the event there has been an unintentional release of bulk hazardous materials under certain conditions and there has been an unintentional release of hazardous materials from a package, container, portable tank, highway, or railroad vehicle.

(b) For the definition of hazardous materials and for the detailed requirements of these reports, §§ 2.20–65 and 2.20–70 of this chapter should be consulted.

(R.S. 4405, as amended, 4462, as amended, 4417a, as amended, 4472, as amended, sec. 6 (b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 391a, 170, 49 U.S.C. 1655(b) (1); 49 CFR 1.46(b) (35 F.R 4959))

SUBCHAPTER N—DANGEROUS CARGOES

PART 146—TRANSPORTATION OR STORAGE OF EXPLOSIVES OR OTHER DANGEROUS ARTICLES OR SUBSTANCES, AND COMBUSTIBLE LIQUIDS ON BOARD VESSELS

Subpart 146.02—General Regulations

9. Part 146 is amended by adding a new § 146.02–35 to read as follows:

§ 146.02–35 Notice and reports of certain hazardous materials incidents.

(a) The owner, master, agent or person in charge of a vessel subject to the provisions of this Subchapter, engaged in the transportation of hazardous materials, is required to report to the nearest District Commander of the Coast Guard immediately by telephone, radiotelephone, or radio message, and subsequently in writing within 15 days of the date of discovery, each incident which occcurs on board in which as a direct result of the hazardous materials being transported any of the circumstances set forth in § 2.20–65(b) of this chapter occurs. In addition, the written report is required in the event there has been an unintentional release of bulk hazardous materials under certain conditions and there has been an unintentional release of hazardous materials from a package, container, portable tank, highway, or railroad vehicle.

(b) For the definition of hazardous materials and for the detailed requirements of these reports, §§ 2.20–65 and 2.20–70 of this chapter should be consulted.

(R.S. 4405, as amended, 4462, as amended, 4472, as amended, sec. 6(b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 170, 49 U.S.C. 1655(b) (1); 49 CFR 1.46(b) (35 F.R. 4959))

SUBCHAPTER O—CERTAIN BULK DANGEROUS CARGOES

PART 151—UNMANNED BARGES

Subpart 151.45—Operations

10. Part 151 is amended by adding a new § 151.45–11 to read as follows:

§ 151.45–11 Notice and reports of certain hazardous materials incidents.

(a) The owner, master, agent, or person in charge of a vessel subject to the provisions of this subchapter, engaged in the transportation of hazardous materials, is required to report to the nearest District Commander of the Coast Guard immediately by telephone, radiotelephone, or radio message, and subsequently in writing within 15 days of the date of discovery, each incident which occurs on board in which as a direct result of the hazardous materials being transported any of the circumstances set forth in § 2.20–65(b) of this chapter occurs. In addition, the written report is required in the event there has been an unintentional release of bulk hazardous materials under certain conditions and there has been an unintentional release of hazardous materials from a package, container, portable tank, highway, or railroad vehicle.

(b) For the definition of harzardous materials and for the detailed requirements of these reports, §§ 2.20–65 and 2.20–70 of this chapter should be consulted.

(R.S. 4405, as amended, 4462, as amended, 4417a, as amended, 4472, as amended, sec. 6(b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 391a, 170, 49 U.S.C. 1655(b) (1); 49 CFR 1.46 (b) (35 F.R. 4959))

SUBCHAPTER T—SMALL PASSENGER VESSELS (UNDER 100 GROSS TONS)

PART 175—GENERAL PROVISIONS

Subpart 175.05—Application

11. Section 175.05–1 is amended by adding a new paragraph (g) to read as follows:

§ 175.05–1 Vessels subject to the requirements of this subchapter.

* * * * *

(g) Notwithstanding the exceptions noted in paragraphs (a) (1) and (a) (2) of this section, foreign vessels shall report marine casualties, hazardous materials incidents, and the unintentional release of hazardous materials occurring while the vessel is in the navigable waters of the United States, as required by Subpart 185.15 of this subchapter and §§ 2.20–65 and 2.20–70 of this chapter.

(R.S. 4405, as amended, 4462, as amended, sec. 3, 70 Stat. 152, sec. 6(b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 390b, 49 U.S.C. 1655(b) (1); 49 CFR 1.46(b) (35 F.R. 4959))

PART 185—OPERATIONS

Subpart 185.15—Notice of Casualty

12. Part 185 is amended by adding a new § 185.15–3 to read as follows:

§ 185.15–3 Notice and reports of certain hazardous materials incidents.

(a) The owner, master, agent or person in charge of a vessel subject to the provisions of this subchapter, engaged in the transportation of hazardous materials, is required to report to the nearest District Commander of the Coast Guard immediately by telephone, radiotelephone, or radio message, and subsequently in writing within 15 days of the date of discovery, each incident which occurs on board in which, as a direct result of the hazardous materials being transported, any of the circumstances set forth in § 2.20–65(b) of this chapter occurs. In addition, the written report is required in the event there has been an unintentional release of bulk hazardous materials under certain conditions and there has been an unintentional release of hazardous materials from a package, container, portable tank, highway, or railroad vehicle.

(b) For the definition of hazardous materials and for the detailed requirements of these reports, §§ 2.20–65 and 2.20–70 of this chapter should be consulted.

(R.S. 4405, as amended, 4462, as amended, sec. 3, 70 Stat. 152, sec. 6(b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 390b, 49 U.S.C. 1655(b) (1); 49 CFR 1.46(b) (35 F.R. 4959))

SUBCHAPTER U—OCEANOGRAPHIC VESSELS

PART 196—OPERATIONS

Subpart 196.07—Notice of Casualty and Voyage Records

13. Part 196 is amended by adding a new § 196.07–13 to read as follows:

§ 196.07–13 Notice and reports of certain hazardous materials incidents.

(a) The owner, master, agent, or person in charge of a vessel subject to the provisions of this subchapter, engaged in the transportation of hazardous materials, is required to report to the nearest District Commander of the Coast Guard immediately by telephone, radiotelephone, or radio message, and subsequently in writing within 15 days of the date of discovery, each incident which occurs on board in which as a direct result of the hazardous materials being transported any of the circumstances set forth in § 2.20–65(b) of this chapter occurs. In addition, the written report is required in the event there has been an unintentional release of bulk hazardous materials under certain conditions and there has been an unintentional release of hazardous materials from a package, container, portable tank, highway, or railroad vehicle.

(b) For the definition of hazardous materials and for the detailed requirements of these reports, §§ 2.20–65 and 2.20–70 of this chapter should be consulted.

(R.S. 4405, as amended, 4462, as amended, sec. 5, 79 Stat. 424, sec. 6(b) (1), 80 Stat. 937; 46 U.S.C. 375, 416, 445, 49 U.S.C. 1655(b) (1); 49 CFR 1.46(b) (35 F.R. 4959))

Effective date. The regulations in this document shall become effective 90 days following the date of publication in the FEDERAL REGISTER.

Dated: October 27, 1970.

C. R. BENDER,
Admiral, U.S. Coast Guard,
Commandant.

[F.R. Doc. 70–14708; Filed, Oct. 30, 1970; 8:51 a.m.]

Title 49—TRANSPORTATION

Chapter I—Hazardous Materials Regulations Board, Department of Transportation

[Docket No. HM-36; Amendments Nos. 171-7, 173-39, 174-7, 175-5, 176-3, 177-14]

REPORTS OF HAZARDOUS MATERIALS INCIDENTS

The purpose of this amendment to the Department's Hazardous Materials Regulations is to establish uniform requirements for (1) immediate telephonic reports of serious incidents involving hazardous materials; and (2) written reports containing detailed information for certain hazardous materials incidents.

This amendment is based on a notice of proposed rule making published in the FEDERAL REGISTER October 29, 1969, Docket No. HM-36; Notice No. 69-29 (34 F.R. 17450). (Separate notices of proposed rule making were issued by the U.S. Coast Guard and the Federal Aviation Administration and were published in the same issue of the FEDERAL REGISTER. Final action on these notices is announced in documents published at pages 16829 and 16832 of this issue.) A number of comments were received in response to that notice and all of the comments were carefully considered. The most significant comments and the changes that were made in this amendment as a result of the comments are discussed below.

A number of comments recommended that the reports to be submitted to the Department on hazardous materials incidents should be classified as confidential and should not be made available to the general public. The commenters suggested a number of reasons for the requested confidentiality. For example, several indicated that the reporters would be much more candid if the comments were not to be available to the general public.

Most of the arguments for classifying hazardous materials incident reports as confidential are necessarily speculative. After considering and analyzing all the comments, the Board concludes that they do not contain any argument substantial enough to require that the reports be kept confidential.

It is the policy of the Department of Transportation to make information available to the public to the greatest extent possible in keeping with the spirit of the Freedom of Information Act (5 U.S.C. 552). In the light of that statute, a refusal to permit the public access to accident reports would be contrary to sound policy. The public is better served by not keeping such reports confidential.

The only statutory exceptions to the basic requirement of disclosure are set out in section 552(b). None of these exceptions provides confidentiality for the reports under consideration here. Section 552(b)(4) excepts "trade secrets and commercial or financial information obtained from a person and privileged or confidential". However, the legislative history indicates that this exception refers to instances where privileged information (not required by law, and that would not customarily be released to the public) is voluntarily furnished and received in confidence. Examples are commercial or financial information submitted with loan applications, or information voluntarily given to the Government in confidence for the purpose of compiling statistics which are then published in the aggregate.

Moreover, in promulgating the regulations by which the Department implemented the Freedom of Information Act (49 CFR Part 7), the Secretary announced that "the policy of the Department will be to make all information available to the public except that which must not be disclosed in the national interest, to protect the right of an individual to personal privacy, or to insure the effective conduct of public business. To this end, the (regulation) provides that information will be made available to the public even if it falls within one of the exemptions set forth in section 552(b), unless the release of that information would be inconsistent with the purpose of the exemption" (32 F.R. 9287 (1967)).

The exemption of documents from mandatory public disclosure merely authorizes the Secretary to withhold them, it does not compel him to do so.

Section 7.51 of the Department's regulations provides that, even though a record is exempt from public inspection, nevertheless the Department will release it, "unless it determines that the release of that record would be inconsistent with a purpose of" the particular exemption.

A number of commenters suggested that the Department should require carriers to furnish the concerned shipper with a copy of each hazardous materials incident report. The basis for this suggestion was that the shipper should have an opportunity to review the carriers description of the incident so that the shipper could file a supplementary report if he felt that the carriers report did not state the facts fairly. While the Department does not agree that a carrier should be required to file a copy of each incident report with the concerned shipper, this does not mean that the Department is not interested in obtaining any supplemental information that a shipper may wish to provide concerning a hazardous materials incident. Since the incident reports will be available to the general public and since it is likely that shippers will be appraised of hazardous materials incidents of interest to them, any shipper is free to review a carrier's report relating to a specific incident and to file supplemental information on that incident with the Department. After the incident reporting system has been in effect for a period of time, the Department will review its effectiveness and, if it is found necessary, additional rule making action could be taken to formalize shipper input on hazardous materials incidents.

The most significant comments made by a large number of commenters with respect to the immediate telephonic reporting requirement was that, under proposed criteria, the Department would be receiving telephonic notification in many instances where it was not clear that the incident would be of such significance to require any immediate action by anyone within the Department of Transportation. Upon reviewing the criteria proposed for telephonic notification and the experience of the Office of Pipeline Safety under its immediate report requirement (which has been in effect for approximately 8 months), it has been concluded that there is justification for further limiting the criteria for immediate notification. This has been done by (1) increasing the property damage from $5,000 to $50,000; (2) eliminating the requirement for a telephonic notification where it is estimated that the resumption of normal transportation facilities involved would be prevented for 2 hours or more; and (3) by establishing an overall judgmental requirement that carriers should notify the Department when they believe that the incident is of such significance as to warrant a telephonic notification even though it does not involve a fatality, serious injury, or property damage in excess of $50,000. Incidents involving a significant continuing danger to life would be one type that would fall into this last category.

A number of commenters indicated that the 15-day reporting requirement for the written report might in many cases be difficult to comply with. It is recognized that in some cases a carrier may find it difficult to furnish all of the information required in the incident reporting form within 15 days of the incident. However, the Board believes that in the vast majority of cases this information should be available within a few days of the incident and that the clerical work involved in completing the form should not delay the submission for longer than 15 days. In the event the carrier is not able to obtain all the necessary information within the 15-day period, it may submit the report and file a supplementary report when the additional information becomes available.

A number of commenters objected to the requirement that a detailed written report must be filed in every case where there "has been an unintentional release of hazardous materials from a package." Many commenters felt that the Department would as a result of this requirement be flooded with numerous incident reports relating to the release of insignificant amounts of hazardous materials. These commenters pointed out that this would place a substantial and apparently unnecessary paper work burden on both the carriers and the Department. The Board does not feel that it is in a position at this time to determine whether there are insignificant unintentional releases of hazardous materials that do not warrant the filing of a written report. While it may be true that under the amendment the Board will receive reports of unintentional releases of hazardous materials that may prove to be insignificant, the Board does not have any criteria at this time on which

it could draw a line between those releases that should be reported and those that should not. As experience is gained under this incident report program, the program will be subject to continuing review. If it is found that the present criteria is putting an undue burden on carriers and that the Board is receiving unusable or irrelevant incident reports, the Board will not hesitate to review the reporting requirements and to take future rule-making action.

A number of commenters made specific suggestions as to detailed requirements of the incident report. Many of these comments were considered warranted and a number of changes have been made in the report form. For example, many commenters pointed out that Item C of the proposed report was entitled probable causes while many of the items listed thereunder were not in actuality "probable causes". The most significant overall comment by a number of commenters on the report form was that it was too detailed and that it would result in the Board receiving much more information than is necessary for the purposes for which the report is required. Each of the items in the report form has been carefully reviewed in the light of this criticism. The Board does not agree that the report form is unduly detailed nor does the Board believe the completion of the form will place any undue burden on carriers. Nevertheless, as indicated above, this is the first comprehensive hazardous materials incident reporting system for all modes of transportation and the Board intends to continually review the requirements adopted in this amendment in the light of the information received under its requirements. As both the carriers and the operating administrations of the Department of Transportation acquire experience under the new incident reporting system, it may well be that the Board will wish to review some of the requirements in the form presently adopted. The Board will be interested in hearing of actual experience from carriers in completing the forms and their recommendations for further changes in the forms, whether deletions therefrom or additions thereto.

Due to the time required to prepare, print, and distribute adequate supplies for use, the printed forms may not be available at the time this regulation becomes effective. In that event, a small supply of temporary forms will be distributed for use until receipt of permanent forms. These temporary forms may be obtained in limited quantities from the Office of Hazardous Materials, Department of Transportation, Washington, D.C. 20590. They may be reproduced by any company if additional copies are needed in the interim period.

In consideration of the foregoing, 49 CFR Parts 171, 173, 174, 175, 176, and 177 are amended as follows:

PART 171—GENERAL INFORMATION AND REGULATIONS

I. Part 171.

(A) In Part 171, Table of Contents, §§ 171.15, 171.16 are added to read as follows:

Sec.
171.15 Immediate notice of certain hazardous materials incidents.
171.16 Detailed hazardous materials incident reports.

(B) Section 171.15 is added to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) At the earliest practicable moment, each carrier who transports hazardous materials shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which as a direct result of hazardous materials—

(1) A person is killed;

(2) A person receives injuries requiring his hospitalization;

(3) Estimated carrier or other property damage exceeds $50,000, or

(4) A situation exists of such a nature that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of subparagraphs (1), (2), or (3) of this paragraph, e.g., a continuing danger to life exists at the scene of the incident.

(b) Each notice required by paragraph (a) of this section shall be given the Department by telephone at Area Code 202 426–1830, and must include the following information:

(1) Name of reporter.

(2) Name and address of carrier represented by reporter.

(3) Phone number where reporter can be contacted.

(4) Date, time, and location of incident.

(5) The extent of injuries, if any.

(6) Classification, name, and quantity of hazardous materials involved, if such information is available.

(7) Type of incident and nature of hazardous material involvement and whether a continuing danger to life exists at the scene.

(c) Each carrier making a report under this section shall also make the report required by § 171.16.

(C) § 171.16 is added to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing in duplicate on DOT Form F 5800.1 [1] to the Department within 15 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, or temporary storage) in which, as a direct result of the hazardous materials, any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank).

(b) Each carrier making a report under this section shall send that report to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, Washington, D.C. 20590.

[1] Filed as part of the original document.

PART 173—SHIPPERS

II. Part 173.

(A) In Part 173, Table of Contents, § 173.11 is canceled.

§ 173.11 [Canceled]

(B) § 173.11 is canceled.

PART 174—CARRIERS BY RAIL FREIGHT

III. Part 174.

(A) In Part 174, Table of Contents, §§ 174.508, 174.565 are canceled; § 174.506 is amended to read as follows:

Sec.
174.506 Reporting hazardous materials incidents.

(B) § 174.506 is amended to read as follows:

§ 174.506 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter. In addition, each carrier is requested to report each such accident to the Bureau of Explosives, American Railroads Building, 1920 L Street NW., Washington, D.C. 20036, Telephone (202) 293–4048.

§ 174.508 [Canceled]

(C) § 174.508 is canceled.

§ 174.565 [Canceled]

(D) § 174.565 is canceled.

PART 175—CARRIERS BY RAIL EXPRESS

IV. Part 175.

(A) In Part 175, Table of Contents, § 175.660 is amended to read as follows:

Sec.
175.660 Reporting hazardous materials incidents.

(B) § 175.660 is amended to read as follows:

§ 175.660 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

PART 176—RAIL CARRIERS IN BAGGAGE SERVICE

V. Part 176.

(A) In Part 176, Table of Contents, § 176.707 is amended to read as follows:

Sec.
176.707 Reporting hazardous materials incidents.

(B) § 176.707 is amended to read as follows:

§ 176.707 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

PART 177—SHIPMENTS MADE BY WAY OF COMMON, CONTRACT, OR PRIVATE CARRIERS BY PUBLIC HIGHWAY

VI. Part 177.

(A) In Part 177, Table of Contents, § 177.814 is canceled; § 177.807 is amended to read as follows:

Sec.
177.807 Reporting hazardous materials incidents.

(B) § 177.807 is amended to read as follows:

§ 177.807 Reporting hazardous materials incidents.

Each carrier shall report incidents involving hazardous materials to the Department as required by §§ 171.15 and 171.16 of this chapter.

§ 177.814 [Canceled]

(C) § 177.814 is canceled.

This amendment is effective December 31, 1970.

(Sec. 831–835, title 18 U.S.C.; sec. 9, Departments of Transportation Act, 49 U.S.C. 1657)

Issued in Washington, D.C., on October 27, 1970.

CARL V. LYON,
Acting Administrator,
Federal Railroad Administration.

F. C. TURNER,
Administrator,
Federal Highway Administration.

[F.R. Doc. 70-14707; Filed, Oct. 30, 1970; 8:51 a.m.]

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-11; Notice No. 70-13]

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

Seats, Seat Belt Assemblies, and Seat Belt Assembly Anchorages

On June 24, 1970, the Director of the Bureau of Motor Carrier Safety added a new § 393.93 to the Motor Carrier Safety Regulations, requiring the installation of properly anchored seats, seat belt assemblies, and sleeper berth restraints in certain motor vehicles (35 F.R. 10859). General Motors Corp., American Motors Corp., and the Automobile Manufacturers Association have sought reconsideration of that amendment insofar as it pertains to new vehicles. The Center for Auto Safety and two interested individuals (Reuben B. Robertson III and Jonathan A. Rowe) have filed a joint petition in opposition to the General Motors request and have asked that, in the event General Motors' petition is granted, consideration be given to extending the new rules to vehicles and occupant positions to which they are now inapplicable.

The thrust of the General Motors-AMA-American Motors petitioners is that, because the new rules have an impact on the manner in which commercial motor vehicles are manufactured, the Bureau of Motor Carrier Safety should defer to the National Highway Safety Bureau with respect to their issuance. It is said that enactment of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1381 et seq.) evinced a congressional intent to vest exclusive jurisdiction to issue safety regulations impinging on vehicle manufacturers in the National Highway Safety Bureau. Further, the petitioners assert that it is impracticable for manufacturers to be burdened with the obligation of constructing those vehicles which will be used by carriers subject to the Motor Carrier Safety Regulations in conformity with those regulations.

Events occurring after the issuance of the new rules have rendered the petitions for reconsideration largely moot. On September 23, 1970, the Director of the National Highway Safety Bureau issued revisions of the motor vehicle safety standards dealing with installation of seat belt assemblies (35 F.R. 15222), seat belt assembly anchorages (35 F.R. 15293), and seating systems (35 F.R. 15290). A principal feature of the revisions was to extend the applicability of Standards Nos. 207, 208, and 210 to include commercial buses and trucks which are subject to the jurisdiction of the Bureau of Motor Carrier Safety. The revisions will compel vehicle manufacturers to construct all trucks and buses—not just those used by carriers subject to the Motor Carrier Safety Regulations—so that properly anchored seats and seat belt assemblies will be installed in them as original equipment. The requirement for installation of seat belt assemblies and seat belt assembly anchorages applies to commercial vehicles manufactured on or after July 1, 1971, while improved seating systems are mandatory on trucks and buses manufactured on or after Jauuary 1, 1972.

In light of these developments, the Director has decided to make conforming amendments to the new § 393.93 of the Motor Carrier Safety Regulations so that vehicles manufactured on or after the effective dates of the revised safety standards need only conform to the requirements of the standards. As noted above, the resultant regulatory scheme adds no new burden for vehicle manufacturers who, if they comply with the applicable motor vehicle safety standards, will thereby automatically construct vehicles that conform to the requirements of § 393.93. At the same time, the amendments do not impose any additional burden on carriers, since the required equipment will, of necessity, be supplied by vehicle manufacturers. After they begin operating the vehicles, the carriers need only maintain them so that the seats, seat belt assemblies, and seat belt assembly anchorages supplied as original equipment remain installed and capable of complying with the performance requirements of the standards. Therefore, notice of, and public procedure upon, these revisions is unnecessary.

As noted above, the petitions of General Motors, Automobile Manufacturers Association, and American Motors have been mooted to the extent they sought reconsideration of the provisions of § 393.93 that apply to vehicles manufactured after the dates upon which Motor Vehicles Safety Standards Nos. 207, 208, and 210 are effective with respect to trucks and buses. Section 393.93 also reaches vehicles manufactured before those dates, however. It requires installation of seat belt assemblies and anchorages in vehicles manufactured after December 31, 1964, and before July 1, 1971. The petitions for reconsideration have, therefore, been considered on their merits as requests for withdrawal of so much of § 393.93 as applies to vehicles that will be manufactured before July 1, 1971. For the following reasons, those requests are denied.

It is now clear that, with a relatively minor exception, there will be no motor vehicle safety standard applicable to occupant restraints in pre-July 1, 1971, commercial motor vehicles. That being so, the possibility that vehicle manufacturers might be subject to inconsistent or conflicting requirements of the Motor Carrier Safety Regulations and the Motor Vehicle Safety Standards is absent. It is true, as petitioners point out, that some taxicabs, used to transport passengers in interstate commerce, are treated as "buses" under the Motor Carrier Safety Regulations and are also deemed "passenger cars" under the Motor Vehicle Safety Standards. However, because § 393.93 of the Motor Carrier Safety Regulations incorporates by reference the requirements of the Safety Standards relating to seat belt assemblies and seat belt assembly anchorages in passenger cars, a manufacturer who constructs vehicles in conformity with the Standards thereby automatically complies with § 393.93.

The absence of conflicting or inconsistent obligations upon manufacturers also tends to undercut the thesis that § 393.93 violates the intent of Congress in enacting section 103(g) of the National Traffic and Motor Vehicle Safety Act of 1966, 15 U.S.C. 1392(g). That section forbids the adoption or continuation of a motor carrier safety regulation which differs from a motor vehicle safety standard unless the regulation imposes upon a commercial vehicle "a higher standard of performance subsequent to its manufacture than that required to comply with the applicable Federal standard at the time of manufacture." On its face, section 103(g)'s prohibition is inapplicable to a motor carrier safety regulation which simply adopts the requirements of the relevant motor vehicle safety standards. Nor does it appear to reach a situation in which there is no motor vehicle safety standard applicable to the vehicles or aspect of performance governed by the motor carrier safety regulation. In those instances, it is clearly impossible

for the regulation to "differ" from a standard.

The available legislative history shows that section 103(g) of the Act was the product of Congressional concern to preclude the possibility that vehicle manufacturers might be subject to conflicting or inconsistent regulations. Where, as here, there is no reason for concern about conflict or inconsistency, neither the letter or section 103(g) nor its rationale requires the Bureau of Motor Carrier Safety to abdicate its statutory responsibility to regulate the safety of equipment operated by commercial motor carriers.

Furthermore, the legislative history of the National Traffic and Motor Vehicle Safety Act shows that Congress was well aware of the fact that, since 1936, the power to establish reasonable requirements with respect to safety of equipment used by motor carriers (found in section 204(a) of the Interstate Commerce Act, 49 U.S.C. 304(a)) had been exercised in a manner which required parts and accessories to be installed in vehicles as original equipment. From the outset, it was recognized that, in many areas significantly related to safety, adequate vehicle systems must be built in, not simply added on. Thus, the initial safety regulations, issued in 1936 and effective the following year (Ex Parte MC-4, 1 MCC 1) required commercial vehicles to be equipped to specifications that could be met only by their manufacturers. There is nothing in the text or history of the National Traffic and Motor Vehicle Safety Act which evinces an intent to enact a sweeping abolition of this traditional regulatory policy. Instead, as noted above, Congress adopted a more narrow rule.

If the need to construct commercial vehicles used by regulated motor carriers has cast an undue burden on manufacturers, the experience of the Bureau of Motor Carrier Safety in many years of revising and refining the regulations, has failed to disclose it. General Motors' petition argues that because only some of the commercial vehicles manufactured will be subject to the Motor Carrier Safety Regulations, issuance of rules applicable only to those vehicles places the large, mass-production manufacturer at a competitive disadvantage to smaller manufacturers who build vehicles to their customers' orders. In practice, however, the larger manufacturers have exhibited no indication that they have incurred an undue burden. In the case of seat belt assemblies, for example, examination of General Motors' own technical literature shows that it now installs seat belts as original equipment on all of its trucks that are equipped with seats. Furthermore, there is no self-evident hardship in requiring larger manufacturers at a minimum to offer safety equipment as optional equipment for installation on commercial vehicles to be operated in interstate or foreign commerce.

The argument that § 393.93 helps small manufacturers—even if true—is not a persuasive reason for withdrawing the rule, however. Specialty manufacturers have always had a number of inherent advantages over large mass producers. Those advantages are endemic to a free enterprise economy geared to a mass market, and they are more than compensated for by the large manufacturers' greater potential for technological innovation and superior ability to achieve economies of scale. In these circumstances, the impact of § 393.93 on the competitive balance of power seems little more than trivial.

Several petitioners have urged withdrawal of the rule on the ground that manufacturers cannot reasonably be expected to subject their vehicles to destructive tests to ascertain whether they conform to provisions of the Motor Vehicle Safety Standards which are incorporated into the rule by reference. There is, however, no imperative necessity for destructive testing even in the case of standards which set forth performance requirements in terms of tests that may be destructive. Requirements of that type, as the Director of the National Highway Safety Bureau has pointed out, "are simply methods of expressing necessary characteristics of each vehicle produced. Manufacturers must, of course, * * * exercise due care to insure that their vehicles will meet these tests, but may develop efficient, economical and reliable methods, other than performing the stated destructive tests, to do this." (Occupant Crash Protection (Notice), 35 F.R. 7187, 7188, (1970)). Furthermore, even in cases where the manufacturer chooses to perform the specified tests, the testing program invariably is performed on a sample basis, rather than by testing every vehicle that comes off the assembly line. There is every reason to believe that the same practice would be followed in the case of commercial vehicles equipped with the occupant protection devices required by the rules. Hence, the contention that compliance testing would place an unreasonable burden on manufacturers must be rejected.

As noted above, § 393.93 stands as the only Federal regulation requiring the installation of seat belts and other occupant restraints on vehicles manufactured before July 1, 1971. It follows that withdrawal of § 393.93 would be detrimental to the interests of persons who would otherwise benefit from the availability of that equipment. The consequence of accepting the petitioners' argument is that, for example, drivers of pre-July 1, 1971, trucks and buses operated in interstate commerce would not have the opportunity to restrain themselves with properly installed seat belts. As a result, those persons would incur a greater risk of death or serious injury than will be the case if § 393.93 remains in effect. To ascribe to the Congress which enacted the National Traffic and Motor Vehicle Safety Act an intent to mandate that result is as ill-founded as the belief that the Department charged with carrying out the Act would willingly permit it.

For the foregoing reasons, the petitions of General Motors Corp., American Motors Corp., and Automobile Manufacturers Association are denied. In view of this disposition, the petition of the Center for Auto Safety, Reuben B. Robertson III, and Jonathan A. Rowe is deemed moot and requires no further action.

In consideration of the foregoing, § 393.93 of the Motor Carrier Safety Regulations in Part 393 of Title 49, CFR (35 F.R. 10860) is revised to read as set forth below. Since this revilson changes only the provisions of § 393.93 which are effective with respect to vehicles manufactured on July 1, 1971, and thereafter, the revised rule is effective on the date of its publication in the FEDERAL REGISTER.

(Sec. 204, Interstate Commerce Act, as amended (49 U.S.C. 304), sec. 6, Department of Transportation Act (49 U.S.C. 1655), delegation of authority by the Secretary of Transportation in 49 CFR 1.48, and delegation of authority by the Federal Highway Administrator in 49 CFR 389.4)

Issued on October 27, 1970.

ROBERT A. KAYE,
Director, Bureau of Motor Carrier Safety.

§ 393.93 Seats, seat belt assemblies, and seat belt assembly anchorages.

(a) *Buses*—(1) *Buses manufactured on or after January 1, 1965, and before July 1, 1971.* After June 30, 1972, every bus manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Motor Vehicle Safety Standard No. 209[1] installed at the driver's seat and seat belt assembly anchorages that conform to the location and geometric requirements of Motor Vehicle Safety Standard No. 210[1] for that seat belt assembly.

(2) *Buses manufactured on or after July 1, 1971.* Every bus manufactured on or after July 1, 1971, must conform to the requirements of Motor Vehicle Safety Standard No. 208[1] (relating to installation of seat belt assemblies) and Motor Vehicle Safety Standard No. 210[1] (relating to installation of seat belt assembly anchorages).

(3) *Buses manufactured on or after January 1, 1972.* Every bus manufactured on or after January 1, 1972, must conform to the requirements of Motor Vehicle Safety Standard No. 207[1] (relating to seating systems).

(b) *Trucks and truck tractors*—(1) *Trucks and truck tractors manufactured on or after January 1, 1965, and before July 1, 1971.* After June 30, 1972, every truck and truck tractor manufactured on or after January 1, 1965, and before July 1, 1971, must be equipped with a Type 1 or Type 2 seat belt assembly that conforms to Motor Vehicle Safety Standard No. 209[1] installed at the driver's seat and at the right front outboard seat, if the vehicle has one, and seat belt assembly anchorages that conform to the location and geometric requirements of Motor Vehicle Safety Standard No. 210[1] for each seat belt assembly that is required by this subparagraph.

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[1] See footnote at end of document.

(2) *Trucks and truck tractors manufactured on or after July 1, 1971.* Every truck and truck tractor manufactured on or after July 1, 1971, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Motor Vehicle Safety Standard No. 208[1] (relating to installation of seat belt assemblies) and Motor Vehicle Safety Standard No. 210[1] (relating to installation of seat belt assembly anchorages).

(3) *Trucks and truck tractors manufactured on or after January 1, 1972.* Every truck and truck tractor manufactured on or after January 1, 1972, except a truck or truck tractor being transported in driveaway-towaway operation and having an incomplete vehicle seating and cab configuration, must conform to the requirements of Motor Vehicle Safety Standard No. 207[1] (relating to seating systems).

(c) *Effective date of standards.* Whenever paragraph (a) or (b) of this section requires conformity to a Motor Vehicle Safety Standard, the vehicle or equipment must conform to the version of the Standard that is in effect on the date the vehicle is manufactured or on the date the vehicle is modified to conform to the requirements of paragraph (a) or (b) of this section, whichever is later.

[F.R. Doc. 70-14666; Filed, Oct. 30, 1970; 8:47 a.m.]

Chapter V—National Highway Safety Bureau, Department of Transportation

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Lamps, Reflective Devices, and Associated Equipment

On January 3, 1970, a proposal to amend Federal Motor Vehicle Safety Standard No. 108 (Docket No. 69-18) was published in the FEDERAL REGISTER (35 F.R. 106). Comments were requested on 25 proposed amendments.

Interested persons have been afforded an opportunity to participate in the rulemaking process and their comments have been considered in the amendments published today. Except as otherwise noted, the amendments are effective July 1, 1971. The amendments are discussed below in the order in which the proposals were published. Unless otherwise indicated, there were no significant objections to the proposals that are being adopted.

(a) It was proposed that Standard No. 108 be extended to include requirements for replacement lighting equipment on vehicles manufactured to comply with Standard No. 108, and all replacement sealed beam headlamp units, lamp bulbs, and plastic lenses.

The proposal to include replacement equipment on vehicles manufactured on or after the effective date of the standard (July 1, 1971) has been adopted. However, the proposal to include all replacement sealed beam headlamp units, lamp bulbs, and plastic lenses on vehicles manufactured prior to that date has been deferred because of the difficulties involved in retrofitting vehicles that were not originally manufactured to conform to Standard No. 108. Further study is necessary of the problems, leadtime, and costs involved in designing and testing replacement equipment for older vehicles that meets the standards required of motor vehicles manufactured today.

(b) The present intermediate side marker device requirement covering vehicles 30 feet or more in overall length, and 80 inches and more in overall width, has been extended to cover vehicles of lesser width.

Commenters requested that the overall length of a trailer be interpreted to exclude the length of the trailer tongue. However, it has been determined that when the rear of a trailer is 30 feet or more from the towing vehicle, intermediate side marker devices are warranted, regardless of he length of the trailer tongue.

(c) SAE Standard J594d, "Reflex Reflectors", has replaced J594c as the basic reference for this item of lighting equipment. Some commenters felt that Class B reflectors (eliminated in J594d) should still be permitted for motorcycles, but the Bureau believes that a motor vehicle whose conspicuity is already marginal should be required to have Class A reflectors.

(d) Self-canceling turn signal operating units will be required on all vehicles less than 80 inches in overall width. One commenter requested excluding all trucks, truck tractors, and commercial vehicles regardless of vehicle width, and several commenters requested the elimination of the requirement for cancellation by steering wheel rotation.

Since the operation of vehicles less than 80 inches in overall width is similar to that of passenger cars, and most multipurpose passenger vehicles and other vehicles of lesser width are operated by drivers other than professionals, their exclusion from this requirement is not warranted.

The Bureau is studying automatic cancellation by time or distance, or both, but current evidence indicates that these methods, given the state of the art, are inferior to cancellation by steering wheel rotation.

(e) As proposed, amber has been eliminated as an optional color of the stop lamp.

(f) The minimum candlepower of any separately mounted stoplamp will equal that of a Class A turn signal lamp.

Many commenters requested a longer leadtime to comply. The requests have been found reasonable, and good cause has been shown for an effective date of January 1, 1973. Other comments suggested consideration of stop lamp candlepower in connection with dual intensity signals, allowance for multiple compartment lamps, and retention of the present Class B intensity for motorcycle stop lamps.

Dual intensity signals have not been proposed, and since time is required for development and implementation of such a proposal, a requirement for increased minimum candlepower in stop lamps cannot be deferred. No justification has been found for not requiring Class A intensity for motorcycle stop lamps. The standard is therefore being amended as proposed, with clarifying provisions for multiple compartment stop lamps.

(g) It was proposed that motorcycles should be equipped with turn-signal lamps, that there be a maximum candlepower limitation on amber rear-mounted lamps, and that minimum photometric output of head and tail lamps at engine idle speeds should be specified.

Several comments objected to the maximum candlepower proposal and the mounting requirements specified in the proposed Table IV. Also, comments indicated potential problems if minimum photometric output were specified, suggesting instead a reference to SAE Recommended Practice J392, "Motorcycle and Motor Driven Cycle Electrical System Maintenance of Design Voltage", December 1969.

Glare candlepower tests on signal lamps installed on the rear of motor vehicles have consistently indicated that a specification in excess of 300 candlepower for both red and amber lamps is not desirable. A manufacturer encountering problems of exceeding this maximum with amber lamps has the option of using red lamps, which have a lower minimum required candlepower.

The detection and interpretation of turn signal lamps improves as they are mounted farther away from the centerline of the vehicle and from other lamps. Some motorcycle manufacturers, recognizing this fact, have installed the turn signal lamps in the ends of the handlebars, exceeding the requirements adopted in the amendment. The mounting requirements for these lamps specified in Table IV are considered reasonable and practicable for motorcycles.

The standard is being amended as proposed, except that minimum photometric output of headlamps and taillamps at engine idle speeds is not specified. Minimum photometrics are currently being studied for further rulemaking. Since an incorporation by reference to SAE Recommended Practice J392 was not proposed, it is beyond the scope of this rulemaking to incorporate it in the amendment.

(h) Aging and weathering requirements for plastic materials used for optical parts are specified. Although the comments generally supported this revision, many requested a more realistic test than continuous operation of stop and backup lamps in an oven for 1 hour to determine lens warpage. Accordingly, the amendment requires a cycle of operation of 10 minutes' duration followed by 10 minutes' rest during the 1 hour test.

[1] Individual copies of Motor Vehicle Safety Standards may be obtained from the National Highway Safety Bureau's General Services Division, Room 5111C, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20591.