New Exemptions—Continued

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
8657-N	Celanese Chemical Co., Inc., Dallas, TX	49 CFR 173.289(a)(2)	To authorize shipment of 95% formic acid in lined aluminum DOT Specification 111A60ALW tank cars. (Mode 2.)

This notice of receipt of applications for new exemptions is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 2, 1981.

J. R. Grothe,

Chief, Exemptions Branch Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc 81-17124 Filed 6-10-81; 8:45 am]

BILLING CODE 4910-60-M

Hazardous Materials; Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Materials Transportation Bureau, DOT.

ACTION: List of applications for renewal or modification of exemptions or application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Regulation of the Materials Transportation Bureau has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal applications are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comment period closes June 26, 1981.

ADDRESS COMMENTS TO: Dockets Branch, Information Services Division, Materials Transportation Bureau, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8426, Nassif Building, 400 7th Street, SW., Washington, DC.

Application No.	Applicant	Renewal of exemption
1479-X	Jet Propulsion Laboratory, Pasedena, CA.	1479
4400-X	AIRCO Industrial Gases, Murray Hill, NJ.	4400
4459-X	Lif-O-Gen American Life Support Corp., Cambridge, MD.	4459
4719-X	Allied Corp., Morristown, NJ	4719
5179-X	Union Carbide Corp., Tarrytown, NY	5179
5248-X	3M Co., St. Paul, MN	5248
5248-X	The Boeing Co., Seattle, WA	5248
5662-X	Dow Chemical, Co., Midland, MI[1]	5662
5778-X	Lif-O-Gen American Life Support Corp., Cambridge, MD.	5778
5923-X	Union Carbide Corp., Tarrytown, NY	5923
6128-X	Hapag-Lloyd, Hamburg, Germany	6128
6267-X	Georgia-Pacific Corp., Montebello, CA	6267
6416-X	Allied Corp., Morristown, NJ	6416
6477-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	6477
6657-X	Liquid Air Corp., San Francisco, CA	6657
6657-X	Kelsey Welding Supply Corp., New Berlin, WI.	6657
6738-X	Texas Eastman Co., Longview, TX	6738
6738-X	E. I. du Pont de Nemours & Co., Inc., Wilmington, DE.	6738
6755-X	Lincoln Welding Supply Co., Lincoln, NB.	6755
6759-X	E. I. du Pont de Nemours & Co. Inc., Wilmington, DE.	6759
6766-X	DuBois Chemical Co., Cincinnati, OH	6766
6769-X	E. I. du Pont de Nemours & Co. Inc., Wilmington, DE.	6769
7051-X	Ozark-Mahoning Co., Tulsa, OK	7051
7192-X	Air Products and Chemicals, Inc., Allentown, PA.	7192
7282-X	M-R Plastics and Coatings, Inc., Maryland Heights, MO.	7182
7413-X	Chilton Metal Products Div. Western Industries, Inc., Chilton, WI.[2]	7413
7476-X	Thompson Tank & Manufacturing Co., Inc., Long Beach, CA.[3]	7476
7526-X	Sherex Chemical Company, Inc., Dublin, OH.	7526
7555-X	Provost Cartage, Inc., Ville d'Anjou, Quebec.[4]	7555
7587-X	Makhteshim Darom, Beer Sheva, Israel.	7587
7590-X	Smith's Transfer Corp., Staunton, VA	7590
7590-X	Gordons Transports, Inc., Memphis, TN.	7590
7590-X	Ryder Truck Lines, Inc., Jacksonville, FL.	7590
7590-X	Central Freight Lines, Inc., Waco, TX	7590
7590-X	Pacific Intermountain Express Co., Oakland, CA.	7590
7590-X	Transcon Lines, Los Angeles, CA	7590
7590-X	Commercial Lovelace Motor Freight, Inc., Columbus, OH.	7590
7886-X	W. M. Barr & Co., Memphis, TN	7886
8012-X	Campagnie des Containers Reservoirs, Paris, France.	8012
8123-X	Texas Instruments, Inc., Dallas, TX	8123
8129-X	RAD Services, Inc., Laurel, MD[5]	8129
8134-X	J. T. Baker Chemical Co., Philipsburg, NJ.	8134
8145-X	American Box Co., Fernwood, MS	8145
8171-X	Sea Containers, Inc., New York, NY	8171
8177-X	A. O. Smith-Inland, Inc., Little Rock, AK.	8177
8182-X	Fauvet-Girel, Paris, France	8182
8182-X	Societe Parlefer, Paris, France	8182
8192-X	Greif Brothers Corp., Springfield, NJ	8192
8212-X	Embassy of Switzerland, Washington, DC.	8212
8222-X	Campagnie des Containers Reservoirs, Paris, France.	8222
8235-X	Mobay Chemical Corp., Pittsburgh, PA	8235
8264-X	Hercules, Inc., Wilmington, DE[6]	8264
8265-X	Hercules, Inc., Wilmington, DE[7]	8265
8308-X	United States Priority Transport Corp., Huntington Station, NY.	8308
8554-X	E. I. du Pont de Nemours & Co. Inc., Wilmington, DE.[8]	8554
8646-X	Marshall Hyde Inc., Port Huron, MI	8646

[1] To renew and to change the guard around the safety valve from 12 inch schedule 80 to 12 inch schedule 40, pipe.
[2] To authorize passenger carrying aircraft as additional mode of transportation.
[3] To authorize poison B liquids, n.o.s. as additional commodity.
[4] To provide for an alternate resin in FRP cargo tanks construction; and to accommodate additional corrosive liquids.
[5] To amend exemption to allow co-mingling of subject packages in the same motor vehicle in a manner where ready access is not always practicable.
[6] To authorize rail as an additional mode of transportation.
[7] To authorize rail as an additional mode of transportation.
[8] To remove the restriction of private carriage from exemption.

Application No.	Applicant	Parties to exemption
4453-P	Alamo Explosives Co., Inc., Houston, TX.	4453
6530-P	MG Burdett Gas Products Co., Conshohocken, PA.	6530
6606-P	Department of Health and Human Services, Morgantown, WV.	6606
6932-P	Compagnie des Containers Reservoirs, Paris, France.	6932
7052-P	Airco Temescal, Berkeley, CA	7052
7052-P	Data/Ware Development, Inc., San Diego, CA.	7052
7259-P	FMC Corp., Philadelphia, PA	7259
7275-P	Basler Flight Service, Inc., Oshkosh, WI.	7275

Application No.	Applicant	Parties to exemption
7285-P	Compagnie des Containers Reservoirs, Paris, France.	7285
7418-P	Interpool Ltd. New York, NY 1	7418
7772-P	Compagnie des Containers Reservoris, Paris, France.	7772
7891-P	Fisher Scientific Co., Fair Lawn, NJ	7891
7943	FMC Corp., Philadelphia, PA	7943
8285-P	U.S. Environmental Protection Agency, Washington, DC.	8285
8441-P	Magnavox Electronics Systems Co., Fort Wayne, IN.	8441
8445-P	Advanced Environmental Technology Corp., Morris Plains, NJ.	8445
8526-P	Red Star Express Lines of Auburn, Inc., Auburn, NY.	8526
8526-P	National Starch and Chemical Corp., Bridgewater, NJ.	8526
8554-P	Alamo Explosives Co., Inc., Houston, TX.	8554
8572-P	AMEX, Inc., Hayden Lake, ID	8572
8606-P	Makhteshim Darom, Beer Sheva, Israel.	8606
8613-P	Mission Petroleum Carriers, Houston, TX.	8613

1 To be added as a party to and to authorize additional flammable liquids, combustible, and corrosive liquids.

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with section 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 2, 1981.

J. R. Grothe,

Chief, Exemptions Branch, Office of Hazardous Materials Regulation, Materials Transportation Bureau.

[FR Doc. 81-17125 Filed 6-10-81; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF THE TREASURY

Secret Service

Appointment of Performance Review Board (PRB) Members

This notice announces the appointment of members of Senior Executive Service Performance Review Boards in accordance with 5 U.S.C. 4314(c)(4) for the rating period beginning July 1, 1980 and ending June 30, 1981. Each PRB will be composed of at least three of the Senior Executive Service members listed below.

Name and Title

John W. Mangels—Director of Operations, Department of the Treasury
Myron I. Weinstein—Deputy Director, U.S. Secret Service
John R. Simpson—Assistant Director, Protective Operations (USSS)
Robert R. Burke—Assistant Director, Protective Research (USSS)
John W. Warner, Jr.—Assistant to the Director, Public Affairs (USSS)
William R. Barton—Assistant to the Director, Training (USSS)
Robert O. Goff—Legal Counsel (USSS)
Robert R. Snow—Deputy Assistant Director, Protective Research (USSS)
Don A. Edwards—Deputy Assistant Director, Protective Operations (USSS Uniformed Division)

FOR FURTHER INFORMATION CONTACT: Wesley Bishop, Chief, Personnel Division, Room 912, 1800 G St., N.W., Washington, D.C. 20223, Telephone No. 202-535-5800.

H. S. Knight,

Director.

[FR Doc. 81-17246 Filed 6-10-81; 8:45 am]

BILLING CODE 4810-42-M

Sunshine Act Meetings

Federal Register
Vol. 46, No. 112
Thursday, June 11, 1981

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Cancellation of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act"(5 U.S.C. 552b(e)(2)), notice is hereby given that the closed meeting of the Corporation's Board of Directors scheduled for 10:00 a.m. on Tuesday, June 9, 1981, has been cancelled. No earlier notice of the cancellation of the meeting was practicable.

Dated: June 8, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-904-81 Filed 6-9-81; 11:31 am]

BILLING CODE 6714-01-M

2

FEDERAL DEPOSIT INSURANCE CORPORATION.

Notice of Changes in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C 552b(e)(2)), notice is hereby given that at its closed meeting held at 2:30 p.m. on Monday, June 8, 1981, the Corporation's Board of Directors determined, on motion of Chairman Irvine H. Sprague, seconded by Director William M. Isaac (Appointive), concurred in by Director Charles E. Lord (Acting Comptroller of the Currency), that Corporation business required the withdrawal from the agenda for consideration at the meeting, on less than seven days' notice to the public of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Case No. 44,815-L—The Hamilton National Bank of Chattanooga, Chattanooga, Tennessee.

The Board further determined, by the same majority vote, that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matters:

Application of Community Bank, Huntington Park, California, for consent to establish a branch at 21415 Devonshire Street, Chatsworth, California.

Application of Bank of Thomasville, Thomasville, Alabama, for consent to merge, under its charter and title, with Citizens Bank, Thomasville, Alabama, and for consent to establish the sole office of Citizens Bank as a branch of the resultant bank.

Application of The Coastal Bank, Hinesville, Georgia, for consent to merge, under its charter and title, with Long State Bank, Ludowici, Georgia, and for consent to establish the sole office of Long State Bank as a branch of the resultant bank.

Request from the Board of Governors of the Federal Reserve System that the Corporation, pursuant to section 10(b) of the Federal Deposit Insurance Act, assist in an examination of a State member bank.

The Board further determined, by the same majority vote, that no earlier notice of the changes in the subject matter of the meeting was practicable; that the public interest did not require consideration of the matters added to the agenda in a meeting open to public observation; and that the matters added to the agenda could be considered in a closed meeting by authority of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(6), (c)(8), and (c)(9)(A)(ii)).

Dated: June 8, 1981.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[S-905-81 Filed 6-9-81; 11:32 am]

BILLING CODE 6714-01-M

3

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Tuesday, June 16, 1981 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Personnel. Compliance. Litigation. Audits.

* * * * *

DATE AND TIME: Thursday, June 18, 1981 at 10 a.m.

PLACE: 1325 K Street, N.W., Washington, D.C.

STATUS: This meeting will be open to the public (fifth floor).

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings
Correction and approval of minutes
Certification
Advisory opinions:
Draft AO 1981-23—Richard H. Magnuson, Vice President/General Counsel, Land O'Lakes, Inc.
Draft AO 1981-24—William C. Oldaker, American Federation of State, County and Municipal Employees (AFSCME)
Pending legislation
Appropriations and budget:
Budget Execution Report
Classification actions
Routine administrative matters

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Public Information Officer; Telephone: 202-523-4065.

Majorie W. Emmons,

Secretary to the Commission.

[S-908-81 Filed 6-9-81; 3:31 pm]

BILLING CODE 6715-01-M

4

FEDERAL HOME BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 30474, Monday, June 8, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, June 11, 1981.

PLACE: 1700 G Street N.W., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following item has been withdrawn from the open portion of the Bank Board meeting scheduled for Thursday, June 11, 1981.

Application for Insurance of Accounts—Citizens Building and Loan Association Plaquemine, Louisiana

[No. 500, June 9, 1981]

[S-909-81 Filed 6-9-81; 3:48 pm]

BILLING CODE 6720-01-M

5

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 30474, Monday, June 8, 1981.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., Thursday, June 11, 1981.

PLACE: 1700 G Street N.W., board room, sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Marshall (202-377-6679).

CHANGES IN THE MEETING: The following item has been added to the open portion of the Bank Board meeting scheduled for Thursday, June 11, 1981.

Monetary Control Act Reserves Counting Toward Liquidity Requirements

[No. 499, June 9, 1981]

[S-910-81 Filed 6-9-81; 3:48 pm]

BILLING CODE 6720-01-M

6

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 9 a.m., June 16, 1981.

PLACE: Hearing Room One, 1100 L Street, N.W., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Portions open to the public:

1. Nigeria-United States Discussion Agreement No. 10407.
2. Agreement No. 10414: PRC-USA Eastbound Rate Agreement.
3. Draft Consumer Affairs Program.

Portions closed to the public:

1. Docket No. 81-28—Agreement No. 10247-3—Australian Loading Expense Agreement—Motion to Dismiss.
2. Consideration of H.R. 2042, H.R. 3578 and H.R. 3577.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Acting Secretary.

[S-906-81 Filed 6-9-81; 11:44 am]

BILLING CODE 6730-01-M

7

[USITC SE-81-15A]

INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 29584, June 2, 1981.

PERVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, June 9, 1981.

CHANGES IN THE MEETING: Emergency action to close a portion of the meeting originally announced as open to the public.

Pursuant to the specific exemptions of 5 U.S.C. 552b(c)(4) and in conformity with 19 CFR 201.36(b)(4), Commissioners Alberger, Calhoun, Bedell, and Stern voted by action jacket INV-E-067 to hold a portion of the discussion with respect to item No. 5 [Investigation 731-TA-42 (Motorcycle Batteries from Taiwan) — briefing and vote] in closed session.

Commissioners Alberger, Calhoun, Bedell, and Stern determined, pursuant to 19 CFR 201.37(b) that Commission business requires the change in the determination of the Commission to open or close this portion of the meeting and directed the issuance of this notice at the earliest practicable time.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 523-0161.

[S-907-81 Filed 6-9-81; 3:05 pm]

BILLING CODE 7020-02-M

8

METRIC BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 46 FR 29852, June 3, 1981.

TIME AND DATE:

9 a.m. to 5 p.m.—Tuesday, June 9, 1981 (closed session)
10 a.m. to 12 noon—Wednesday, June 10, 1981 (open session)
3 p.m. to 5 p.m.—Wednesday, June 10, 1981 (closed session)

PLACE: U.S. Metric Board, 1600 Wilson Boulevard, Suite 400, Arlington, Virginia 22209.

STATUS: Portions of the meeting will be open to the public and portions of the meeting will be closed to the public.

CHANGES IN THE MEETING: The closed session (Tuesday, June 9, 1981) is continued to 3 p.m., Wednesday, June 10, 1981. The schedule now reads: Tuesday, June 9, 1981 (closed session); 10 a.m. to 12 noon, Wednesday, June 10, 1981 (open session); 3 p.m. to 5 p.m., Wednesday, June 10, 1981 (closed session).

The noted sessions are closed under exemption 5 U.S.C. 552(c)(9)(B) because premature release of this information would have a significant adverse impact on the successful completion of the three projects under review by the Committee.

Exigent circumstances prevented the publishing of this notice earlier.

CONTACT PERSON FOR MORE INFORMATION: G. Edward McEvoy, Director of Research (703) 235-2583.

Louis F. Polk,

Chairman, United States Metric Board.

[S-903-81 Filed 6-9-81; 10:52 am]

BILLING CODE 8250-01-M

9

NATIONAL SCIENCE FOUNDATION.

DATE AND TIME:

June 17, 1981: 1 p.m. open session, 2 p.m. closed session
June 18, 1981: 8:30 a.m. closed session
June 19, 1981: 8:30 a.m. Open session (if necessary), 9 a.m. closed session

PLACE: National Academy of Sciences Summer Study Center, Woods Hole, Massachusetts.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED AT THE OPEN SESSIONS:

Wednesday, June 17, 1 p.m.

1. Minutes—Open Session—Thirty-first Annual (226th) Meeting
2. Chairman's Items
3. Director's Report:
   a. Report on Grant and Conract Activity—5/20-6/16/81
   b. Organizational and Staff Changes
   c. Congressional and Legislative Matters
   d. NSF Budgets for Fiscal Years 1981 and 1982
   e. Other Items
4. Reports on Meetings of Board Committees
5. NSF Advisory Groups and Other Events
6. Other Business
7. Next Meeting National Science Board—August 20-21

Friday, June 19, 8:30 a.m.

Conclusion of Open Session (if necessary)

Matters to be considered at the closed session:

Wednesday, June,17, 1 p.m.

A. Minutes—Closed Session—Thirty-first Annual (226th) Meeting
B. Recommendations to the Administration and the Congress for Fiscal Year 1983 and Subsequent Years:

1. Science and Engineering Education

Thursday, June 18, 8:30 a.m.

B. Recommendations to the Administration and the Congress for Fiscal Year 1983 and Subsequent Years (continued):
2. Behavioral and Social Sciences
3. NSB Role in National Science Policy

Friday, June 19, 9 a.m.

C. NSB and NSF Staff Nominees
D. Appointments to Alan T. Waterman Award Committee
E. NSB Annual Reports
F. Export of Technological Data
B. Recommendations to the Administration and the Congress for Fiscal Year 1983 and Subsequent Years (conclusion):
1. Science and Engineering Education
2. Behavioral and Social Sciences
3. NSB Role in National Science Policy
4. Other

CONTACT PERSON FOR MORE INFORMATION: Miss Vernice Anderson, Executive Secretary, (202)357-9582.

[S-913-81 Filed 6-9-81; 3:59 pm]

BILLING CODE 7555-01-M

10

NUCLEAR REGULATORY COMMISSION.

DATE: Tuesday, June 16 and Wednesday, June 17, 1981.

PLACE: Commissioners conference room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO BE CONSIDERED: Tuesday, June 16:

10 a.m.: 1. Briefing on Criterion I in Export Licensing (closed meeting)

Wednesday, June 17:

10 a.m.: 1. Discussion of Anticipated Transients Without Scram (public meeting)

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Gary M. Gilbert (202) 634-1410.

June 9, 1981.

Gary M. Gilbert,

Office of the Secretary.

[S-912-81-Filed 6-9-81; 3:59 pm]

BILLING CODE 7590-01-M

11

NUCLEAR REGULATORY COMMISSION.

DATE: Week of June 8, 1981 (revision #2).

PLACE: Commissioners conference room, 1717 H Street, N.W., Washington, D.C.

STATUS: Open/closed.

MATTERS TO CONSIDERED: Monday, June 8:

1:00 p.m.

1. Discussion and Vote on GPU Federal Tort Claim—Draft Decision (approximate 1 hour, closed meeting/final portion may be open) (as announced)

Tuesday, June 9:

10:00 a.m.

1. Briefing on McGuire Operating License (approximate 1 hour, public meeting) (as announced)

2. Discussion of McGuire Operating License (closed meeting) (as announced)

2:00 p.m.

1. Discussion and Vote on Operating License for Sequoyah-2 (public meeting) (as announced)

Wednesday, June 10:

2:00 p.m.

1. Briefing on comments on EPA-Proposed Guidance for Occupational Exposures (public meeting approximate 1½ hours), as announced)

2. Discusion and Vote on Motion for a Stay of Certain Aspects of Final Rule on Fire Protection for Operating Nuclear Power Plants (approximate 1 hour, closed meeting) (previously announced for affirmation on June 11)

Thursday, June 11:

10:00 a.m.

1. Discussion and Possible Vote on 10 CFR 60, Disposal of High-Level Wastes in Geologic Repositories: Technical Criteria (public meeting) (as announced)

2:00 p.m.

1. Briefing on Pressurized Thermal Shock (approximate 1½ hours, public meeting) (as announced)

2. Affirmation/Discussion Session (public meeting) Items to be affirmed and/or discussed:

a. Significant Changes Decision in Summer Anitrust Matter

b. Publication of Guidelines for Mgmt. of Agreement State Radiation Control Programs

c. Reporting of Changes to Quality Assurance Programs

d. Commission Review of ALAB-603, St. Lucie

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULE UPDATE: (202) 634-1498. Those planning to attend a meeting should reverify the status on the day of the meeting.

CONTACT PERSON FOR MORE INFORMATION: Gary Gilbert (202) 634-1410.

Gary Gilbert,

Office of the Secretary.

June 8,1981.

[S-911-81 Filed 6-9-81; 3:59 pm]

BILLING CODE 7590-01-M

federal register

Thursday
June 11, 1981

Part II

Department of Transportation

Federal Aviation Administration

Pilot-in-Command Qualifications and Instrument Proficiency Check Requirements

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 135

[Docket No. 21129; Amdt. No. 135-15]

Pilot-in-Command Qualifications and Instrument Proficiency Check Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: Part 135, effective December 1, 1978, required all pilots in command to hold instrument ratings. It also required pilots to satisfactorily demonstrate instrument approach procedures using certain navigational facilities. These requirements are unduly restrictive for some certificate holders. This amendment provides that pilots are not required to hold instrument ratings when operating in day, visual flight rule conditions in certain isolated areas when conducting air taxi or commercial operations. It also provides that only those instrument procedures which the certificate holder desires to be used are required to be demonstrated. This amendment reduces burdens on certain air taxi and commercial operators and is therefore consistent with Executive Order 12291 and the Regulatory Flexibility Act.

EFFECTIVE DATE: June 11, 1981.

FOR FURTHER INFORMATION CONTACT: Ms. Marilyn M. Sidwell, Regulatory Projects Branch (AVS-24), Safety Regulations Staff, Associate Administrator for Aviation Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 755-8716.

SUPPLEMENTARY INFORMATION:

Background

§ 135.243 Pilot-in-Command Qualifications.

An amendment was adopted on September 26, 1978, which revised the requirements for operations by persons holding Air Taxi/Commercial Operators Certificates and required all pilots in command to hold instrument ratings. Section 135.10(c) originally required compliance with this requirement by June 1, 1979.

Following publication of the revised Part 135, the FAA received numerous petitions for exemption from the instrument rating requirement. In addition, several inquiries were received from members of Congress who were seeking information for constituents who wanted relief from the instrument rating requirement. The majority of these requests for relief were from certificate holders who conduct on-demand charter operations in remote areas which are located in the northern United States. Almost all of the requests were from seaplane operators conducting day VFR operations that carry hunting or fishing groups to isolated locations or provide cargo service to small, isolated settlements which lack access to other commercial transportation means. In virtually all instances, these operators serve areas that are so remote there are no navigation facilities suitable for use. Because of the absence of these facilities and the day VFR nature of the operations, their aircraft are not equipped for instrument flight operations. Consequently, they use pilots who do not hold instrument ratings. However, these pilots are highly experienced and are thoroughly familiar with the terrain, alternate landing areas, and weather patterns in the area of operations.

In response to the situation, Amendment No. 135-1, effective May 7, 1979, (44 FR 26737) extended the compliance date of the instrument rating requirement until December 1, 1980. This action was taken to provide time for the FAA to restudy this requirement and possibly adopt changes regarding its scope.

Notice 80-23 (45 FR 80450), Miscellaneous Amendments, was issued on November 28, 1980. This notice proposed changes to numerous sections of the FAR. Most of the proposals were clarifying, editorial, or corrective in nature. However, one proposal involved changing the Part 135 pilot-in-command requirements to allow pilots to conduct flights during the day under VFR in certain isolated areas without holding an instrument rating. The closing date for comments was February 4, 1981.

Amendment No. 135-9 (45 FR 80460), effective December 1, 1980, further extended the compliance date for the instrument rating requirement to February 1, 1981, to allow the agency adequate time to consider alternatives and determine a course of action.

§ 135.297 Pilot in Command: Instrument Proficiency Check Requirement.

When Part 135 was revised, the pilot-in-command instrument proficiency check requirements were modified. Under that revision, § 135.297 requires each pilot in command to demonstrate satisfactorily at least one instrument approach procedure using an instrument landing system (ILS), a very high frequency omnirange station (VOR), and a nondirectional radio beacon (NDB). Some air taxi certificate holders contend that the revised requirement is too restrictive. For example, some certificate holders state they have no need to use ILS facilities and that the nearest ILS facility is located a significant distance from the certificate holder's operations base. It is argued that the present rule requires unreasonable expenditures of aircraft and pilot operational expense to demonstrate proficiency on a facility which is not used by some certificate holders.

Notice 80-23 proposed that only those instrument approach procedures which the certificate holder desires to use are required to be demonstrated.

Discussion of Comments

§ 135.243 Pilot-In-Command Qualification.

The FAA has reviewed the necessity for an instrument rating in light of comments received from Notice 80-23. It has concluded that it is appropriate to amend the present regulation to allow certain pilots in command operating under Part 135 to operate under day, visual flight rule conditions into isolated areas or settlements without having an instrument rating. A new paragraph (d) is added to § 135.243 to implement this amendment.

Notice 80-23 stated that § 135.243(b)(3), which requires an instrument rating, would not apply to nonstop flights between the certificate holder's main base and seaplane landing area or the return flight, subject to specific limitations. After considering comments which indicate that the proposal is too restrictive, the rule is amended to apply to single reciprocating-engine-powered airplanes, including seaplanes, skiplanes, and landplanes. In addition, the FAA has determined that the nonstop flight requirement is unnecessary and is deleted.

Section 135.243(d)(2) prohibits certain scheduled operators and mail carriers, such as commuter air carriers, from using pilots in command without instrument ratings. No comments were received on this proposal and it is adopted as proposed.

Notice 80-23 proposed that it would not be necessary for a pilot in command in a Part 135 operation flying under day VFR conditions to have an instrument rating when there is no VOR or NDB facility within 40 nautical miles of the certificate holder's main base, the destination, or straight-line course between the main base and destination. In response to the notice, one commenter states that aircraft that are used in day, VFR operations are not required to be radio equipped, making such a proposal useless. Another commenter took issue with the 40-nautical-mile stipulation stating that although a facility may be within the 40-nautical-mile range, it does not necessarily mean that it can be useful on trips to these isolated areas or settlements.

Three other commenters object to this requirement since they could operate in these areas within 40 nautical miles of the facilities and still not receive a reliable signal due to the nature of the terrain. These commenters feel that climbing to any altitude to get a reliable signal would be time consuming and, at today's cost, would result in substantial loss of business. These flights would be especially impacted since they are of such short duration. The FAA reevaluated this aspect of the proposal and concludes that the requirement concerning the VOR and NDB facility is too restrictive and the rule is amended by deleting this requirement. It was proposed as a means of expressing in objective terms the concept that isolated areas ordinarily do not have radio navigational aids.

The FAA has decided that the certificate-holding Flight Standards district office should determine whether the area to be served is an isolated area since it is familiar with areas within its jurisdiction. Accordingly, § 135.243(d)(3) is added which states that the area, as specified in the certificate holder's operations specifications, is an isolated area as determined by the certificate-holding Flight Standards district office if it is shown that the primary means of navigation in the area is by pilotage, since radio navigational aids are largely ineffective, and the primary means of transportation in the area is by air. Before approving the area as an isolated area, the Flight Standards district office ascertains that the entire operation, that is, takeoff, en route travel, and landing, will be conducted within the area.

Section 135.243(d)(4) provides that pilots in command not holding instrument ratings may operate within isolated areas during day, VFR conditions with a ceiling of not less than 1,000 feet and visibility not less than 3 statute miles. Two commenters propose that the visibility restriction be changed to 1 statute mile visibility and that the flight be conducted clear of all clouds since most operations are in noncontrolled airspace. The FAA disagrees. Section 135.205(a) prohibits operations under VFR in uncontrolled airspace when the ceiling is less than 1,000 feet and flight visibility is less than 2 statute miles. This applies to all operations under Part 135. The FAA sees no reason to lessen this requirement. The 3-mile visibility minimum is necessary because it would allow noninstrument-rated pilots additional time to maneuver to alternate landing areas in the event of deteriorating weather in the isolated area. Therefore § 135.243(d)(4) is adopted as proposed.

Section 135.243(d)(5) is adopted as proposed in the notice. This provides that an operation may be conducted when weather reports or forecasts, or any combination of them, indicate that for the period commencing with the planned departure and ending 30 minutes after the planned arrival at the destination, the flight may be conducted under VFR with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles. However, if weather reports or forecasts are not available, the pilot in command may use that pilot's observations or those of other persons competent to supply weather observations if those observations indicate the flight may be conducted under VFR with the ceiling and visibility required in this paragraph.

One commenter interprets the proposal to mean that all weather briefings and forecasts must come from local General Aviation District Office (GADO) facilities rather than Flight Service Stations or local forecasting facilities. This interpretation is incorrect. This rule does not change the provisions of § 135.213(a) regarding weather reports and forecasts. These reports and forecasts are not available at GADO's. The provisions for weather reports and forecasts are incorporated in § 135.243(d)(5) to ensure the proper preflight planning to conduct the flight during VFR weather conditions with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles. The use of pilot observations or those of other persons competent to supply weather information may also be used when the official reports and forecasts are not available.

Proposed § 135.243(d)(7) limited the distance of each flight from departure point to destination to 250 nautical miles for a pilot in command who holds a commercial pilot certificate with an airplane category rating issued before February 1, 1973, without an instrument rating, or 50 nautical miles in the case of a pilot in command who holds a commercial pilot certificate with an airplane category rating issued after January 31, 1973, without an instrument rating. However, some commercial pilot certificates were issued without instrument ratings and without mileage limitations after February 1, 1973, in accordance with §§ 61.1 and 61.71. The FAA determined that these pilots should be included in the amendment. The amendment allows operation where the distance of each flight from the certificate holder's base of operation to destination does not exceed 250 nautical miles by a pilot who holds a commercial pilot certificate with an airplane rating without an instrument rating, provided that pilot's certificate does not contain any limitations to the contrary.

Two commenters state that the 250-nautical-mile restriction on distances is acceptable since pilots cannot possibly be familiar with areas outside this limit. Two other commenters disagree and feel that the distance restriction should be relaxed since initial certification training requires longer flights. One commenter asks if 250 nautical miles is good, why not 300 miles or 400 miles? The FAA recognizes that some commenter may believe that a limitation other than 250 miles may be more appropriate. However, it is clear that some limit must be given in this rule. No commenter provided quantitative data to support any other mileage limitation. The 250-nautical-mile limit is approximately 2 hours flight time in the airplanes used in these operations. Operations conducted within this limitation would minimize the effects of rapidly changing weather conditions and more likely result in the pilot in command having sufficient knowledge of the area of operations. The FAA has determined that limiting flights to 250 nautical miles from the certificate holder's base of operations provides an acceptable level of safety. A base of operation can be the certificate holder's main base or one or more bases established at the locations more convenient to the isolated area to be served. The approval of the certificate-holding district office is necessary before establishing or changing the area of operation. Proposed § 135.243(d)(7) is redesignated § 135.243(d)(6) to provide a more logical listing and is adopted with the changes discussed.

Section 135.243(d)(7) (proposed (d)(6)) allows pilots in command to operate without the instrument rating when the areas to be flown are approved by the certificate-holding FAA Flight Standards district office and are listed in the certificate holder's operations specifications. Notice 80-23 proposed approval of routes to be flown. One commenter states that approval on every individual route is impractical due to the numerous routes connected with on-demand charter operations. The FAA would be unable to approve each route in on-demand operations since these could involve thousands of different variations. Another commenter states that all deviations from the instrument rating rule should be handled by the local GADO. The FAA concludes that the certificate-holding office should have approval authorization of these operations and should approve specific areas of operations subject to review by the regional office. In addition, while Notice 80-23 did not specify what method was to be used for approval of operations by the FAA, it is determined that the areas of operation should be listed in the certificate holder's operations specifications. Therefore, proposed § 135.243(d)(6) is redesignated § 135.243(d)(7) and is adopted with these changes.

§ 135.297 Pilot in Command: Instrument Proficiency Check Requirements.

§ 135.297(b) provides that only those instrument approach procedures which the certificate holder desires to use are required to be demonstrated. Thus, each certificate holder would determine from the characteristics of its operation which procedures it needs. This amendment relaxes requirements and provides the air taxi operator flexibility in electing the kinds of approaches authorized. The certificate holder may elect to use only one kind of approach or several, whatever suits its operation. Safety is maintained by requiring the certificate holder to provide initial and recurrent training for each type of approach to be used. This ensures that each pilot receives flight training to proficiency, as specified in § 135.341(a), on each type of procedure to be used. Therefore, the proposed requirement that training for all instrument approach procedures to be used by the certificate holder should be included in the certificate holder's initial and recurrent training program is repetitive and is deleted. The operator is issued operations specifications which contain the instrument approach procedures authorized.

One commenter opposes the change because, by virtue of the type of flying conducted, an operator will be executing instrument approaches to many different navigational aids. The commenter contends that by allowing an operator to select only those approaches that would normally be used in its operation, it is conceivable that a pilot could be forced to execute an approach he or she is not authorized to use because the kind of approach the pilot planned to use was out of service at the destination. This proposal was initiated because of numerous certificate holders located at airports where an ILS/NDB is not available and a substantial cost is involved in demonstrating ILS, NDB, and VOR approaches. The amendment provides flexibility in the rule. Operators will have to plan IFR flights carefully to handle the possibility of a facility being out of service.

The previous rules required each pilot in command to demonstrate satisfactorily at least one instrument approach using an ILS, a VOR, and an NDB facility before a letter of competency is issued to that pilot authorizing IFR operations. Some air taxi certificate holders contend that the requirement is too restrictive, especially if they have no need to use these approaches and the nearest facility is located a significant distance from a certificate holder's base of operations.

To ensure an adequate level of safety, § 135.297(b) allows a pilot to use only those precision approach procedures satisfactorily demonstrated. To use any nonprecision instrument approach procedure, a pilot is required to demonstrate satisfactorily that procedure or any other two nonprecision instrument approach procedures. One commenter was unsure as to the identification of nonprecision approaches. Examples of nonprecision approaches are localizer, localizer (back course), VOR, VOR-DME, NDB, and ASR.

As proposed in Notice 80-23, § 135.297(h) is deleted. The certificate holder is required by § 135.63 to maintain records showing the qualifications of its pilots and to designate operations its pilots are authorized to conduct. This includes the types of instrument approach procedures and facilities authorized and pilot-in-command autopilot authorization. Therefore, § 135.297(h) is not needed. Section 135.297(a) is modified to delete the requirement for a letter of competency.

Economic Analysis

The FAA conducted an economic impact study to determine the benefits and costs of the pilot-in-command qualifications and instrument proficiency check requirement revisions for Part 135 certificate holders. The study is included in the regulatory docket for this final rule.

The FAA found that both industry and the FAA would be affected by the regulatory changes. Expected benefits are cost savings. These cost savings include lower fuel expenses resulting from fewer required instrument training and instrument check flights. Costs include the potential operator's insurance premium reductions if affected pilots had their instrument ratings and the additional FAA workload necessary to issue appropriate operations specifications to operators using pilots without instrument ratings. Neither the FAA nor the industry would incur any additional costs as a result of the changes to the rules on instrument proficiency checks. Finally, the FAA found that the impact on the U.S. economy will be extremely small. The number of certificate holders affected by the changes is small in comparison with the total number of certificate holders. However, the regulatory changes could result in significant time and cost savings to those individuals affected by the pilot-in-command revisions. Therefore these revisions carry out the intent of the Regulatory Flexibility Act by reducing the regulatory burden for essentially small air taxi operators which provide unique service to remote areas of the United States.

To determine the economic impact of the changes to the instrument rating requirement of § 135.243, the FAA surveyed its regional offices and reviewed requests for extension of the compliance date. As a result of the survey, the FAA concludes that there are no more than 100 pilots who would be affected by this rule. Cost savings to the pilots were estimated by multiplying the average number of additional hours of training required for them to obtain instrument ratings by the average training cost per hour, and adding to that total the present value of the potential revenue loss resulting from not being able to fly without an instrument rating. Industry costs are potential operator insurance premium reductions if affected pilots obtained instrument ratings. An operator must pay a risk insurance premium for pilots without instrument ratings. A survey of aviation insurers indicates that operators' insurance premiums would be reduced if they utilize pilots holding instrument ratings. Industry costs were estimated by multiplying the insurance premium risk differential by the number of affected pilots. The present value of these costs was determined because industry costs will accrue each succeeding year an operator uses a pilot without an instrument rating. These costs represent a "worst" case. Actual industry costs may be lower. FAA costs were estimated by calculating the administrative costs required to issue an operations specification and multiplying this figure by the approximate number of Part 135 operators who would request such an action. A major portion of the cost to the FAA would be offset by not having to process petitions for exemption. The operator's costs to prepare for and travel to a meeting at the certificate-holding Flight Standards district office to get an operations specification were assumed to be insignificant and much less than the cost savings they would accrue.

To calculate the economic benefits of the pilot-in-command instrument proficiency check requirement revisions, the FAA first estimated the percentage of the total certificated commercial pilots who would not have to demonstrate ILS, VOR, and NDB approaches. It estimated that a maximum of 10 percent of the total certificated commercial pilots would be in this category. For the purpose of this analysis, the FAA judged the ILS proficiency check as the most likely check to be foregone. In many cases, an ILS is very far from an affected operator's base. The cost savings to affected operators will result from eliminating the expenses for aircraft operation and pilot time needed for an instrument proficiency check. The present value of the cost savings was determined because an ILS check is required twice a year and a certificate holder who elects not to use ILS approaches will not only accrue cost savings in the year the revision becomes effective but also in each succeeding year. In addition, FAA would save the cost of the administrative time used to perform and rate an instrument proficiency check.

The results of the FAA economic study demonstrate that the savings to affected Part 135 operators, pilots, and Federal Government will exceed any costs incurred in implementing either rule. These savings are summarized in the following table:

Summary of the Present Value of the Economic Impact of Part 135 Pilot-In-Command Revisions

	Benefits	Costs
PIC qualification:		
Industry	$450,000	$127,200
Government		2,500
Total	450,000	129,700
PIC instrument check:		
Industry	3,208,210	
Government	326,895	
Total	3,535,105	

The Amendement

Accordingly, Part 135 of the Federal Aviation Regulations (14 CFR Part 135) is amended as follows, effective June 11, 1981.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

1. By amending § 135.243 by adding a new paragraph (d) to read as follows:

§ 135.243 Pilot-in-command qualifications.

* * * * *

(d) Paragraph (b)(3) of this section does not apply when—

(1) The aircraft used is a single reciprocating-engine-powered airplane;

(2) The certificate holder does not conduct any operation pursuant to a published flight schedule which specifies five or more round trips a week between two or more points and places between which the round trips are performed, and does not transport mail by air under a contract or contracts with the United States Postal Service having total amount estimated at the beginning of any semiannual reporting period (January 1-June 30; July 1-December 31) to be in excess of $20,000 over the 12 months commencing with the beginning of the reporting period;

(3) The area, as specified in the certificate holder's operations specifications, is an isolated area, as determined by the Flight Standards district office, if it is shown that—

(i) The primary means of navigation in the area is by pilotage, since radio navigational aids are largely ineffective; and

(ii) The primary means of transportation in the area is by air;

(4) Each flight is conducted under day VFR with a ceiling of not less than 1,000 feet and visibility not less than 3 statute miles;

(5) Weather reports or forecasts, or any combination of them, indicate that for the period commencing with the planned departure and ending 30 minutes after the planned arrival at the destination the flight may be conducted under VFR with a ceiling of not less than 1,000 feet and visibility of not less than 3 statute miles, except that if weather reports and forecasts are not available, the pilot in command may use that pilot's observations or those of other persons competent to supply weather observations if those observations indicate the flight may be conducted under VFR with the ceiling and visibility required in this paragraph;

(6) The distance of each flight from the certificate holder's base of operation to destination does not exceed 250 nautical miles for a pilot who holds a commercial pilot certificate with an airplane rating without an instrument rating, provided the pilot's certificate does not contain any limitation to the contrary; and

(7) The areas to be flown are approved by the certificate-holding FAA Flight Standards district office and are listed in the certificate holder's operations specifications.

2. By amending § 135.297 by removing paragraph (h) and by revising paragraphs (a) and (b) to read as follows:

§ 135.297 Pilot in command: Instrument proficiency check requirements.

(a) No certificate holder may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No pilot may use any type of precision instrument approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures must include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated must be conducted to published minimums for that procedure.

* * * * *

(Secs. 313(a) 601 through 605 of the Federal Aviation Act of 1958 (49 U.S.C. 1354(a), 1421 through 1425); sec. 6(c), Department of Transportation Act (49 U.S.C. 1655(c)); and 14 CFR 11.45)

Note.—The FAA has determined that this regulation relaxes requirements for certain operators. It therefore: (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant regulation" under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The regulatory evaluation contained in the docket shows that this rule relieves an economic burden on certain small entities. A copy of the evaluation may be obtained from the person indentified under the caption "For Further Information Contact."

Issued in Washington, DC, on May 11, 1981.

J. Lynn Helms,

Administrator.

[FR Doc. 81-17300 Filed 6-10-81; 8:45 am]

BILLING CODE 4910-13-M

federal register

Thursday
June 11, 1981

Part III

Department of Transportation

Federal Highway Administration

Motor Carriers; Minimum Levels of Financial Responsibility

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 387

[BMCS Docket No. MC-94; Amdt. No. 81-3]

Minimum Levels of Financial Responsibility for Motor Carriers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: This document establishes minimum levels of financial responsibility for for-hire motor carriers of property involved in interstate or foreign transportation and for motor carriers transporting hazardous materials in intrastate or interstate commerce, in accord with the provisions of Section 30 of the Motor Carrier Act of 1980, and further provides for the implementation and enforcement of the standards set forth.

DATE: The rule is effective on July 1, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald J. Davis, Bureau of Motor Carrier Safety (BMCS), (202) 426-9767; or Mr. Gerald M. Tierney, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: The FHWA has determined that this document is a major proposal under Executive Order 12291 and that this rulemaking action is considered to be significant under the DOT's regulatory policies and procedures. The requirement to conduct a regulatory impact analysis prior to promulgation was waived by OMB since their review found this final regulation consistent with the principles of Executive Order 12291. A regulatory evaluation and a regulatory flexibility analysis are available for inspection in the public docket and may be obtained by contacting Mr. Gerald J. Davis of the program office at the address specified above.

Background

On July 1, 1980, the President signed the Motor Carrier Act of 1980, Pub. L. 96-296. Section 30 of the Act prescribes that minimum levels of financial responsibility be set for for-hire motor carriers of property involved in interstate or foreign transportation and for the transportation of hazardous materials in intrastate and interstate commerce. The Act limits the applicability of these requirements to motor vehicles having a gross vehicle weight rating of 10,000 pounds or more.

The Act establishes minimum dollar levels of financial responsibility that must be met by affected persons 1 year from the date of enactment of the Act unless the Secretary of Transportation issues regulations that require higher or lower levels.

The Secretary's authority to reduce those levels is limited. The statute generally precludes the Secretary from reducing the minimum levels below specified levels and generally provides that the authority to impose reduced levels applies only to a period of up to 2 years beginning either on (1) the effective date of the rule, provided that the rule is made effective within 1 year after enactment, or (2) the 366th day after enactment, provided that the rule is made effective 1 year after enactment or later. The period of time is herein referred to as a 2-year "phase-in period."

The purpose of the financial responsibility provisions of the Motor Carrier Act of 1980 is to create incentives for the motor carrier industry to focus on the safety aspects of highway transportation and to assure the general public that a motor carrier maintains an adequate level of financial responsibility sufficient to satisfy claims covering public liability and environmental restoration liability. The legislative history of Section 30 indicates a congressional belief that increased financial responsibility will lead to improved safety performance as unsafe motor carriers will incur higher premiums than safe carriers, or will be unable to obtain coverage. The Congress expected that motor carriers which maintain high levels of safety would be evaluated in a favorable light by insurance or surety companies. Since generally the premiums that insurance or surety companies actually charge are directly related to the insured motor carrier's record of loss experience, the minimum levels of financial responsibility for public liability, property damage, and environmental restoration required in the Act should initiate a new and major focus on motor carrier safety.

The BMCS published an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** on Thursday, August 28, 1980 (45 FR 57676). An errata notice appeared in the September 8, 1980, issue of the **Federal Register** (45 FR 59177) to correct two words that originally appeared on 45 FR 57676. The ANPRM set forth a series of 23 questions for the purpose of gathering information aimed at assisting the FHWA in the promulgation of reasonable and comprehensive regulations in the area of motor carrier financial responsibility and in the development of a report for the Secretary of Transportation to submit to Congress. Responses to the ANPRM numbered 114 and represented segments of the motor carrier industry, including representative associations, as well as the insurance industry and its representative associations, State insurance commissions, Federal government agencies, and other interested persons.

A Notice of Proposed Rulemaking (NPRM) was subsequently published in the **Federal Register** on Monday, January 26, 1981 (46 FR 8186). The NPRM discussed the comments on the ANPRM, asked for responses to 11 specific questions concerning intercorporate hauling and tow truck operations, and set forth proposed rules for minimum levels of financial responsbility for motor carriers. Approximately 345 responses to the NPRM were received from a wide variety of respondents as shown below.

1. Motor carriers
2. Motor carriers of hazardous materials
3. Shipper associations
5. Independent owner-operators
6. Transportation consultants
7. Insurance companies
8. Insurance associations
9. Insurance consultants
10. Trucking associations
11. Leasing companies
12. Government agencies
13. U.S. congressional representatives
14. Hazardous materials manufacturers
15. Other interested persons

The following is a discussion of the final rule.

Purpose, Scope and Applicability (§§ 387.1 and 387.3)

These rules apply only to motor vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or more. Congress, in subsection (f) of section 30 of the Motor Carrier Act of 1980, specifically exempted vehicles weighing less.

The minimum levels of financial responsibility, covering public liability, property damage, and environmental restoration liability, applies to for-hire motor carriers operating motor vehicles transporting nonhazardous property in interstate or foreign commerce. The term "for-hire motor carrier" includes motor carriers operating under certificates or permits issued by the Interstate

Commerce Commission (ICC), certain motor carriers involved in intercorporate hauling, which is discussed further below, and for-hire motor carriers that are exempt from the ICC's economic regulations (49 U.S.C. 10523, 10525, and 10526). It was the intent of Congress to exclude intrastate transportation and private carriage from these requirements when transporting nonhazardous materials (H.R. Rept. 96–1069, p. 43).

The NPRM stated, "the legislative history of section 30 indicates a congressional belief that increased financial responsibility will lead to improved safety performance as unsafe motor carriers will incur higher premiums than safe carriers, or will be unable to obtain coverage." Numerous commenters took exception to the congressional belief stated above. The American Insurance Association (AIA) whose membership, it claims, writes 41 percent of all motor carrier coverage, made the following statements which generally sum up the position taken by the other respondents.

"The congressional belief is not substantiated by the facts. Individual insurers can refuse to voluntarily provide coverage based on objectively poor accident history, financial instability or failure to meet prescribed safety standards. However, all motor carriers have access to insurance. Every jurisdiction provides for the assignment of risks through a residual market mechanism (commonly referred to as assigned risk plans) * * * It must be emphasized that anyone, regardless of accident history or financial stability, must be provided insurance protection for the limits and coverages required by law. There are only two conditions that would preclude coverage through a residual market plan:

—Failure to maintain a valid operator's permit; and

—Failure to pay premium.

Based on this factual observation, the congressional belief that motor carriers will be unable to obtain coverage is incorrect.

"The second premise of congressional intent was that 'unsafe carriers will incur higher premiums.' This belief, likewise, is not factual in all instances. All rate levels upon which premiums are based in the residual market are subject to the *prior approval* of the individual State insurance regulators.

"In several states the residual market rate levels are competitive with or lower than the voluntary market rate level. (For example, in New Jersey the residual market rate level is 20.4% below that of the ISO (Insurance Services Office); in New York 9.5% below; in Virginia 20.6% below; in Wisconsin 17.2% below.) Whether politically or socially motivated, the residual market rate level is artificially depressed, resulting in a real world situation that is not attune with the congressional belief."

No comments were received to contradict this statement. It should be noted, however, that the majority of the State residual market rate levels are higher than those of the voluntary market. Thus it is believed that there is some incentive, though perhaps to a lesser degree than originally contemplated, that will lead to improved safety performance. Subsection (e) of Section 30 requires the Secretary to submit a report to Congress upon the regulations issued under section 30. This concern will be addressed in that report.

The Travelers Insurance Companies, in a comment received on April 13, maintained that section 30(b)(3)(B) granted to the Secretary the authority to reduce, for any amount of time, the amount of financial responsibility which must be maintained in the case of any vehicle transporting nonbulk hazardous material in intrastate commerce, if the Secretary finds that such reduction will not adversely affect public safety. The Travelers stated its belief that no Federal financial responsibility requirement should be imposed on this class of carrier.

We agree that the Act does grant the Secretary the authority to reduce, for any amount of time, the amounts of financial responsibility required for the intrastate carriage of nonbulk hazardous materials. The Congress was concerned that the Secretary exercise the authority granted under section 30(b)(3)(B) so, "* * * that local operations dealing with only small quantities of hazardous materials will not be unduly burdened." (H.R. Rept. 96–1069, page 44.) The Department is also concerned that many persons who fall into this category have never before been subject to Federal regulation (farmers, plumbers, paint store dealers, florists, and the like). While this class would include motor carriers who may or may not be subject to State regulation, the class also contains large numbers of "private" carriers. This latter group, we note, would share many of the characteristics of private carriage noted in the discussion regarding intercorporate hauling located elsewhere in this statement (i.e., nontransportation assets which serve as an incentive to operate safely and as a source for compensation). The large majority of States prescribe minimum levels of financial responsibility for the operation of motor vehicles. Such requirements would be applicable to the intrastate carriage of nonbulk hazardous materials. In a few States (5 States and the District of Columbia according to BMCS' information), no levels of financial responsibility applicable to commercial motor vehicles have been established. However, it can be assumed that in such States the lack of such a requirement has been an affirmative action on the part of those States representing their assessments that the public safety in their State is assured in other ways.

It is therefore believed that, as to intrastate carriage of nonbulk hazardous materials, existing State laws and requirements adequately protect the public safety in those States and variations amongst such State requirements reflect the considered judgments of the respective State legislatures. Consequently, it has been decided to use the authority under section 30(b)(3)(B) to effectively exempt intrastate carriers of nonbulk hazardous materials from this rule.

It is recognized, however, that this issue was raised late in the rulemaking process and, due to the constraints of time imposed by the Motor Carrier Act, has not been the subject of additional public participation. The Bureau, therefore, specifically solicits comments, data, and information on:

1. Whether intrastate carriers of nonbulk hazardous materials should be required to maintain federally established minimum levels of financial responsibility.

2. If so, what levels should be established for such carriers?

3. Should differing classes of intrastate carriers be treated differently?

4. If so, what distinctions (for-hire vs. private carriage, regulated vs. nonregulated, subject to State requirements vs. not so subject) should form the basis for differing treatment?

5. Any other comments bearing on the Secretary's exercise of the authority provided by section 30(b)(3)(B).

Comments and information received in response to this request will be incorporated, as appropriate, in the Secretary's report to the Congress pursuant to section 30(e) and will also be used to determine whether a new rulemaking action should be initiated to assure the public safety while further assuring, ". . . that local operations dealing with only small quantities of hazardous materials will not be unduly burdened." (H.R. Rept. 96–1069, page 44.)

Definitions (§ 387.5)

As used in this part, there are 15 definitions included in these rules. A few of them require the presentation of background information in order to understand fully the underlying rationale of the definitions.

Several commenters, representing the interests of the insurance industry, suggested the addition of three definitions that were not proposed in the NPRM. The commenters stated that definitions of the word *"accident"*, and the terms *"bodily injury"* and *"property damage"* were needed to clarify the intent of the required endorsement (Form MCS-90). These definitions have been added to the final rule.

Cancellation of insurance—The definition remains the same as it was proposed in the NPRM. However, it should be noted that the required endorsement (Form MCS-90) may be canceled without canceling or terminating the policy of insurance. (See discussion of § *387.7* below)

Endorsement—An endorsement is an amendment to a policy of insurance. The endorsement is a prescribed form (Form MCS-90) and must be attached to the policy of insurance and be maintained at the motor carrier's principal place of business. The NPRM would required motor carriers to secure a single endorsement for the liability amounts set forth in these rules in order to satisfy the requirements of these rules. The proposed language effectively precluded aggregation of the required amounts of financial responsibility by motor carriers. Several commenters argued that to disallow aggregation would be a disservice to the motor carriers as well as to many of the insurance companies serving them. Their rationale included the following points:

1. Paragraphs (d)(1) and (d)(2) of Section 30 of the Motor Carrier Act of 1980 clearly place the responsibility for maintaining adequate amounts of financial responsibility coverage on the motor carrier. Allowing aggregation would go a long way toward reducing the burden of the regulation by leaving to negotiation, between the motor carrier and the insurance industry, how the motor carrier will secure the full amount of financial responsibility required.

2. Many small and medium-sized insurance companies who now provide coverage for regulated or private carriers are either unable or unwilling to certify large dollar amounts of coverage.

3. Several States limit the amount of coverage that a company may write to 10 percent of the company's surplus (policy holder premium retention). Aggregation would allow insurance companies with surpluses between $10 and $50 million to continue to write coverage for motor carriers not hauling highly hazardous materials and would allow them to provide a first layer of coverage for carriers of highly hazardous materials.

4. If a substantial number of insurance companies withdraw from the motor carrier market because they are either unable or unwilling to provide limits up to $5 million (the amount of coverage required by statute for the carriage of highly hazardous materials after July 1, 1983), many of the smaller motor carriers currently insured voluntarily by small insurance companies may be forced to seek coverage from the involuntary market (assigned risk plans). The involuntary market is subsidized by the voluntary market and the subsidy must be passed through in the form of higher costs for motor carriers insured voluntarily, and ultimately to the public.

5. Allowing aggregation will keep many small and medium-sized insurance companies in the motor carrier marketplace, thereby enhancing competition.

The arguments presented have merit and no arguments to the contrary were received. Therefore, section 387.7(d)(1) of this part has been changed, as has been the endorsement, to allow aggregation of the required amounts of financial responsibility.

The NPRM gave notice that the BMCS and the ICC were working closely in an attempt to develop both an endorsement form and a surety bond form that could be used by both agencies, the insurance companies, and the various States with no disruption in their methods of operation. It was further stated that should the proposed modifications be adopted, no additional paperwork would be required when initiating a new filing of a policy of insurance for a motor carrier operating under ICC authority.

The endorsement that appeared in the NPRM contained the following language—

> The Company certifies that the insured has represented that the transportation operations conducted are adequately described under subparagraph — above and that said insured has a policy in force in single limit amounts of at least $.

The ICC would not accept such language in the proposed endorsement form or in the proposed surety bond form. It is their contention that language of this nature limits the public's protection. The ICC further stated:

> The provision serves no purpose except to limit an insurance company's liability in instances where there is a dispute as to the amount of insurance required for the actual operation of the carrier in contrast to the amount of insurance in the policy based upon the carrier's description of its operations. * * * The purpose of the endorsement is to give full security for the protection of the public up to the limits prescribed. The public should be permitted to rely upon the protection of the endorsement.

As stated previously, paragraphs (d)(1) and (d)(2) of Section 30 of the Motor Carrier Act of 1980 clearly place the responsibility for maintaining adequate amounts of financial responsibility coverage on the motor carrier. Clearly stating what the insurer's limit of liability will be in the endorsement will not mitigate the protection afforded the public in any way. Continuing the ICC policy of holding the insurer responsible, irrespective of the motor carrier's action, would be tantamount to regulating the insurance industry. Clearly, we do not have that authority. Further, Congress established a "tiered" system to require various levels of financial responsibility based on commodities transported by the motor carrier. The commenters representing the insurance industry have made it very clear that without a limiting clause in the endorsement and surety bond form, they would have no choice but to write policies of insurance and surety bonds at the maximum level of $5 million and refuse to underwrite any lesser amount. This action would effectively negate the congressional intent to "tier" the required coverage and would create an economic hardship on the small motor carriers and small insurance companies. Language limiting the insurer's liability will, therefore, appear on both the endorsement and the surety bond.

Environmental restoration—Commenters to the docket representing insurance companies and insurance associations took exception to the proposed definition that appeared in the NPRM. The AIA submitted comments which were endorsed by most of the respondents from the insurance industry. Its statement is as follows:

> The definition in the current rulemaking is all encompassing and overlaps the current protection afforded motor carriers. Coverage currently provides for "bodily injury" (defined as bodily injury, sickness or disease and includes death resulting from any of these) and "property damage" (defined as damage to or loss of use of tangible property). We believe that the addition of liability for "environment restoration" is intended to clarify that coverage. The current protection covers damage to natural resources, e.g. the oil spill is cleaned up. The definition advanced in the rulemaking would have environmental restoration afford protection for: loss of income, impairment of earning capacity, out-of-pocket medical expense, burial costs, and damage to real or personal property—all of which are encompassed in

bodily injury damage. The rulemaking would create a new liability system. Environmental restoration must be a coverage that falls within the purview of the current liability systems; it must not create the liability * * *. The definition of environmental restoration should be limited to provide coverage "to restore the environment." The term environment (as defined by Webster) means "the complex of climatic, edaphic (of or relating to the soil), and biotic factors that act upon an organism or an ecological community and ultimately determine its form and survival." The intent of environmental restoration is to clarify protection of those natural resources that affect and determine the course of living creatures.

The comments submitted have merit and are reflected in the revised definition. Additionally, it is believed that Congress intended "environmental restoration" liability coverage to be limited to restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, water course or body of water of *any commodity transported by a motor carrier.*

Several commenters voiced concern about the interrelationship of Section 30 of the Motor Carrier Act of 1980 and the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) (Pub. L. 96-510) (Superfund). The commenters were fearful of the potential for duplication and stacking of limits under both Acts. Section 108(b)(5) of Pub. L. 96-510 clearly precludes that possibility with the following language:

The requirements for evidence of financial responsibility for motor carriers covered by this Act shall be determined under Section 30 of the Motor Carrier Act of 1980, Pub. L. 96-296.

For-hire carriage—The NPRM proposed to subject intercorporate hauling of property to the requirements of these rules applicable to for-hire carriage of nonhazardous materials regardless of whether such intercorporate hauling would be regulated by the ICC. (The carriage of hazardous materials is subject to section 30(b) without regard to whether it be by for-hire or private carriage.) Section 9 of the Motor Carrier Act of 1980 exempts from ICC regulation intercorporate hauling by one member of a corporate family for another member of that family when each member is 100 percent owned by the parent, provided the parent corporation notifies the ICC of its intent to provide such transportation, a notice to that effect is published in the Federal Register, and a copy of such notice is carried in the cab of all vehicles conducting such transportation.

In response to the ANPRM, the Private Carrier Conference, Inc., (PCC) of the American Trucking Associations, Inc. commented that intercorporate hauling between corporations with 100 percent common ownership should be considered private carriage for the purposes of section 30 of the Motor Carrier Act of 1980. This comment, as well as the reasons for our proposal, were discussed in detail in the NPRM (46 FR 8186, 8188). The PCC has not responded to the NPRM. However, other comments have been received on this subject. The National Industrial Traffic League (NITL) and the Private Truck Council of American (PTCA) both opposed the inclusion of this type of intercorporate hauling under the coverage of these rules. Essentially, PTCA repeats the arguments offered by the PCC and discussed in the preamble to the NPRM. These arguments are based primarily on its reading of the legislative history of section 9 of the Act.

The Bureau's view of the relevant legislative history has been set out in the NPRM and on this point remains unchanged. It is the position of the Bureau that the legislative history of section 9 makes clear that intercorporate hauling should be treated as private carriage for purposes of ICC regulation, but that the section does not address the issue of DOT safety regulation. Section 9 *does not* state that intercorporate hauling *is* private carriage, simply that such carriage is not subject to ICC regulation. In fact, section 9 requires intercorporate haulers to take certain actions in order to avail themselves of the exemption which private carriers need not take to avoid ICC regulation.

Other commenters including the American Trucking Associations, Inc. and the International Brotherhood of Teamsters, as well as a number of insurance companies, supported the proposal to include such intercorporate hauling under these rules. In fact, these latter commenters suggest that all private carriage should be included under these rules. Section 30(a) of the Motor Carrier Act of 1980 clearly precludes the inclusion of strictly private carriage. However, it is believed that intercorporate hauling which had been considered by the ICC as for-hire carriage prior to enactment of the Motor Carrier Act of 1980 and which now is exempted from ICC jurisdiction pursuant to an express provision in the Motor Carrier Act (section 9), should be, and was intended to be, covered by DOT's safety regulation under section 30. In this regard, we note that the Department's safety jurisdiction and the Federal Motor Carrier Safety Regulations (49 CFR Parts 390–399) promulgated under that jurisdiction extend to private carriage.

It is believed that Section 30(a)(1) was intended to apply equally to for-hire and intercorporate hauling situations. Clearly the scope of section 30 is beyond that which is regulated by the ICC. Notice, in point of fact, that section 29 of the Motor Carrier Act specifically provides that the ICC retains jurisdiction with respect to insurance over ICC regulated carriers; however the ICC is precluded from requiring levels of financial responsibility which are less than those established by the Secretary of Transportation pursuant to the provisions of section 30. It is believed that the legislative history of section 30, as discussed more fully in the NPRM indicates the intent of the Congress that the financial responsibility requirements established pursuant to section 30 should reach broadly. It was the intent of the Congress that section 30 should serve to prevent a deterioration in safety which some had argued would occur as a result of the freer entry permitted under the Motor Carrier Act. As a remedial legislative measure section 30 should be interpreted broadly.

Furthermore, it is believed that it is equitable to treat intercorporate hauling similarly to for-hire carriage. This will serve to keep these two segments of the industry on a relatively equal footing in this one respect. The NITL indicates that there is a strong policy consideration suggesting that section 30(a) should not be applied to "compensated intercorporate hauling." This argument appears to be based upon the example of cargo liability. The point appears to be that Federal requirements in that area are unnecessary because the "carrier" is carrying for itself and can best guard against cargo loss. Section 30 does not deal with cargo liability and the public to be protected shares no such special relationship with any segment of the industry whether injured by a for-hire, private, or intercorporate carrier. The NITL's assertion that "these firms (intercorporate haulers) already carry insurance coverages in the normal operation of their business, just as private carriers carry the necessary insurance," is not supported by the NITL submission and does not address the problem discussed below.

The Bureau's view is that there is a stronger policy consideration for the purposes of section 30, in treating intercorporate hauling similar to for-hire carriage rather than to private carriage. In the instance of a public liability insurance requirement it must be remembered that there is an important distinction between carriage by one member of a corporate family for another member of that corporate family and carriage by a division of a company for that company.

Private carriage is that carriage performed by a nontransportation service entity. In the case of private carriage, liability which may attach to the entity as a result of a commercial motor vehicle accident could be satisfied from the nontransportation assets of the entity. In the instance of intercorporate hauling, the entity has divided itself into separate corporate entities. Regardless of the other beneficial reasons for adopting such a structure, one result, in some instances, could be to shield the parent and other subsidiaries from liability for the claims against the transportation unit. In this regard, intercorporate hauling is more like for-hire carriage than private carriage. For this reason, the Bureau's position is that there is a stronger policy argument in the area of public liability insurance for maintaining that intercorporate hauling should be treated as for-hire carriage rather than private carriage.

Lastly, with respect to policy considerations, the Bureau notes that as a safety matter it is irrelevant whether a commercial motor vehicle is owned and operated by a for-hire carrier, an intercorporate hauler, or a private carrier. While section 30(a) is clear that its provisions do not extend to private carriers, section 30(e) of the Act specifically requires the Secretary to report to the Congress making recommendations with respect to the need for further legislation related to financial responsibility. While the Secretary has not yet completed this report nor formulated any recommendations to accompany it, the issue of the private carriage exemption will be addressed. The analysis above, however, may well explain why Congress exempted private carriage from the requirements of section 30(a). It is the position of the Bureau in this rulemaking simply to state that, as currently drafted, and given the current information available to the Bureau, it makes more sense to treat intercorporate haulers as for-hire carriers rather than private carriers.

In bulk—To eliminate any misunderstanding of the term "*in bulk*", the proposed interim definition of *"in bulk (except Class A and B explosives)"* now means the transportation, as cargo, of property in containment systems with capacities in excess of 3,500 water gallons. This change now coincides with the language of Section 30 and the intent of the Congress. The term *"in bulk (Class A explosives)"* has been interpreted to include Class B explosives as well, and the interim definition has been eliminated. The potential danger presented by both Class A and Class B explosives is well known. The DOT's hazardous materials regulations require that motor vehicles transporting either class of explosives, in any quantity, be placarded. In line with this rule and in the interest of satisfactorily protecting the public, the term *"in bulk (Class A and B explosives)"* will mean the transportation, as cargo, of any Class A and B explosive(s) in any quantity.

Public liabilty—The definition as proposed in the NPRM has been changed to encompass the necessary and reasonable protection required under the Act for bodily injury, property damage, and environmental restoration. By redefining the term *"public liability"* as it now appears in the rule, the intent of the required endorsement (Form MCS-90) is made clear.

Financial Responsibility Required (§ 387.7)

Congress clearly mandated that no motor carrier subject to the Act will operate a motor vehicle until the motor carrier as obtained and has in effect the minimum levels of financial responsibility as required by the Secretary.

The NPRM rules would have required simultaneous cancellation of the endorsement (Form MCS-90) and the policy to which it is attached. This requirement has been deleted from the final rule to ease the burden on private motor carriers who may cease transporting hazardous materials for any of several reasons (e.g., a private motor carrier may cease to manufacture or process the hazardous materials or the motor carrier may hire another motor carrier for that part of its transportation needs). In those situations, a private motor carrier would no longer be subject to the rules of this part and, therefore, would no longer need the endorsement, but it may possibly still need a policy of insurance or surety bond to comply with State requirements.

The NPRM also proposed a 30-day cancellation period to commence to run on the day that such notice is received by either party. The NPRM proposed the 30-day cancellation period based on the reporting requirements of the ICC. The ICC requires that an insurer file a cancellation notice with it, and that the 30-day cancellation period not commence until the notice is received by the ICC. This method serves as a source of verification of receipt. In comments received on the NPRM, and at a public meeting held with representatives of the insurance industry, it was suggested that a 35-day cancellation period be used. Since the BMCS has no reporting requirements such as the ICC's and only the insurer and the motor carrier are affected, the 35-day, rather than the 30-day, notice period is a reasonable alternative. The extra 5 days should guarantee, in most cases, that the notice is received 30 days prior to cancellation. As a reasonable protection to the insured and the insurer, a statement has been added that proof of mailing will be sufficient proof of notice.

Exception. The rule allows the motor carrier the right to obtain adequate coverage for a finite period of time (e.g. coverage by binder) to cover any lapse in continuous compliance without triggering the 35-day cancellation requirement. This will afford assurance that the public is protected.

Policies of insurance and surety bonds may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35-day cancellation period. It is felt that this will give motor carriers greater latitude to shop the insurance marketplace for better rates and/or services while still affording adequate protection to the public.

The regulations require that an endorsement(s) (discussed above) be attached to a policy of insurance for the purpose of providing notice to the general public that all criteria of Section 30 have been met.

A surety bond (Form MCS-82) could be obtained in lieu of a policy(s) of insurance and the required insurance endorsement(s) (Form MCS-90). The endorsement(s) and the surety bond form will alleviate the oftentimes confusing translation and interpretation of an insurance policy of surety bond because they provide a clearly written single page verification of the motor carrier's coverage. Additionally, it is believed that this requirement will not create a significant paperwork burden on the insurance industry, as it is estimated that the time required for an insurer to complete either the endorsement form or the surety bond form will be approximately 3 minutes. An estimated 200,000 carriers will come under these new regulations; of those, approximately 30 percent will, for one reason or another, cancel their policies or bond in any given year. Therefore, an estimated 260,000 endorsements will be generated in the first year. Based on this formula, it is estimated that approximately 13,000 burdenhours will be required of the insurance industry to complete the paperwork requirements of this regulation.

The proof of financial responsibility, whether it be an endorsement(s) attached to a policy of insurance, or a surety bond, will be required to be maintained at a motor carrier's principal place of business. This proof must be available to the public for review upon reasonable request. Such availability meets the intent of Congress to provide protection to the public. It will also provide the assurance needed by an owner-operator leasing a motor vehicle to the motor carrier that the minimum levels of financial responsibility have been met by the motor carrier.

Financial Responsibility, Minimum Levels (§ 387.9)

The NPRM proposed a sliding schedule of limits based on the number of power units controlled by a motor carrier. That is, small carriers (those with four or fewer power units) were initially scheduled to be responsible for the lowest limits as prescribed in the Act for the first year. During the second year, it was proposed that these levels be adjusted upward to an intermediate level. At the end of the two-year phase-in period the limits mandated in the Act would be required.

The rationale for proposing that small carriers be allowed a graduated phase-in over two years was threefold:

1. In the Motor Carrier Act, the Congress directed the Secretary to consider the impact of the regulation on small businesses;

2. Congress recently passed the Regulatory Flexibility Act (Pub. L. 96–354, September 19, 1980; 5 U.S.C. 601 et seq.) which provides for a more flexible regulatory approach for small businesses; and

3. Comments received from small motor carriers and small insurance companies indicated that they would be forced out of business if faced with the highest limits immediately.

It was also indicated in the draft regulatory evaluation and the initial regulatory flexibility analysis that medium and small insurance companies may be forced to drop the business of underwriting liability coverage for motor carriers if the higher limits are imposed as of July 1, 1981. The primary reason for withdrawing from this area of underwriting would be the inability to secure sufficient reinsurance treaty protection at the higher limits. Also, certain States have requirements that preclude an insurance company from underwriting coverage in excess of 10 percent of its surplus (policyholder premium retention). These requirements might greatly curtail participation of medium and small insurance companies in the underwriting of motor carrier insurance.

As proposed in the NPRM, large motor carriers (those with five or more power units) were scheduled to carry the maximum limits as prescribed in the Act from the onset. The comments received from the large motor carriers in response to the ANPRM indicated that acquiring the coverage to meet the highest limits would present no problems nor would it cause a disruption of services. This proposal was further justified by comments received from the large insurance companies who initially indicated that they would have no problem providing the highest limits.

One commenter who took exception to the belief that the insurance industry could easily handle, from the onset, the highest limits was the AIA. In its comments, the AIA indicated that time was needed to prepare for the potential surge of new motor carriers requiring new limits of financial responsibility. It further explained that the two year phase-in was needed to make it possible for the insurance industry to move in the most orderly fashion possible toward meeting the coverage requirements of motor carriers with the smallest possible impact on either the motor carrier or insurance industries.

Comments filed in response to the NPRM indicated that, upon further research, the large insurance companies found that the impact may be greater than they had originally anticipated. In the comments received from the majority of large insurers, it is evident that there is a great deal of concern as to what impact the highest limits, if required, would have upon their industry.

The primary concern expressed by almost all insurance companies and representative associations was the need for more time to deal with the administration of the new regulations. It was made clear that the proposed regulation created confusion by differentiating between small and large motor carriers on the basis of the number of power units operated. Potential insurers stated that they would be unable to know on a daily basis whether an insured motor carrier has rented, leased or hired an extra power unit to meet some special demand of the business. In some cases the use of an extra power unit would change the motor carrier's status from small to large and would in turn increase the financial responsibility coverage required five-fold, from $1 million to $5 million in some instances. In response to this particular confusing issue, most insurance companies indicated that they would be forced to write policies for the highest limits so as to protect themselves from the unknown changes in their insured's status.

It was also requested by the insurance industry that the minimum statutory limits be adopted for the full two year period to minimize exposure from possible errors and omissions and to allow the industry time to establish operating parameters that would be within the scope of the Act.

Less than 10 percent of the trucking industry's 72 comments received in response to the NPRM generally favored the proposed schedule of limits. The American Trucking Associations Inc. (ATA) was among those favoring the proposed limits with the exception of the lowered limits for small carriers. In its comments, the ATA strongly urged the adoption of the highest limits for all carriers regardless of size. This argument was based upon several factors. The primary basis for their contention was the results of a questionnaire sent to 501 motor carriers in an effort to determine current insurance practices. A majority of the respondents to the survey indicated that they already have coverage equal to or greater than the highest limits prescribed by the Act.

The ATA also stated the belief that reduction of the statutory limits could affect the public safety and that such a reduction is not needed to prevent a serious disruption in transportation service. Finally, the ATA went on to point out that it is not a question of fleet size when an accident occurs on the highways, because generally only one of a motor carrier's vehicles is involved in each occurrence. As indicated in the comments from both the insurance and the motor carrier industries, the proposal to differentiate between large and small carriers did not meet with favorable response.

Due consideration was given to whether lowering the limits would affect the public safety, as suggested by the ATA. It was determined that, if any limits above the minimums were required and the insurance industry, as they have stated, could not provide the coverage, one of two things would happen; either, (1) many motor carriers would be forced out of business, or (2) they would risk driving without coverage. The latter is certainly not in the interest of public safety.

Consideration was also given to the question of whether a reduction of limits would prevent a serious disruption in transportation service. Based on the comments from the insurance industry and many small carriers (other than those in the ATA survey) it is evident that the implementation of any limits above the minimums would indeed have a serious affect on transportation service since the insurance industry is unable to provide the coverage and the small carriers maintain that they could not afford it.

It is deemed both reasonable and responsible to establish limits the insurance industry will be able to provide and motor carriers, large and small, will be able to afford. With all things considered, primarily the public safety, as intended by the Congress, the limits established by this rulemaking action will generally be the lowest levels permitted by the Act, for the full two-year phase-in period. By establishing the lowest limits, the public will be afforded protection which is substantially greater than required in the past by either the ICC or any of the individual States, and access to that coverage will be more affordable to motor carriers which will prevent a serious disruption in transportation service. Finally, by establishing the lowest limits, more insurance companies will be able to provide the required coverage and this in turn will afford the motor carriers a greater marketplace in which to shop for coverage.

Hence, for the first and second year, motor carriers, depending upon the commodity transported, will be required to maintain the levels as set forth in the Schedule of Limits (§ 387.9).

A lengthy discussion concerning the minimum levels of financial responsibility required for tow truck operators was presented in the NPRM. It was proposed at that time that the appropriate level of financial responsibility would depend upon the type of cargo in or on the disabled vehicle at the time of towing. The Interstate Towing Association responded to the NPRM clearly stating that tow truck operators would have no choice but to refuse to tow vehicles transporting hazardous materials because they would be unable to afford the coverage required. It is apparent that it would not be in the interest of the public safety to allow a disabled vehicle which contains a hazardous material to sit idle on the roadside if tow truck operators refuse to remove it. As stated in the NPRM, tow truck operations, by their very nature, must be considered "emergency services." A tow truck performing such an emergency service typically operates with warning lights flashing and at a relatively slow rate of speed. In the interest of public safety it has been determined that tow truck operators, in the act of removing a vehicle from the roadway, regardless of the cargo in or on the vehicle being towed, will be considered to be transporting property (nonhazardous), and will be required to maintain the levels of financial responsibility set forth for that category in the Schedule of Limits.

The subject of the transportation of small quantities of hazardous materials has been raised in comments by the National Oil Jobbers Council (NOJC) and the American Fertilizer Institute (AFI). They expressed concerns about small motor carrier operations such as farmers hauling nurse tanks and the "mom and pop" operations, who for the most part transport hazardous materials in cargo tanks with capacities of less the 3,500 water gallons. Under the proposed rules, these operations would have been required to maintain the highest levels of financial responsibility. It was made clear in the comments that these small operations could not bear the expense of the highest limits. In addition to the comments, the AFI submitted data which revealed that the accident history of the small farm service operations is not indicative of a need for the highest limits.

In response to the needs of these small operations, it has been decided to revise the definition of "*in bulk*" which can be found in Section 387.5. This revision will not affect public safety and will prevent a serious disruption in transportation service as it relates to these groups.

Congress directed the Secretary to establish minimal levels of financial responsibility sufficient to satisfy liability amounts covering public liability, property damage, and environmental restoration for the transportation of hazardous materials (named by the Secretary) by motor vehicle in interstate or intrastate commerce. The House Committee on Public Works and Transportation provided specific guidance to the Secretary in its report to the Whole House (H.R.Rept. 96-1069, p. 44). The Committee is quoted below:

> With respect to the hazardous materials not subject to the $5,000,000 minimum, the minimum level of financial responsibility that can be established by the Secretary is $1,000,000. The Committee wants to emphasize its strong belief that many of these hazardous materials should also be subject to at least a $5,000,000 minimum, especially hazardous materials in bulk. However, the Secretary was given the discretion to set the minimum level as low as $1,000,000 in recognition of the fact that some of the materials on the Department's hazardous materials list may not require a $5,000,000 minimum. For instance, the list included burlap bags and charcoal briquettes. These are examples of items which would not appear to require a $5,000,000 minimum, especially when not transported in bulk.

It is clear that Congress intended the Secretary to name many hazardous materials, not mentioned in subsection (b)(2) of section 30, and require a $5 million minimum for them when transported in bulk. Because of the limited time available and the substantial amount of time needed to review the thousands of hazardous materials however, the Secretary has decided that these materials will be subject to the $500,000/$1 million minimum until specific commodity determinations can be made, if necessary, to require different levels of coverage. The Department solicits information identifying any hazardous materials which, because of their risk or hazard, should be required to carry different limits of liability coverage.

Finally, the definition of oil has been clarified in the Schedule of Limits (§ 387.9) to make clear that the oils which are covered by category (3) of the schedule are those oils which, because of the risk or hazard they pose, appear in the Department's Hazardous Materials Table located at 49 CFR 172.101.

Qualifications (§ 387.11) (Deleted)

The NPRM contained a proposal that would allow a motor carrier to be a self-insurer. It also contained a proposal that would allow a motor carrier to use "other securities or agreements" to satisfy the financial responsibility requirements of Section 30 of the Motor Carrier Act of 1980 so long as those securities or agreements would afford the security for the protection of the public contemplated by the Act.

The language regarding "other securities or agreements" used in the NPRM was taken from the rules and regulations promulgated by the ICC and currently in effect (49 CFR 1043.5). The legislative history of the Interstate Commerce Act has been researched as has that of the Motor Carrier Act of 1980. No mention of what was meant by "other securities or agreements" was made in the legislative histories of either Act. It is also interesting to note that since the inception of the ICC rule covering this area, no motor carrier has applied for consideration of "other securities or agreements" to satisfy the financial responsibility requirements of the ICC. In view of the above, it has been decided that applications for approval of "other securities or agreements" will not be accepted.

The alternative of self-insurance to obtaining a policy of insurance (even one with a high deductible) or a surety bond has raised special problems. The principal problem is how to guarantee payment of unspecified liabilities for at least 5 years in the future. It is not uncommon for complex personal injury or environmental restoration claims to take up to 5 years to pass through all available legal processes prior to payment. In fact, relatively small damage claims may take 2 years from the time they are filed until they are settled and paid.

When a person obtains self-insurance authority the public has no protection for any outstanding claims if that person should subsequently encounter financial difficulty. In order for the government to ensure that a change in a self-insurer's financial condition does not pose a possibility that injured parties will go uncompensated as a result of such a change, the government would have to undertake periodic audits and require certain reporting or filings, in addition to the initial application. This is what is, in fact, done by State insurance commissions, which currently grant self-insurance authority for much lower levels of financial responsibility and by surety companies in the analogous situation of writing surety bonds.

There is evidence that well-known entities can encounter financial reversals within a 5-year or shorter period. Most, if not all, of these companies were able to obtain credit months or several years prior to encountering dire financial trouble. A governmental agency cannot be expected to predict future solvency more efficiently than major lending institutions, stock brokers, and investors.

It must be recognized that a self-insurer is, in effect, operating as an insurance company. This means, among other things, that the self-insured motor carrier must set aside substantial claims reserves *and* establish a claims handling capability within the company. When the extensive controls, safeguards and regulations existing for insurance companies are acknowledged, the problems inherent with self-insurance become obvious.

At this time it might be well to mention the difference between "self-insurance" and "self-retention." When "self-insurance" is involved, there is no security for the protection of the public other than the self-insured's financial strength, whereas "self-retention" involves a motor carrier and its insurer agreeing between themselves that the motor carrier will be responsible for claims up to an amount specifically agreed upon. In effect, this is a large deductible. However, the insurer does issue the prescribed regulatory form and, accordingly, is fully liable for all claims to the public. This is a very common practice for large motor carriers, and is permitted by these rules.

Another major item to be reviewed when considering self-insurance is the saving of substantial monies. The ICC has considered this whenever reviewing a self-insurance application. Unless a motor carrier could present evidence that self-insurance would produce substantial savings, any request for self-insurance approval would be refused. A motor carrier is required by the ICC to demonstrate that it thoroughly analyzed all other available avenues of insurance or surety programs. Examples of these programs would be the use of a high deductible or an open-end retrospective plan with a very low minimum and a very high maximum. Such programs would allow a motor carrier to handle the bulk of its own claims, yet the insurer would make any required filings *at no extra charge.* In such instances, self-insurance authority would provide no savings to the motor carrier. Conversely, it is felt that there may be no need for Federal involvement in this area.

Surety bonds are also available for motor carriers with good financial statements who desire to process their own claims. The premium, or service charge, assessed by surety companies for these bonds is nominal in relation to the total claim expenditures. However, the saving of a bond premium only would be insufficient justification to grant self-insurance authority and jeopardize the public's protection afforded by the surety bond.

The ICC has granted a limited number of motor carriers the authority to self-insure. It is interesting to note that such authority is for a limited amount per claim, with a requirement that the motor carrier maintain excess insurance for claims above the self-insured's retention. Also of interest is the fact that no such self-insured has a retention at or above the minimum limits of liability required by these rules. It is also important to note that the evidence of excess insurance filed with the ICC is not made via a regulatory form but rather via an insurance company form of certificate of insurance. Such a certification provides only limited protection to the public as all the policy limitations, exclusions, and conditions are applicable unlike a regulatory form of certification.

Section 30 of the Act does refer to the possible use of self-insurance as a means of compliance with it. The BMCS is afraid that the implementation of a self-insurance program will require substantial commitment of resources over and above what is currently available. Further, it is believed that a number of viable alternatives exist which would adequately safeguard the public while providing motor carriers with considerable flexibility.

It is recognized that self-insurance could be a viable alternate way of providing the required levels of financial responsibility. In response to question No. 10 of the ANPRM, regarding self-insurance, most of the commenters did not offer definitive information concerning the criteria that should be used when considering a self-insurance application. Most commenters agreed that the BMCS should be "conservative" in approving applications for self-insurance. None favored voluntary compliance. Most favored a requirement that self-insurers deposit securities. The BMCS, therefore, specifically solicits comments, data, and detailed information concerning this matter. Answers to the following specific questions are sought.

1. Considering the economic conditions that must be faced by motor carriers today, is self-insurance a viable alternative to "pure" insurance, self-retention, or surety bonds?

2. Specifically, what criteria should be used in considering an application for self-insurance (e.g., net worth, cash flow, liquid assets, current and long term liabilities, claims handling capability, costs involved in the administration of a self-insurance program, etc.)?

3. Is the deposit of securities or irrevocable letters of credit necessary to successfully administer a self-insurance program that will adequately protect the public? Please explain.

4. If security deposits are considered necessary, are there any legal or technical problems likely to be encountered by the Government when accepting such security deposits?

5. What mechanisms and structures might be developed to successfully implement and administer a self-insurance program?

6. What audit procedures should be established, both for financial statements and claims handling, including adequacy of reserves?

7. Can specific examples of self-insurance programs be cited that would

be applicable to the needs of the motor carrier industry and would satisfy the intent of section 30 of the Act?

Comments and information received in response to this request will be incorporated, as appropriate, in the Secretary's report to the Congress pursuant to section 30(e) and will also be used to determine whether a new rulemaking action should be initiated.

State Authority and Designation of Agent (§ 387.11)

The regulations state that a policy of insurance or surety bond will only satisfy the financial responsibility requirements of this part if the insurer or surety furnishing the policy or bond is:

(a) legally authorized to issue such policies or bonds in each State in which the motor carrier operates;

(b) legally authorized to issue such policies or bonds in the State in which the motor carrier has its primary place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding of law or equity brought in any State in which the motor carrier operates; or

(c) legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

The only change to the proposed rules is the addition of subparagraph (c) of this section. It is the Department's view that the inclusion of insurers authorized by any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written will enlarge the marketplace in which motor carriers will be able to purchase the required coverage. Additionally, it allows those insurers the opportunity to enter the motor carrier insurance market.

Forms (§ 387.15)

Endorsements for policies of insurance (Form MCS-90) and surety bonds (Form MCS-82) may be in the form prescribed in the two attachments. Both forms may specify that coverage thereunder will remain in effect continuously until terminated and may be issued in the exact name of the motor carrier. Both forms are currently under review by the Office of Management and Budget according to the Paperwork Reduction Act of 1980. Final action on these forms by OMB is expected by July 1, 1981.

The BMCS recognizes the problem that the insurance industry will have in trying to get the required endorsements into the hands of its motor carrier clients. Time is needed to satisfy the endorsement requirement. In view of this, the BMCS does not intend to enforce the requirement that motor carriers have the endorsement(s) attached to their policies of insurance for 90 days from either the effective date of July 1, 1981 or the date OMB approves the forms, whichever is later.

It should be understood that this is in no way a relaxation of the minimum levels of financial responsibility. All motor carriers must have the required minimum levels of financial responsibility as of July 1, 1981.

The DOT believes that good cause exists for not providing 30 days notice prior to the effective date of this rule. Section 30 of the Motor Carrier Act of 1980 provides that certain minimum levels of financial responsibility will be required of motor carriers on July 1, 1981 unless the Secretary has established different levels by then. These statutory limits are higher than those prescribed in this rule. The trucking and insurance industries would encounter serious hardship if they were to be required to obtain and provide one level of financial responsibility on July 1, 1981 and another level soon thereafter. As stated above, the Bureau does not intend to enforce the requirement that motor carriers have the required endorsements attached to their policies of insurance for 90 days. This policy should substantially mitigate the impact of this rule becoming effective July 1, 1981.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Subtitle B, Chapter III is amended by establishing a new Part 387 as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on June 8, 1981.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

Part 387 is added to read as follows:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

Authority: Sec. 30, Pub. L. 96-296, 94 Stat. 793; Sec. 108(b)(5), Pub. L. 96-510, 94 Stat. 2767; 23 U.S.C. 315; 49 CFR 1.48 and 301.60.

§ 387.1 Purpose and scope.

This part prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property operating motor vehicles in interstate, foreign, or intrastate commerce. The purpose of these regulations is to create additional incentives to motor carriers to maintain and operate their vehicles in a safe manner and to assure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

§ 387.3 Applicability.

(a) This part applies to for-hire motor carriers operating motor vehicles transporting property in interstate or foreign commerce.

(b) This part applies to motor carriers operating motor vehicles transporting hazardous materials, hazardous substances, or hazardous wastes in interstate or intrastate commerce.

(c) *Exception.* (1) The rules in this part do not apply to those motor vehicles that have a gross vehicle weight rating (GVWR) of less than 10,000 pounds.

(2) The rules in this part do not apply to the transportation of nonbulk oil, hazardous materials, substances, or wastes in intrastate commerce.

§ 387.5 Definitions.

As used in this part—*Accident*—includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

Bodily injury—means injury to the body, sickness, or disease including death resulting from any of these.

Cancellation of insurance—the withdrawal of insurance coverage by either the insurer or the insured.

Endorsement—an amendment to an insurance policy.

Environmental restoration—restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish, and wildlife.

Evidence of security—a surety bond or a policy of insurance with the appropriate endorsement attached.

Financial responsibility—the financial reserves (e.g., insurance policies or surety bonds) sufficient to satisfy liability amounts set forth in this part covering public liability.

For-hire carriage—transportation of property by motor vehicle except when—

(1) the property is transported by a person engaged in a business other than transportation; and

(2) the transportation is within the scope of, and furthers a primary business (other than transportation) of, the person.

In bulk—the transportation, as cargo, of property, except Class A and B explosives and poison gases, in containment systems with capacities in excess of 3,500 water gallons.

In bulk (Class A and B explosives)—the transportation, as cargo, of any Class A or B explosive(s) in any quantity.

In bulk (poison gas)—the transportation, as cargo, of any poison gas in any quantity.

Insured and principal—the motor carrier named in the policy of insurance, surety bond, endorsement, or notice of cancellation, and also the fiduciary of such motor carrier.

Insurance premium—the monetary sum an insured pays an insurer for acceptance of liability for public liability claims made against the insured.

Motor carrier—a common, contract, or private carrier of property by motor vehicle.

Property damage—damage to or loss of use of tangible property.

Public liability—liability for bodily injury or property damage and includes liability for environmental restoration.

§ 387.7 Financial responsibility required.

(a) No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this part.

(b)(1) Policies of insurance, surety bonds, and endorsements required under this section shall remain in effect continuously until terminated. Cancellation may be effected by the insurer or the insured motor carrier giving 35 days' notice in writing to the other. The 35 days' notice shall commence to run from the date the notice is mailed. Proof of mailing shall be sufficient proof of notice.

(2) *Exception.* Policies of insurance and surety bonds may be obtained for a finite period of time to cover any lapse in continuous compliance.

(c) Policies of insurance and surety bonds required under this section may be replaced by other policies of insurance or surety bonds. The liability of the retiring insurer or surety, as to events after the termination date, shall be considered as having terminated on the effective date of the replacement policy of insurance or surety bond or at the end of the 35 day cancellation period required in paragraph (b) of this section, whichever is sooner.

(d) Proof of the required financial responsibility shall be maintained at the motor carrier's principal place of business. The proof shall consist of—

(1) and "Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-90) issued by an insurer(s); or

(2) a "Motor Carrier Surety Bond for Public Liability Under Section 30 of the Motor Carrier Act of 1980" (Form MCS-82) issued by a surety

(e) The proof of minimum levels of financial responsibility required by this section shall be considered public information and be produced for review upon reasonable request by a member of the public.

§ 387.9 Financial responsibility, minimum levels.

The minimum levels of financial responsibility referred to in § 387.7 of this part are hereby prescribed as follows:

Schedule of Limits—Public Liability

[Freight vehicles with gross vehicle weight rating of 10,000 pounds or more]

Type of carriage	Commodity transported	Single limit requirement	
		July 1, 1981	July 1, 1983
(1) For hire	Property (non-hazardous)	$500,000	$750,000
(2) For hire and private	Hazardous substances, as defined in 49 CFR 171.8 and designated by the letter E in the first column of the Hazardous Materials Table found at 49 CFR 172.101, transported in cargo tanks, portable tanks, or hopper-type vehicles with capabilities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquefied compressed gas, compressed gas, or large quantity radioactive materials as defined in 49 CFR 173.389.	1,000,000	5,000,000
(3) For hire and private	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above.	500,000	1,000,000

§ 387.11 State authority and designation of agent.

A policy of insurance or surety bond does not satisfy the financial responsibility requirements of this part unless the insurer or surety furnishing the policy or bond is—

(a) Legally authorized to issue such policies or bonds in each State in which the motor carrier operates; or

(b) Legally authorized to issue such policies or bonds in the State in which the motor carrier has its principal place of business or domicile, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates; or

(c) Legally authorized to issue such policies or bonds in any State of the United States and eligible as an excess or surplus lines insurer in any State in which business is written, and is willing to designate a person upon whom process, issued by or under the authority of any court having jurisdiction of the subject matter, may be served in any proceeding at law or equity brought in any State in which the motor carrier operates.

§ 387.13 Fiduciaries.

The coverage of fiduciaries shall attach at the moment of succession of such fiduciaries.

§ 387.15 Forms.

Endorsements for policies of insurance (Illustration I) and surety bonds (Illustration II) must be in the form prescribed by the BMCS and approved by the OMB. Endorsements to policies of insurance and surety bonds shall specify that coverage thereunder will remain in effect continuously until terminated, as required in § 387.7 of this part. The endorsement and surety bond shall be issued in the exact name of the motor carrier.

§ 387.17 Violation and penalty.

Any person (except an employee who acts without knowledge) who knowingly violates the rules of this part shall be liable to the United States for civil penalty of no more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation will constitute a separate offense. The amount of any such penalty shall be assessed by the Director, Bureau of Motor Carrier Safety, by written notice. In determining the amount of such penalty, the Director shall take into account the nature, circumstances, extent, the gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

BILLING CODE 4910-22-M

Form MCS - 90
(7/81)

[ILLUSTRATION I]

Form Approved
OMB No.

ENDORSEMENT FOR MOTOR CARRIER POLICIES OF INSURANCE FOR PUBLIC LIABILITY UNDER SECTION 30 OF THE MOTOR CARRIER ACT OF 1980

DEFINITIONS AS USED IN THIS ENDORSEMENT

ACCIDENT includes continuous or repeated exposure to the same conditions resulting in public liability which the insured neither expected nor intended.

BODILY INJURY means injury to the body, sickness or disease including death resulting from any of these.

ENVIRONMENTAL RESTORATION means restitution for the loss, damage or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse or body of water of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage or potential for damage to human health, the natural environment, fish, shellfish and wildlife.

PROPERTY DAMAGE means damage to or loss of use of tangible property.

PUBLIC LIABILITY means liability for bodily injury or property damage and includes liability for environmental restoration.

The policy to which this endorsement is attached is an insurance policy providing automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as a motor carrier of property, with Section 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety.

In consideration of the premium stated in the policy to which this endorsement is attached, the Insurer (the Company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles, regardless of whether such motor vehicles are specifically described in the policy or not and whether or not occurring on the route or in the territory authorized to be served by the insured or elsewhere. Such insurance as is afforded for public liability does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo.

Within the limits of liability herein described, it is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, or any other endorsement thereon or violation thereof, or of this endorsement, by the insured, shall relieve the Company from liability or from the payment of any such final judgment, irrespective of the financial responsibility or lack thereof or insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which this endorsement is attached are to remain in full force and effect as binding between the insured and the Company, and the insured agrees to reimburse the Company for any payment made by the Company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the Company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is understood and agreed that, upon failure of the Company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the Company to compel such payment.

The limits of the Company's liability for the amounts provided in this endorsement apply separately to each accident and any payment under the policy because of any one accident shall not operate to reduce the liability of the Company for the payment of final judgments resulting from any other accident.

The policy to which this endorsement is attached provides primary or excess insurance, as indicated by "X", for the limits shown:

☐ This insurance is primary and the Company shall not be liable for amounts in excess of $________________ for each accident.

☐ This insurance is excess and the Company shall not be liable for amounts in excess of $________________ for each accident in excess of the underlying limit of $____________ for each accident.

Whenever required by the Bureau the Company agrees to furnish the Bureau a duplicate original of said policy and all its endorsements. The Company also agrees, upon telephone request by an authorized representative of the Bureau to verify that the policy is in force as of a particular date. The telephone number to call is: ____________________.

Cancellation of this endorsement may be effected by the Company or the insured by giving thirty five (35) days notice in writing to the other party, said thirty five (35) days notice to commence to run from the date notice is mailed, proof of mailing shall be sufficient proof of notice.

Issued to ____________________ of ____________________

Dated at ________________ this ______ day of ________________, 19___

Amending Policy No. ________________

Countersigned by ____________________

Authorized Company Representative

The Motor Carrier Act of 1980 requires limits of financial responsibility according to type of carriage and commodity transported by the motor carrier. It is the MOTOR CARRIER'S obligation to obtain the required limits of financial responsibility.

THE SCHEDULE OF LIMITS SHOWN BELOW DOES NOT PROVIDE COVERAGE.

The limits shown in the schedule are for information purposes only.

SCHEDULE OF LIMITS

Public Liability

Freight Vehicles With Gross Vehicle Weight Rating of 10,000 Pounds or More

Type of Carriage	Commodity Transported	Single Limit Requirement	
		July 1, 1981	July 1, 1983
(1) For-hire	Property (non-hazardous)	$ 500,000	$ 750,000
(2) For-hire and Private	Hazardous substances, as defined in 49 CFR 171.8 and designated by the letter E in the first column of the Hazardous Materials Table found at 49 CFR 172.101, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons; or in bulk Class A and B explosives, poison gas (Poison A), liquefied compressed gas, compressed gas, or large quantity radioactive materials as defined in 49 CFR 173.389	$1,000,000	$5,000,000
(3) For-hire and Private	Oil listed in 49 CFR 172.101; hazardous waste, hazardous materials and hazardous substances defined in 49 CFR 171.8 and listed in 49 CFR 172.101, but not mentioned in (2) above	$ 500,000	$1,000,000

[ILLUSTRATION II]

Form MCS - 82
(7/81)

Form Approved
OMB No.

MOTOR CARRIER PUBLIC LIABILITY SURETY BOND UNDER SECTION 30 OF THE MOTOR CARRIER ACT OF 1980

PARTIES

Surety Company and Principal Place of Business Address

Motor Carrier Principal, I.C.C. Docket No., and Principal Place of Business Address

PURPOSE

This is an agreement between the Surety and the Principal under which the Surety, its successors and assignees, agree to be responsible for the payment of any final judgment or judgments against the Principal for public liability, property damage, and environmental restoration liability claims in the sums prescribed herein, subject to the governing provisions and following conditions.

GOVERNING PROVISIONS

(1) Section 30 of the Motor Carrier Act of 1980

(2) Rules and regulations of the Federal Highway Administration's Bureau of Motor Carrier Safety

CONDITIONS

The Principal is or intends to become a motor carrier subject to the applicable governing provisions relating to financial responsibility for the protection of the public.

This bond assures compliance by the Principal with the applicable governing provisions, and shall inure to the benefit of any person or persons who shall recover a final jugement or judgments against the Principal for public liability, property damage, or environmental restoration liability claims (excluding injury to or death of the Principal's employees while engaged in the course of their employment, and loss of or damage to property of the Principal, and the cargo transported by the Principal). If every final judgment shall be paid for such claims resulting from the negligent operation, maintenance, or use of motor vehicles in transportation subject to the applicable governing provisions, then this obligation shall be void, otherwise it will remain in full effect.

Within the limits described herein, the Surety extends to such losses regardless of whether such motor vehicles are specifically described herein and whether occurring on the route or in the territory authorized to be served by the Principal or elsewhere.

The liability of the Surety for each accident shall not exceed $______________, and shall be a continuing one notwithstanding any recovery hereunder.

The surety agrees, upon telephone request by an authorized representative of the Bureau, to verify that the surety bond is in force as of a particular date. The telephone number to call is: ______________.

This bond is effective from ______________ (12:01 a.m., standard time, at the address of the Principal as stated herein) and shall continue in force until terminated as described herein. The Principal or the Surety may at anytime terminate this bond by giving thirty five (35) days written notice as prescribed in the applicable governing provisions. Said thirty five (35) days notice to commence to run from the date notice is mailed. Proof of mailing shall be sufficient proof of notice. The Surety shall not be liable for the payment of any judgment or judgments against the Principal for public liability, property damage, or environmental restoration claims resulting from accidents which occur after the termination of this bond as described herein, but such termination shall not affect the liability of the Surety for the payment of any such judgment or judgments resulting from accidents which occur during the time the bond is in effect.

____
Date

(AFFIX CORPORATE SEAL)

____
Surety

_______, _______
City *State*

By ______________

ACKNOWLEDGMENT OF SURETY

STATE OF ______________ COUNTY OF ______________

On this ____ day of ________, 19____, before me came ______________, who, being by me duly sworn, did depose and say that he resides in ______________; that he is the __________ of the ______________, the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation; that he signed his name thereto by like order, and he duly acknowledged to me that he executed the same for and on behalf of said corporation.

(OFFICIAL SEAL)

____

Surety Company File No. ______________

____
Title of official administering oath

[FR Doc. 81-17438 Filed 6-10-81; 8:45 am]
BILLING CODE 4910-22-C

federal register

Thursday
June 11, 1981

Part IV

Office of Management and Budget

Budget Rescission and Deferral

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescission and Deferral

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report four proposals to rescind a total of $114.1 million in budget authority previously provided by the Congress. The rescission proposals affect programs in the Environmental Protection Agency and the National Endowments for the Arts and Humanities. These proposals are a part of my continuing effort to help reduce government spending.

The details of the rescission proposals are contained in the attached reports.

Ronald Reagan

THE WHITE HOUSE,
June 8, 1981.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Rescission #	Item	Budget Authority
R81-156	Environmental Protection Agency Research and development..............	56,300
R81-157	Environmental Protection Agency Abatement, control, and compliance....	43,700
R81-158	National Endowment for the Arts.........	6,650
R81-159	National Endowment for the Humanities..	7,417
	Total, Rescission proposals.......	114,067

SUMMARY OF SPECIAL MESSAGES FOR FY 1981
(in thousands of dollars)

	Rescissions	Deferrals
Effect of tenth special message......	114,067	---
Previous special messages............	14,753,870	8,607,977
Total amount proposed in special messages..............................	14,867,937 a/	8,607,977 b/

a/ This amount represents budget authority except for $751.8 million involving authority to incur obligations for direct loans.

b/ This amount represents budget authority except for $61,756 thousand involving the deferral of outlays only (D81-193).

Rescission Proposal No: R81-156

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency: Environmental Protection Agency

Bureau:

Appropriation title & symbol: Research & Development 681/20107

New budget authority (P.L. 96-526): $ 253,520,000

Other budgetary resources: -2,535,000

Total budgetary resources: 250,985,000

Amount proposed for rescission: $ 56,300,000

OMB identification code: 68-0107-0-1-999

Grant program: ☐ Yes ☒ No

Legal authority (in addition to sec. 1012): ☐ Antideficiency Act ☐ Other

Type of account or fund: ☐ Annual ☒ Multiple-year September 30, 1982 (expiration date) ☐ No-year

Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification

In order to offset a significant increase in FY1981 expenditures, the President has directed Federal Agencies to identify lower priority areas in which outlay reductions can be achieved. After a careful examination of the remaining unobligated Research and Development appropriation, $56.3 million in funds for lower priority research activities have been identified for rescission. This action will defer lower priority research projects that are not immediately needed, or are not required to meet the Agency's statutory mandates or health mission. This action will not only reduce 1981 outlays, but will further contribute to the objective of reducing outlays in fiscal years 1982-1984.

Estimated Effects

Since only unobligated funds are being proposed for rescission, minimal disruption will be felt by contractors.

Outlay Effect (in millions of dollars)

1981 Outlay Estimate		Outlay			
Without Rescission	With Rescission	1981	1982	1983	1984
230	224	6	22	22	6

R81-156

ENVIRONMENTAL PROTECTION AGENCY

Research and Development

Of the funds appropriated under this head in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1981, $56,300,000 are rescinded.

Rescission Proposal No: R81-157

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency: Environmental Protection Agency	New budget authority (P.L. 96-526) $ 545,183,000
Bureau	Other budgetary resources -5,435,900
Appropriation title & symbol: Abatement Control & Compliance 681/20108	Total budgetary resources 539,747,100
	Amount proposed for rescission $ 43,700,000
OMB identification code: 68-0108-0-1-304	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☐ Yes ☒ No	☐ Other
Type of account or fund: ☐ Annual	Type of budget authority: ☒ Appropriation
☒ Multiple-year September 30, 1982 (expiration date)	☐ Contract authority
☐ No-year	☐ Other

Justification

In order to offset a significant increase in FY1981 expenditures, the President has directed Federal agencies to identify lower priority areas in which outlay reductions can be achieved. After a careful examination of the remaining unobligated Abatement, Control and Compliance funds, $43.7 million of lower priority projects have been identified for rescission. This represents only 28 percent of the remaining unobligated balance in this account, and will only reduce or eliminate those projects not immediately needed or not required at this time to meet the Agency's statutory mandate or health mission. This action will leave more than $112 million in unobligated funds, which can be applied toward the Agency's programs. Grant funds to State, interstate and local governments are not included in this reduction.

Estimated Effects

Since only unobligated funds are being proposed for rescission, minimal disruption at most will be felt by contractors. No significant programmatic effects are anticipated since over two thirds of the remaining unobligated balances remain.

Outlay Effect (in millions of dollars)

1981 Outlay Estimate: Without Rescission	1981 Outlay Estimate: With Rescission	Outlay Savings: 1981	Outlay Savings: 1982	Outlay Savings: 1983	Outlay Savings: 1984
495	491	4	22	14	4

R81-157

ENVIRONMENTAL PROTECTION AGENCY

Abatement, Control and Compliance

Of the funds appropriated under this head in the Department of Housing and Urban Development-Independent Agencies Appropriation Act, 1981, $43,700,000 are rescinded.

Rescission Proposal No: R81-158

PROPOSED RESCISSION OF BUDGET AUTHORITY
Report Pursuant to Section 1012 of P.L. 93-344

Agency National Endowment for the Arts	New budget authority (P.L. 96-514) $ 125,860,000
Bureau	Other budgetary resources 12,400
Appropriation title & symbol Salaries and Expenses 5910100	Total budgetary resources 125,872,400
	Amount proposed for rescission $ 6,650,000
OMB identification code: 59-0100-0-1-503	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The National Endowment for the Arts awards discretionary grants to State and local arts agencies, cultural institutions, organizations and individuals. Grants are aimed at: (1) encouraging creative efforts by artists; (2) enhancing access to the arts; (3) supporting arts institutions; (4) providing leadership in the arts; and (5) maintaining the artistic heritage of diverse cultural and ethnic groups. The Arts Endowment supports 19 programs ranging from Dance and Music to Folk Arts and Literature, and within these programs, some 120 funding categories.

The Administration seeks this rescission in order to begin the transition to fiscal 1982 levels of support for arts activities, which emphasize a greater role for private philanthropy and State and local support for cultural activities.

The Administration proposes to rescind a total of $6.65 million in Definite program funds.

Estimated Effects:

Rescinding $6.65 million of the funds appropriated for the National Endowment for the Arts will reduce the number of grant awards made to various artists and arts organizations and institutions nationwide. This proposal will reduce outlays by $2.9 million in fiscal year 1981.

Outlay Effects: (In millions of dollars)

1981 Outlay Estimate: Without Rescission	1981 Outlay Estimate: With Rescission	1981	1982	1983	1984
159.1	156.2	2.9	3.2	.5	--

R81-158

NATIONAL ENDOWMENT FOR THE ARTS

SALARIES AND EXPENSES

Of the funds appropriated for the National Endowment for the Arts in Public Law 96-514 for fiscal year 1981, $6,650,000 of the amount appropriated for support of projects and productions in the arts pursuant to section 5(c) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is rescinded.

Rescission Proposal No: R81-159

PROPOSED RESCISSION OF BUDGET AUTHORITY

Report Pursuant to Section 1012 of P.L. 93-344

Agency National Endowment for the Humanities	New budget authority (P.L. 96-514) $ 117,799,000
Bureau	Other budgetary resources 100,000
Appropriation title & symbol Salaries and Expenses - 5910200	Total budgetary resources 117,899,000 Amount proposed for rescission $ 7,417,000
OMB identification code: 59-0200-0-1-503	Legal authority (in addition to sec. 1012): ☐ Antideficiency Act
Grant program ☒ Yes ☐ No	☐ Other
Type of account or fund: ☒ Annual ☐ Multiple-year (expiration date) ☐ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

JUSTIFICATION: The National Endowment for the Humanities awards grants on a competitive basis to state and local humanities agencies, cultural institutions, historical organizations, and individuals. Awards are aimed at (1) strengthening the scholarly foundation for study in the humanities and supporting research activity which enriches the life of the mind in America; (2) improving the quality of teaching in the humanities and its responsiveness to new intellectual currents and changing social concerns; (3) promoting public understanding of the value of the humanities; and (4) nurturing the future well being of those essential institutional and human resources which make possible the study of the humanities.

The Humanities Endowment supports 31 programs ranging from fellowships and research activity to strengthen the scholarly foundation of the humanities to improving the quality of teaching in the humanities and its responsiveness to new intellectual currents and changing social concerns.

The Administration seeks this rescission in order to begin the transition to Fiscal Year 1982 levels of support for humanities activities, which emphasize a greater role for private philanthropy, State and local support.

Estimated Effect: The Administration proposes to rescind a total of $7,417,000 in Definite program funds. This proposal will reduce outlays by $2.5 million in FY 1981.

Outlay Effect:

1981 Outlay Estimates

(in millions)

Without Rescission	Rescission	Outlay Savings 1981	1982	1983	1984
151.2	148.7	2.5	3.0	1.9	--

[FR Doc. 81-17464 Filed 6-10-81; 8:45 am]
BILLING CODE 3110-01-C

R81-159

NATIONAL ENDOWMENT FOR THE HUMANITIES

SALARIES AND EXPENSES

Of the funds appropriated for the National Endowment for the Humanities in Public Law 96-514 for fiscal year 1981, $7,417,000 of the amount appropriated for support of activities in the humanities pursuant to section 7(c) of the National Foundation on the Arts and the Humanities Act of 1965, as amended, is rescinded.