Office of the Secretary

[43 CFR Part 2]

RECORDS AND TESTIMONY

Denial of Public Access

The proposed addition of paragraph (c) to 43 CFR 2.2 would require officers and employees of the Department of the Interior in replying to written requests by a member of the public to inspect or receive copies of records of the Department to advise the applicant in writing if the request is denied of the reasons therefor and of the applicant's right of appeal to the Solicitor. A copy of each such reply is to be forwarded to the Office of the Solicitor, Washington, D.C. 20240.

Interested persons may participate in the proposed rule making by submitting written comments to the U.S. Department of the Interior, Office of the Solicitor, Washington, D.C. 20240. All comments received within 30 days after publication of this notice in the FEDERAL REGISTER will be considered before action is taken on the proposal.

MITCHELL MELICH,
Solicitor.

JUNE 8, 1972.

The following paragraph (c) is added to § 2.2:

§ 2.2 Determinations as to availability of records.

* * * * *

(c) All replies by officers or employees of the Department of the Interior to written requests denying a member of the public an opportunity to inspect or receive copies of records of the Department shall advise the applicant, in writing, of the reason for the denial and of the right of appeal to the Solicitor. A copy of all such replies shall be forwarded to the U.S. Department of the Interior, Office of the Solicitor, Washington, D.C. 20240.

[FR Doc.72-8891 Filed 6-13-72;8:45 am]

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[7 CFR Part 1106]

[Docket No. AO-210 A34]

MILK IN OKLAHOMA METROPOLITAN MARKETING AREA

Notice of Hearing on Proposed Amendments to Tentative Marketing Agreement and Order

Notice is hereby given of a public hearing to be held at the Tradewinds Central Motel, 3141 East Skelly Drive, Tulsa, Okla., beginning at 10 a.m., June 27, 1972, with respect to proposed amendments to the tentative marketing agreement and to the order, regulating the handling of milk in the Oklahoma metropolitan marketing area.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreement and to the order.

The proposed amendments, set forth below, have not received the approval of the Secretary of Agriculture.

PROPOSED BY THE PAGE MILK CO.

PROPOSAL NO. 1

§ 1106.53 Location adjustment to handlers.

(a) For milk received from producers at a plant located outside the State of Texas and that portion of Oklahoma that is south of the northern boundaries of Beckham, Washita, Caddo, Canadian, Oklahoma, Pottawatomie, and Seminole Counties and west of the eastern boundaries of Seminole, Pontotoc, Johnston, and Marshall Counties, and 50 or more miles from the city hall in Oklahoma City, by the shortest hard-surfaced highway distance as determined by the market administrator, and classified as Class I milk or assigned location adjustment credit pursuant to paragraph (b) of this section, and for other source milk to which a location adjustment is applicable, the prices specified in § 1106.51(a) shall be subject to a location adjustment credit computed as follows:

Distance from the City Hall in Oklahoma City (miles)	*Cents per hundredweight*
50 to 110	10
110.1 to 120	12
120.1 to 130	14
130.1 to 140	16
140.1 to 150	18
150.1 to 160	20
160.1 to 170	22
170.1 to 180	24
180.1 to 190	26
190.1 to 200	28

Plus 1.5 cents for each additional 10 miles or fraction thereof in excess of 200 miles; and

(b) For purposes of calculating such adjustment, transfers between pool plants shall be assigned to Class I disposition at the transferee plant in an amount not in excess of that by which 105 percent of Class I disposition at the transferee plant exceeds the sum of receipts at such plant from producers and cooperative associations pursuant to § 1106.11(c), and the pounds assigned as Class I to receipts from other order plants and unregulated supply plants. Such assignment is to be made first to transferor plants at which no location adjustment credit is applicable and then in sequence beginning with the plant at which the least location adjustment would apply.

PROPOSED BY THE DAIRY DIVISION, CONSUMER AND MARKETING SERVICE

PROPOSAL NO. 2

Make such changes as may be necessary to make the entire marketing agreement and the order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the order may be procured from the Market Administrator, Post Office Box 45563, Tulsa, OK 74145, or from the Hearing Clerk, Room 112-A, Administration Building, U.S. Department of Agriculture, Washington, DC 20250, or may be there inspected.

Signed at Washington, D.C., on June 9, 1972.

E. L. PETERSON,
Administrator.

[FR Doc.72-8973 Filed 6-13-72;8:51 am]

Rural Electrification Administration

[7 CFR Part 1701]

RURAL ELECTRIFICATION PROGRAM

Policy on Large Power Rates and Contracts

Notice is hereby given that pursuant to the Rural Electrification Act, as amended (7 U.S.C. 901 et seq.), REA proposes to issue a revision of REA Bulletin 112-6, Large Power Rates and Contracts. The bulletin is being revised to make certain changes in REA policy and procedure to be followed by electrification program borrowers with respect to retail rates and contract provisions for serving large power loads.

Persons interested in the provisions of revised REA Bulletin 112-6 may submit written data, views, or comments to the Director, Power Supply, Management and Engineering Standards Division, Room 3313, South Building, Rural Electrification Administration, U.S. Department of Agriculture, Washington, D.C. 20250, not later than 30 days from the publication of this notice in the FEDERAL REGISTER. All written submissions made pursuant to this notice will be made available for public inspection at the Office of the Director, Power Supply, Management and Engineering Standards Division, during regular business hours.

A copy of the proposed revision of the bulletin including related contract forms may be secured in person or by written request from the Director, Power Supply, Management and Engineering Standards Division.

A summary of the substantive changes in the proposed revision of REA Bulletin 112-6 is as follows:

1. Changes are proposed in the criteria for requiring REA approval of borrowers' contracts with large power consumers. As proposed, the revised bulletin requires REA approval for large power contracts which:

a. Provide for service to loads with demands of 1,000 kw. (changed from 350 kw.) or more, or,

b. Require additional investment to serve a single consumer or more than (1) $25,000, and, (2) $70/kw. of load.

2. The proposed bulletin provides that, in general, a rate of general application is to be used for large power consumers rather than special rates for each individual load.

3. REA recommends a line extension policy for service to large power loads based on revenue to be received over a 5-year period under a 5-year contract, when the additional investment to serve such a load is less than 5 percent of the total system investment.

Dated: June 8, 1972.

E. C. WEITZELL,
Acting Administrator.

[FR Doc.72-8936 Filed 6-13-72;8:52 am]

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[49 CFR Parts 391, 392, 393, 394, 395, 396]

[Notice 72-5; Docket No. MC-37]

CONTRACT CARRIERS OF MAIL BY MOTOR VEHICLE

Notice of Proposed Rule Making

The purpose of this notice is twofold. First, the Director is announcing that it is the position of the Bureau of Motor Carrier Safety of the Federal Highway Administration that motor carriers who transport mail in interstate or foreign commerce under contract with the U.S. Postal Service are subject to the Motor Carrier Safety Regulations (49 CFR Parts 390-397) issued under section 204 of the Interstate Commerce Act, 49 U.S.C. 304. Second, the Director proposes to provide an administrative exemption from application of the regulations for carriers and drivers engaged exclusively in transporting mail by means of light weight (10,000 pounds gross weight or less) motor vehicles. This notice also describes the plan of the Bureau of Motor Carrier Safety for administering and enforcing the Motor Carrier Safety Regulations with respect to motor carriers of mail who are not exempted.

The Director of the Bureau of Motor Carrier Safety is issuing this notice to alert persons engaged in motor carrier operations using heavy vehicles under contract with the Postal Service to their status and the nature of the obligations imposed on them by law. The Director is mindful of the fact that, in the past, there have been a number of public declarations on the subject of the amenability of contract mail carriers generally to regulations under the Interstate Commerce Act.[1] A major purpose of this notice is to dispel any unwarranted conclusion on the part of motor carriers of mail who are engaged in interstate or foreign commerce that they enjoy a special general statutory exemption from compliance with the Motor Carrier Safety Regulations. The Director hopes that this notice and the efforts of the Bureau's enforcement staff described below will induce contract carriers of mail by heavy motor vehicles to comply with the Regulations on a voluntary basis.

In the following segments of this notice, the Director outlines the origins and nature of the Bureau's jurisdiction, sets forth the legal bases for the Bureau's position on the application of the Motor Carrier Safety Regulations to contract carriers of mail, summarizes the safety considerations which make the application of the safety regulations to carriers of mail advisable, describes the Bureau's program of surveillance and enforcement with respect to those carriers, and discusses the basis and purpose of the proposed exemptions for certain contract mail carriers.

I. *The Bureau of Motor Carrier Safety and its motor carrier safety responsibility.* In section 204(a) of the Interstate Commerce Act, 49 U.S.C. 304(a), the Interstate Commerce Commission was authorized to regulate certain motor carriers who operate in interstate or foreign commerce. Among other things, the Commission was given the duty of establishing for contract carriers of property "reasonable requirements with respect to * * * qualifications and maximum hours of service of employees, and safety of operation and equipment." 49 U.S.C. 304(a)(2). The Act also contains provisions relative to administration and enforcement of the regulations issued under the authority of section 204(a).

To implement the provisions of the Act relative to safety regulation of motor carriers, the Interstate Commerce Commission issued and enforced the Motor Carrier Safety Regulations. The first set of safety regulations was issued in 1936 (1 MCC 1) and was applicable to common and contract carriers engaged in interstate or foreign commerce. During the years that followed, the safety regulations were revised and refined many times.

In 1966, Congress enacted the Department of Transportation Act (Public Law 89-670, 80 Stat. 931), which established the Department of Transportation as an executive department of the Government. Section 6(e) of the Act, 49 U.S.C. 1655(e), transferred the Interstate Commerce Commission's jurisdiction over motor carrier safety, including the power to issue, administer, and enforce safety regulations under section 204 of the Interstate Commerce Act, to the Secretary of the new Department of Transportation. In section 6(f) of the Department of Transportation Act, 49 U.S.C. 1655(f), Congress provided that the Secretary's functions, powers, and duties pertaining to motor carrier safety transferred from the Interstate Commerce Commission would be exercised by the Federal Highway Administrator. Accordingly, in 49 CFR 1.48, the Secretary has delegated the related authority to the Federal Highway Administrator. The Bureau of Motor Carrier Safety, headed by a Director, is an operating unit of the Federal Highway Administration, created by the Administrator to carry out the Federal Highway Administration's motor carrier safety program. The Administrator has delegated to the Director of the Bureau authority to issue, amend, or revoke provisions of the Motor Carrier Safety Regulations. See 49 CFR 389.4. In addition, much of the Administrator's authority with respect to enforcement of the Motor Carrier Safety Regulations has been delegated to the Bureau Director.

The Motor Carrier Safety Regulations are found in Subchapter B of Chapter III in Title 49, Code of Federal Regulations.[2] The regulations consist of rules that motor carriers must obey during any operations in interstate or foreign commerce. Subjects covered by the regulations include qualifications of drivers, driving rules, parts and accessories necessary for safe operation of motor vehicles, reporting of accidents, hours of service of drivers, inspection and maintenance programs, and operation of motor vehicles transporting hazardous materials. The Bureau of Motor Carrier Safety makes every effort to induce and assist motor carriers to comply with the regulations on a voluntary basis; it conducts seminars and other educational programs for drivers and other carrier employees whose duties pertain to safety of operations, and the Federal Highway Administration field staff conducts safety surveys and holds conferences with carriers to assist in making their safety programs viable. When efforts to achieve voluntary compliance are unsuccessful, the Bureau administers a formal enforcement program. Criminal violations of the Motor Carrier Safety Regulations are referred to the Department of Justice for prosecution under 49 U.S.C. 322(a) and 49 U.S.C. 322(c). Civil forfeitures for violations are imposed and collected under 49 U.S.C. 322(h) and 49 CFR Part 385. The Bureau also initiates proceedings under 49 CFR Part 386 looking toward the issuance of cease-and-desist orders as authorized by 49 U.S.C. 304(c).

II. *Applicability of the Motor Carrier Safety Regulations to motor carriers of mail.* As the Director has noted above, section 204(a)(2) of the Interstate Commerce Act, 49 U.S.C. 304(a)(2), authorizes the Department of Transportation

[1] See Department of Labor Notice at 36 F.R. 21778, 21785 (1971). See also cases cited in footnotes 3 and 4, infra.

[2] Single copies of that Motor Carrier Safety Regulations may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The cost is 65 cents.

"To regulate contract carriers by motor vehicle as provided in this chapter, and to that end the * * * [Department] may establish reasonable requirements with respect to * * * qualifications and maximum hours of service of employees, and safety of operation and equipment." There is nothing in the broad mandate of that language, or in the Act's definition of the term "contract carrier" (section 203(a)(15), 49 U.S.C. 303(a)(15)), that purports to exempt a motor carrier whose cargo is mail carried under contract with the Postal Service from the grant of regulatory jurisdiction. In section 203(b) of the Act, 49 U.S.C. 303(b), Congress has created a set of explicit, limited categories of exempt carriers. Mail carriers are nowhere included among those exempt carriers. Furthermore, it is clear that, when it authorized the exemptions, Congress consciously focussed on the issue of safety regulations. In the introductory language of section 203(b), it specifically provided that the exemptions did not cover compliance with safety regulations. In section 208(d), 49 U.S.C. 308(d), Congress authorized the certification of passenger carriers as carriers of mail in the same vehicle as the passengers, thereby indicating that it considered transportation of mail as a subject within the ambit of the authority conferred by section 204 of the Act.

The legislative history of the statute is consistent with the notion that carriers of mail were intended to come under the regulatory scheme. The Interstate Commerce Act was extended to cover motor carriers with the enactment of the Motor Carrier Act of 1935, 49 Stat. 543. The Motor Carrier Act (subsequently retitled part II of the Interstate Commerce Act) had its genesis in draft legislation recommended to the Congress in the 1934 Report of the Coordinator of Transportation (S. Doc. No. 152, 73d Cong., second sess.). See United States v. American Trucking Assn's, 310 U.S. 534, 538 (1940); Maurer v. Hamilton, 309 U.S. 598, 607 (1940). In that report, the Coordinator gave specific consideration to exempting mail carriers, as well as other carriers under contract to Government agencies, from regulation. The report (at p. 175) states:

> Exemptions of schoolbuses and mail and Government-owned vehicles are observed in many States. In most States they are exempted without qualification, but in others certain restrictions apply, as, for example, that the schoolbus must be operated directly or under contract by the school authorities or the mail vehicle must not exceed a certain capacity, or be used exclusively on its mail route, or be used only when no public transportation is available.

It is significant that, having dealt directly with the question of exempting carriers operating in Government service, the Coordinator recommended, and the Congress passed, a specific exemption for vehicles carrying schoolchildren (section 203(b)(1), 49 U.S.C. 303(b)(1)), but did not attempt to exempt mail carriers. The clear inference is that neither the coordinator nor the Congress intended that mail carriers should be exempt.

During the years following enactment of the Motor Carrier Act, the Interstate Commerce Commission issued a number of decisions containing broad language that purported to exempt mail carriers from all requirements of the Interstate Commerce Act.[3] None of those cases discussed the merits of absolving mail carriers from the duty of complying with the safety regulations—as contrasted with the economic rules—established under the Act. Indeed, with but a single exception, no decision of the Commission relating to carriers of mail contains any mention of safety at all. The lone exception is Armored Carrier Corp. v. Security Dispatch, Inc., 102 MCC 246 (1966). In that case, the Commission held that it would not regulate contract carriers of mail because, by doing so, it might unduly interfere with the operations of the Post Office Department. As in the other cases, discussion of the reasons for the result was confined entirely to economic matters. In the course of that discussion, the Commission noted (102 MCC at 248): "Moreover carriers under exclusive contract with the Post Office Department are not subject to our safety regulations; nor are the maximum hours of service of their employees regulated by us." As we have noted, the Commission cited no authority which supports conferring a statutory exemption upon mail carriers.[4] In light of the clear evidence that neither the text of the statute nor its legislative history justifies such an exemption, the Director construes the quoted language in the Armored Carrier case as prescribing an exemption rooted in administrative convenience rather than as a gloss upon the statute itself.[5] This being so, it follows that the mail carriers remain subject to safety regulation under the Act, since an exemption of this type can be revoked whenever the agency sees fit to exercise the full extent of its jurisdiction, as the Bureau is now doing.

In 1970, Congress enacted the Postal Reorganization Act (84 Stat. 719), creating the U.S. Postal Service and transferring most of the functions, powers, and duties of the Post Office Department to it. In that statute (39 U.S.C. 5215), Congress provided for the issuance of certificates of public convenience and necessity to star route carriers of mail by motor vehicle. The Commission responded by issuing an ex parte order (Implementation of Public Law 91-375, 113 MCC 14 (1971)), under which star route carriers were divided into two categories. In the first category were carriers who operate in more than one State; the Commission provided for the issuance of certificates to those carriers upon application therefor. See 49 CFR 1100.248. The second category consisted of motor carriers of mail who operate solely in a single State. The Commission's decision, and its resultant rule, provided for the issuance of a certificate of exemption under section 204(a)(4a) of the Interstate Commerce Act, 49 U.S.C. 304(a)(4a), to any mail carrier in this category who applies for one.

The Commission's action is worthy of special attention in this notice because there is a possibility that mail carriers who have been issued an exemption certificate may be misled into the belief that they are thereby exempted from the duty of compliance with the Motor Carrier Safety Regulations. The possibility exists because the certificate issued by the Commission, by its terms, provides that, the holder is "exempt * * * from compliance with the provisions of part II of the Interstate Commerce Act." In addition, the Commission's decision notes that a carrier operating under a certificate of exemption would be subject to "none of the obligations imposed by the Interstate Commerce Act." 113 MCC at 22.

It is clear, however, that motor carriers of mail who hold a single-State certificate of exemption are not thereby relieved from the duty to comply with Federal safety regulations when they operate in interstate or foreign commerce. The Interstate Commerce Commission's issuance of a certificate of exemption relieves those carriers only from compliance with economic rules, e.g., the duty to file and obey tariffs and the obligation to operate only over authorized routes.

As we have seen, the enactment of the Department of Transportation Act in 1966 and the creation of the new Department in the following year, transferred the Commission's authority over

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[3] See Atchison, T. & S.F. Ry. Co., Extension of Operations, 3 MCC 694 (1937); Freer Bros. Motor Exp. Lines Common Carrier Application, 7 MCC 203 (1938); Texas & P. Motor Transp. Co. Common Carrier Application, 12 MCC 37 (1939); Fred M. Sutton Common Carrier Application, 18 MCC 289 (1939); William Blau Common Carrier Application, 61 MCC 705 (1953); Baggett Transp. Co. Investigation of Operations, 77 MCC 584 (1958); Armored Carrier Corp. v. Security Dispatch, Inc., 102 MCC 246 (1966).

[4] The only case cited in Armored Carrier is Thompson v. Daugherty, 40 F. Supp. 279 (D. Md. (1941)). The Thompson case plainly does not support the Commission's rationale. First, the case dealt with the issue of whether mail carriers were subject to the maximum hours provisions of the Fair Labor Standards Act or were exempt as carriers subject to the Commission's safety jurisdiction. Thus, the issue before the Court was not whether those carriers should be free from any Federal regulation but rather which agency—the ICC or the Labor Department—would have regulatory jurisdiction over them in the narrow area of overtime employment. Second, there are a number of District Court decisions which are squarely in conflict with Thompson (e.g., Magann v. Long's Baggage Transfer Co., 39 F. Supp. 742 (W.D. Va., 1941)). Finally, the Court of Appeals for the crcuit in which Thompson was decided has held that the case is not sound authority for the proposition that mail carriers are exempt from safety regulation under section 204 of the Interstate Commerce Act. See Wirtz v. Highway Transportation, Inc., 310 F. 2d 643 (4th Cir. 1962).

[5] It is axiomatic that an administrative agency may decline to exercise its statutory jurisdiction to the full extent permissible under the law. See Office Employees v. NLRB, 353 U.S. 313 (1957).

all matters pertaining to transportation safety to the Department of Transportation.[6] As a result, the Commission lost jurisdiction to create any new exemptions from safety regulations for motor carriers operating solely in a single State; the authority to do so resides exclusively in the Department of Transportation.[7] The Interstate Commerce Commission has itself acknowledged that this is the case, and that certificates of exemption issued pursuant to its 1971 proceeding do not exempt motor carriers of mail from the duty to comply with the Motor Carrier Safety Regulations.[8] Each carrier who holds such a certificate should, therefore, be aware that, despite the broad language of the certificate, his operations in interstate or foreign commerce must be conducted in accordance with the safety regulations.

III. *Mail carriers and the highway safety problem.* The Director has given considerable thought to the question whether motor carriers of mail should be granted a general administrative exemption from compliance with the Motor Carrier Safety Regulations, similar to the exemption they enjoyed during the period when administration of the Safety Regulations was a function of the Interstate Commerce Commission. Since the rates mail carriers charge, the quality of the service they render, and the routes they traverse are all controlled by their contracts with the Postal Service, there is logic in deferring to the Postal Service's authority to regulate the economic aspects of those carriers' operations.

In many respects, regulation of the safety aspects of transportation of mail by motor carriers cannot simply be left to the Postal Service's contract administration. The actual and potential safety hazards that such transportation presents bear a marked similarity to the problems posed by for-hire carriers by motor vehicle generally. As the Commission has noted, even the star route contractors (originally seen as solely local carriers) now "perform operations over long distances, or within a vast territory." 113 MCC at 16. More and more of the mail carriers are using heavy equipment (tractor-semitrailer combinations) essentially identical to the equipment used by long-haul common and contract carriers of general commodities. Cf. Cornelius v. United States, 348 F. 2d 960 (Ct. Cl. 1965). The risks arising from long-haul operations by carriers of mail using articulated, heavy vehicles are certainly no less than the hazards generated by vehicles of other motor carriers. Mitigation of those risks was the motive for enactment of section 204(a) of the Interstate Commerce Act, authorizing issuance of the Motor Carrier Safety Regulations.

Furthermore, the experience of the Bureau of Motor Carrier Safety has been that the larger mail carriers as a class do not operate in a manner that lessens the potential safety hazards they present. Indeed, in some areas, such as maintenance of heavy equipment, the Bureau has found that mail carriers tend to fall below the standard set by the motor carrier industry as a whole. The Bureau has received a large number of disturbing reports of equipment in manifestly unsafe condition being operated by mail carriers in violation of the Motor Carrier Safety Regulations. It appears, therefore, that the public interest in highway safety requires that the scope of the Bureau's activities should extend to carriers of mail who use the larger types of motor vehicles.

The efforts of the postal authorities alone cannot provide an adequate answer to the problem. Contract mail carriers tend to fall into two categories. On the one hand, there is a large group of owner-operators who perform a local service using small vehicles that often are specially adapted for transporting mail. It is reasonable to expect the postal authorities to be able to exact an acceptable degree of compliance with safety requirements from these carriers. The other category consists of larger concerns utilizing fleets of line-haul, heavy vehicles to traverse long distances. Although the standard form contracts for both types of service between the Postal Service and its contract carriers contain provisions requiring the carriers to maintain a minimum standard of safety, the fact remains that the relationship between the Postal Service and the larger carriers is not conducive to a high level of surveillance over carriers' performance in this respect. The primary objective of the postal authorities is, as it should be, to see that the mail is delivered on schedule. Postal inspectors do not have the expertise to uncover violations of safety standards by carriers. The Postal Service does not have a program comparable to the Bureau's driver-equipment compliance checks, nor does it perform routine safety surveys of its carriers. The Postal Service lacks the arsenal of enforcement remedies the Department of Transportation can utilize in case violations are uncovered. In contrast to the small carriers, the contractor is not himself the driver; hence, it is difficult, if not impossible, for the Postal Service to police compliance with driver qualification rules.

In relation to the carriers, the postal authorities are in the position of a shipper, akin to the Department of Defense, which contracts for highway transportation of explosives, household goods, and other property. In all of these cases, it is clear that the Department of Transportation must shoulder the primary burden of regulating the carriers from the standpoint of safety.[9] In discussions with the Bureau, the Postal Service has agreed that the Motor Carrier Safety Regulations should be fully applicable to contract carriers who operate vehicles having a gross weight of more than 10,000 pounds.

The Director has concluded that if all mail carriers are given a general exemption from compliance with the Motor Carrier Safety Regulations, additional highway deaths and injuries will result. People will be killed and injured in highway crashes involving commercial motor vehicles carrying mail, crashes that might be avoided if the carriers were complying with the Motor Carrier Safety Regulations. It will be small solace to the victims and their survivors and families to point out that the carrier was transporting mail under contract with an independent establishment of the U.S. Government.

Accordingly, the Director has decided that motor carriers of mail who operate heavy motor vehicles in interstate or foreign commerce should not be given a blanket exemption from compliance with the Motor Carrier Safety Regulations.

IV. *The Bureau of Motor Carrier Safety's surveillance and enforcement program with respect to mail carriers.* It is the general policy of the Bureau of Motor Carrier Safety to seek voluntary compliance with the regulations it administers before subjecting persons subject to those regulations to formal enforcement action. The Bureau intends to follow this policy in dealing with contract carriers of mail.

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[6] The legislative history of the Department of Transportation Act makes it clear that Congress intended to give the new Department exclusive jurisdiction over transportation safety matters. In discussing the assignment of responsibility among branches of the Department, the Senate report said (S. Rept. No. 1659, 89th Cong., 2d sess. 11–12):

> In view of the vast area of heavy responsibilities and functions which will be vested in the Secretary, the committee deemed it in the public interest to vest sole authority for all transportation safety decisions in the modal Administrators and in the National Transportation Safety Board. Safety is highly technical in nature and requires the knowledge, experience, and judgment of highly trained and experienced technical specialists. By vesting sole authority for safety matters in trained experts, the committee believes that any possible semblance of political influence will be eliminated * * *.

[7] The Director does not assert that enactment of the Department of Transportation Act voided all prior exemptions from safety jurisdiction given single-State carriers by the Interstate Commerce Commission. Section 12 of the Act, 80 Stat. 949, provides that those exemptions continue in effect until they are modified, superseded, set aside, or repealed by the Department of Transportation. Exemptions for single-State operations remain in force until they are explicitly modified or revoked. However, the enactment of the Department of Transportation Act precluded the Commission from issuing any new exemptions applicable to compliance with safety regulations.

[8] In its Order of June 10, 1971, in Ex Parte No. 86, the Commission said:

> * * * inasmuch as this Commission no longer has administrative jurisdiction over safety matters set forth in part II of the Interstate Commerce Act, the issuance of Certificates of Exemption cannot relieve carriers subject to the provisions of that part from compliance with such safety provisions as administered [sic] by the Department of Transportation * * *

[9] The Bureau of Motor Carrier Safety has for many years been routinely administering the safety regulations under its jurisdiction with respect to motor carriers operating under contract with the Department of Defense. See Texas-Oklahoma Express, Inc. v. United States, 429 F.2d 100 (10th Cir. 1970).

As a first step, the field safety investigators of the Federal Highway Administration will contact all mail carriers of record who are subject to the Motor Carrier Safety Regulations. The purpose of this initial contact is to assure that each carrier is familiar with his obligations under the law. A copy of the regulations will be served on the carrier. The investigator will generally discuss the requirements of the regulations with carrier management.

Thereafter, to the extent their work schedules permit, field safety investigators will be available to discuss specific safety compliance problems and, where they can, to assist carriers to establish efficient and effective systems to assure compliance with the regulations. They will, for example, describe how to set up and administer driver qualification files, so that carriers will not inadvertently utilize drivers who are not qualified to drive commercial motor vehicles in interstate or foreign commerce. They will also discuss how drivers' logs should be filled out and maintained and the steps carriers can take to assure that drivers will not drive or perform other duties in excess of the permissible hours of service. Safety investigators will also be available to consult with carriers on methods of establishing sound preventive maintenance and vehicle inspection programs.

Contract mail carriers will be the subject of routine safety surveys by the field safety investigators. By examining the carrier's files and his physical plant and equipment, the safety investigator makes an assessment of the degree to which he is in compliance with the Motor Carrier Safety Regulations. A report, detailing the areas in which deficiencies have been found, is prepared and given to the carrier. Vehicles operated by contract carriers of mail will also be included in the Federal Highway Administration's regular program of driver-equipment compliance checks. At locations where they are stopped for one reason or another (such as State weighing stations or ports of entry) they will be inspected by safety investigators. As a concession to the nature of their cargo, however, vehicles carrying mail will be given priority so that they will not be unnecessarily delayed en route. In addition, exclusive-use, mail-carrying vehicles that have been properly sealed by the U.S. Postal Service will not be opened for inspection of their cargo. If the investigator who performs an inspection finds violations of the Motor Carrier Safety Regulations, he will prepare a report listing the violations. A copy of the report will be given to the driver, so that the carrier can take the necessary corrective action and certify to that effect when he returns a copy of the form to the Federal Highway Administration. Vehicles which are found to have defects so serious as to render an accident or breakdown imminent will be placed out of service at the point of inspection. Provisions will be made to enable drivers to notify their employers and postal officials in the event a mail-carrying vehicle is placed out of service.

Formal enforcement proceedings will be instituted against willful and persistent violators of the Motor Carrier Safety Regulations, on the basis of information obtained from routine safety surveys and driver-equipment compliance checks. As noted above, these formal proceedings may include: (1) Referring the violations to the Department of Justice for the institution of a criminal prosecution; (2) proceedings to recover a civil forfeiture on behalf of the United States; and (3) proceedings looking towards the entry of a cease-and-desist order which can be enforced in the Federal courts.

V. *The proposed exemptions for lightweight mail trucks and their operators.* As the Director has noted above, many contract carriers of mail are single-vehicle family or one-man operations that use lightweight vehicles to traverse relatively short distances and to perform a local delivery service. These carriers would appear to present a much less substantial risk of serious highway accidents than other, larger, operations. The Postal Service has indicated that it is prepared to exercise the necessary surveillance of these carriers, pursuant to its contracts, to insure that they comply with the substantive provisions of the Motor Carrier Safety Regulations. The Postal Service has also said that, because of their diminutive size, it would be impracticable to subject mail carriers who use lightweight vehicles to many of the record-keeping and reporting requirements that are applicable to motor carriers generally.

The nature of the vehicles used, the type of service performed, and the willingness and ability of the Postal Service to obtain compliance with safety requirements all tend to indicate that mail carriers who use lightweight vehicles should be given a general exemption from the Motor Carrier Safety Regulations. They seem to present a unique case. If it appears at a later date that the public interest is not served by this course of action, these carriers can be brought under such provisions of the regulatory scheme as is appropriate.

In consideration of the foregoing, the Director proposes to amend the Motor Carrier Safety Regulations (Subpart B of Chapter III in Title 49, CFR) as set forth below.

Interested persons are invited to submit data, views, or arguments pertaining to the proposed amendments. All comments should refer to the docket number and notice number appearing at the top of this notice and should be submitted in three copies to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590. All comments received before the close of business on September 1, 1972, will be considered before further action is taken. Comments will be available for examination in the public docket of the Bureau of Motor Carrier Safety, Room 4136, 400 Seventh Street SW., Washington, DC, both before and after the closing date for comments.

Authority. This notice is issued under the authority of section 204 of the Interstate Commerce Act, 49 U.S.C. 304, section 6 of the Department of Transportation Act, 49 U.S.C. 1655, the delegation of authority from the Secretary of Transportation to the Federal Highway Administrator at 49 CFR 1.48, and the delegations of authority from the Federal Highway Administrator to the Director of the Bureau of Motor Carrier Safety in 49 CFR 389.4 and Chapter 7 of Part I of FHWA Order 1–1, December 14, 1970.

Issued on May 31, 1972.

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

PART 391—QUALIFICATIONS OF DRIVERS

I. § 391.2 of Part 391 would be amended by adding a new paragraph (f), reading as follows:

§ 391.2 General exemptions.

* * * * *

(f) *Lightweight mail-truck drivers.* The rules in this part do not apply to a driver who drives only a motor vehicle that—

(1) Is used exclusively to transport mail under contract with the U.S. Postal Service; and

(2) Has a gross weight, including its load, of 10,000 pounds or less.

PART 392—DRIVING OF MOTOR VEHICLES

II. § 392.1 of Part 392 would be revised to read as follows:

§ 392.1 Scope of the rules in this part.

(a) *General.* Except as provided in paragraphs (c) and (d) of this section, every motor carrier, its officers, agents, representatives, and employees responsible for the management, maintenance, operation, or driving of motor vehicles, or the hiring, supervising, training, assigning, or dispatching of drivers, shall be instructed in and comply with the rules in this part.

(b) *Additional rules.* Nothing in Parts 390–397 of this subchapter prohibits a motor carrier from requiring and enforcing more stringent rules and regulations relating to safety of operation.

(c) *Intracity operations.* The rules in this part do not apply to a driver or a vehicle wholly engaged in exempt intracity operations as defined in § 390.16 of this chapter.

(d) *Lightweight mailtrucks.* The rules in this part do not apply to a vehicle that has a gross weight, including its load, of 10,000 pounds or less and is wholly engaged in transporting mail under contract with the U.S. Postal Service or to the driver of that vehicle.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

III. Section 393.1 would be revised to read as follows:

§ 393.1 Scope of the rules in this part.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, every motor carrier, and its officers, agents, drivers, representatives, and employees directly concerned with the installation and maintenance of equipment and accessories, shall comply and be conversant with the requirements and specifications of this part, and no motor carrier shall operate any vehicle, or cause or permit it to be operated, unless it is equipped in accordance with said requirements and specifications.

(b) *Intracity operations.* The rules in this part do not apply to a driver or a vehicle wholly engaged in exempt intracity operations as defined in § 390.16 of this subchapter.

(c) *Lightweight mailtrucks.* The rules in this part do not apply to a vehicle that has a gross weight, including its load, of 10,000 pounds or less and is wholly engaged in transporting mail under contract with the U.S. Postal Service.

PART 394—RECORDING AND REPORTING OF ACCIDENTS

IV. Part 394 is amended by adding a new § 394.1, reading as follows:

§ 394.1 Scope of the rules in this part.

(a) *General.* Except as provided in § 394.4 and in paragraph (b) of this section, the rules in this part apply to all motor carriers.

(b) *Carriers operating lightweight mail trucks.* The rules in this part do not apply to a carrier wholly engaged in transporting mail under contract with the U.S. Postal Service in vehicles which, when loaded, have a gross weight of 10,000 pounds or less.

PART 395—HOURS OF SERVICE OF DRIVERS

V. Section 395.1 is revised to read as follows:

§ 395.1 Compliance with, and knowledge of, the rules in this part.

(a) *General.* Except as provided in paragraph (b) of this section, every motor carrier and its officers, drivers, agents, employees, and representatives shall comply with the rules in this part, and every motor carrier shall require that its officers, drivers, agents, employees, and representatives be conversant with this part.

(b) *Lighweight mailtrucks.* The rules in this part do not apply to a driver who drives only a motor vehicle that—

(1) Is used exclusively to transport mail under contract with the U.S. Postal Service; and

(2) Has a gross weight, including its load, of 10,000 pounds or less.

PART 396—INSPECTION AND MAINTENANCE

VI. Section 396.1 is revised to read as follows:

§ 396.1 Scope of the rules in this part.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, every motor carrier, its officers, drivers, agents, representatives, and employees directly concerned with the inspection or maintenance of motor vehicles, shall comply and be conversant with the rules in this part.

(b) *Intracity operations.* The rules in this part do not apply to a driver or a vehicle wholly engaged in exempt intracity operations as defined in § 390.16 of this chapter.

(c) *Lightweight mailtrucks.* The rules in this part do not apply to a motor carrier or driver wholly engaged in transporting mail under contract with the U.S. Postal Service in motor vehicles which, when fully loaded, have a gross weight of 10,000 pounds or less.

[FR Doc.72-8924 Filed 6-13-72;8:52 am]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social and Rehabilitation Service

[45 CFR Part 248]

PUBLIC ASSISTANCE PROGRAMS

Determination of Disability; Correction

The document of proposed regulations amending current policies pertaining to the program of Aid to the Permanently and Totally Disabled authorized under titles XIV and XVI, and the program of Medical Assistance authorized under title XIX of the Social Security Act, published in the FEDERAL REGISTER on May 18, 1972, at 37 F.R. 10003, is corrected by changing § 248.80(a)(1) to read as follows:

§ 248.80 Disability.

(a) *State plan requirements and options.* (1) A State plan under title XIX of the Social Security Act must:

* * * * *

Approved: June 8, 1972.

STEVEN D. KOHLERT,
Deputy Assistant Secretary for Management.

[FR Doc.72-8961 Filed 6-13-72;8:50 am]

ATOMIC ENERGY COMMISSION

[10 CFR Part 55]

OPERATORS' LICENSES

Requirements for Renewal

The Atomic Energy Commission has under consideration amendments to its regulation, 10 CFR Part 55, "Operators' Licenses," which would: (1) Require an operator or senior operator of production and utilization facilities to complete a requalification program as one condition for the renewal of his license, and (2) set forth the requirements for requalification programs for production and utilization facility operators and senior operators. If the first provision stated above is not met, the Commission could require an applicant for license renewal to take a written examination or an operating test or both.

As one of the requirements for the renewal of an operator's or senior operator's license, the Commission must find (pursuant to § 55.33(c)(2) of 10 CFR Part 55) that the licensee has been actively and extensively engaged as an operator or a senior operator under his existing license, and has discharged his responsibilities competently and safely and is capable of continuing to do so. If these findings cannot be made, reexamination in whole or in part may be necessary for license renewal.

Recent operating history indicates that, after the initial testing and startup programs are completed, nuclear power reactors are experiencing longer periods of continuous base-loaded operations resulting in fewer opportunities for licensed individuals to participate in startup, shutdown, and transient operations. These base-loaded periods of operation can last for periods approaching 2 years for many of the newer plants. Hence, the value of operating experience in maintaining competency of operators is clearly diminished.

The complexity of design, the frequency of facility modifications, and the operating modes of production and utilization facilities other than nuclear power plants are such that ongoing comprehensive requalification programs should be conducted to assure that operators and senior operators at these facilities are maintaining a high level of proficiency.

To assure increased competence of operator personnel, the Commission proposes to amend § 55.33(a) to require an operator licensee in his application for renewal to describe the requalification program he has satisfactorily completed during the term of his current license. Section 55.33(c)(2) would be amended to require that not only must an operator licensee be actively and extensively engaged as an operator or senior operator and discharge his responsibilities competently and safely, but he also must satisfactorily complete an acceptable requalification program during his current license period. An alternative would be to take a written examination or operating test or both before the license is renewed.

An Appendix A would be added to Part 55 to describe the minimum requirements of a requalification program for production and utilization facility operators and senior operators.

The requalification program would include lectures, on-the-job training, and evaluation of the trainees. Requirements for manipulation of reactor controls for