health care benefits. Prior to Pub. L. 107-107, transitional health care benefits were to expire on December 31, 2001. Section 736 also extended coverage for either 60 or 120 days based on years of service to those eligible for transitional health care benefits. Further, it deleted coverage for dependents of those eligible for transitional coverage, but the Department of Defense created a demonstration project to include coverage for such dependents.

Section 706 of the National Defense Authorization Act for Fiscal Year 03 (NDAA-03) re-inserted transitional health care coverage benefits for dependents and deemed the provision to have been enacted as part of section 736 of the NDAA-02. Consequently, there is no need for this rule to include regulatory language addressing the removal of dependents from transitional health care coverage.

## VIII. Regulatory Procedures

Section 801 of title 5, United States Code, and Executive Order 12866 requires certain regulatory assessments and procedures for any major rule or significant regulatory action, defined as one that would result in an annual effect of \$100 million or more on the national economy or which would have other substantial impacts.

The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues a regulation which would have a significant impact on a substantial number of small entities.

This is not a major rule under 5 U.S.C. 801. It is a significant regulatory action but not economically significant, and has been reviewed by the Office of Management and Budget as required

under the provisions of E. O. 12866. In addition, we certify that this proposed rule will not significantly affect a substantial number of small entities.

### *Paperwork Reduction Act*

This rule, as written, imposes no burden as defined by the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3511). If, however, any program implemented under this rule causes such a burden to be imposed, approval thereof will be sought from the Office of Management and Budget in accordance with the Act, prior to implementation.

### List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

Accordingly, 32 CFR part 199 is amended as follows:

### PART 199—[AMENDED]

1. The authority citation for part 199 continues to read as follows:

**Authority:** 5 U.S.C. 301; 10 U.S.C. chapter 55.

2. Section 199.2(b) is proposed to be amended by revising the definitions of “Durable medical equipment”, and “Prosthetic device (prosthesis)”, by adding definitions of “Augmentative Communication Device”, “Profound hearing loss”; “Prosthetic”, “Prosthetic supplies”, “Rehabilitative therapy”, and “Speech generating device” in alphabetical order to read as follows:

#### § 199.2 Definitions.

\* \* \* \* \*

(b) \* \* \*

*Augmentative communication device.*  
See *Speech generating device.*

\* \* \* \* \*

*Durable medical equipment.*  
Equipment for which the allowable charge is over \$100 and which:

(1) Is medically necessary for the treatment of a covered illness or injury;

(2) Improves, restores, or maintains the function of a malformed, diseased, or injured body part, or can otherwise minimize or prevent the deterioration of the patient's function or condition;

(3) Can maximize the patient's function consistent with the patient's physiological or medical needs.

(4) Is primarily and customarily designed and intended to serve a medical purpose rather than primarily for transportation, comfort, or convenience.

(5) Can withstand repeated use;

(6) Provides the medically appropriate level of performance and quality for the medical condition present (that is, nonluxury or nondeluxe);

(7) Is other than spectacles, eyeglasses, contact lenses, or other optical devices, hearing aids (unless otherwise provided as a covered TRICARE benefit), or other communication devices (unless otherwise provided as a covered TRICARE benefit); and

(8) Is other than exercise equipment, spas, whirlpools, hot tubs, swimming pools or other such items.

\* \* \* \* \*

*Profound hearing loss (adults).* An “adult” (a spouse as defined in section 199.3(b) of this part of a member of the Uniformed Services on active duty for 30 days) with a hearing threshold of:

(1) 40 dB HL or greater in one or both ears when tested at 500, 1,000, 1,500, 2,000, 3,000 or 4,000Hz; or

(2) 26 dB HL or greater in one or both ears at any three or more of those frequencies; or

(3) A speech recognition score less than 94 percent.

*Profound hearing loss (children).* A “child” (an unmarried child of an active duty member who otherwise meets the criteria (including age requirements) in section 199.3 of this part) with a 26dB or greater hearing threshold level in one or both ears when tested in the frequency range at 500, 1,000, 2,000, 3,000, or 4,000 Hz.

\* \* \* \* \*

*Prosthetic.* Artificial legs, arms, and eyes.

*Prosthetic device (prosthesis).* Devices (other than a dental device) which replace all or part of an internal body organ (including contiguous tissue), or replace all or part of the function of a permanently inoperative or malfunctioning internal body organ are covered when furnished on a physician's order. Examples of prosthetic devices include cardiac pacemakers, breast prostheses (including a surgical brassiere) for post mastectomy patients, maxillofacial devices and devices which replace all or part of the ear or nose.

*Prosthetic supplies.* Supplies that are necessary for the effective use of a prosthetic device.

\* \* \* \* \*

*Rehabilitative therapy.* Speech therapy, occupational therapy, and physical therapy to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient and prescribed by a physician.

\* \* \* \* \*

*Speech generating device.* (1) Speech aids that provide an individual who has severe speech impairment with the ability to meet his functional speaking needs. Such devices are considered

prosthetic devices and are characterized by:

- (i) Being a dedicated speech device, used solely by the individual who has severe speech impairment;
- (ii) May have digitized speech output, using pre-recorded messages, less than or equal to 8 minutes recording time;
- (iii) May have synthesized speech output, which requires message formulation by spelling and device access by physical contact with the device-direct selection techniques;
- (iv) May have synthesized speech output, which permits multiple methods of message formulation and multiple methods of device access; or
- (v) May be software that allows a laptop computer, desktop computer or personal digital assistant (PDA) to function as a speech generating device.

(2) Examples of devices that do not meet the above definition and are excluded from coverages as SGDs include, but are not limited to:

(i) Devices that are not dedicated speech devices, but are devices that are capable of running software for purposes other than for speech generation, e.g., devices that can also run a word processing package, an accounting program, or perform other non-medical functions.

(ii) Laptop computers, desktop computers, or PDAs, which may be programmed to perform the same function as a speech generating device, are non-covered since they are not primarily medical in nature and do not meet the definition of prosthetic, prosthetic device, prosthetic supply, or durable medical equipment.

(iii) A device that is useful to someone without severe speech impairment is not considered an SGD.

\* \* \* \* \*

3. Section 199.3 is proposed to be amended by revising paragraph (e) to read as follows:

**§ 199.3 Eligibility.**

\* \* \* \* \*

(e) *Eligibility Under the Transitional Assistance Management Program (TAMP).* (1) Transitional health care benefits under TRICARE are authorized for the following eligibles:

- (i) A member who is involuntarily separated from active duty and the dependents of the member.
- (ii) A member of a reserve component who is separated from active duty to which called or ordered in support of a contingency operation if the active duty is active duty for a period of more than 30 days and the dependents of the member.
- (iii) A member who is separated from active duty for which the member is

involuntarily retained under 10 U.S.C. 12305, in support of a contingency operation and the dependents of the member.

(iv) A member who is separated from active duty pursuant to a voluntary agreement of the member to remain on active duty for a period of less than one year in support of a contingency operation and the dependents of the member.

(2) Time period of eligibility. Transitional health care shall be available for a specified period of time for members and dependents beginning on the date which the member is separated as follows:

- (i) For members separated with less than 6 years of service, 60 days.
- (ii) For members separated with 6 or more years of active service, 120 days.

\* \* \* \* \*

4. Section 199.4 is proposed to be amended by revising paragraph (d)(3)(ii)(A), paragraph (d)(3)(vii), the text of paragraph (g)(41) preceding the note, paragraph (g)(47), paragraph (g)(51) and by adding new paragraph (e)(23), new paragraph (e)(24), and new paragraph (e)(25) to read as follows:

**§ 199.4 Basic program benefits.**

\* \* \* \* \*

- (d) \* \* \*
- (3) \* \* \*
- (ii) \* \* \*

(A) Scope of benefit. Subject to the exceptions in paragraphs (B) and (C) below, only durable medical equipment (DME) which is ordered by a physician for the specific use of the beneficiary, and which complies with the definition of "Durable Medical Equipment" in Sec. 199.2 of this part, and which is not otherwise excluded by this Regulation qualifies as a Basic Program Benefit. In addition, any customization of durable medical equipment owned by the patient is authorized to be provided to the patient and any accessory or item of supply for any such authorized durable medical equipment, may be provided to the patient if the customization, accessory, or item of supply is essential for—

- (1) Achieving therapeutic benefit for the patient
- (2) Making the equipment serviceable; or
- (3) Otherwise assuring the proper functioning of the equipment.

\* \* \* \* \*

(vii) Prosthetics, prosthetic devices, and prosthetic supplies, as determined by the Secretary of Defense to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. Additionally, the following are covered:

(A) Any accessory or item of supply that is used in conjunction with the device for the purpose of achieving therapeutic benefit and proper functioning;

(B) Services necessary to train the recipient of the device in the use of the device;

(C) Repair of the device for normal wear and tear or damage;

(D) Replacement of the device if the device is lost or irreparably damaged or the cost of repair would exceed 60 percent of the cost of replacement.

\* \* \* \* \*

(e) \* \* \*

(23) A speech generating device (SGD) as defined in § 199.2 of this part is covered as a voice prosthesis. The prosthesis provisions found in paragraph (d)(3)(vii) of this section apply.

(24) A hearing aid, but only for a dependent of a member of the uniformed services on active duty and only if the dependent has a profound hearing loss as defined in § 199.2 of this part. Medically necessary and appropriate services and supplies, including hearing examinations, required in connection with this hearing aid benefit are covered.

(25) Rehabilitation therapy as defined in § 199.2 of this part to improve, restore, or maintain function, or to minimize or prevent deterioration of function, of a patient when prescribed by a physician. The rehabilitation therapy must be medically necessary and appropriate, must be necessary to the establishment of a safe and effective maintenance program in connection with a specific medical condition, and must not be custodial care.

\* \* \* \* \*

(g) \* \* \*

(41) *Hair transplants, wigs, hair pieces, or cranial prosthesis.*

**Note:** \* \* \*

\* \* \* \* \*

(47) *Eye and hearing examinations.* Eye and hearing examinations except as specifically provided in paragraphs (c)(2)(xvi), (c)(3)(xi), and (e)(24) of this section, or except when rendered in connection with medical or surgical treatment of a covered illness or injury.

\* \* \* \* \*

(51) *Hearing aids.* Hearing aids or other auditory sensory enhancing devices, except those allowed in paragraph (e)(24) of this section.

\* \* \* \* \*

4. Section 199.14 is proposed to be amended by redesignating paragraphs (k) through (n) as paragraphs (l) through (o) and adding a new paragraphs (k) to read as follows:

**§ 199.14 Provider reimbursement methods.**

\* \* \* \* \*

(k) Reimbursement of Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS). Reimbursement of DMEPOS is based on the same amounts established under the Medicare DMEPOS fee schedule under 42 CFR part 414, subpart D.

\* \* \* \* \*

Dated: April 9, 2003.

**L.M. Bynum,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 03-9153 Filed 4-15-03; 8:45 am]

BILLING CODE 5001-08-M

**DEPARTMENT OF HOMELAND SECURITY****Coast Guard****33 CFR Part 165**

[CGD09-03-206]

RIN 1625-AA00

RIN 1625-AA11

**Regulated Navigation Area and Safety Zone; Huntington Cleveland Harborfest and Parade of Sail, Cleveland Harbor, Cleveland, OH****AGENCY:** Coast Guard, DHS.**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish a temporary regulated navigation area during the Huntington Cleveland Harborfest, and a moving safety zone for the Parade of Sail in the Port of Cleveland, Ohio. These regulations are necessary to manage vessel traffic and ensure the safety of both spectators and participant vessels. These regulations are intended to restrict vessel traffic from a portion of Lake Erie in the vicinity of Cleveland, Ohio.

**DATES:** Comments must reach the Coast Guard on or before May 10, 2003.

**ADDRESSES:** You may mail comments and related material to U.S. Coast Guard Marine Safety Office (MSO) Cleveland, 1055 East Ninth Street, Cleveland, Ohio, 44114. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and available for inspection or copying at MSO Cleveland between 8 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Lieutenant Allen Turner, Chief, Port

Operations Department, MSO Cleveland at (216) 937-0128.

**SUPPLEMENTARY INFORMATION:****Request for Comments**

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09-03-206), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please include a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

**Public Meeting**

We do not plan to hold a public meeting. But you may submit a request for a meeting by writing to MSO Cleveland at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

**Background and Purpose**

During Huntington Cleveland Harborfest, tall ships will moor in Cleveland Harbor at the Cleveland Port Authority and along Cleveland's Inner Harbor. A regulated navigation area (RNA) will be established inside Cleveland's break wall to protect those boarding the tall ships and spectator vessels from vessels transiting at excessive speeds creating large wakes, and also to prevent obstructed waterways.

A moving safety zone will be established around the Parade of Sail during the transit through Cleveland Harbor and Lake Erie in the vicinity of Cleveland, Ohio. A large number of spectator craft is expected which would result in congestion, the safety zone will ensure that spectator craft do not impede the path of the parade vessels.

**Discussion of Proposed Rule**

The RNA would be established from 12 p.m. on Wednesday, July 9, 2003, until 1 p.m. on Monday, July 14, 2003. The RNA would encompass all of Cleveland Harbor between a perpendicular line drawn from Dock 28 of Cleveland Port Authority across the breakwall; and a perpendicular line drawn from the northwestern edge of

Burke Lake Front Airport across to the breakwall. Within the RNA, no vessel shall exceed 5 mph nor produce a wake. Any vessel within the RNA shall not pass within 50 feet of a moored tall ship. Any vessel within the RNA must adhere to the direction of the Captain of the Port or the on scene representative who will be the Patrol Commander.

On July 9, 2003, from 2 p.m. until the 8 p.m. the Parade of Sail, a moving safety zone would be established around all tall ships participating in the parade. The safety zone would extend 100 yards in all directions of each vessel officially participating in the parade. The parade will begin approximately 2 miles northwest of Cleveland Harbor inlet and pass through Cleveland Harbor via the main entrance channel. After coming through the main entrance, the parade will travel east down the inner harbor to the eastern end of the break wall and exit through the eastern inlet. The parade will turn around in Lake Erie east of the harbor, and then reenter the harbor through the eastern inlet of the break wall south of the original track. The safety zone will be in effect until the last vessel moors at approximately 8 p.m.

**Regulatory Evaluation**

This proposed 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 Homeland Security (DHS).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the short amount of time that vessels will be restricted from the zones, and the actual location of the safety zones within the waterways.

**Small Entities**

Under the Regulatory Flexibility Act (5 U.S.C. 601-612), we have considered whether this proposed rule would have a significant 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.