ACTION: Extension of comment period.

SUMMARY: On October 13, 1981 (46 FR 50378) the Commodity Credit Corporation (CCC) proposed the issuance of a rule to amend the standards for the approval of warehouses to be used for the storage and handling of grain, rice, dry edible beans, and seed owned by the CCC or serving as collateral for a price support loan made by CCC. The proposed rule would amend the regulations to require a warehouseman to furnish to CCC an annual financial statement which has been examined by an independent Certified Public Accountant (CPA). In addition, the warehouseman must submit to CCC a copy of the CPA's audit report, prepared in accordance with generally accepted auditing standards, of the financial statement of such warehouseman. It is also proposed that the regulations be amended to delete the provision that the net worth of the warehouseman need not exceed $250,000 and change the rate used in calculating the net worth requirement with respect to grain warehouses. As a result of this increase in the net worth requirements for warehousemen, the regulations would also be amended to permit warehousemen to furnish to CCC an irrevocable letter of credit as security to meet such net worth requirements. The comments received are extreme and varied. It has been determined that the comment period should be extended so that CCC can have the benefit of the maximum of information which can be obtained. The comment period established in the proposed rule is hereby extended to December 16, 1981.

DATES: The CCC will consider all comments including alternative methods to the proposed rule and suggestions on the proposed rule that are received on or before December 16, 1981.

ADDRESS: Comments should be directed to: Paul W. King, Acting Director, Transportation and Storage Division, Agricultural Stabilization and Conservation Service, Post Office Box 2415, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Barry W. Klein, Marketing Specialist, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, Transportation and Storage Division, Storage Management Branch, Post Office Box 2415, Washington, D.C. 20013; (202) 447-7911.

SUPPLEMENTARY INFORMATION: The October 13, 1981 (46 FR 50378) proposed rule requested that written comments be submitted by November 16, 1981. This deadline has been extended until December 16, 1981, in order to accommodate additional comments.

Signed at Washington, D.C., on November 12, 1981.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 81-33181 Filed 11-17-81; 8:45 am]

BILLING CODE 3410-05-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 70

Material Control and Accounting Requirements for Facilities Possessing Formula Quantities of SSNM: Extension of Comment Period

AGENCY: Nuclear Regulatory Commission.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Nuclear Regulatory Commission is extending the public comment period on its advance notice of proposed rulemaking announcing NRC's consideration of amendments to refocus its Material Control and accounting (MC&A) regulations that apply to facilities possessing formula quantities of special nuclear material. The advance notice was published on September 10, 1981 (46 FR 45144) with a comment period closing date of November 9, 1981. The comment period is being extended in response to requests for additional time from interested parties.

DATES: Comments must be received before February 9, 1982. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received before this date.

ADDRESSES: Comments on the proposed amendments should be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch. Copies of comments received may be examined at the Commission's Public Document Room at 1717 H Street N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Mr. Robert J. Dube, Section Leader, Technical Issues Section, Regulatory Improvements Branch, Division of Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 427-4181.

Dated at Bethesda, Maryland this 9th day of November 1981.

For the Nuclear Regulatory Commission.

William J. Dircks,

Executive Director for Operations.

[FR Doc. 81-33257 Filed 11-17-81; 8:45 am]

BILLING CODE 7590-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 312

[PDR-77; Procedural Regs. Docket: 40207]

Implementation of the National Environmental Policy Act; Mexican Air Taxi Operators

Dated: November 11, 1981.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The CAB proposes that environmental evaluations not be required when Mexican air taxi operators apply for a foreign air carrier permit. This will place transborder operations by Mexican air taxis on an equal footing with their Canadian counterparts. It is not likely that transborder operations with small aircraft will significantly affect the environment.

DATES: Comments by: January 18, 1982.

Comments and other relevant information received after this date will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: December 3, 1981.

The Docket Section prepares the Service List and sends it to each person listed on it, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 40207, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington., D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Nancy Pitzer Trowbridge, Bureau of International Aviation, 202-673-5134 or David Schaffer, Office of the General Counsel, 202-673-5442, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

SUPPLEMENTARY INFORMATION: The Board's rule, implementing the National Environmental Policy Act (NEPA), 14 CFR Part 312, generally requires that

environmental impact statements or environmental assessments be prepared for Board actions that have a significant effect on the environment. Several exceptions are listed in § 312.11. Paragraph (a)(8) of that section lists authorizations to Canadian air carriers to conduct transborder operations with small aircraft as one of those exceptions. The Board proposes to add similar operations by Mexican air carriers to this list. This will place transborder operations by Mexican air taxis on an equal footing with their Canadian counterparts. It is not likely that transborder operations with small aircraft will significantly affect the environment. If the Board official responsible for authorizing such an operation determines that it has the potential for significantly affecting the environment, an environmental impact statement or environmental assessment will be prepared.

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Pub. L. 96-354, the Board certifies that this rule will not, if adopted as proposed, have a significant economic impact on a substantial number of small entities. This rule will affect only small Mexican air carriers and the Board. It will not have a significant economic impact on these small carriers. It will merely reduce their reporting requirements and eliminate a possible barrier to entry.

PART 312—IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT

Accordingly, the Civil Aeronautics Board proposes to revise § 312.11(a)(8) of 14 CFR Part 312, *Implementation of the National Environmental Policy Act*, to read as follows:

§ 312.11 Actions normally not requiring preparation of an environmental impact statement or assessment.

(a) * * *

(8) Authorizing transborder operations by Canadian or Mexican air carriers with aircraft having a capacity of 60 seats or less, or 18,000 pounds or less:

* * * * *

(Secs. 102, 204, Pub. L. 85-726, as amended, 72 Stat. 740, 743, 49 U.S.C. 1302, 1324; National Environmental Policy Act of 1969, 83 Stat. 352, *et seq.*, 42 U.S.C. 4321 *et seq.*)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 81-33301 Filed 11-17-81; 8:45 am]

BILLING CODE 6320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPTS 62020; TSH-FRL-1939-6]

Proposed Amendment To Use Authorization for PCB Railroad Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA promulgated a rule pursuant to section 6(e) of the Toxic Substances Control Act that authorizes the use of polychlorinated biphenyls (PCBs) in railroad transformers until July 1, 1984. Two of the restrictions on this use of PCBs are that these transformers must contain dielectric fluids with a PCB concentration not exceeding 60,000 parts per million (ppm) (6 percent) after January 1, 1982, and not exceeding 1000 ppm (0.1 percent) after January 1, 1984. Several railroad organizations have been unable to select an acceptable PCB substitute for use in these transformers in time to comply with the 60,000 ppm requirement. EPA is therefore proposing to extend the time for compliance with the 60,000 ppm requirement to October 1, 1983, and requesting comments on whether there should be any change in the 1000 ppm requirement.

DATES: An informal hearing, if requested, will be held on January 5, 1982, in Washington, D.C. The exact time and location of the hearing will be available through the Industry Assistance Office, which can be reached by calling toll free 800-424-9065 or, in Washington, D.C., 554-1404. Comments on this proposed amendment and requests to participate in the informal hearing must be submitted by December 18, 1981.

ADDRESSES: Comments should be sent to: Document Control Officer (TS-793), Office of Toxic Substances, Environmental Protection Agency, Room E-401, 401 M St. SW., Washington, D.C. 20460.

EPA requests that comments be submitted in triplicate. Comments should include the docket number, OPTS 62020. Comments on this proposed amendment will be available for review from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Room E-107, Environmental Protection Agency, 401 M St. SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: John B. Ritch, Jr., Director, Industry Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460. In Washington, D.C.: (554-1404), Toll Free: (800-424-9065), Outside the USA: (Operator 202-554-1404).

Requests to participate in the informal hearing should be made to the Industry Assistance Office.

SUPPLEMENTARY INFORMATION:

Section 6(e) of the Toxic Substances Control Act (TSCA) prohibits the manufacture, processing, distribution in commerce, and use of PCBs. However, section 6(e)(2)(B) of TSCA permits EPA to authorize a particular use of PCBs if EPA determines that the use "will not present an unreasonable risk of injury to health or the environment."

The **Federal Register** published EPA's rule on May 31, 1979, (44 FR 31514, codified at 40 CFR Part 761) that, among other things, authorized the use and servicing of PCBs in railroad transformers pursuant to section 6(e)(2)(B) of TSCA. The use of PCBs in railroad transformers (railroad transformers are those transformers used in electrically-powered locomotives and self-propelled cars), along with the processing and distribution in commerce of PCBs for purposes of servicing these transformers, is authorized until July 1, 1984, subject to use and servicing restrictions. These restrictions require that railroad transformers contain dielectric fluids with no more than 60,000 ppm (6 percent) PCBs after January 1, 1982, and no more than 1000 ppm (0.1 percent) PCBs after January 1, 1984.

This authorization is designed to systematically reduce PCB concentrations in railroad transformers by January 1, 1984, without disrupting railroad service. To meet the 60,000 ppm requirement, these transformers must either be replaced or be drained, flushed, and refilled with a non-PCB dielectric fluid. (The term "retrofill" is used to denote the entire process of draining, flushing, and refilling a transformer with a non-PCB fluid.) To meet the 1000 ppm requirement, the transformers previously retrofilled must undergo additional processing or a second retrofilling to further reduce the PCB concentration in the dielectric fluid.

There are seven railroad organizations that own PCB railroad transformers affected by this proposal. The National Railroad Passenger Corporation (Amtrak) owns 75 transformers, used in self-propelled cars and 26, used in locomotives. Southeastern Pennsylvania Transportation Authority (SEPTA) owns 364, used in self-propelled cars. The

Connecticut Department of Transportation and the New York Metropolitan Transportation Authority jointly own 244, used in self-propelled cars. The New Jersey Transit Corporation owns 70, used in self-propelled cars and 13, used in locomotives. Two railroad organizations, the Consolidated Rail Corporation (Conrail) and the Maryland Department of Transportation, own PCB railroad transformers which are retired from active service. Conrail also operates all of SEPTA's self-propelled cars.

EPA has recognized the need to allow railroad organizations sufficient time to evaluate the feasibility of retrofilling PCB railroad transformers with non-PCB dielectric fluids because the railroad transformers' design creates unique heat removal problems and because mineral oil, a common substitute for PCBs in other applications, poses an unacceptable safety hazard on passenger trains. Mineral oil's fire point (170° C) is unacceptably low for this use.

Railroad organizations were investigating the effects of PCB substitutes on the performance and safety of PCB railroad transformers before the PCB rule was promulgated. At the time of promulgation, no PCB substitutes were proven in retrofilled railroad transformers; however, EPA expected timely testing and selection of a PCB substitute from on-going tests. PCB railroad transformers are designed to fit within confined spaces on locomotives and self-propelled cars. This unique design significantly affects the ability of dielectric fluids to remove heat from PCB railroad transformers. Consequently, during early tests, several non-PCB dielectric fluids successfully used for retrofilling non-railroad transformers overheated or created pumping problems in railroad transformers. The failure of these common PCB substitutes considerably delayed the process of selecting a suitable non-PCB dielectric fluid for PCB railroad transformers. Testing of additional, new PCB substitutes was required.

Testing programs for retrofilled PCB railroad transformers have narrowed the field of acceptable PCB substitutes to the following: FR-15,[1] Iralec,[2] Midel,[3] and RAILtemp.[4] All of these fluids appear to be feasible PCB substitutes for railroad transformers, and all are being monitored in at least one inservice railroad transformer. However, railroad organizations have expressed concern that the toxicity and persistence of the chlorinated benzenes contained in FR-15, Iralec, and RAILtemp may themselves be hazardous and make them subject to future governmental regulation. In fact, one of the trichlorobenzenes contained in these fluids is already regulated under the Resource Conservation and Recovery Act [42 U.S.C. 6902]. Consequently, these organizations have been reluctant to use these three fluids for retrofilling. The remaining acceptable PCB substitute, Midel, contains no chlorinated benzenes. Railroad organizations, however, have some concern about Midel's fire point of 310° C which is close to their minimum standard of 300° C for passenger applications.

SEPTA has decided to require contractors bidding on their retrofilling contract to supply four separate bids, one bid for each of the four candidate fluids. SEPTA will select the fluid to be used at the time they award the contract. Several other railroad organizations are awaiting SEPTA's selection of a substitute fluid, and intend to use the same PCB substitute SEPTA selects.

Of the affected railroad organizations, SEPTA owns the largest number of PCB railroad transformers requiring retrofilling, and, as a result, EPA expects that SEPTA will require the longest period of time to complete its retrofill program. Assuming that federal funds become available from the Urban Mass Transit Administration (UMTA) to fund SEPTA's retrofilling program, SEPTA estimates that the earliest they can complete their program is October 1, 1983. SEPTA's estimate assumes 4 months to advertise, evaluate, and award a retrofilling contract and 20 months to complete the retrofilling. The rate of retrofilling is limited by two factors. First, the transformers to be retrofilled may have to be physically removed from the railroad cars; this takes longer than retrofilling the transformers in place, but results in greater PCB removal. Second, a limited number of cars can be removed from service at any one time because of the need to maintain commuter railroad service.

EPA estimates that the total retrofilling cost of reducing the PCB concentration in railroad transformers to 60,000 ppm could be as high as $12.5 million. This estimate assumes a one-time retrofilling cost of $15,000 per self-propelled car transformer and $30,000 per locomotive transformer. The total cost of replacing these transformers is estimated to be $108 million ($130,000 per self-propelled car transformer and $250,000 per locomotive transformer). None of the affected railroad organizations are considering replacing PCB railroad transformers because of the high cost.

In view of the circumstances that have prevented railroad organizations from selecting and retrofilling with a PCB substitute in time to meet the January 1, 1982 requirement, EPA is proposing to extend the date by which this requirement must be met until October 1, 1983. This date, which would apply to all transformers, is based on the schedule proposed by SEPTA, and assumes that federal funds from UMTA become available to SEPTA. At this time, EPA does not have enough information to determine if a separate compliance deadline for each affected railroad organization would be appropriate. EPA will consider within the context of this rulemaking whether such separate deadlines are appropriate. If the rulemaking record demonstrates a need to establish separate dates for one or more railroads, EPA will do so.

EPA recognizes that by extending the January 1, 1982 date, some railroad organizations may have less than one year from the effective date of the 60,000 ppm concentration requirement to further reduce PCD concentrations in affected railroad transformers to 1000 ppm. EPA has not received any information which shows that reducing PCB concentrations in railroad transformers to 1000 ppm is not achievable. However, since it is apparently not possible to reduce present PCB levels to 1000 ppm with one retrofill, some railroads may not be able to fully comply with the 1000 ppm level by January 1, 1984. SEPTA has already informed EPA that it does not expect to attain the 1000 ppm level in all of its transformers until October 1, 1985. Therefore, EPA will also consider within the context of this rulemaking whether any changes should be made to the requirement to reduce the PCB concentration in railroad transformers to 1000 ppm by that date. As with the 60,000 ppm level, EPA could either not extend the compliance date; establish a new compliance date for all railroads; or establish different compliance dates for each railroad. EPA requests comments concerning the feasibility of achieving

[1] Electro-Chem FR-15 LoTemp is composed of a mixture of trichlorobenzenes and tretrachlorobenzenes.

[2] Iralec is also composed of a mixture of trichlorobenzenes and tetrachlorobenzenes. Iralec and FR-15 are almost identical in chemical composition.

[3] Midel 7131 is composed of synthetic esters.

[4] RAILtemp is a mixture of highly refined mineral oil and trichlorobenzene.

the 1000 ppm requirement by January 1, 1984. Comments are also encouraged on the effectiveness and timeliness of retrofilling procedures and of processes which physically remove PCBs, such as filtration.

The risks associated with this proposed rule amendment are the increased exposure of humans and the environment to PCBs resulting from any spills of PCBs which may occur during the period of the extension and the increased exposure of persons who perform service on railroad transformers requiring handling of dielectric fluid. These risks are reduced because the railroads have spill control and cleanup programs, and provide employee protection. EPA believes this risk is not unreasonable in the present circumstances. It appears that the railroads acted reasonably in not precipitously substituting fluids which were ineffective or present serious fire, health, or environmental concerns. The fire concern is especially important for passenger railroads. As a result, it is clear that most of the railroads will not be able to comply with the January 1, 1982 deadline. In these circumstances, EPA has essentially two choices: extend the deadline or not allow the railroads to operate cars containing PCB transformers after January 1, 1982, which do not meet the 60,000 ppm requirement. The latter alternative would result in stopping passenger railroad service in much of the northeast until a sufficient number of railroad cars became operational. The potential disruption of the transportation system is significant: Almost all of the 792 affected transformers will be out of compliance on January 1, 1982, and these transformers provide most of the daily commuter service to the metropolitan areas of the Northeast United States. Without an extension of the January 1, 1982 deadline, the result would be increased vehicular traffic. Congestion would be increased in these metropolitan areas, thereby resulting in increased air pollution and the risk of automobile accidents.

The loss of daily commuter service would also necessitate the termination of employment for many railroad personnel. Furthermore, the affected railroad organizations may not be able to sustain the loss of revenues associated with a disruption of service. In sum, the risks associated with extending the deadline are outweighed by the benefits of having taken the time to develop an appropriate substitute and by the benefits of continued operation of the Northeastern railroad system without serious disruption. Accordingly, EPA believes that the risk associated with granting the railroad organizations sufficient time to complete their retrofilling is not unreasonable.

Official Record of Rulemaking

The record in this rulemaking includes the rulemaking record for the May 1979 PCB rule (44 FR 31514, May 31, 1979). EPA has also received formal written requests from SEPTA and Amtrak for relief from the January 1, 1982 requirement. In addition, by letter dated August 28, 1981, SEPTA has informed EPA of their plans to request that the conditions under which PCBs may be used in railroad transformers be relaxed further than proposed in this publication. SEPTA plans to request that the PCB railroad transformer use authorization be subject to the following conditions:

1. The PCB concentration in railroad transformers be reduced to 60,000 ppm (6 percent) by July 1, 1984; and
2. The PCB concentration in railroad transformers be reduced to 20,000 ppm (2 percent) by July 1, 1986.

These communications and other related documents have been placed in the rulemaking record. The record for this rulemaking is available for review and photocopying from 8:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays, in Room E-107, Environmental Protection Agency, 401 M St. SW., Washington, D.C.

Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this amendment to the PCB rule is not a "major rule" as that term is defined in section 1(b) of the Executive Order. Therefore, EPA has not prepared a Regulatory Impact Analysis for the proposed amendment.

EPA reached its conclusion that the amendment is not "major" under the criteria of section 1(b) because the annual effect of the rule on the economy will be less than $100 million; it will not cause a major increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation or on the ability of United States enterprises to compete with foreign enterprises in domestic or foreign markets. Indeed, because it will reduce the burden on railroad organizations to comply with the PCB rule, this amendment should reduce costs for the railroad industry and for governmental bodies that operate railroads.

This proposed amendment was submitted to the Office of Management and Budget (OMB) prior to publication as required by the Executive Order. Any comments from OMB to EPA and any response by EPA to those comments are available for public inspection as part of the public record of this rulemaking.

Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act [5 U.S.C. 603] requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" in connection with any rulemaking for which there is a statutory requirement that a general notice of proposed rulemaking be published. The "initial regulatory flexibility analysis" describes the effect of the proposed rule on small business entities.

Section 605 (b) of the Regulatory Flexibility Act [5 U.S.C. 605 (b)], however, provides that section 603 of the Act "shall not apply to any proposed * * * rule if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

Since the effect of this rule avoids the economic impact associated with a disruption of passenger railroad service, and no negative economic effect is expected upon any business entity from this amendment, the Administrator of EPA has certified that promulagation of this amendment will not have a significant economic impact on a substantial number of small entities. Therefore, an "initial regulatory flexibility analysis" is not required and will not be prepared for this rulemaking. The Administrator's certification is set forth below.

Administrator's Certification

The proposed rule amendment to the PCB rule affects seven railroad organizations: National Railroad Passenger Corporation (Amtrak), Southeastern Pennsylvania Transportation Authority (SEPTA), New Jersey Transit Corporation, Connecticut Department of Transportation, Maryland Department of Transportation, New York Metropolitan Transportation Authority, and Consolidated Rail Corporation (Conrail).

In view of the size and small number of railroad organizations affected by this rule, and the fact that the effect of this rule is to avoid the economic impact associate with a disruption in passenger railroad service and since no negative economic effect is expected upon any business entity from the promulgation of this proposed rule, I certify that this rule will not, if promulgated, have a

significant economic impact on a substantial number of small entities.

Dated: October 31, 1981

Anne M. Gorsuch,
Administrator.

Statutory Authority

Section 6(e) of TSCA [15 U.S.C. 2605]. The Administrator of EPA has delegated authority to amend or modify the PCB Manufacturing, Processing, Distribution in Commerce, and Use Prohibition Rule [40 CFR Part 761], published May 31, 1979, in the **Federal Register** [44 FR 31514], to the Assistant Administrator for Pesticides and Toxic Substances.

Dated: November 10, 1981.

Edwin H. Clark II,
Acting Assistant Administrator for Pesticides and Toxic Substances.

PART 761—POLYCHLORINATED BIPHENYLS (PCBs) MANUFACTURING, PROCESSING, DISTRIBUTION IN COMMERCE, AND USE PROHIBITIONS

Therefore, it is proposed to amend 40 CFR Part 761 by revising § 761.31 (b)(1)(i) to read as follows:

§ 761.31 Authorizations.

* * * * *

(b) * * *

(1) * * *

(i) After October 1, 1983, use of railroad transformers that contain dielectric fluids with a PCB concentration greater than 60,000 ppm (6.0% on a dry weight basis) is prohibited;

* * * * *

[FR Doc. 81-33205 Filed 11-17-81; 8:45 am]
BILLING CODE 6560-31-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1310

[No. 36135]

Rules Governing Publication of Exceptions Ratings Higher Than Classification Ratings

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Central and Southern Motor Freight Tariff Association, Inc. has petitioned the Commission to remove 49 CFR 1310.7(r). This subsection requires motor common carriers to submit justification statements with any tariff that results in rates and charges higher than what would be applicable under classification ratings. The Commission is seeking comments both on the merits of the proposal, and on the merits of modifying rather than removing the subsection.

DATES: Comments of interested persons will be due on or before January 4, 1982.

ADDRESS: An original and fifteen copies of comments should be sent to: Interstate Commerce Commission, Room 5356, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Jane F. Mackall (202) 275-7656.

SUPPLEMENTARY INFORMATION: The motor common carriers party to tariffs published by the Central and Southern Motor Freight Tariff Association, Inc. (C&S) have requested that the Commission reconsider the provisions found at 49 CFR 1310.7(r).[1] This subsection states the principle that classification classes or ratings and rules, together with the class rates governed thereby, generally provide the highest rates and charges an article should bear, and requires that motor common carriers submit a justification statement to the Commission with any tariff that departs from this principle. The rules were promulgated by the Commission in *Rules Governing Publication of Exceptions Ratings,* 351 I.C.C. 716 (1976).

Replies to the petition to reopen have been filed by Outboard Marine Corporation, and jointly by the National Small Shipments Traffic Conference, Inc. and the Drug and Toilet Preparation Traffic Conference, Inc. Replicants request that the petition to reopen be rejected on grounds that it was not served on the parties of record in this proceeding. This argument, however, is without merit. The passage of time since the issue rule was promulgated indicates that the petition is more similar to a request for a new proceeding than to a continuation of an existing proceeding with known parties. Furthermore, this notice is procedural only, and all interested persons will have an opportunity to comment before a substantive decision is issued.

In *Rules Governing Publication of Exceptions Ratings, supra,* the Commission discussed the rationale supporting the rule. The Commission pointed out that the classification system is designed to reflect the characteristics of the commodity transported and to establish the relationship of a multitude of articles to each other in the rate structure. The classification system was thus viewed as an aid to maintaining a just and reasonable relationship between competing commodities.

Viewed in this context, the establishment of an exceptions rating tends to disrupt a commodity's relationship to other commodities from a transportation standpoint. The Commission believed, and had so found in a number of previous cases, that such disruption is allowable only where justified by special circumstances. By codifying in 1310.7(r) the requirement that carriers file justification statements with exceptions ratings, the Commission benefited shippers by eliminating the litigation that might otherwise be necessary to force carriers to justify the ratings.

In proposing the elimination of section 1310.7(r), petitioners cite in comparison *Consolidated Rail Corp.—Eliminate Dk. No. 28300,* 364 I.C.C. 615 (1981), in which the Commission vacated the rail class rate prescription ordered in No. 28300, *Class Rate Investigation 1939,* 262 I.C.C. 447 (1945), 264 I.C.C. 41 (1945), 268 I.C.C. 577 (1947), and 281 I.C.C. 213 (1951). As a result of the *Consolidated Rail Corp.* decision, the class rates no longer are presumed to establish maximum reasonable rail rate levels.

Petitioners argue that, as with rail carriers, the Commission is currently emphasizing competition and pricing flexibility for motor carriers. For LTL shipments particularly, petitioners state that the ability to price according to individual shipment characteristics is increasingly important under this new competitive environment, but that presuming classification ratings to be the maximum reasonable level significantly limits rate flexibility. Petitioners also argue that while the classification may have appropriately apportioned revenues for the various classes in relation to one another, it has not appropriately apportioned the expenses of handling the various classes of traffic.

In terms of the importance of the class rate structure, petitioners have submitted statistics to show a decrease in class rated traffic as a source of revenue and an increase in exceptions or commodity rated traffic. Petitioner states that on a per shipment basis, the percentage of traffic moving under class rates was 94.1 in 1974, 93.1 in 1979, and 92.1 in 1980.[2]

In response, replicants state that the statistical changes cited by petitioners are infinitesimal and insufficient to show a trend. Replicants also point out that most commodity and exceptions

---

[1] Petitioners requested the Commission to reconsider the regulations found at 49 CFR 1307.28(a)(4). That section was revoked as relevant here effective October 5, 1979. See 44 FR 24290, April 25, 1979. The regulations at issue are currently found at 49 CFR 1310.7(r).

[2] See petitioner's supplement to petition to reopen, filed September 2, 1981.

rates are lower than class rates, so that even if they are increasing in number, petitioner has not shown that the rule will hinder carriers' efforts to increase rates.

Regarding the changed competitive environment, replicants state that there is no need to change the rule because carriers do not compete by increasing their rates. Finally, replicants argue that the petition is premature because the Commission has not yet completed its study of the classification system in Ex Parte No. MC-98 (Sub-No. 1), *Investigation into Motor Carrier Classification*, 364 I.C.C. 906 (1981).

In considering this petition, we note first that our reasons for the *Consolidated Rail Corp.* decision are not totally applicable here. Most rail traffic moves by exceptions ratings and commodity rates rather than by class rates. In contrast, petitioners indicate that more than 90 percent of their traffic moves under class rates. As class rates appear to be more significant for motor carrier traffic than for rail, greater scrutiny of exceptions to the motor class rates may be warrented.

Furthermore, the *Consolidated Rail Corp.* decision responded to certain Staggers Rail Act requirements which, of course, do not apply to motor carriers. For example, elimination of the rail class rate prescription was necessary to allow the carriers to take full advantage of the joint rate cancellation provisions of the Act. Similar joint rate problems do not exist for motor carriers.

Most important, however, is the fact that, although the cost of transporting a particular commodity changes with the quantity tendered and the distance hauled, the transportation characteristics of that commodity ordinarily do not. Classification and exceptions ratings should relate only to the transportation characteristics of commodities.[3] Thus § 1310.7(r), at least to the extent it limits exceptions ratings, should not inhibit cost-based pricing.

We request comments on petitioner's request that the rule be eliminated. We also seek suggestions as to alternatives that should be considered. For example, we believe we should study whether carriers should be allowed to file rates higher than existing class rates, without first filing a justification statement, if those higher rates are the result of changes in rules or the creation of commodity rates which do not depend on exceptions to the classification.[4] The significant portion of this proposal, of course, is the elimination of the justification requirement for commodity rates, as rule changes are relatively insignificant in their effect upon rates.

Under this proposal the second sentence of 49 CFR 1310.7(r) would read as follows (with editorial changes for clarity):

> It follows that any exceptions rating which would result in a higher charge than otherwise would result from application of the classification class or rating would require special justification.

The rest of § 1310.7(r) would remain the same. (See the appendix for the full text.)

Repeal or change of 1310.7(r) would not, of course, affect the right of shippers to reasonable rates. In reviewing allegations of rate unreasonableness, the Commission would consider the costs and the particular circumstances involved in each case. At the suspension level, protests raising reasonableness issues, in instances where justification statements were no longer required, would be seriously considered. In these cases, it is expected that carriers would reply.

We request the parties to comment specifically on the following questions: (1) Whether classification ratings and corresponding class rates should continue to represent maximum reasonable levels; (2) whether a justification statement should be required for rates and charges higher than would be applicable under classification ratings; and (3) whether a justification statement should be required only for exceptions ratings that result in higher rates and charges. Although the matters raised in this notice do not appear to affect significantly the quality of the human environment or conservation of resources, comments on these issues are welcome in addition.

We also certify, pursuant to the Regulatory Flexibility Act, that this proceeding will not have a significant economic impact on a substantial number of smal entities. Regardless of the outcome of the proceeding, the substantive right of shippers to reasonable rates will not be affected. Furthermore, the rule at issue affects a very small proportion of the total number of rates published. A copy of this notice will be forwarded to the Chief Counsel for Advocacy, SBA.

(49 U.S.C. 10701, 10762.)

Decided: November 6, 1981.

By the Commission, Chairman Taylor, Vice-Chairman Clapp, Commissioners Gresham and Gilliam.

Agatha L. Mergenovich,

Secretary.

Appendix

PART 1310—FREIGHT RATE TARIFFS AND CLASSIFICATIONS OF MOTOR COMMON CARRIERS

Under the proposal to modify rather than abolish 49 CFR 1310.7(r), § 1310.7(r) would be revised as follows:

§ 1310.7 [Amended]

* * * * *

(r) *Statement required when classification basis exceeded.* It is a principle of longstanding that classification classes or ratings and rules, together with the class rates governed thereby, generally provide the highest rates and charges which an article should bear. It follows that any exceptions rating which would result in a higher charge than otherwise would result from application of the classification class or rating would require special justification. Therefore, accompanying the tender to the Commission of a tariff, supplement, or looseleaf page which names such a tariff provision, there shall be a clear statement by the publishing motor common carrier or agent of the justification relied upon to warrant the higher charges. Any such publication not accompanied by a statement of justification shall be subject to rejection. This paragraph does not apply (1) In connection with minimum charges for small shipments (provided they are based on weights not over 500 pounds), (2) with respect to publication of rates and provisions for a special service which under the tariff the shipper has the option of using by requesting it in writing (e.g., expedited service, exclusive use of vehicle, et cetera), and (3) where no class rates are maintained by the carrier for whose account the rating is published. Nor does this rule serve to prohibit publications of class rate arbitraries under authority of paragraph (b) of this section. (See §§ 1310.7(h)(3) and 1310.13 for provisions governing the alternation of commodity rates with class rates, and see § 1310.17(c), prohibiting alternation of exceptions with the classification.)

[FR Doc. 81-33182 Filed 11-17-81; 8:45 am]

BILLING CODE 7035-01-M

---

[3] Ex Parte No. MC-98 (Sub-No. 1), *Investigation into Motor Carrier Classification, supra.*

[4] It should be noted that carriers already can increase rates without a justification statement if the higher rates are a result of changes in class rate tables or rate basis numbers.