

other final order of the probate court should be submitted with the Claim for Reimbursement.

(d) The name and roll number of the deceased enrollee through which an heir is claiming, the place and date of the deceased enrollee's death and the relationship of the claimant to the deceased enrollee accompanied by copies of birth or marriage certificates or other evidence proving the relationship.

§ 111.5 Burden of proof.

The burden of proof rests upon the claimant to establish that he or she is entitled to reimbursement as an enrollee, heir, or legatee.

§ 111.6 Appeals.

Any person whose claim for reimbursement is rejected may appeal by filing such appeal in writing with the Financial Management Officer not more than thirty (30) days from receipt of the notice of rejection. The claimant must submit with his appeal any supporting data not previously furnished. When upon review of the evidence submitted by the appellant, the Financial Management Officer is satisfied that the claimant has established his right for reimbursement, the appellant shall be so notified. In any case where the Financial Management Officer determines the claimant ineligible, the Financial Management Officer shall forward the appeal together with the complete record and his recommendation thereon to the Commissioner for transmittal to the Secretary.

§ 111.7 Action by the Secretary.

The decision by the Secretary on an appeal shall be final and the claimant shall be given written notice of the decision.

§ 111.8 Special instruction.

To facilitate the work of the Financial Management Officer, the Commissioner may issue special instruction not inconsistent with the rules of this part.

LOUIS R. BRUCE,
Commissioner.

[FR Doc. 71-3548 Filed 3-12-71; 8:49 am]

Title 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

SUBCHAPTER A—INCOME TAX

[T.D. 7095]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Percentage To Be Used by Foreign Life Insurance Companies in Computing Income Tax for the Taxable Year 1970 and Estimated Tax for the Taxable Year 1971

Section 819 of the Internal Revenue Code of 1954 provides for the determination of a percentage to be used in de-

termining a "minimum figure" for each foreign corporation carrying on a life insurance business. Where this minimum figure exceeds such a corporation's surplus held in the United States, the amount of the "policy and other contract liability requirements" (determined under section 805 without regard to section 819), and the amount of the "required interest" (determined under section 809(a) without regard to section 819), must each be reduced by an amount determined by multiplying such excess by the "current earnings rate" (as defined in section 805(b)(2)). Accordingly, it is hereby determined that for purposes of computing the 1970 income tax for foreign corporations carrying on a life insurance business a percentage of 13.8 shall be used in determining the "minimum figure" under section 819.

It is presently anticipated that the data with respect to domestic life insurance companies for 1970 required for the computation of the percentage to be used by foreign corporations carrying on a life insurance business in computing their estimated tax for the taxable year 1971 will not be available in time for the filing of the declaration of estimated tax for such taxable year. Accordingly, it is hereby determined that for purposes of computing the estimated tax for the taxable year 1971 and payments of installments thereof by such corporation a percentage of 13.8 (the percentage applicable for 1970) shall be used in determining the minimum figure under section 819. No additions to tax shall be made because of any underpayment of estimated tax for the taxable year 1971 which results solely from the use of this percentage.

Because the percentage announced in this Treasury decision is computed from information contained in the income tax returns of domestic life insurance companies for the year 1969, which are not open to public inspection, the public accordingly cannot effectively participate in the determination of such figure. Therefore, it is found that it is unnecessary to issue this Treasury decision with notice and public procedure thereon under section 553(b) of title 5 of the United States Code (Public Law 89-554, 80 Stat. 383), or subject to the effective date limitation of subsection (d) of such section.

[SEAL] EDWIN S. COHEN,
Assistant Secretary of the Treasury.
MARCH 11, 1971.

[FR Doc. 71-3587 Filed 3-12-71; 8:50 am]

[T.D. 7093]

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Consolidated Return Regulations

On February 6, 1971, notice of proposed rule making with respect to the amendment of the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of

1954 to provide rules for computation of the income tax surcharge in cases where a corporation is a member of an affiliated group of corporations for less than the entire year was published in the FEDERAL REGISTER (36 F.R. 2569). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendment of the regulations as proposed is hereby adopted.

(Secs. 1502 and 7805 of the Internal Revenue Code of 1954; 68 Stat. 367, 917; 26 U.S.C. 1502, 7805)

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: March 11, 1971.

EDWIN S. COHEN,
Assistant Secretary
of the Treasury.

The Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954 are amended as follows to provide rules for computation of the income tax surcharge in cases where a corporation is a member of an affiliated group of corporations for less than the entire year:

§ 1.1502-2 [Amended]

PARAGRAPH 1. There is inserted at the end of § 1.1502-2 the following sentence: "For amount of tax surcharge, see section 51 and § 1.1502-7."

PAR. 2. There is inserted after § 1.1502-6 the following:

§ 1.1502-7 Tax surcharge.

(a) Part-year affiliate. If—

(1) A group files a consolidated return for any taxable year which includes any portion of the period beginning January 1, 1970, and ending June 30, 1970, and

(2) Any corporation (referred to in paragraph (b) of this section as a "part-year affiliate") which joins in the filing of such return is not a member of the group for each day during any such taxable year, the surcharge liability of the group under section 51 shall be determined under paragraph (b) of this section.

(b) Amount of surcharge. If paragraph (a) of this section applies, the surcharge liability imposed by section 51 on consolidated taxable income shall be the sum of—

(1) The surcharge which would be imposed under section 51(a)(1)(B) or (2) if that portion of the consolidated tax liability allocable to any part-year affiliate were excluded from the consolidated tax liability of the group, and

(2) The surcharge which would be imposed under section 51(a)(2) on any part-year affiliate if such part-year affiliate filed a separate return for the period for which its income was included in the consolidated return and if the tax imposed by this chapter for such period was the portion of consolidated tax liability allocable to such corporation.

Consolidated tax liability under subparagraphs (1) and (2) shall be determined under § 1.1502-2 without regard to

the tax surcharge imposed by section 51, the minimum tax imposed by section 56, any increase in tax under section 47(a), relating to early dispositions of investment credit property, or under section 614(c) (4) (C), relating to an election to aggregate certain mineral interests.

(c) *Allocation of tax liability.* For purposes of this section, the portion of consolidated tax liability allocable to a member shall be determined under the method used in allocating the tax liability of the group under the provisions of section 1552(a).

§§ 1.1502-8 to 1.1502-10 [Reserved]

[FR Doc.71-3596 Filed 3-12-71; 8:50 am]

[T.D. 7094]

PART 13—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1969

Extension of Time for Section 170(b)(1)(E)(ii) Organizations

The following regulations relate to the application of section 170(b) (1) (E) (ii) of the Internal Revenue Code of 1954, as added by section 201(a) of the Tax Reform Act of 1969 (83 Stat. 552) with respect to the requirements for compliance with the provisions of section 170(b) (1) (E) (ii).

The regulations set forth herein are temporary and are intended to extend the period of time during which an organization seeking classification under section 170(b) (1) (E) (ii) may meet the requirements of that section.

In order to provide such temporary regulations under section 170(b) (1) (E) (ii) of the Internal Revenue Code of 1954, the following regulations are adopted:

§ 13.15 Extension of time for section 170(b) (1) (E) (ii) organizations.

(a) *In general.* A private foundation described in section 170(b) (1) (E) (ii), as referred to in section 170(b) (1) (A) (vii) and (e) (1) (B) (ii), is, in effect, a private nonoperating foundation which distributes an amount equal to all contributions received not later than the 15th day of the third month after the close of the foundation's taxable year in which such contributions were received and which maintains adequate records with respect to such distributions.

(b) *Extension of period.* For purposes of section 170(b) (1) (A) (vii) and (e) (1) (B) (ii), in the case of a taxable year ending in either 1970 or 1971, the period referred to in section 170(b) (1) (E) (ii) for making certain distributions shall not expire before the 30th day after final regulations under section 170(b) (1) (E) (ii) are published in the *FEDERAL REGISTER*.

Because of the need for immediate guidance with respect to the provisions contained in this Treasury decision, it is found impracticable to issue it with notice and public procedure thereon under subsection (b) of section 553 of

title 5 of the United States Code or subject to the effective date limitation of subsection (d) of that section.

(Sec. 7805 of the Internal Revenue Code of 1954; 68A Stat. 917; 26 U.S.C. 7805)

[SEAL] RANDOLPH W. THROWER,
Commissioner of Internal Revenue.

Approved: March 11, 1971.

EDWIN S. COHEN,
Assistant Secretary of
the Treasury.

[FR Doc.71-3586 Filed 3-12-71; 8:50 am]

Title 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

SUBCHAPTER M—MISCELLANEOUS

PART 262—POLICIES GOVERNING THE CONTRIBUTION OF FEDERAL FUNDS TO THE STATES UNDER CHAPTER 133, TITLE 10, UNITED STATES CODE—FACILITIES FOR RESERVE COMPONENTS

The following revision to Part 262 was approved by the Deputy Secretary of Defense on February 11, 1971:

Sec.

- 262.1 Purpose.
- 262.2 Applicability and scope.
- 262.3 Policies and procedures.
- 262.4 Authority of DOD agencies.
- 262.5 Background information relating to 10 U.S.C. 133.

AUTHORITY: The provisions of this Part 262 issued under sec. 301, 80 Stat. 379; 5 U.S.C. 301.

§ 262.1 Purpose.

(a) This part updates and expands the policies established to implement section 2233(a) (2), (3), and (4) of chapter 133, title 10, United States Code which contains authority to provide facilities for the training of all Reserve components of the Armed Forces and authorizes contributions of Federal funds to the several States of the United States, Puerto Rico, and the District of Columbia (hereinafter referred to collectively as the States), as the Secretary of Defense shall determine to be necessary:

(1) To expand, rehabilitate, or convert facilities owned by such State to the extent required for the joint utilization of such facilities;

(2) To expand, rehabilitate, or convert facilities owned by such State to the extent made necessary, or to acquire, construct, expand, rehabilitate, or convert such additional facilities as he shall determine to have been made essential, by any conversion, redesignation, or reorganization of a unit or units of the Army National Guard of the United States or the Air National Guard of the United States, requested or authorized by the Secretary of the Army or the Secretary of the Air Force, respectively;

(3) To acquire, construct, expand, rehabilitate, or convert by such State such additional facilities that have been made

essential by any increase in the strength of the Army National Guard of the United States or the Air National Guard of the United States.

(b) It establishes criteria under which Federal funds may be contributed to the States to provide training facilities for the above Reserve components.

§ 262.2 Applicability and scope.

The provisions of this part apply to the Military Departments and encompass the Army National Guard of the United States and the Air National Guard of the United States, respectively (hereinafter referred to as "Reserve components").

§ 262.3 Policies and procedures.

In carrying out the provisions of this part, the Secretaries of the Military Departments will comply with the following:

(a) Each project toward which a contribution is granted by the Federal Government under the authority contained in chapter 133, 10 U.S.C. shall be covered by an agreement between the United States and the State. The purpose of such agreement is to delineate the equities and obligations involved and assure not only a clear understanding of these obligations but definitely to establish these equities.

(b) The following policies are to be used as a guide in negotiating and executing agreements with States in the implementation of clauses (2), (3), and (4) of section 2233(a) of chapter 133, 10 U.S.C.:

(1) All work authorized pursuant to clauses (2), (3), and (4) of section 2233 (a) of chapter 133, 10 U.S.C. shall be done in accordance with the laws of the State in which the project is located, and under the supervision of officials of such State, subject to inspection and approval by the Secretary of Defense or his delegate.

(i) Provisions definitive of such inspection and approval shall be included in said agreement, to accomplish the purpose of assuring that the work performed toward which the Federal contribution is made complies with the plans, specifications, criteria, and standards approved for the project by the Secretary of Defense or his delegate.

(ii) Except for supervision of a project, which function is reserved by law to State officials, the services of the Chief of Engineers or the Chief of the Naval Facilities Engineering Command may be utilized to the extent mutually agreed by the State and the Military Department concerned.

(2) A separate agreement shall be entered into between the State and the Federal Government for each project covering the terms, conditions, equities, and obligations of the parties.

(3) The State, as defined in section 2232(1) of chapter 133, 10 U.S.C. shall certify that it has the legal authority and the necessary funds to accomplish its share of the project, that it will furnish evidence satisfactory to the Department of Defense of a perfected title to, or

other adequate property interest in, acceptable and suitable real estate, and that such real estate is located in an area appropriate, under local laws and ordinances relating to location and construction, to the use for which the facilities are intended.

(4) Plans, specifications and cost estimates shall be approved by the Federal Government.

(5) Unless terminated under the provisions of subparagraph (18) of this paragraph, the agreement shall remain in full force and effect for the fixed term of years which represents the estimated useful life of the facility.

(6) When a facility is to be jointly used by two (2) or more Reserve Components, the agreement shall:

(i) Identify the space, both within and outside the building or buildings, which is to be maintained and reserved for the exclusive use of those Reserve components that are designated by the Federal Government;

(ii) Identify the space, both within and outside the building or buildings, which is to be used in common by all Reserve components assigned to the facility;

(iii) Prescribe the extent of collaboration between the State and the Federal Government in the selection of the site location and the orientation of the facilities to be jointly and exclusively utilized by those Reserve components which are designated by the Federal Government;

(iv) Prescribe the costs to be borne by the Federal Government and by the State in maintaining the common use space, both within and outside the building or buildings, and in general administrative expense for janitorial and similar service. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of chapter 133, 10 U.S.C.

(v) Prescribe generally for the time and extent of the use by the various components, and prescribe the method of resolving conflicts in schedules for use of the facilities.

(7) Insofar as it is determined at the time the Federal contribution is made that it is impracticable for the State and the Federal Government to delineate the extent of the spaces to be jointly and exclusively utilized by those Reserve components designated by the Federal Government, the agreement shall contain a covenant on the part of the State substantially as follows:

To make such facility available for joint utilization to the extent that the State shall hereafter deem it to be practicable.

(8) In the event it is necessary to apply the concept of a "master agreement" contemplating future individual agreements with respect to specific projects, such "master agreement" shall contain an affirmative covenant on the part of the State in substantially the following form:

A the time each contribution is made by the Government, to negotiate concerning the extent to which the facility covered thereby will be made available for joint use by units of two or more of the Reserve components of the Armed Forces.

(9) At no time during the term of the agreement shall such State permit any disposition or use to be made of such facility which will interfere with its use for the administration and training of units of the Reserve components of the Armed Forces of the United States, or in time of war or national emergency of other units of the Armed Forces of the United States or any other use by the Federal Government.

(10) The State shall take necessary action to the extent of its power or authority, to prohibit use of the facility by outside interests (such as adjacent land owners, public utility corporations, etc.) that would interfere with its use for its intended purpose.

(11) The State shall be required to maintain and preserve the facility in a state of good repair except that the Federal Government may contribute to the cost of maintenance to an extent commensurate with the joint use of the facility by those Reserve components which are designated by the Federal Government. Each such agreement shall take cognizance of the net proceeds derived from leasing the facility or other arrangements and other income in accordance with section 2236(c)(2) of chapter 133, 10 U.S.C.

(12) Where the State accomplishes the project by contract, the State shall let such contract in accordance with the laws of such State, and under those regulations within the Armed Services Procurement Regulation which are applicable to federally assisted programs insofar as the application of such regulations by supervisory officials of the State is not precluded by nor inconsistent with the State laws. All contracts, subcontracts, and change orders shall be subject to prior approval by the Federal Government.

(13) The Federal Government shall determine what costs incurred or to be incurred by the State are allowable under the terms and conditions of the agreement. When so requested by the State, such determination shall be made prior to the execution of any contract by the State, and the State shall be advised thereof in writing, subject to conformance with applicable Department of Defense military construction policies and criteria.

(14) The State shall be required to maintain an accounting system which is acceptable to the Federal Government with respect to the construction work, as well as to the subsequent maintenance and operation of those facilities toward which the Federal Government contributes or will contribute funds for such maintenance and operation, including those facilities to be jointly used by other Reserve components.

(15) The contributions of funds by the Federal Government to the State

shall be in accordance with a system whereby the Federal Government maintains adequate control of the expenditure of such funds until payment is due the contractor for work already completed. Payment, however, may be made periodically as work progresses, and the Federal share of the funds will be obligated upon the approval of the construction contract by the Federal Government, and will be made available in accordance with established fiscal procedures.

(16) The appropriate legal authority of the State shall certify that in his opinion the agreement is legal and binding and that its execution is duly authorized, and upon request of the Federal Government, the State shall furnish evidence of its authority to enter into the agreement.

(17) The agreement shall contain other clauses, which in the opinion of the cognizant Military Department and State, are required to more specifically delineate the equities and obligations of both the State and Federal Government and which are not in conflict with the policies enumerated herein.

(18) The agreement shall contain a clause and existing agreements may be amended to include a clause providing for termination of the agreement, subject to the approval of the Secretary of Defense or his designee, prior to expiration of the fixed term: *Provided, That:*

(i) The facility is replaced in kind without any further contribution by the Federal Government and the State executes an agreement on the replacement facility for the unexpired term of the agreement to be terminated, or

(ii) The State agrees to reimburse the Federal Government for its equity in the asset which shall be computed as that proportion of the Federal contribution or grant as the unexpired term of the agreement bears to the full term of the agreement.

§ 262.4 Authority of DOD agencies.

The provisions of DOD Directive 5100.10, subject: "Delegation of Authority With Respect to Reserve Forces Facilities," dated August 20, 1962 (published at 27 F.R. 8630, Aug. 29, 1962), which delegates certain authorities with respect to Reserve Forces Facilities vested in the Secretary of Defense by the Act, as amended (chapter 133 title 10, United States Code), to certain officials in the Department of Defense, apply specifically in the implementation of this Directive.

§ 262.5 Background information relating to 10 U.S.C. 133.

(a) It is recognized that many existing State-owned or State-controlled facilities contain certain types of space, such as drill halls, which were not being fully utilized because of limited support (administrative) space, locker rooms, etc. Contributions of Federal funds to the State for the expansion of these facilities to provide this additional space will insure maximum fiscal economy through the full and joint utilization of common space to the maximum extent practicable.

(b) It is also recognized that many existing State-owned or State-controlled facilities cannot physically accommodate certain equipment involved upon conversion, redesignation, or reorganization of the organizational units previously assigned to those facilities. A provision of chapter 133, 10 U.S.C. (see § 262.1(b)) will relieve the States of the inequitable burden of financing the cost of physical changes in existing facilities made necessary by such organizational changes requested or authorized by the Federal Government.

MAURICE W. ROCHE,
Director, Correspondence and
Directives Division, OASD
(Administration).

[FR Doc. 71-3525 Filed 3-12-71; 8:47 am]

Title 49—TRANSPORTATION

Chapter III—Federal Highway Administration, Department of Transportation

SUBCHAPTER B—MOTOR CARRIER SAFETY REGULATIONS

[Docket No. MC-16; Notice No. 71-4]

PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES

The Director of the Bureau of Motor Carrier Safety is issuing a major revision of the rules in the Motor Carrier Safety Regulations pertaining to the safe transportation of hazardous materials by carriers who engage in interstate or foreign commerce. This revision is part of a broad Federal program of increased efforts towards reducing the level of risks involved in the movement of hazardous materials. Many fatal—and sometimes catastrophic—accidents have occurred in recent years. The result has been renewed program emphasis on eliminating unsafe practices and regulations that permit them to exist. In the recent Hazardous Materials Transportation Control Act of 1970 (Public Law 91-458), Congress again made it clear that the Department of Transportation has primary responsibility for ensuring that the hazards of transporting dangerous commodities are reduced to the lowest possible level.¹ The recent adoption of revised regulations pertaining to reporting of serious accidents involving transportation of hazardous materials (35 F.R. 16836) was a step aimed at carrying out that responsibility.

¹ The responsibility is shared to some extent with other Federal and State agencies. The Department of Defense is the largest shipper of hazardous materials. The Interstate Commerce Commission issues certificates to for-hire carriers of those materials. In a recent decision (111 MCC 575) the Commission said that despite the transfer to the Department of Transportation of responsibility for prescribing routes over which hazardous commodities may be transported, the Commission remains empowered to prohibit authorized carriers from deviating from the routes specified in their certificates. There is, therefore, a coordinate responsibility for safety of operations among all these Federal agencies.

This revision of Part 397 is another such step. Taken in conjunction with programed increases in enforcement and educational activities, it should result in a significant increase in the level of safety with which hazardous substances are moved over the Nation's highways.

Features of the revised rules were first proposed as long ago as 1961, however, the immediate genesis of this revision of Part 397 is a notice of proposed rule making which the Federal Highway Administrator issued on December 11, 1969 (34 F.R. 20214). In that Notice, the Administrator set forth the text of the proposed new regulations and invited interested persons to comment upon them. Twenty-five parties responded to that invitation. In addition, the views of other Federal agencies which have duties relating to hazardous materials were received and considered. As a result of the Bureau's study of the available information and views, the following actions have been taken:

1. Section 397.1(a)(1), as proposed, would have obligated every supervisory employee or officer of a motor carrier to know and obey the rules in Part 397. In response to contentions that the application of those duties was stated too broadly, the Director has limited the duties so that they apply only to carrier officers or employees who perform supervisory duties related to transportation of hazardous materials. Carrier personnel on the operating level, i.e., those who operate or are in charge of vehicles containing hazardous materials, are obligated to know and comply with the regulations under § 397.1(a)(2).

2. The issue of compliance with State and local laws dealing with transportation of hazardous materials caused considerable controversy. In § 397.3 of the proposal, the Administrator provided that motor vehicles containing hazardous materials must be operated in accordance with those laws to the extent that they impose a more affirmative obligation or restraint than applicable Department of Transportation regulations. Some persons who filed comments asked the Director to preempt all State and local laws, pointing to the benefits that would flow from uniform Federal regulations having universal application and eliminating the burdens of special local law or regulation. Some respondents argued against any reference to State and local laws at all; these persons saw the proposal as placing carriers in double jeopardy and requiring them and their drivers to make fine jurisdictional distinctions. The Director has decided that neither of these positions is valid, and that § 397.3 should be adopted in its proposed form. The request for total Federal preemption vastly overstates the existing authority or capability of this, or any other Federal agency to establish rules governing all phases of the operation of motor vehicles, regardless of the nature of the commerce. Establishment and enforcement of those rules has historically been based on the character of the commerce, and the tradition is too far along to be broken in the context of an administrative rulemaking proceeding. Consequently, Federal regula-

tions must continue to play a leading, but not exclusive role in the totality of law governing motor vehicle operations. Restated § 397.3 merely applies to vehicles transporting hazardous materials, a rule which has been in force for interstate carriers generally for many years. (See 49 CFR 392.3.) No undue burdens appear to have resulted from requiring those same carriers to obey local and State laws. The only novelty in restating the rule in Part 397 is that it will now apply to intrastate movements of hazardous materials by interstate carriers. The claim that this action will impose new and unbearable obligations appears to be an overstatement.

3. Under § 397.5(a) of the proposal, a motor vehicle transporting Class A or Class B explosives or Poison Class A would have been subject to a continuous attendance requirement. There were many objections to extending the requirement to Class A poisons. The Director has concluded that these objections are meritorious, particularly so because the Hazardous Materials Regulations Board has issued a notice which may result in a broad expansion of the number of substances classified as Poison Class A (Docket No. HM-51, 35 F.R. 8831). Consequently, the reference to Poison Class A has been dropped from § 397.5(a) and from a number of other rules designed to cover the more dangerous hazardous materials. However, this subject will remain open pending the final rule issued in HM-51.

4. Section 397.5(b) contains the exceptions to the general rule that vehicles containing Class A or Class B explosives must be continuously attended. The purpose of these exceptions is to permit motor carriers to develop so-called "safe havens," parking areas constructed so that, in the event the contents of a vehicle explode, the danger to the public in the vicinity will be minimized. The proposal was design-oriented in this respect. It specified that the parking area must be surrounded by hills, timber, or other natural features or by an earthen revetment. Comments indicated that, in this respect, the specification was too restrictive, and did not allow for development of new methods of assuring the protection of the public. Therefore, the Director has eliminated this feature of the proposal. Under the revised rule, the "safe haven" must be an area that has been approved by competent governmental authorities as appropriate for parking vehicles containing dangerous explosives. Other prerequisites of the "safe haven" concept, as set forth in the proposed rule, remain unchanged: except for vehicles containing small quantities of explosives at construction or survey sites, the explosive-laden vehicles must be on property of the carrier, a shipper, or consignee, and the person in charge of the cargo must be aware of its nature and of appropriate steps to follow in emergencies. Finally, it should be noted that neither § 397.5 nor any other provision of the revised Part purports to cover commodities or vehicles once the commodities have been accepted at their final destinations. This is the case because, as a jurisdictional matter,

the scope of the regulations is limited to activities which occur during the flow of commerce.

5. The sole change in § 397.5(c), which deals with attendance of vehicles containing hazardous materials other than Class A or Class B explosives, is the elimination of a provision which would have limited to 15 minutes the length of time a driver may leave such a vehicle unattended on a public street or highway. The contents of several comments indicated that the 15-minute limitation would prove unduly rigid and unfeasible in many instances. It has, therefore, been deleted. However, the Director has left intact a provision that permits those vehicles to be left unattended only while the drivers are performing duties incident and necessary to their duties as vehicle operators, and this exception will be narrowly construed.

6. The major change in the rules relating to parking of motor vehicles containing hazardous materials has been deletion of vehicles carrying Poison Class A from the category of vehicles within the prohibition against on-street parking, parking on private property without the consent of the property's custodian, or long-term parking near buildings and other structures likely to be occupied by large numbers of people. Section 397.7 now subjects only vehicles containing Class A or Class B explosives to those prohibitions. Vehicles carrying other hazardous materials are also prohibited from being parked on or near a street or highway. However, in light of comments that such a ban, if absolute, would preclude loading and off-loading in areas where no off-street parking is available, the Director has added an exception to cover this situation. Several comments argued for abandoning any proscription against parking vehicles containing hazardous materials in certain locations. The argument is that these prohibitions would penalize drivers and carriers whose vehicles break down. That is not the case. Since violators of the rule may be punished only if they act "knowingly", those in charge of vehicles that come to rest in a dangerous location because of mechanical failure do not risk culpability for events beyond their control—at least if they used due care to begin the journey with sound equipment. The objective of the rule is to avoid, as much as is possible, the exposure of parked vehicles carrying dangerous cargoes to accidents when they are parked, particularly on or near high-speed highways.

7. For many years, the Motor Carrier Safety Regulations have specified that vehicles containing hazardous materials must, whenever possible, be routed so as to avoid congested places and other locations where fire, explosion, or escape of those materials could have catastrophic results. Nevertheless, recent years have seen a number of near disasters resulting from vehicles leaving safe routes for other and more hazardous ones. The Director has concluded, therefore, that the rules must be made more specific and less ambiguous. At the same time,

he recognizes that routing of hazardous cargoes often requires compromises between population density in a corridor in which a highway is located and the expeditious manner with which the vehicle can pass through that corridor. Thus, § 397.9(a) is essentially unchanged from the version that appeared in the proposal. What is really necessary, to assure maximum safety, is increased attention to the matter of routing by managers and dispatchers of property motor vehicles, with routes being planned in advance for the purpose of minimizing risks and drivers being educated and required to follow the plans. The motion of a written routing plan for vehicles carrying Class A or Class B explosives is not novel, for it was proposed by the Interstate Commerce Commission in 1961 (26 F.R. 8040). It should help to eliminate unnecessary exposure of those vehicles to situations in which an otherwise run-of-the-mill accident may become a catastrophe. The concept of a written route plan has therefore, been written into § 397.9(b). It need not be burdensome, since formal guidelines and forms have not been imposed. Results are the true test of the effectiveness of compliance with the rules.

8. In response to comments, § 397.15 has been changed so that, even though someone must be in control of fueling a vehicle containing hazardous materials, he may use a fueling device having an automatic cutoff mechanism. On the other hand, the Director has declined to adopt the contention that there is no need to promulgate a special rule on fueling which includes vehicles powered by diesel fuel. It was argued that diesel fuel, in contrast to gasoline, involves a negligible risk of fire, and hence that vehicles using it ought to be exempted. The evidence does not warrant concluding that the hazards associated with fueling diesel vehicles are so low as to justify exemption from the rule. In a notice issued in February 1970, it was noted that "accident investigations by the Bureau of Motor Carrier Safety indicate that diesel fuel, although less volatile than gasoline, creates a substantial risk of fire in some accident situations." (35 F.R. 3177). No evidence substantiating a contrary view has been received. Therefore, the Director has decided to issue a rule applicable to both gasoline-powered vehicles and those using diesel fuel.

9. Section 397.17, dealing with tires, was easily the most controversial provision in the notice of proposed rule making. It proposed mandatory, periodic, en route inspection of tires on certain vehicles equipped with dual tires and immediate replacement of tires found to be damaged or overheated. The comments addressed themselves to three issues: (1) The application of the rule to vehicles using tubeless tires; (2) the period specified for en route inspections (every two hours or 100 miles, whichever is less); and (3) the remedial action to be taken by the driver. On the first point, several comments argued that tire fires in tubeless tires are nonexistent. In looking into

this matter, the Bureau of Motor Carrier Safety conducted a study of tire fire accidents that were reported to it under the requirement of Part 394. It found nine instances in which tubeless tires had caught fire. These nine cases are a relatively small proportion of the 98 tire fire accidents reported. Nevertheless, their existence refutes the allegations of the filings that such fires do not occur and further enforces the position for the need for mandatory periodic inspection of all tires while vehicles containing hazardous materials are engaged in long trips.

Comments on the specified period for en route inspections were quite diverse. Some persons argued for different time-tables, others contended that no inspection at all ought to be required, while a third group said that pretrip inspection programs, coupled with improved driver education efforts, would suffice. Some comments supported the benefits of en route inspections but suggested that no precise intervals be specified, on the ground that the 100-mile/2-hour rule did not give drivers sufficient leeway in selecting a location at which to stop. Accident investigations and compliance checks by the Bureau demonstrate the need for pretrip and en route mandatory inspection requirements. The data make it abundantly clear that, at present, drivers of vehicles transporting hazardous materials are not making proper pretrip inspections of those vehicles. There appear to be several reasons why this is so. Some drivers refuse to expend the time needed to perform an adequate inspection. Others have not been trained to check their vehicles properly. Furthermore, tire manufacturers have agreed that periodic en route inspections are the best method of preventing tire fires. Their views are borne out by accident experience. For these reasons, the Director has decided, in view of the serious consequences flowing from tire fires and the risks they entail, to require inspection of tires by drivers of vehicles containing hazardous materials at the outset of each trip, whenever the vehicle is parked and, in any event, at least once during each 2 hours or 100 miles of travel. The inability of drivers to perform tire inspections precisely every 2 hours or at the 100-mile point is recognized. Therefore these two alternative criteria are written as maxima. Here again, advance planning is desirable and prudent, so that the process of route selection will include choices of pre-planned stopping points for inspection of tires.

When a tire is found to be flat, leaking, or improperly inflated—though not dangerously hot—it may often be safer to move the vehicle to a position of safety than to attempt to perform on-the-spot repairs. In recognition of this consideration, which was the subject of some comments, the Director has agreed to permit such a vehicle to be driven to "the nearest safe place to perform the required repair, replacement, or inflation." Several comments asked how a driver is supposed to ascertain when a

tire is "improperly inflated". These words were not intended to require drivers to carry gauges and to ensure that each tire's inflation pressure is precisely at the mark called for in its manufacturer's specifications. They must be read in the context of the dominant objective of the rule—prevention of tire fires. The Director expects that any well-trained and well-qualified driver will be able to tell, upon visual or physical inspection, whether a tire is so grossly underinflated as to be likely to overheat to the point of combustion.

Once an overheated tire is discovered, prudence dictates that the vehicle should not be moved at all until the tire has been removed and the cause of the overheating has been corrected. Experience demonstrates that an overheated tire frequently presents latent hazards that are difficult to predict or control. It was suggested that if an asbestos blanket were carried on a vehicle, the need for periodic en route inspection of its tires would diminish. Asbestos blankets may serve a useful purpose in controlling tire fires. However, they have their disadvantages. If a tire has become overheated, covering it with an asbestos blanket does not eliminate the heat that has built up in it and may only delay the tire's ignition. In these circumstances, the Director has decided to adhere to the rule that overheated tires must be removed from a vehicle before that vehicle is moved.

10. Section 397.19 of the proposal, dealing with instructions and documents that must be given to drivers of certain vehicles carrying hazardous materials, has been extensively modified. For reasons noted above, the application of this section has been restricted to drivers of vehicles transporting Class A or Class B explosives. Section 397.19(a) (2) of the proposal, as construed by many persons who commented, would have required a driver to be supplied with, and to carry, the text of the laws relating to the transportation of hazardous materials in every jurisdiction in which his vehicle is operated. The Director agrees with those who argued that an on-board encyclopedia of statutes, ordinances, and regulations, would have little utility. The provision has, therefore, been redrafted so that carriers can furnish drivers with summary information about the operative rules of laws written in a manner that will enable each driver readily to understand what is expected of him. Paragraph (c) has been changed to require drivers to be familiar with those documents that must be in their possession. One such document is the written route plan required under § 397.9(b). Although some persons objected to this requirement on the ground that it tended to increase paperwork, others, particularly State and local regulatory agencies, supported it. The support of those agencies was grounded in accident experience in the localities to which their jurisdiction extends. On balance, the Director has decided that the benefits of having a written route plan in the driver's pos-

session outweigh any additional administrative burdens they might entail.

In consideration of the foregoing, Chapter III of Title 49, CFR is amended by revising Part 397 of Subchapter B to read as set forth below.

Effective date. This revision of Part 397 is effective on June 1, 1971.

This revision of Part 397 of the Motor Carrier Safety Regulations is issued under the authority of 18 U.S.C. 834, section 204 of the Interstate Commerce Act, as amended, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, and the delegations of authority at 49 CFR 1.48 and 49 CFR 389.4.

Issued on March 5, 1971.

ROBERT A. KAYE,

Director,

Bureau of Motor Carrier Safety.

Sec.	
397.1	Application of the rules in this part.
397.3	State and local laws, ordinances, and regulations.
397.5	Attendance and surveillance of motor vehicles.
397.7	Parking.
397.9	Routes.
397.11	Fires.
397.13	Smoking.
397.15	Fueling.
397.17	Tires.
397.19	Instructions and documents.

AUTHORITY: The provisions of this Part 397 issued under 18 U.S.C. 834, sec. 204 of the Interstate Commerce Act, as amended (49 U.S.C. 304), sec. 6 of the Department of Transportation Act (49 U.S.C. 1655), and the delegation of authority by the Secretary of Transportation in 49 CFR 1.4(c).

§ 397.1 Application of the rules in this part.

(a) The rules in this part apply to each motor carrier engaged in the transportation of hazardous materials by a motor vehicle which must be marked or placarded in accordance with § 177.823 of this title and to—

(1) Each officer or employee of the carrier who performs supervisory duties related to the transportation of hazardous materials; and

(2) Each person who operates or who is in charge of a motor vehicle containing hazardous materials.

(b) Each person designated in paragraph (a) of this section must know and obey the rules in this part.

§ 397.3 State and local laws, ordinances, and regulations.

Every motor vehicle containing hazardous materials must be driven and parked in compliance with the laws, ordinances, and regulations of the jurisdiction in which it is being operated, unless they are at variance with specific regulations of the Department of Transportation which are applicable to the operation of that vehicle and which impose a more stringent obligation or restraint.

§ 397.5 Attendance and surveillance of motor vehicles.

(a) Except as provided in paragraph (b) of this section, a motor vehicle which

contains Class A or Class B explosives must be attended at all times by its driver or a qualified representative of the motor carrier that operates it.

(b) The rules in paragraph (a) of this section do not apply to a motor vehicle which contains Class A or Class B explosives if all the following conditions exist—

(1) The vehicle is located on the property of a motor carrier, on the property of a shipper or consignee of the explosives, or, in the case of a vehicle containing 50 pounds or less of either Class A or Class B explosives, on a construction or survey site; and

(2) The lawful bailee of the explosives is aware of the nature of the explosives the vehicle contains and has been instructed in the procedures he must follow in emergencies; and

(3) The vehicle is within the bailee's unobstructed field of view, or is located in an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of vehicles containing Class A or Class B explosives.

(c) A motor vehicle which contains hazardous materials other than Class A or Class B explosives and which is located on a public street or highway or the shoulder of a public highway must be attended by its driver. However, the vehicle need not be attended while its driver is performing duties which are incident and necessary to his duties as the operator of the vehicle.

(d) For purposes of this section—

(1) A motor vehicle is attended when the person in charge of the vehicle is on the vehicle, awake, and not in a sleeper berth, or is within 100 feet of the vehicle and has it within his unobstructed field of view.

(2) A qualified representative of a motor carrier is a person who—

(i) Has been designated by the carrier to attend the vehicle;

(ii) Is aware of the nature of the hazardous materials contained in the vehicle he attends;

(iii) Has been instructed on the procedures he must follow in emergencies; and

(iv) Is authorized to move the vehicle and has the means and ability to do so.

(e) The rules in this section do not relieve a driver from any obligation imposed by law relating to the placing of warning devices when a motor vehicle is stopped on a public street or highway.

§ 397.7 Parking.

(a) A motor vehicle which contains Class A or Class B explosives must not be parked—

(1) On or within 5 feet of the traveled portion of a public street or highway;

(2) On private property (including premises of a fueling or eating facility) without the knowledge and consent of the person who is in charge of the property and who is aware of the nature of the hazardous materials the vehicle contains; or

(3) Within 300 feet of the bridge, tunnel, dwelling, building, or place where people work, congregate, or assemble, except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

(b) A motor vehicle which contains hazardous materials other than Class A or Class B explosives must not be parked on or within five feet of the traveled portion of public street or highway except for brief periods when the necessities of operation require the vehicle to be parked and make it impracticable to park the vehicle in any other place.

§ 397.9 Routes.

(a) Unless there is no practicable alternative, a motor vehicle which contains hazardous materials must be operated over routes which do not go through or near heavily populated areas, places where crowds are assembled, tunnels, narrow streets, or alleys. Operating convenience is not a basis for determining whether it is practicable to operate a motor vehicle in accordance with this paragraph.

(b) Before a motor carrier requires or permits a motor vehicle containing Class A or Class B explosives to be operated, he must prepare a written plan of a route that complies with the rules in paragraph (a) of this section for that vehicle and must furnish a copy of the written plan to the vehicle's driver.

§ 397.11 Fires.

(a) A motor vehicle containing hazardous materials must not be operated near an open fire unless its driver has first taken precautions to ascertain that the vehicle can safely pass the fire without stopping.

(b) A motor vehicle containing hazardous materials must not be parked within 300 feet of an open fire.

§ 397.13 Smoking.

No person may smoke or carry a lighted cigarette, cigar, or pipe on or within 25 feet of—

(a) A motor vehicle which contains explosives, oxidizing materials, or flammable materials; or

(b) An empty tank motor vehicle which has been used to transport flammable liquids or gases and which, when so used, was required to be marked or placarded in accordance with the rules in § 177.823 of this title.

§ 397.15 Fueling.

When a motor vehicle which contains hazardous materials is being fueled—

(a) Its engine must not be operating; and

(b) A person must be in control of the fueling process at the point where the fuel tank is filled.

§ 397.17 Tires.

(a) If a motor vehicle which contains hazardous materials is equipped with

dual tires on any axle, its driver must stop the vehicle in a safe location at least once during each 2 hours or 100 miles of travel, whichever is less, and must examine its tires. The driver must also examine the vehicle's tires at the beginning of each trip and each time the vehicle is parked.

(b) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be flat, leaking, or improperly inflated, the driver must cause the tire to be repaired, replaced, or properly inflated before the vehicle is driven. However, the vehicle may be driven to the nearest safe place to perform the required repair, replacement, or inflation.

(c) If, as the result of an examination pursuant to paragraph (a) of this section, or otherwise, a tire is found to be overheated, the driver shall immediately cause the overheated tire to be removed and placed at a safe distance from the vehicle. The driver shall not operate the vehicle until the cause of the overheating is corrected.

(d) Compliance with the rules in this section does not relieve a driver from the duty to comply with the rules in §§ 397.5 and 397.7.

§ 397.19 Instructions and documents.

(a) A motor carrier that transports Class A or Class B explosives must furnish the driver of each motor vehicle in which the explosives are transported with the following documents:

(1) A copy of the rules in this part;

(2) A document containing summary information about the laws, ordinances, and regulations pertaining to transportation of explosives of each State (including the District of Columbia) in which the vehicle will be operated; and

(3) A document containing instructions on procedures to be followed in the event of accident or delay. The documents must include the names and telephone numbers of persons (including representatives of carriers or shippers) to be contacted, the nature of the explosives being transported, and the precautions to be taken in emergencies such as fires, accidents, or leakages.

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The carrier must retain the receipt in its files for one year at its principal place of business or at such regional or terminal offices as the Director of the Bureau of Motor Carrier Safety may approve.

(c) A driver of a motor vehicle which contains Class A or Class B explosives must have in his possession and be familiar with—

(1) The documents specified in paragraph (a) of this section;

(2) The documents specified in § 177.817 of Chapter I of this title; and

(3) The written route plan specified in § 397.9(b).

[FR Doc.71-3515 Filed 3-12-71;8:46 am]

Title 19—CUSTOMS DUTIES

Chapter I—Bureau of Customs, Department of the Treasury

PART 153—ANTIDUMPING

Ferrite Cores (of the Type Use in Consumer Electronic Products) From Japan

MARCH 11, 1971.

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the Secretary of the Treasury responsibility for determination of sales at less than fair value. Pursuant to such authority the Secretary of the Treasury has determined that ferrite cores (of the type used in consumer electronic products) from Japan are being, or are likely to be, sold at less than fair value within the meaning of section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). (Published in the FEDERAL REGISTER of October 29, 1970 (35 F.R. 16745, F.R. Doc. 70-14594).)

Section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), gives the U.S. Tariff Commission responsibility for determination of injury or likelihood of injury. The U.S. Tariff Commission has determined, and on January 28, 1971, it notified the Secretary of the Treasury that an industry in the United States is being injured by reason of the importation of ferrite cores (of the type used in consumer electronic products) from Japan sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended. (Published in the FEDERAL REGISTER of February 3, 1971 (36 F.R. 1934, F.R. Doc. 71-1446).)

On behalf of the Secretary of the Treasury, I hereby make public these determinations, which constitute a finding of dumping with respect to ferrite cores (of the type used in consumer electronic products) from Japan.

Section 153.43 of the Customs Regulations is amended by adding the following to the list of findings of dumping currently in effect:

Merchandise	Country	T.D.
Ferrite Cores (of the type used in consumer electronic products).	Japan.....	71-84

(Secs. 201, 407, 42 Stat. 11, as amended, 18; 19 U.S.C. 160, 173.)

[SEAL] EUGENE T. ROSSIDES,
Assistant Secretary of the Treasury.

[FR Doc.71-3648 Filed 3-12-71;9:15 am]

Proposed Rule Making

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[14 CFR Parts 25, 29, 37, 91, 121,
123, and 135]

[Docket No. 10915; Notice No. 71-7]

EMERGENCY LOCATOR TRANSMITTERS

Notice of Proposed Rule Making

The Federal Aviation Administration is considering amending Parts 25, 29, 37, and 91 of the Federal Aviation Regulations to implement Section 31 of Public Law 91-596, achieve uniformity in terminology used, and update requirements and standards for the manufacture, installation, airworthiness, and operation of emergency locator transmitters required on airplanes operated in air commerce. In addition, it is proposed to update current requirements in Part 121, which also apply to air travel clubs operating under Part 123, for emergency signaling devices required for extended overwater operations and operation over uninhabited terrain, and added to Part 135 a requirement for an emergency locator transmitter for extended overwater operation.

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to: Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, GC-24, 800 Independence Avenue SW., Washington, DC 20590. All communications received on or before May 12, 1971, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons.

During the past 3 years, the FAA has been concerned with the need for an emergency signaling device on aircraft to facilitate search and rescue efforts in locating downed aircraft. Accordingly, the agency issued advance notice of proposed rule making 68-4 (33 F.R. 3643) in February 1968 soliciting comments concerning the type of device needed, the power required, and the types of operations which should be covered. As a result of the information gained from that Notice, the FAA issued notice of proposed rule making 69-11 (34 F.R. 5442) on

March 17, 1969, which proposed that a "crash locator beacon" be required on all aircraft in operations conducted by air taxi and commercial operators under Part 135, including air taxi operations conducted with large aircraft, and that "survival radio equipment" be carried aboard such aircraft when engaged in extended overwater operations.

Comments on these notices were voluminous and indicated a great interest in the subject. However, before the agency completed its rulemaking action, Congress in 1970, enacted a law (section 31, Public Law 91-596) which amended section 601 of the Federal Aviation Act of 1958 to require the installation of "emergency locator beacons" on U.S. registered civil airplanes used in air commerce, with certain specified exceptions.

As we construe the exceptions specified in section 31 of Public Law 91-596, the beacon requirement does not apply to turbojet engine powered (pure jet) airplanes, or to airplanes of domestic and flag air carriers certificated under Part 121 while being operated by those air carriers in other than charter flights. In addition, that law excludes military airplanes, an airplane used solely for training purposes not involving flights more than 20 miles from its base, and airplanes used for agricultural aircraft operations governed by Part 137 of the Federal Aviation Regulations.

The compliance dates established by Public Law 91-596 for U.S. registered civil airplanes subject to the beacon requirement are December 30, 1971, for those manufactured or imported after that date, and December 30, 1973, for all others. However, it will be noted that for airplanes used by air taxi operators or commercial operators in operations pursuant to Part 135, it is proposed herein to require compliance within 1 year after the effective date of the rule.

The Radio Technical Commission for Aeronautics (RTCA) has developed minimum performance standards for various types of airborne emergency locator transmitters. This notice proposes to amend Part 37 of the Federal Aviation Regulations to incorporate by reference the standards and terminology established by the RTCA for various types of emergency locator transmitters. In addition to the standards established by RTCA, it is proposed to require additional performance standards in keeping with the intent of Public Law 91-596.

It should be clearly understood that the enactment of Section 31 of Public Law 91-596, and the adoption of implementing regulations by the FAA under the authority of the Federal Aviation Act of 1958, as amended, will provide complete Federal regulation regarding emergency locator transmitter requirements for aircraft operating in air com-

merce, to the exclusion of any State regulation regarding such devices.

This proposal would implement Public Law 91-596 by adding to Part 91 of the Federal Aviation Regulations a new § 91.52 entitled "Emergency locator transmitters." Proposed § 91.52 sets forth those operations for which the law requires an airplane to have an emergency locator transmitter and specifies the type of transmitter required for the particular operation by reference to the provisions of § 37.200 of Part 37. In addition, it is proposed to require, in § 91.52 as well as in §§ 121.339, 121.353, and 135.163, that the transmitter battery be replaced after the transmitter has been used in an emergency and also when 50 percent of its useful life has expired. In either case, the new expiration date for the replacement battery would have to be legibly marked on the outside of the transmitter. "Useful life", as defined in proposed § 37.200(g) (2), means the length of time, after its date of manufacture, that the battery may be stored on the shelf under normal environmental conditions without losing its ability to meet the power supply requirements prescribed in the applicable performance standards of § 37.200. The FAA considers this proposal necessary to assure that the transmitter power source will be capable of effective operation when needed.

Section 37.200 is a new section that would be added to Part 37 and titled "Emergency locator transmitters—TSO-C91." As proposed, § 37.200 would establish performance standards for five types of emergency locator transmitters. Three of these consist of automatic types which are divided into three categories, namely, fixed, portable, and deployable. The other two types are categorized as a personnel type and a survival type. However, as previously indicated, it is proposed to add to the RTCA standards: (1) a requirement that personnel type transmitters be automatically operated; (2) a requirement that each transmitter (irrespective of type) be equipped with a manually operated test circuit to determine whether the transmitter is operative; (3) a requirement that the transmitter battery be marked with its date of manufacture; and (4) a requirement that the electrical connections to the battery be corrosion resistant and positive in action.

The FAA is aware that some persons affected by this notice may have already purchased, in anticipation of proposed State requirements, emergency locator transmitter equipment which may, in all respects other than the test circuit, comply with the proposals made in this notice. Accordingly, it is proposed herein to permit use of such equipment without the test circuit if the equipment

was purchased prior to the date of publication of this notice.

The basic performance standards for each of the five types of transmitter are set forth in RTCA Documents Nos. DO-138, DO-145, DO-146, and DO-147, which will be incorporated by reference in § 37.200. These documents are available for examination at each FAA Regional, District, and Area Office.

Subject to the exceptions previously mentioned, § 91.52 would require an automatic emergency locator transmitter to be attached to each airplane used in operations governed by: (1) The supplemental air carrier and commercial operator rules of Part 121; (2) the domestic and flag air carrier charter flight rules of Part 121; (3) the air travel club rules of Part 123; and (4) the air taxi rules of Part 135. The automatic transmitter could be a fixed, portable or deployable type, as specified in § 37.200. The automatic fixed type is attached to the airplane permanently. The portable type is attached in such a manner that it can be removed easily from its mounting, whereas, the deployable type is so attached to the airplane that it can be deployed either automatically or manually.

For general aviation airplane operations governed by Part 91, proposed § 91.52 would require an emergency locator transmitter, identified in § 37.200 as an automatic type or a personnel type, to be attached to the airplane. As previously indicated, this proposal would require (among other things) that the personnel type of transmitter be automatically operable.

It should be noted that RTCA standards for the emergency locator transmitters, other than the survival type, would require a peak effective radiated power of at least 75 milliwatts. This power output level has been proposed because it would provide a useful emergency signal for a range of 50 nautical miles even when conditions at the downed-aircraft site are unfavorable. An adverse antenna orientation, for example, may sharply reduce the power radiated in useful directions; the terrain may absorb power or significantly distort the radiation pattern; and the weather may weaken the signal. The FAA is aware that the weight, size, and cost of emergency locator transmitters are related to output power, and that each of these factors would decrease in some measure if the 75 milliwatt power requirement were reduced. However, a reduction in power would mean (if all other factors remained unchanged) a reduction in the range at which the signal could be picked up by search and rescue aircraft, thereby limiting the usefulness of the transmitter as a safety device. Comments are specifically requested on whether the proposed 75 milliwatt power requirement is in fact reasonable for the purpose and, if not, what value would be more appropriate, and why.

In addition to the foregoing, this notice proposes to amend Parts 25, 29, 121, and 135 to achieve uniformity in terminology and update requirements for certain signaling devices. Specifically,

the current ditching certification requirement in §§ 25.1415(d) and 29.1415(d) for an "approved long range signaling device" for use in one life raft would be amended by this proposal to require a "survival type emergency locator transmitter" that meets the performance standards prescribed in new § 37.200 for that type of transmitter. These are portable, self-buoyant, water-resistant, independently powered devices (generally attached to a life raft) that transmit signals on emergency frequencies. Devices currently in use that meet the standards of current § 37.166 (TSO-C61a) would be acceptable until the effective date of the proposals made herein.

In §§ 121.339(a)(4) and 121.353(b) the requirement for an "emergency signaling device" would be replaced by a requirement for a "survival type emergency locator transmitter" that meets the performance standards prescribed in new § 37.200.

Section 135.163 does not presently require any emergency signaling device for extended overwater operations. This proposal would amend § 135.163 by adding in paragraph (b) thereof a requirement that there be attached to one of the required life rafts a "survival type emergency locator transmitter" that meets the requirements of new § 37.200.

As proposed, compliance with the new requirement for a survival type emergency locator transmitter in Parts 121 and 135 that meets the requirements of § 37.200 would be 1 year after the effective date of the amendment.

It should be noted that certain of the requirements of the Federal Communications Commission (FCC) would be applicable to the emergency locator transmitters discussed herein. Accordingly, affected persons should consult the Federal Communications Commission Regulations as part of their examination of the proposals made herein.

In consideration of the foregoing, it is proposed to amend the Federal Aviation Regulations as follows:

1. By amending § 25.1415(d) to read as follows:

§ 25.1415 Ditching equipment.

(d) There must be a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter for use in one life raft.

2. By amending § 29.1415(d) to read as follows:

§ 29.1415 Ditching equipment.

(d) There must be a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter for use in one life raft.

3. By adding a new section to Part 37 to read as follows:

§ 37.200 Emergency locator transmitters—TSO-C91.

(a) *Applicability.* This technical standard order prescribes the minimum

performance standards that airborne emergency locator transmitters must meet in order to be identified with the applicable TSO marking. Emergency locator transmitters which are to be so identified must meet the requirements set forth in paragraphs (b) and (c) of this section.

(b) *Basic performance standards.* Basic performance standards are hereby established for the following types of emergency locator transmitters:

(1) *Type ELT(P), (Personnel type).* Personnel type emergency locator transmitters must meet the standards set forth in Radio Technical Commission for Aeronautics Document No. DO-145 titled "Minimum Performance Standards—Personnel Type Emergency Locator Transmitters, ELT(P), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(2) *Type ELT(AF), (Automatic fixed type).* Automatic fixed type emergency locator transmitters must meet the standards for Automatic Fixed (AF) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO-147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters, ELT(AF) (AP) (AD), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(3) *Type ELT(AP), (Automatic portable type).* Automatic portable type emergency locator transmitters must meet the standards for Automatic Portable (AP) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO-147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters, ELT(AF) (AP) (AD), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(4) *Type ELT(AD), (Automatic deployable type).* Automatic deployable type emergency locator transmitters must meet the standards for Automatic Deployable (AD) Type equipment set forth in Radio Technical Commission for Aeronautics Document No. DO-147 titled "Minimum Performance Standards—Automatic Fixed, Automatic Portable and Automatic Deployable Type Emergency Locator Transmitters, ELT(AF) (AP) (AD), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(5) *Type ELT(S), (Survival type).* Survival type emergency locator transmitters must meet the standards set forth in Radio Technical Commission for Aeronautics Document No. DO-146 titled "Minimum Performance Standards—Survival Type Emergency Locator Transmitters, ELT(S), operating on 121.5 and 243.0 Megahertz," dated November 5, 1970.

(c) *Additional performance standards.* In addition to meeting the basic performance standards (as applicable) set forth in paragraph (b) of this section—

(1) Each personnel type emergency locator transmitter must, when installed

in accordance with the manufacturer's instructions—

(i) Be automatically activated when subjected to a force of 5.0 ± 2.0 g and greater for a duration of 11 milliseconds and greater in the direction of the longitudinal axis of the aircraft;

(ii) Not be activated under conditions less severe than those prescribed in subparagraph (b) (1) (i); and

(iii) After activation, remain activated when subsequently subjected to shock forces in any direction of up to 50 g and having durations up to 11 milliseconds.

(2) Each personnel, automatic, and survival type emergency locator transmitter must be equipped with a manually-activated test circuit to determine whether it is operative. The test circuit must receive all its indicating energy from radiated power. However, the radiated field associated with the test circuit may not exceed 15 microvolts per meter at a distance of 1 foot, free space, irrespective of direction.

(3) Each personnel, automatic, and survival type emergency locator transmitter must have its battery permanently and legibly marked with the date (month and year) of the battery's manufacture. In addition, the electrical connections to the battery must be corrosion resistant and positive in action. Connections relying on spring force alone are not acceptable.

(d) *Environmental standards.* Unless otherwise stated in RTCA documents referenced in paragraphs (b) and (c) of this section, environmental testing must be done in accordance with RTCA Document No. DO-138 titled "Environmental Conditions and Test Procedures for Airborne Electronic/Electrical Equipment and Instruments," dated June 27, 1968.

(e) *Availability of documents.* RTCA Documents Nos. DO-138, DO-145, DO-146, and DO-147 are incorporated herein in accordance with 5 U.S.C. 552(a) (1) and § 37.23 of this part and are available as indicated in § 37.23. Additionally, these RTCA documents may be examined at any FAA Regional Office of the Chief, Engineering and Manufacturing Branch (or, in the case of the Western Region, the Chief, Aircraft Engineering Division). The above documents may be obtained from the RTCA Secretariat, Suite 655, 1717 H Street NW., Washington, DC 20006.

(f) *Marking.* (1) In addition to the markings specified in § 37.7(d) of this part, the equipment must be permanently and legibly marked with its type designation as set forth in paragraph (b) of this section, and must be legibly marked with the date on, or before, which the battery must be replaced to comply with the useful life limitation prescribed in paragraph (g) (2) of this section.

(2) Each separate component of the equipment (antenna, transmitter, or other) must be permanently and legibly marked with at least the manufacturer's name and the TSO number.

(g) *Data requirements.* In accordance with § 37.5 of this part, the manufacturer must furnish to the Chief, Engineering and Manufacturing Branch, Flight Standards Division (or, in the case of the Western Region, to the Chief, Aircraft Engineering Division), Federal Aviation Administration, in the region in which the manufacturer is located, one copy of the following technical data, except that additional copies must be furnished upon request by the FAA:

(1) Manufacturer's operating instructions and equipment limitations, containing a statement identifying the type designation of the equipment as prescribed in paragraph (b) of this section.

(2) Installation instructions, including applicable schematic diagrams, wiring diagrams, procedures, and specifications. The specifications must set forth all limitations, restrictions, or other conditions, pertinent to the installation. The limitations must include a limitation on the use of the battery beyond 50 percent of its useful life, as established by the transmitter manufacturer. For the purpose of this subparagraph, the useful life of the battery (established by the transmitter manufacturer) is the length of time, after its date of manufacture, that the battery may be stored on the shelf under normal environmental conditions without losing its ability to meet the power supply requirements prescribed in the applicable performance standards of paragraph (b) of this section.

(3) List of components (by part number) that make up the equipment system complying with the applicable standards prescribed in this section.

(4) Manufacturer's test report.

(5) Equipment data sheets specifying the equipment's actual performance with respect to each performance factor prescribed in the applicable standard, and the ranges of environmental factors (temperature, altitude, etc.) within which that performance can be attained.

(h) *Data furnished with each manufactured unit.* A copy of the installation instructions prescribed in paragraph (g) (2) of this section, and of the equipment data sheets prescribed in paragraph (g) (5) of this section, must be furnished with each emergency locator transmitter manufactured under this TSO.

4. By adding a new section to Part 91 to read as follows:

§ 91.52 Emergency locator transmitters.

(a) Except as provided in paragraphs (c), (f), and (g) of this section:

(1) After December 30, 1971, no person may operate a U.S. registered civil airplane manufactured or imported after that date unless it meets the applicable requirements of paragraphs (b), (c), and (d) of this section.

(2) After (date one year after the effective date of this amendment) for operations (with airplanes not subject to paragraph (a) (1) of this section) governed by Part 135 of this chapter, and after December 30, 1973, for all other

operations, no person may operate a U.S. registered civil airplane unless it meets the applicable requirements of paragraphs (b), (c), and (d) of this section.

(b) To comply with paragraph (a) of this section, each U.S. registered civil airplane must be equipped as follows:

(1) For operations governed by the supplemental air carrier and commercial operator rules of Part 121 of this chapter, or the air travel club rules of Part 123 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter;

(2) For charter flights governed by the domestic and flag air carrier rules of Part 121 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter;

(3) For operations governed by Part 135 of this chapter, there must be attached to the airplane an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter; and

(4) For operations other than those specified in subparagraphs (1), (2), and (3) of this paragraph, there must be attached to the airplane a personnel type or an automatic type emergency locator transmitter that is in operable condition and meets the applicable requirements of § 37.200 of this chapter.

(c) Each emergency locator transmitter required by paragraphs (a) and (b) of this section must be attached to the airplane in such a manner that the probability of damage to the transmitter, in the event of crash impact, is minimized. Fixed and deployable automatic type transmitters must be attached to the airplane as far aft as practicable.

(d) Batteries used in emergency locator transmitters required by paragraphs (a) and (b) of this section must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200 (g) (2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

(e) Notwithstanding paragraphs (a) and (b) of this section, a person may—

(1) Ferry a newly acquired airplane from the place where possession of it was taken to a place where the emergency locator transmitter is to be installed; and

(2) Ferry an airplane with an inoperative emergency locator transmitter from a place where repairs or replacement cannot be made to a place where they can be made.

No persons other than required crewmembers may be carried aboard an airplane being ferried pursuant to paragraph (e) of this section.

(f) Paragraphs (a) and (b) of this section do not apply to—

(1) Turbojet engine powered airplanes;

(2) Scheduled operations (other than charter flights) conducted by a domestic or flag air carrier certificated under Part 121 of this chapter;

(3) Training flights conducted within a 20-mile radius of the airport from which the flight began; or

(4) Agricultural aircraft operations governed by Part 137 of this chapter.

(g) The emergency locator transmitter required by paragraphs (a) and (b) of this section need not meet the manually-operated test circuit requirement in § 37.200(c) (2) if the operator shows that he had purchased the transmitter prior to (date of publication of this notice in the FEDERAL REGISTER.

5. By amending § 121.339 (a) (4) and (b) to read as follows:

§ 121.339 Equipment for extended overwater operations.

(a) * * *

(4) A survival type emergency locator transmitter that after (date 1 year after the effective date of this amendment) meets the applicable requirements of § 37.200 of this chapter. The transmitter must be attached to one of the required life rafts. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g) (2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

(b) The required life rafts, life preservers, and survival type emergency locator transmitter must be easily accessible in the event of a ditching without appreciable time for preparatory procedures. This equipment must be installed in conspicuously marked, approved locations.

6. By amending § 121.353 (b) to read as follows:

§ 121.353 Equipment for operations over uninhabited terrain areas: flag and supplemental air carriers and commercial operators.

* * *

(b) A survival type emergency locator transmitter that after (date 1 year after the effective date of this amendment) meets the applicable requirements of § 37.200 of this chapter. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g) (2) of this chapter) has expired. The new expiration date for the replacement battery must

be legibly marked on the outside of the transmitter.

7. By amending § 135.163 to read as follows:

§ 135.163 Emergency equipment: extended overwater operations.

(a) No person may operate an aircraft in extended overwater operations unless it carries enough life rafts (with proper buoyancy) to carry all occupants of the aircraft, and unless there is attached to each life raft, and clearly marked for identification, at least—

(1) One canopy (for sail, sunshade, or for rain catcher);

(2) One radar reflector (or similar device);

(3) One life raft repair kit;

(4) One bailing bucket;

(5) One signaling mirror;

(6) One police whistle;

(7) One raft knife;

(8) One CO₂ bottle for emergency inflation;

(9) One inflation pump;

(10) Two oars;

(11) One 75-foot retaining line;

(12) One magnetic compass;

(13) One dye marker;

(14) One flashlight;

(15) At least one pyrotechnic signaling device;

(16) A two-day supply of emergency food rations supplying at least 1,000 calories a day for each person;

(17) One sea water desalting kit for each two persons the raft is rated to carry, or two pints of water for each person;

(18) One fishing kit; and

(19) One book on survival appropriate for the area in which the aircraft is operated.

(b) After (date 1 year after the effective date of this amendment) no person may operate an aircraft in extended overwater operations unless there is attached to one of the life rafts required by paragraph (a) of this section a survival type emergency locator transmitter that meets the applicable requirements of § 37.200 of this chapter. Batteries used in this transmitter must be replaced after the transmitter has been used in an emergency and must also be replaced when 50 percent of their useful life (as established by the transmitter manufacturer under § 37.200(g) (2) of this chapter) has expired. The new expiration date for the replacement battery must be legibly marked on the outside of the transmitter.

These amendments are proposed under the authority of sections 313 (a), 601, and 604 of the Federal Aviation Act of 1958 (49 U.S.C. 1354, 1421, and 1424), and section 6(c) of the Department of Transportation Act (49 U.S.C. 1655(c)).

Issued in Washington, D.C., on March 10, 1971.

JAMES F. RUDOLPH,
Director, Flight Standards Service.
[FR Doc. 71-3546 Filed 3-12-71; 8:48 am]

[14 CFR Parts 71, 73]

[Airspace Docket No. 70-AL-5]

DESIGNATION OF RESTRICTED AREA AND ALTERATION OF FEDERAL AIRWAY AND CONTINENTAL CONTROL AREA

Notice of Proposed Rule Making

The Federal Aviation Administration (FAA) is considering amendments to Parts 71 and 73 of the Federal Aviation Regulations that would designate a restricted area at Chatanika, Alaska, and a west alternate to VOR Federal airway No. 438 between Fairbanks, Alaska, and Fort Yukon, Alaska. Also, the Continental control area would be altered to include the proposed restricted area.

Interested persons may participate in the proposed rule making by submitting such written data, views, or arguments as they may desire. Communications should identify the airspace docket number and be submitted in triplicate to the Director, Alaskan Region, Attention: Chief, Air Traffic Division, Federal Aviation Administration, 632 Sixth Avenue, Anchorage AK 99501. All communications received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposed amendments. The proposals contained in this notice may be changed in the light of comments received.

An official docket will be available for examination by interested persons at the Federal Aviation Administration, Office of the General Counsel, Attention: Rules Docket, 800 Independence Avenue SW., Washington, DC 20590. An informal docket also will be available for examination at the office of the Regional Air Traffic Division Chief.

The FAA proposes the following airspace actions:

1. The Chatanika, Alaska, restricted area would be designated as follows:

Boundaries. Within a 1½-mile radius circle centered at lat. 65°07'45" N., long. 147°29'30" W., and within a line drawn from the northerly tangent of the 1½-mile radius circle to lat. 65°15'00" N., long. 146°19'00" W., thence to lat. 64°59'40" N., long. 146°19'00" W., thence to the southerly tangent of the 1½-mile radius circle.

Designated Altitudes. Surface to unlimited.

Time of Designation. From 0930 to 1030 a.m. local time for a period of 2 years beginning July 1, 1971.

Controlling Agency. Federal Aviation Administration, Fairbanks ARTC Center.

Using Agency. U.S. Army Electronics Command, Fort Huachuca, Ariz.

2. V-438 would be altered by adding a standard west alternate between the Fairbanks, Alaska, VORTAC and the Fort Yukon, Alaska, VOR.

3. The continental control area would be altered by adding the Chatanika restricted area.

The proposed restricted area is needed as a part of a worldwide network of meteorological rocket sounding stations to