claim in which a proposed compromise, settlement, or award exceeds $1,000 can be paid only after review by a legal officer of the agency to which the claim was presented. When the administrative claim requirement was established by legislation eleven years ago there was Congressional concern that claims should be reviewed by lawyers, rather than by clerks or paralegals. Accordingly, the $1,000 limitation was established by regulation. In the eleven years of experience with the claims process, most departments and agencies of the federal government have become quite proficient at handling such claims. In many such offices, inspectors, investigators, and paralegals have acquired expertise and have proven to be efficient and effective. In addition, there has been considerable inflation which has produced a result that the requirement of review by a legal officer is a more stringent imposition now than when originally established. The amendment would simply raise to $2,500 the figure above which a compromise must be reviewed by a legal officer.

EFFECTIVE DATE: December 8, 1977.

FOR FURTHER INFORMATION CONTACT:

Barbara A. Babcock, Assistant Attorney General, Civil Division, Department of Justice, Washington, D.C. 20530, 202–739–3301.

By virtue of the authority vested in me by 5 U.S.C. 301, and 28 U.S.C. 509 and 2672, § 14.5 of Part 14 of Title 28, Code of Federal Regulations, is amended by deleting the figure "$1,000" and substituting therefor the figure "$2,500."

Dated: November 29, 1977.

GRIFFIN B. BELL,
Attorney General.

[FR Doc.77-35075 Filed 12-7-77;8:45 am]

[4910-14]

Title 33—Navigation and Navigable Waters

CHAPTER I—COAST GUARD, DEPARTMENT OF TRANSPORTATION

[CGD 76-186]

PART 110—ANCHORAGE REGULATIONS

Special Anchorage Areas, Islands of Hawaii, Kauai, and Oahu, Hawaii

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes special anchorages in the vicinity of the Islands of Hawaii, Kauai, and Oahu, Hawaii. This regulation is needed to provide safe anchorage areas for a large number of local and transient pleasure vessels in these vicinities. Establishing these special anchorage areas were vessels under 65 feet in length, when at anchor, are not required to exhibit anchor lights results in these recreational vessels anchoring in safe areas away from vessel traffic.

EFFECTIVE DATE: This amendment is effective on January 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Capt. George K. Greiner, Marine Safety Council (G-CMC/81), Room 8117, Department of Transportation, Nassif Building, 400 Seventh Street SW., Washington, D.C. 20590, 202–426–1477.

SUPPLEMENTARY INFORMATION: On January 21, 1977, the Coast Guard published a proposed rule (42 FR 3871), corrected on February 22, 1977 (42 FR 10319), concerning this amendment. Interested persons were given until March 7, 1977, to submit comments. Two hundred and forty comments were received. All were favorable with 7 suggesting minor changes which have been implemented in this final rule.

DRAFTING INFORMATION

The principal persons involved in drafting this rule are: Lt. Comdr. H. E. Snow, Project Manager, Office of Marine Environment and Systems, and Mr. S. D. Jackson, Project Attorney, Office of the Chief Counsel.

DISCUSSION OF MAJOR COMMENTS

Since publication of the proposed rule some of the boundary lines of inland waters for Hawaii have been moved, raising questions as to the Coast Guard's authority to establish special anchorage areas in some of the locations requested. Pending resolution of this question only those areas inside the new boundary lines are being established; therefore, the special anchorages in proposed § 110.128b (c), (d), (e), and (f), § 110.128c(b), and § 110.128d (d) and (e), are deleted until the Coast Guard can determine their status. Because of these deletions some of the new special anchorages are moved to different paragraphs in this rule. The area of three of the proposed special anchorages has been decreased. Proposed § 110.128d(b) *Kaneohe Bay*, is decreased so that it is totally within inland waters. Proposed § 110.128d(c) *Keehi Lagoon*, is decreased because of possible interference with operations at Honolulu International Airport. Proposed § 110.128d(f) *Sans Souci Beach*, is decreased to provide adequate distance from recreational swimmers at the beach. Proposed § 110.128d(i) *Hickam AFB Marina* is divided into two areas to allow for a fairway to the marina dock.

In consideration of the foregoing, Part 110 of Title 33 Code of Federal Regulations is amended by adding §§ 110.128 b, c, and d to read as follows:

§ 110.128b Island of Hawaii, Hawaii.

(a) *Hilo Bay.* The waters of Hilo Bay enclosed by a line beginning at 19°43'-55.5'' N. latitude, 155°03'30'' W. longitude; thence to 19°44'08'' N. latitude, 155°04'19'' W. longitude; thence to 19°43'51'' N. latitude, 155°04'30'' W. longitude; thence to 19°44'10'' N. latitude, 155°05'29'' W. longitude; thence along the shoreline to the beginning point.

(b) *Kuhio Bay.* The waters of Kuhio Bay enclosed by a line beginning at 19°44'13'' N. latitude, 155°03'25'' W. longitude; thence to 19°44'15'' N. latitude, 155°03'25'' W. longitude; thence along the shoreline to the beginning point.

§ 110.128c Island of Kauai, Hawaii.

(a) *Nawiliwili Bay.* The waters of Nawiliwili Bay enclosed by a line beginning at 21°57'12.5'' N. latitude, 159°21'-38'' W. longitude; thence to 21°57'26'' N. latitude, 159°21'39.5'' W. longitude; thence along the shoreline to the beginning point.

§ 110.128d Island of Oahu, Hawaii.

(a) *Kaneohe Bay (1).* The waters of Kaneohe Bay enclosed by a line beginning at 21°26'28'' N. latitude, 158°46'-00'' W. longitude; thence to 21°26'00'' N. latitude, 157°46'14'' W. longitude; thence to 21°26'20'' N. latitude, 157°47'-24'' W. longitude; thence to 21°26'00'' N. latitude, 157°48'25'' W. longitude; thence to 21°26'46'' N. latitude, 157°48'-37'' W. longitude; thence along the shoreline to the beginning point.

(b) *Kaneohe Bay (2).* The waters of Kaneohe Bay enclosed by a line beginning at 21°27'28'' N. latitude, 157°49'08'' W. longitude; thence to 21°28'10'' N. latitude, 157°50'30'' W. longitude; thence to 21°29'10'' N. latitude, 157°50'40'' W. longitude; thence to 21°30'46'' N. latitude, 157°50'14'' W. longitude; thence along the shoreline to the beginning point.

(c) *Keehi Lagoon.* The waters of Keehi Lagoon enclosed by a line beginning at 21°19'04'' N. latitude, 157°53'50'' W. longitude; thence to 21°19'06'' N. latitude, 157°53'44'' W. longitude; thence to 21°19'37'' N. latitude, 157°54'00'' W. longitude; thence to 21°19'35'' N. latitude, 157°54'06'' W. longitude; thence along the shoreline to the beginning point.

(d) *Sans Souci Beach.* The waters of Sans Souci Beach enclosed by a line beginning at 21°15'49'' N. latitude, 157°49'31'' W. longitude; thence to 21°15'-49.2'' N. latitude, 157°49'29'' W. longitude; thence to 21°15'56.2'' N. latitude, 157°49'31'' W. longitude; thence to 21°-15'56'' N. latitude, 157°49'33'' W. longitude; thence along the shoreline to the beginning point.

(e) *Iroquois Point Lagoon.* The waters of Iroquois Point Lagoon enclosed by a line beginning at 21°19'53'' N. latitude, 157°58'30'' W. longitude; thence to 21°19'56'' N. latitude, 157°58'31'' W. longitude; thence along the shoreline to the beginning point.

(f) *Hickman AFB Marina. (1)a.* The waters of Hickam AFB Marina enclosed by a line beginning at 21°19'13'' N. latitude, 157°57'40'' W. longitude; thence to 21°18'45'' N. latitude, 157°57'40'' W. longitude; thence to 21°18'45'' N. latitude, 157°57'28.5'' W. longitude; thence to 21°19'10'' N. latitude, 157°57'28.5'' W. longitude; thence along the shoreline to the beginning point.

(g) *Hickam AFB Marina (2)* The waters of Hickam AFB Marina enclosed by a line beginning at 21°19'11'' N. latitude, 157°57'10'' W. longitude; thence to 21°18'46.2'' N. latitude, 157°57'20'' W.

longitude; thence to 21°18'46.2" N. latitude, 157°57'05.2" W. longitude; thence along the shoreline to the beginning point.

(h) *Aiea Bay.* The waters of Aiea Bay enclosed by a line beginning at 21°22'20" N. latitude, 157°56'30" W. longitude; thence to 21°22'27" N. latitude, 157°56'40.5" W. longitude; thence to 21°22'30" N. latitude, 157°56'40.5" W. longitude; thence to 21°22'37" N. latitude, 157°56'22.5" W. longitude; thence to 21°22'37" N. latitude, 157°56'19" W. longitude; thence along the shoreline to the beginning point.

(Sec. 1, 30 Stat. 98, as amended (33 U.S.C. 180); sec. 6(g)(1)(B), 80 Stat. (937 (49 U.S.C. 1655(g)(1)(B)); 49 CFR 1.46 c)(2).)

NOTE.—The Coast Guard has determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended, and OMB Circular A-107.

Dated: December 2, 1977.

E. L. PERRY,
Vice Admiral, U.S. Coast Guard,
Acting Commandant.

[FR Doc.77-35141 Filed 12-7-77;8:45 am]

[6712-01]

Title 47—Telecommunication

CHAPTER I—FEDERAL COMMUNICATIONS COMMISSION

[FCC 77-793]

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS: GENERAL RULES AND REGULATIONS

Deleting Footnote NG 13 Pertaining to Amateur Radio Operation in 220-225 MHz Band in Portions of States of Texas and New Mexico

AGENCY: Federal Communications Commission.

ACTION: Rule Amendment.

SUMMARY: This document removes restrictions on the use of the 220-225 MHZ band in portions of Texas and New Mexico by amateur radio operations because those restrictions are no longer necessary.

EFFECTIVE DATE: December 12, 1977.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT:

Benjamin Perez, Spectrum Planning & Coordination Branch, Office of Chief Engineer, 202-632-6350.

ORDER

Adopted: November 22, 1977.

Released: December 1, 1977.

In the matter of amendment of Part 2 of the Commission's Rules and regulations to delete footnote NG 13 pertaining to amateur radio operation in the 220-225 MHz band in portions of the States of Texas and New Mexico.

1. The Commission has been advised by the Office of Telecommunications Policy, that the provisions of footnote NG 13 to the Table of Frequency Allocations, § 2.106 of the Commission's rules are no longer required. The footnote imposes restrictions on the secondary use, by the amateur radio service, of the 220-225 MHz band in certain areas of the United States.

2. The deletion of NG 13 would remove the restriction of the use of the 220-225 MHz band by amateur stations engaged in normal amateur operations between the hours of 0500 and 1800 local time Monday through Friday inclusive, of each week in those portions of the States of Texas and New Mexico in the area bounded on the south by parallel 31°53'N., on the east by longitude 105°40'W., on the north by parallel 33°24'N. and on the west by longitude 106°40'W. The amateur service would then be allowed to operate on the 220-225 MHz band in all portions of the United States subject to the continuing restriction of footnote U.S. 34 (prohibiting harmful interference to the radiolocation service).

3. Since the deletion of NG 13 will have no adverse effect on non-Government licensees, we anticipate no comments in this matter; therefore, compliance with the notice and public procedure provisions of the Administrative Procedure Act, 5 U.S.C. 553 (b) and (c), is believed to be unnecessary (5 U.S.C. 553 (c)(3)(B), 47 CFR 1.412(c)).

4. Furthermore, since the substance of this rule amendment would be to relieve a restriction, compliance with the effective date provision of the Administrative Procedure Act, 5 U.S.C. 553(d) would not be in the public interest (5 U.S.C. 553(d)(1); 47 CFR 1.427).

5. *Accordingly, it is ordered,* That effective December 12, 1977, §2.106 of the rules is amended by deleting footnote NG 13. Authority for this action is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended.

(Secs. 4, 303, 48 Stat., as amended, 1066, 1082 (47 U.S.C. 154, 303).)

FEDERAL COMMUNICATIONS COMMISSION,
WILLIAM J. TRICARICO,
Acting Secretary.

[FR Doc.77-35069 Filed 12-7-77;8:45 am]

[4910-06]

Title 49—Transportation

CHAPTER II—FEDERAL RAILROAD ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

[Docket No. RSRM-1, Notice 4]

PART 221—REAR END MARKING DEVICE—PASSENGER, COMMUTER, AND FREIGHT TRAINS

Procedures for Obtaining Approval of Rear End Marking Devices

AGENCY: Federal Railroad Administration, DOT.

ACTION: Final rule amendment.

SUMMARY: On January 11, 1977, the Federal Railroad Administration (FRA) published a final rule prescribing the requirements for the installation of a rear end marking device for use on passenger, commuter, and freight trains (42 FR 2321). The rule establishes performance standards for marking devices and requires that the Federal Railroad Administrator approve devices that are to be installed. The purpose of this notice is to amend Part 221 by the addition of an appendix which sets forth the specific procedures by which railroads subject to this Part are to obtain approval of the marking devices to be used on passenger, commuter, and freight trains. In addition, the effective date of Part 221 is being extended to allow adequate time for approval and installation of marking devices. Under the present provisions of the rule, trains subject to Part 221 must be equipped with approved marking devices after December 31, 1977. Sections 221.13(a) and 221.15(d) have been amended to provide that marking devices must be installed and in service after June 30, 1978.

DATES: (1) This amendment is effective December 8, 1977. (2) A public meeting to discuss the "Guidelines for Testing of FRA Rear End Marking Devices" will be held on December 20, 1977, at 10 a.m.

ADDRESSES: The public meeting will be held in Room 3201, Trans Point Building, 2100 Second Street SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

PRINCIPAL AUTHORS:

Principal Program Person: John A. McNally, Office of Safety, Federal Railroad Administration, Washington, D.C., 202-426-9178.

PRINCIPAL ATTORNEY:

Anne-Marie Hyland, Office of the Chief Counsel, Federal Railroad Administration, Washington, D.C., 202-426-8836.

SUPPLEMENTARY INFORMATION: The Federal Railroad Safety Authorization Act of 1976 (Pub. L. 94-348, "the Act") required the Secretary of Transportation to issue such rules as may be necessary to require that "the rear car of all passenger and commuter trains shall have one or more highly visible markers which are lighted during periods of darkness or whenever weather conditions restrict clear visibility"; and "the rear car of all freight trains shall have highly visible markers during periods of darkness or whenever weather conditions restrict clear visibility" (Pub. L. 94-348, section 5(b)). On January 11, 1977, the FRA published a final rule that established the performance standard that all "highly visible" marking devices would be required to meet in order to be approved by the Federal Railroad Administrator (42 FR 2321). That notice explained the assumptions upon which the performance standard was based. These included a given degree of re-

stricted visibility, a restricted operating speed, and a reasonable braking distance to permit a train to stop short of a collision whenever a marking device on the rear end of a train ahead is seen (42 FR 2323–2324). The rule required each train subject to Part 221 to be equipped with approved marking devices after December 31, 1977.

Shortly after the issuance of the rules, the FRA held a public meeting on January 25, 1977, to discuss with interested parties a draft of proposed approval procedures and testing guidelines for verification of the performance of specific marking devices. As was stated earlier in the notice of the final rule, the FRA had not specifically tested any devices for the purpose of qualifying them under the performance standard included in Part 221, but had determined that the issuance of the regulation in the form of a performance standard based upon reasonable assumptions concerning the railroad operating environment, and a given degree of restricted visibility, would provide the industry with the broadest flexibility in achieving compliance. The performance standard was drawn to reflect what FRA believed to be the minimum visibility enhancement requirements necessary for a marking device to be considered to be "highly visibile". Any device, either lighted (active), non-lighted (passive), or combination of lighted and non-lighted elements, would be approved if it could be demonstrated to be in compliance with the performance standard as included in 49 CFR 221.15. Discussions which took place at the public meeting on January 25, 1977 reflected disagreement among interested parties as to whether any passive, retroreflective devices could be approved for installation and use on freight trains.

In response to this controversy, the FRA decided there was a need for an independent study of this question. With the assistance of a railroad, the FRA conducted a field test of various retroreflective materials, and also observed field testing conducted under the auspices of the Association of American Railroads. In addition, the FRA, with contractor support, developed a specific testing procedure which defines how the technical information concerning the performance of specific marking devices is to be developed, and also reviewed the theoretical performance of retroreflective materials in reference to the railroad operating environment. As a result of this additional study the FRA remains convinced that the original theoretical basis upon which the performance standard was premised was both sound and reasonable. Given the stated degree of restricted visibility and railroad operating conditions, the prescribed marking device intensity and angle of coverage reflect the minimum level of conspicuity necessary to assure that acceptable devices will meet the statutory and regulatory intent that they be "highly visibile" in the railroad operating environment. Any device which can demonstrate compliance with the prescribed intensity and angle of coverage requirements when tested in accordance with the guidelines referenced in Appendix A, will be approved. However, the FRA is now aware that marking devices composed of retroreflective elements alone will present a problem, and given the external illumination capable with the typical locomotive headlight, the application of currently available retroreflective materials will not meet the requirements of the performance standard for "highly visible markers."

This conclusion is based on a consideration of the principal specifications of the marking device; that is, the effective intensity of not less than 100 nor more than 1,000 candela along the central axis and not less than 50 candela at ±15 degrees either side of the central axis in the horizontal plane and at ±5 degrees either side of the central axis in the vertical plane. Since a passive marking device is itself non-luminous, our consideration was based upon the assumption of an external light source provided by the typical locomotive headlight of an approaching train. The mathematical calculations to describe the performance of a passive marking device were developed for both tangent track and curved track.

The least complicated factual situation in which to assess the performance of a passive marking device is the case in which the locomotive headlight is directed straight down a tangent track onto a retroreflective marking device that is perpendicular to the beam of light that illuminates it. The beam of light we have used in our calculations is the narrow beam of a typical locomotive headlight. This beam has an intensity of approximately 200,000 candela on-axis, has half-intensity points at an angle of about 2½ degrees off-axis, and essentially a cut-off of light intensity just beyond 6 degrees off-axis.

Since the performance standard requires a reflected intensity of at least 50 candela at 15 degrees off-axis, we have focused our calculations upon that 15 degree point. Given the characteristics of the locomotive headlight, there is little question that some retroreflective materials available on the market today can be shown to comply with the 100 candela on-axis requirement. The off-axis performance of these materials is the more questionable aspect of their use as highly visible marking devices. Given a retroflector with a reflectance factor of 1.0, an external light source intensity from a locomotive of 200,000 candela on-axis, a distance of 1,000 feet from the retroreflector, and a marking device area of 3 feet x 3 feet, it was determined that the reflected intensity would be 0.55 candela at 15 degrees off-axis. Even when the retroreflective material of the marking device is constructed of reflective beads, the optical gain or enhancement factor possible at the 15 degree off-axis point increases the reflected intensity only marginally to 0.6 candela for a red retroreflector. Obviously, both of these intensities fall far short of the minimum 50 candela required by the performance standard.

Additional factors which further reduce the amount of reflected light must be considered when similar calculations are done for passive marking device performance on curved track. Although the FRA recognizes that there is sound justification for the narrow beam width of the typical locomotive headlight from both an operating and safety point of view, that narrow beam width significantly restricts the performance of retroreflective materials as "highly visible markers". Because of the narrowness of the headlight beam, our calculations lead to a conclusion that the degree of curvature of a track must not exceed a value ranging between ½ and 1 degree to assure that the light will reach 1,000 feet down the track. The calculations for a track with a 1 degree curve result in an on-axis reflected intensity of 18 candela, as opposed to the 100 candela required by the performance standard. The ±15 degree point would be significantly less.

Finally, one must consider the effects of the restricted visibility which formed the basis for the determination of the 100 candela standard. Illumination from a lighted marking device is reduced by restricted visibility over the distance from the marking device to the observer. This reduction was contemplated in the establishment of the 100 candela performance standard. A passive system, however, depends upon an external light source. The restricted visibility has a dual impact reducing the illumination from the source to the marking device, as well as from the marking device back to the observer. Taking into consideration a restricted visibility or "transmissivity factor" of 0.104, the value for 1,000 feet on a ¼ mile visibility day, the reflected light intensity from the typical 200,000 candela headlight would be 104 candela, on-axis. Again, the ±15 degree points would be significantly less than the 50 candela required by the performance standard.

The full text of these calculations, together with the mathematical formulas involved is included in the public docket of this proceeding. Copies may be obtained from the Office of Standards and Procedures, Office of Safety, 2100 Second Street SW., Washington, D.C. 20590.

The conclusion FRA has drawn as a result of the calculations and considerations described and summarized above is that a marking device, composed solely of retroreflective materials, which relies upon a typical locomotive headlight as its external light source will not be capable of compliance with the requirements of Part 221. This conclusion is based upon the realization that as long as the external light source is to be provided by the existing type of locomotive headlight with a useful beam intensity of ±6 degrees either side of the central axis, the light reflected back from a retroreflective marking device at ±15 degrees either side of the central axis will not be sufficient to meet the prescribed minimum standard.

If railroad operating conditions and other safety considerations permit the use of a modified locomotive headlight with a sufficiently broad beam width, the limitations of retroreflective devices discussed above may be obviated to the extent that compliance is possible. A railroad that feels that it has developed a retroreflective marking device which can overcome the limitations of the present operating environment, and can provide the intensity at the various beam width points prescribed in the performance standard, may submit the descriptive and mathematical data, including a description of the external light source, and a proposed validation procedure to the FRA. If the FRA determines that the theoretical and mathematical descriptions of the marking device and external light source appear to demonstrate that compliance with the performance standard is possible, the FRA will require and/or take part in testing to validate the performance of the device. If the testing demonstrates full compliance with the performance standard, the FRA will approve the use of any such marking device within a closed system which assures that the external light source will be of the kind used in the testing process.

The purpose of this amendment is to define the procedures by which a railroad will submit to the Administrator for approval information derived from its testing which verifies that the specific marking device chosen by the railroad will in fact comply with the performance standard prescribed in 49 CFR 221.15. These approval procedures will be added to Part 221 as Appendix A. The testing is to be conducted in accordance with the current "Guidelines for Testing of FRA Rear End Marking Devices." Copies of these guidelines may be obtained from the Office of Safety, Federal Railroad Administration, 2100 Second Street SW., Washington, D.C. 20590.

As was stated in the notice to the final rule (42 FR 2324), FRA will develop an additional appendix, Appendix B, as individual devices are approved, and will publish this list in the FEDERAL REGISTER. The initial list will be published in July 1978, and will be updated as necessary thereafter. In the interim, as devices are approved, an up-to-date list may be obtained from the FRA Office of Safety.

The procedures do not prescribe who must conduct the required tests. The testing may be done by the railroad itself, by an independent testing laboratory, or by the marking device manufacturer. The railroad must submit to FRA a description of the device, a certification that it has been tested in accordance with the guidelines and that the results of that testing demonstrate compliance with the performance standard. The railroad will also be required to maintain records of the tests at a designated location and to make those records available to the FRA for inspection. FRA will monitor railroad compliance with these procedures by random review of these test records. Continued compliance with the performance standard will be monitored in the course of routine field inspections of equipment used in railroad operations covered by Part 221. It should be noted that even after a marking device type is approved, based upon the sample testing and certification required by Appendix A, individual units of that type must be maintained so as to assure the prescribed intensity at all times when installed on the trailing end of the rear car of a train subject to this part.

The rule presently requires trains to be equipped with approved marking devices after December 31, 1977. The FRA believed that the lead time from January 1977, to the end of December 1977, was necessary in order to provide a reasonable time for the development of approval procedures and the retrofit of existing equipment. In August 1977, the Association of American Railroads (AAR) submitted comments and suggestions concerning procedures for approving retroreflective devices together with a request for a postponement of the effective date of Part 221 until July 1, 1978. On October 12, 1977, AAR requested a further extension until December 31, 1978.

The FRA recognizes that the publication of these procedures has been delayed by the additional study which has been given to the basic issues concerning qualifying both lighted and retroreflective devices under the performance standard.

This delay will require a postponement of the effective date so as to provide reasonable retrofit time; however, we believe that, in the long run, the accomplishment of the intent of the statutory mandate will be benefitted by the firm technical basis upon which the approval procedure can now proceed. Consequently, the FRA has decided to postpone the effective date of Part 221 until July 1, 1978. The FRA believes that this will provide adequate time for the approval process and necessary retrofit. Railroads are encouraged to make their submissions for approval of the devices they intend to install as early as possible, to allow themselves the most favorable amount of time for retrofit of equipment. The FRA recognizes the Congressional concern which prompted this statutory mandate, and intends to insure that compliance is accomplished by July 1, 1978. Requests for further extensions will not be likely to receive favorable consideration.

In order to assure complete understanding of the approval procedure and the testing guidelines, the FRA will conduct another public meeting for all interested parties. This meeting will be held on December 20, 1977, at 10 a.m., in Room 3201, Trans Point Building, 2100 Second Street SW., Washington, D.C.

In consideration of the foregoing, Title 49 CFR, Chapter II, Part 221 is amended as follows:

1. 49 CFR Part 221 is amended by revising § 221.13(a) to read as follows:

§ 221.13 Marking device display.

(a) After June 30, 1978, each train to which this part applies that occupies or operates on a main track shall be equipped with marking devices located on the trailing end of the rear car of the train as prescribed in this subpart.

* * * * *

2. 49 CFR Part 221 is amended by revising § 221.15(a) and (d) to read as follows:

§ 221.15 Marking devices.

(a) Passenger, commuter and freight trains shall be equipped with at least one marking device which the Administrator approves, according to the procedures included in Appendix A of this part, as having an intensity of not less than 100 candela nor more than 1,000 candela (or an effective intensity of not less than 100 candela nor more than 1,000 candela for flashing lights) as measured at the center of the beam with:

* * * * *

(d) After June 30, 1978, marking devices displayed in compliance with this part shall be inspected by the train crew at each crew change point to assure that they are in proper operating condition.

3. 49 CFR Part 221 is amended by adding a new Appendix A as follows:

APPENDIX A—PROCEDURES FOR APPROVAL OF REAR END MARKING DEVICES

As provided in § 221.15 of this part, marking devices must be approved by the Administrator. Approval shall be issued in accordance with the following procedures:

(a) Each submission for approval of a marking device consisting of lighted elements only shall contain the following information:

(1) A detailed description of the device including the type, luminance description, size of lens, manufacturer and catalog number, lamp manufacturer, lamp type and model number, and any auxiliary optics used.

(2) A certification, signed by the chief operating officer of the railroad, that—

(i) The device described in the submission has been tested in accordance with the current "Guidelines for Testing of FRA Rear End Marking Devices," copies of which may be obtained from the Office of Safety, Federal Railroad Administration, 2100 Second Street SW., Washington, D.C. 20590;

(ii) The results of the tests performed under paragraph (1) of this subsection demonstrate marking device performance in compliance with the standard prescribed in 49 CFR 221.15;

(iii) Detailed test records, including as a minimum the name and address of the testing organizations, the name of the individual in charge of the tests, a narrative description of the test procedures, the number of samples tested, and for each sample tested, the on-axis beam candela, the beam candela at the ±15 degree points in the horizontal plane, the beam candela at the ±5 degree points in the vertical plane, and the chromaticity coordinates, are maintained by the railroad and are available for inspection by the FRA at a designated location which is identified in the submission;

(iv) Marking devices of this type installed in the operating environment shall consist of the same type and model of components as were used in the samples tested for purposes of this approval submission.

(3) Unless otherwise qualified, acknowledgment of the receipt of the submission required by this section shall constitute approval of the device. The FRA reserves the right to review the test records maintained by the railroad, or to test independently any device submitted for approval under these

procedures, and to withdraw the approval of such device at any time, after notice and opportunity for oral comment, if its performance in the operating environment fails to substantiate the rest results or to comply with 49 CFR 221.15.

(b) (1) Each submission for approval of a marking device consisting of non-lighted elements or a combination of lighted and non-lighted elements shall contain the following information:

(i) A detailed description of the device including the type of material, the reflectance factor, the size of the device, and the manufacturer and catalogue number;

(ii) A detailed description of the external light source including the intensity throughout its angle of coverage, and the manufacturer and catalogue number;

(iii) A detailed description of the proposed test procedure to be used to demonstrate marking device compliance with the standard prescribed in 49 CFR 221.15, including any detailed mathematical data reflecting expected performance.

(2) FRA will review the data submitted under subsection (1) of this section, and in those instances in which compliance with 49 CFR 221.15 appears possible from a theoretical analysis, the FRA will authorize and may take part in testing to demonstrate such compliance.

(3) Where authorized testing has demonstrated compliance with 49 CFR 221.15, a railroad shall submit a certification, signed by the chief operating officer of the railroad, that—

(i) The device described in the original submission has been tested in accordance with the procedures described therein;

(ii) The results of the tests performed under paragraph (1) of this subsection demonstrate marking device performance in compliance with the standard prescribed in 49 CFR 221.15;

(iii) Detailed test records, including as a minimum the name and address of the testing organization, the name of the individual in charge of the tests, a narrative description of the test procedure, a description of the external light source used, the number of samples tested, and for each sample tested, the on-axis beam candela, the beam candela at the ±15 degree points in the horizontal plane, the beam candela at the ±5 degree point in the vertical plane, and the chromaticity coordinates, are maintained by the railroad and are available for inspection by the FRA at a designated location which is identified in the submission;

(iv) Marking devices of this type installed in the operating environment and the external light source used to illuminate them shall consist of the same type and model of components as were used in the samples tested for purposes of this approval submission.

(4) Unless otherwise qualified, acknowledgement of the receipt of the submission required by this subsection shall constitute approval of the device. The FRA reserves the right to review the test records maintained by the railroad, or to test independently any device submitted for approval under these procedures, and to disapprove the use of such device at any time if its performance fails to comply with 49 CFR 221.15.

(c) Whenever a railroad elects to use a marking device which has been previously approved by the FRA, and is included in the current list in Appendix B to this part, the submission shall contain the following information:

(1) The marking device model designation as it appears in Appendix B.

(2) A certification, signed by the chief operating officer of the railroad that—

(i) Marking devices of this type installed in the operating environment shall consist of the same type and model of components as were used in the samples tested for the original approval.

(d) Each submission for approval of a marking device shall be filed in triplicate with the Office of Standards and Procedures, Office of Safety, Federal Railroad Administration, 2100 Second Street, SW., Washington, D.C. 20590.

(Sec. 202, 84 Stat. 971 (45 U.S.C. 431); § 1.49 (n) of the regulations of the Office of the Secretary of Transportation, 49 CFR 1.49 (n).)

Issued in Washington, D.C., on December 5, 1977.

JOHN M. SULLIVAN,
Administrator.

[FR Doc.77-35158 Filed 12-7-77;8:45 am]

[4910-06]

[FRA State Rail Docket No. 1; Notice No. 1]

PART 255—ASSISTANCE TO STATES AND PERSONS IN THE NORTHEAST AND MIDWEST REGION FOR LOCAL RAIL SERVICES UNDER SECTION 402 OF THE REGIONAL RAIL REORGANIZATION ACT OF 1973

Amendment to Procedures and Requirements Regarding Applications and Disbursements

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Amendment to Final Rule.

SUMMARY: On March 5, 1976, the Federal Railroad Administration published in the FEDERAL REGISTER (41 FR 9692) final regulations (Regulations) governing assistance to States and persons in the northeast and midwest region for continuation of local rail services under section 402 of the Regional Rail Reorganization Act of 1973, as amended (Act). The regulations contained a requirement that funds in excess of a State's needs as reflected in its 1977 program of projects are to be reallocated on December 1, 1977. This document amends the reallocation provisions by deleting the requirement for a reallocation of funds on December 1, 1977. This amendment is necessitated by the fact that many State Rail Plan Updates, which serve as the bases for the various State programs of projects, were delayed and/or deficient. As a consequence, the annual certified programs of projects due from the States to FRA on November 1, 1977, which are based on the annual updates, and which form the bases for the FRA determination of the amounts of funds available for reallocation, were also delayed. In addition, FRA's inability to determine the mileage data needed to apportion funds until November 3, 1977, contributed to the delay in submission of the program of projects.

DATES: Effective Date: November 30, 1977.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: The amendment provided herein will not affect the overall costs or benefits of the local rail services program and thus an evaluation of the expected impact of the regulations pursuant to the Department of Transportation Policies to Improve Analysis and Review of Regulations (41 FR 16200) is not required.

It is DOT policy that the operating administrations within the Department follow the notice-and-comment procedure of the Administrative Procedure Act (5 U.S.C. 553) for rules that relate to public property, loans, grants, benefits or contracts which have a substantial public interest even though these rules are exempt from notice-and-comment procedures (41 FR 42824). This amendment does not have a substantial public interest and, accordingly, the notice-and-comment procedure will not be followed in this proceeding.

In consideration of the foregoing, 49 CFR Part 255 is amended as follows:

§ 255.7 [Amended]

1. Section 255.7(d)(2) is revised to read as follows:

(d) * * *

(2) All funds remaining available for obligation will be reallocated on June 1, 1976, and December 1, 1976. Funds available for reallocation in Federal fiscal year 1978, will be reallocated, if practicable, after notice has been provided to participating States by the Administrator.

* * * * *

2. Section 225.7(d)(3) is changed to read:

(d) * * *

(3) The amount available for reallocation on June 1, 1976 will be that in excess of the States' total estimated needs as reflected in approved applications through September 30, 1976 plus the States' anticipated additional needs for the period through September 30, 1976 as contained in the latest certified program of projects, approved by the Administrator, which lead to specific applications in accordance with § 255.11. The amount available for reallocation on December 1, 1976 will be the amount of the new appropriation and the balance of unobligated funds from the prior year in excess of the funds needed by the States to maintain their programs for each Federal fiscal year. The amounts available for reallocation in Federal fiscal year 1978, will be the amounts in excess of the funds needed by the States to maintain their programs until the termination of the program, based on their approved programs of projects.