determined that the conditions have been fully met. Therefore, EPA is withdrawing conditional approval and is fully approving these portions of Regulation V.

Regulation VI

In the March 25, 1980 notice, under the section which discussed Regulation VI, "Control of Air Pollution by Permit for New Construction or Modification," EPA noted several issues on which the State's regulation deviated from the provisions of Section 173 of the Act, and for which the State committed to revise by August 1, 1980. Conditional approval of this portion of the SIP required the State to take the following corrective action: Revise Subchapter 131.08.00.003(a)(13), (now 116.3(a)(13)) so as to provide for the application of offsets in all newly designated nonattainment areas; and, revise the regulation to reflect that the use of "significance levels" will only apply to areas which can be demonstrated to be clean areas.

On July 25, 1980, the State submitted revisions to Regulation VI for the purpose of satisfying the conditions specified for approval. In regard to Subchapter 131.08.00.003(a)(13), (now 116.3(a)(13)), the State revised this portion of the regulation so as to require offsets, in newly designated areas until such time that EPA approves regulations and a control strategy for these areas. Since the State has met the condition for approval for this portion of Regulation VI, EPA is withdrawing conditional approval and fully approving this portion of Regulation VI.

Concerning the use of "significance levels," the State revised the regulation to allow for the use of "significance levels" (now revised to "de minimus impact") only in areas that were clean portions of nonattainment areas. However, on May 13, 1980 (45 FR 31307), EPA promulgated revisions to the Emission Offset Interpretative Ruling (40 CFR Part 51 Appendix S) which, in turn, revised its interpretation of the requirements for SIPs imposed by Section 173 of the Act. Under that promulgation, EPA extended the requirements of the Emission Offset Ruling for new source review pursuant to Section 173 of the Act to cover new major stationary sources and major modifications proposing to construct *anywhere* in the designated nonattainment area, thereby effectively eliminating the clean spot exemption previously allowed in conjunction with the use of "significance levels." Insofar as the State has met the condition for approval for this portion of Regulation VI, EPA is hereby withdrawing conditional approval and issuing full approval to this portion of Regulation VI with the understanding that the State will be required to comply with the requirements specified in the May 13, 1980 **Federal Register** notice by the time limits specified therein.

In addition, compliance with the above mentioned conditional approval resulted in the State adding a new Subchapter 131.08.00.003(15), (now 116.3(a)(15)) to regulation VI. While the addition and intent of this subchapter satisfied the condition for approval specified above, it contains language which EPA considers to be ambiguous since it does not specify that greater than one for one offsets are required. In their letter of July 24, 1980, the State indicated that the method of operating the offset provision is to require a net decrease in emissions and that the language will be revised to reflect such. In light of the State's commitment, and their having satisfied the original condition for approval for this portion of Regulation VI, EPA is issuing full approval to this portion of Regulation VI. However, should the State not operate the permitting program in accordance with this interpretation, or fail to revise the language, EPA would initiate action to disapprove this portion of the SIP. EPA expects the TACB to correct the ambiguity by May 7, 1981 since its new source review regulations must be consistent by that date with the new source review requirements promulgated on August 7, 1980 in the **Federal Register**.

Under Section 307(b)(1) of the Clean Air Act, judicial review of this final rulemaking is available *only* by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of July 10, 1981. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may *not* be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

Under Executive Order 12291, EPA must judge whether a regulation is "Major" and therefore subject to the requirement of a Regulatory Impact Analysis. This regulation is not major because it is merely approving a State action. It will impose no new regulatory burden.

Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator has certified that SIP approvals under Sections 110 and 172 of the Clean Air Act will not have a significant economic impact on a substantial number of small entities (46 FR 8709, January 27, 1981). This action constitutes a SIP approval under Sections 110 and 172 within the terms of the January 27 certification. This action only approves State actions. It imposes no new requirements.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291.

Incorporation by reference of the State Implementation Plan for the State of Texas was approved by the Director of the **Federal Register** on July 1, 1980.

(Sec. 110 of the Clean Air Act, as amended)

Dated: July 1, 1981.

John W. Hernandez,

Acting Administrator.

Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

Subpart SS—Texas

1. Section 52.2270, is amended by adding paragraph (c)(25), which reads as follows:

§ 52.2270 Identification of plan.

* * * * *

(c) * * *

(25) Revisions to Regulation VI (i.e., Subchapter 116.3(a)(13–15)), and the definition of "de minimus impact," were adopted by the Texas Air Control Board on July 11, 1980, and submitted by the Governor on July 25, 1980.

§ 52.2275 [Amended]

2. Section 52.2275 is amended to remove paragraphs (a) (1), and (2).

3. Section 52.2299 is revised to read as follows:

§ 52.2299 Review of new sources and modifications.

(a) Part D Conditional Approval. Regulation VI is conditionally approved until the following condition is satisfied:

(1) Revise the definitions of "major source" and "major modification" to be equivalent to EPA's definitions by May 7, 1981.

[FR Doc. 81-20225 Filed 7-9-81; 8:45 am]
BILLING CODE 6560-38-M

GENERAL SERVICES ADMINISTRATION

41 CFR Part 101-26

[FPMR Amdt. E-247]

Procurement Sources and Programs; Appliances and Water Coolers From Federal Supply Schedules

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation reflects a change in the method by which GSA supplies Federal agencies with various household and commercial appliances and water coolers (dispensers). Agencies may now order these items directly from appropriate Federal Supply Schedules. Previously, under a consolidated procurement program no longer in effect, agencies were required to submit their requirements for appliances and water coolers to designated GSA regional offices.

EFFECTIVE DATE: July 10, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Welsh, Acting Director, Regulations Management Division (703-557-7970).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effects. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

1. The table of contents for Part 101-26 is amended by reserving two entries and deleting four entries as follows:

Sec.
101-26.502 [Reserved]
101-26.502-1 [Deleted]
101-26.502-2 [Deleted]
101-26.503 [Reserved]
101-26.503-1 [Deleted]
101-26.503-2 [Deleted]

SUBPART 101-26.5—GSA PROCUREMENT PROGRAMS

§ 101-26.502 [Reserved]

2. Section 101-26.502 is reserved.

§§ 101-26.502-1—101-26.502-2 [Removed]

3. Sections 101-26.502-1 and 101-26.502-2 are removed.

§ 101-26.503 [Reserved]

4. Section 101-26.503 is reserved.

§§ 101-26.503-1—101-26.503-2 [Removed]

5. Sections 101-26.503-1 and 101-26.503-2 are removed.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: June 24, 1981.

Gerald P. Carmen,

Administrator of General Services.

[FR Doc. 81-20229 Filed 7-9-81; 8:45 am]

BILLING CODE 6820-24-M

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41 CFR Part 101-30

[FPMR Amdt. E-246]

Federal Catalog System; Nonperishable Subsistence Items

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This regulation clarifies GSA's position concerning procurement and supply management of nonperishable subsistence items by updating that portion of the federal property management regulations (FPMR) concerning those items. The regulations are being changed as a result of findings by the Interagency Medical and Nonperishable Subsistence Supply Management Committee that many items were dual- or triple-managed by GSA, the Veterans Administration and the Department of Defense.

EFFECTIVE DATE: July 10, 1981.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Welsh, Acting Director, Regulations Management Division (703-557-7970).

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this rule is not a major rule for the purposes of Executive Order 12291 of February 17, 1981, because it is not likely to result in an annual effect on the economy of $100 million or more; a major increase in costs to consumers or others; or significant adverse effect. The General Services Administration has based all administrative decisions underlying this rule on adequate information concerning the need for, and consequences of, this rule; has determined that the potential benefits to society from this rule outweigh the potential costs and has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

1. The table of contents for Part 101-30 is amended by adding one entry as follows:

Sec.
101-30.101-1a Item of production.

2. Section 101-30.000 is revised to read as follows:

§ 101-30.000 Scope of part.

This part provides for a Federal Catalog System by which items of supply under § 101-30.301 are uniformly named, described, classified, and assigned national stock numbers (NSN's) to aid in managing all logistical functions and operations from determination of requirements through disposal. This system provides a standard reference language or terminology to be used by personnel in managing these items of supply, a prerequisite for integrated item management under the Federal procurement system concept.

Subpart 101-30.1—General

3. Section 101-30.101-1 is revised to read as follows:

§ 101-30.101-1 Civil agency item.

"Civil agency item" means an item of supply in the supply system of one or more civilian agencies, which is repetitively procured, stocked, or otherwise managed (includes direct delivery requirements as well as items stocked for issue).

4. Section 101-30.101-1a is added to read as follows:

§ 101-30.101-1a Item of production.

"Item-of-production" means those articles, equipment, materials, parts, pieces, or objects produced by a manufacturer which conform to the same engineering drawing, standard, or specification and receive the same quality control and inspection.

5. Section 101-30.101-2 is revised to read as follows:

§ 101-30.101-2 Item of supply.

"Item of supply" means an item of production that is purchased, cataloged, and assigned a national stock number by the Government. The item of supply is determined by the requirements of each Government agency's supply system. The item of supply concept differentiates one item from another item in the Federal Catalog System. Each item of supply is expressed in and fixed by a national item identification number. An item of supply may be:

(a) A single item of production;

(b) Two or more items of production that are functionally interchangeable;

(c) A more precise quality controlled item than the regular item of production, or

(d) A modification of a regular item of production.

6. Section 101-30.101-9 is revised to read as follows:

§ 101-30.101-9 Item entry control.

"Item entry control" means the functional responsibility of GSA/DOD cataloging to minimize the number of items in the supply system by: (a) Establishing controls that prevent unessential new items from entering the supply system; (b) promoting the development of standards and use of standard items; and (c) eliminating items having nonstandard characteristics, and isolating and recommending the use of duplicate or replacement items.

7. Section 101-30.101-14 is revised to read as follows:

§ 101-30.101-14 Maintenance action.

"Maintenance action" means any action taken after conversion to the Federal Catalog System which changes the previously reported identification or management data regarding a cataloged item.

Subpart 101-30.2—Cataloging Handbooks and Manuals

8. Section 101-30.201(b) is amended by revising paragraphs (b)(1) through (b)(5) to read as follows:

§ 101-30.201 General.

* * * * *

(b) * * *

(1) *Federal Catalog System Policy Manual (DOD 4130.2-M).* This hard copy manual prescribes the operating policies and instructions covering the maintenance of a uniform catalog system.

(2) *Defense Integrated Data Systems (DIDS) Procedures Manual (DOD 4100.39-M).* This hard copy manual prescribes the procedures covering the maintenance of a uniform catalog system.

(3) *Federal Supply Classification (Cataloging Publication H2 Series).* This microfiche publication includes the listings and indexes necessary for using the commodity classification system (grouping related items of supply) as prescribed by the Federal Catalog System Policy Manual.

(4) *Federal Supply Code for Manufacturers (Cataloging Publication H4 Series).* This microfiche publication includes a comprehensive listing of the names and addresses of manufacturers who have supplied or are currently supplying items of supply used by the Federal Government and the applicable 5-digit code assigned to each.

(5) *Federal Item Name Directory (FIND) for Cataloging (Cataloging Publication H6 Series).* This microfiche publication includes names of supply items with definitions, item name codes, and other related data required to prepare item identifications for inclusion in the Federal Catalog System.

Subpart 101-30.3—Cataloging Items of Supply

9. Section 101-30.303(b) is revised to read as follows:

§ 101-30.303 Responsibility.

* * * * *

(b) Agencies not having the capabilities cited in paragraph (a) of this section shall submit their request to the appropriate cataloging activity; i.e., GSA or VA, for the performance of all cataloging functions and/or the preparation of data for submission to DLSC. Cataloging requests to GSA or VA shall be prepared using Standard Form 1303, Request for Federal Cataloging/Supply Support Action (illustrated at § 101-30.4901-1303). EAM card formatted requests for volume add/delete user actions may also be submitted. Instructions on the preparation of Standard Form 1303 and EAM card formatted requests and guidance in determining the appropriate cataloging activity designated to receive requests are in the GSA Handbook, Federal Catalog System-Logistics Data (FPMR 101-30.3), issued by the Commissioner, Federal Supply Service.

* * * * *

10. Section 101-30.304 is revised to read as follows:

§ 101-30.304 Application of item entry control.

In addition to the reviews attendant to the process of item identification and assignment of national stock numbers, proposed new items will be subjected to a technical review to associate them with items available through the GSA supply system. Where a similar item is available through the GSA supply system, the agency will be informed of the national stock number and a source of supply and will be requested to use that item. If the requesting agency considers the GSA item unacceptable because of technical differences, the requesting agency shall notify GSA of the technical differences between the alternate item and the requested item to allow for the assignment of a new national stock number to the requested item.

11. Section 101-30.305 is amended by revising the introductory paragraph to read as follows:

§ 101-30.305 Exemptions from the system.

When an agency believes that the benefits of the Federal Catalog System may be realized without formal participation, a request for an exemption shall be submitted to the General Services Administration (FRI), Washington, DC 20406. After reviewing the request for an exemption, GSA will inform the requesting agency of the decision and will provide instructions for implementation. The request for an exemption shall include, but not be limited to, the following information:

* * * * *

Subpart 101-30.4—Use of the Federal Catalog System

12. Section 101-30.401-1 is amended by revising paragraphs (a)(3) and (a)(5) and removing paragraph (a)(6) to read as follows:

§ 101-30.401-1 Publications providing Federal catalog data.

(a) * * *

(3) *Consolidated Management Listing.* A microfiche publication which is a consolidated listing of NSN's and related supply management data of each integrated manager and military service. These data include Government source of supply, unit of issue, unit price, etc.

* * * * *

(5) *Defense Logistics Agency (DLA) Federal Supply Catalog for Civil Agencies.* This publication (available in hard copy only) includes NSN's for which DLA is the single source of supply for civil agencies. These NSN's may not necessarily have a DOD user recorded. The publication contains descriptive and management data for items not usually listed in the GSA catalog but which might be required by civil agencies.

(6) [Deleted]

* * * * *

13. Section 101-30.404 is revised to read as follows:

§ 101-30.404 Supply support.

Civilian agencies requiring supply support on an item of supply shall request this action by preparing Standard Form 1303, Request for Federal Cataloging/Supply Support Action (illustrated at § 101-30.4901-1303), and submitting the form to the General Services Administration (FRIS), Washington, DC 20406. All supply support requests for nonperishable subsistence items in Federal Supply Group 89, subsistence (except items in FSC classes 8940 and 8950), shall be submitted to the Veterans Administration, Catalog Division (901 S) Veterans Administration Supply Depot, P.O. Box 27, Hines, IL 60141. Guidance on the preparation of supply support requests is in the GSA Handbook,

Federal Catalog System-Logistics Data (FPMR 101-30.3), issued by the Commissioner, Federal Supply Service.

Subpart 101-30.5—Maintenance of the Federal Catalog System

14. Section 101-30.501 is revised to read as follows:

§ 101-30.501 Applicability.

(a) The Administrator of General Services delegated authority to the Secretary of Defense to develop and maintain the Federal Catalog System. This delegation provided for the cataloging system to continue to provide for the identification and classification of personal property under the control of Federal agencies and to maintain uniform item management data required and suitable for interdepartment supply activities.

(b) The Federal Catalog System Policy Manual (DOD 4130.2-M) and the Defense Integrated Data System (DIDS) Procedures Manual (DOD 4100.39-M) are equally applicable to all DOD and civilian agencies. The Federal Supply Service, GSA, and the Department of Defense share joint responsibility for the coordination of civilian agency cataloging to ensure the integrity of the system and the compatibility of civilian and military agency participation in the Federal Catalog System.

15. Section 101-30.503 is amended by revising paragraphs (a) and (b) and adding paragraph (e) to read as follows:

§ 101-30.503 Maintenance action required.

* * * * *

(a) As new items meeting criteria for national stock number (NSN) assignment are added to an agency's supply system, the agency shall submit data to GSA, the Defense Logistics Agency (DLA), the Veterans Administration (VA), or DLSC when a direct submitter of catalog data is involved in accordance with § 101-30.303.

(b) All civilian agencies not authorized to submit catalog data direct to DLSC shall prepare Standard Form 1303, Request for Federal Cataloging/Supply Support Action (illustrated at § 101-30.4901-1303), to request maintenance action. Maintenance requests shall be submitted to GSA for collaboration and submission to DLSC, except that civilian agencies receiving supply support on an item from a DLA center or the VA, as expressed by major organizational entity (MOE) rule, should submit these requests to the DLA center using DD Form 1685, Data Exchange and/or Proposed Revision of Catalog Data, or to the VA using Standard Form 1303, for collaboration and submission to DLSC. When GSA receives maintenance requests on these items, they will be forwarded to the appropriate DLA center or to the VA.

* * * * *

(e) Any civilian agency participating in the Federal Catalog System (those agencies previously assigned a Cataloging Activity Code) may propose action for maintenance of the catalog system tools as outline in § 101-30.201(b).

Subpart 101-30.6—GSA Section of the Federal Supply Catalog

16. Section 101-30.601 is revised to read as follows:

§ 101-30.601 Objective.

GSA supply catalogs are primarily designed to aid in the acquisition of GSA centrally managed, stocked, and issued items available from GSA supply facilities by Federal civilian agencies and other organizations authorized to use the GSA Federal Supply Service (FSS) stock program as a source of supply. GSA also provides information relative to other FSS sales programs and GSA services.

17. Section 101-30.603 is revised to read as follows:

§ 101-30.603 GSA supply catalog.

(a) The GSA Supply Catalog is an illustrated catalog, published annually, which serves as the primary source to identify and order centrally managed, stocked, and issued items available from GSA supply facilities. The catalog also provides information concerning other Federal Supply Service programs and GSA services.

(b) The GSA Supply Catalog contains all necessary information for ordering from the GSA Federal Supply Service stock program and basic information, such as:

(1) *Alphabetical Index.* This index is organized alphabetically by approved item names under the basic noun name in inverted word sequence, (i.e. sofa, sleeper) with reference to the page that contains the pertinent item description.

(2) *Item Descriptions/Ordering Data.* Item descriptions are listed by commodity groups in this section. Included also are descriptive and ordering data with representative illustrations for selected common-use items that are centrally managed, stocked, and issued from GSA supply facilities.

(3) *National Stock Number Index.* This NSN sequenced index lists items that are centrally managed, stocked, and issued from GSA supply facilities.

(4) *Narrative.* The narrative includes comprehensive detailed information to use and understand the GSA Federal Supply Service stock program.

(5) *Other Federal Supply Service sales programs and GSA services.* This section provides to user agencies pertinent information regarding the use and understanding of the GSA Federal Supply Service stock program, sales program, and other GSA services.

(c) Changes to the GSA Supply Catalog are effected by change bulletins issued during April, July, and October. These are cumulative publications that contain information pertaining to new items, changes to supply management data, and deleted items.

(d) Special Notice to Ordering Office is issued on a nonscheduled basis as required by the Commissioner, FSS, to inform agencies of significant program changes to the GSA Supply Catalog.

18. Section 101-30.604 is revised to read as follows:

§ 101-30.604 Availability.

Agencies that require current copies of and desire to be placed on distribution lists to receive Federal supply catalogs and related publications shall complete GSA Form 457, FSS Publications Mailing List Application (illustrated at § 101-26.4902-457), and forward the completed GSA Form 457 to General Services Administration (8BRC), Centralized Mailing Lists Services, Building 41, Denver Federal Center, Denver, CO 80225. Copies of GSA Form 457 may also be obtained from the above address. Periodically, the Centralized Mailing Lists Services will request information from agency offices for use in maintaining current distribution lists.

Subpart 101-30.7—Item Reduction Program

19. Section 101-30.703(b) is revised to read as follows:

§ 101-30.703 Program objectives.

* * * * *

(b) Standardizing items of supply used by the Government;

* * * * *

20. Section 101-30.704-1(b)(1) is revised to read as follows:

§ 101-30.704-1 General Services Administration.

(b) * * *

(1) Distribute proposed item reduction studies, as appropriate, to all civil agencies recorded as users of the item in

the DLSC data base. This distribution will be made by coordination letters in which a time frame for a response will be specified. GSA will interpret each nonresponse to a proposed study to mean that the activity concurs with the study. Extensions, when requested by an agency, normally will be granted by GSA.

* * * * *

21. Section 101-30.704-2 is amended by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 101-30.704-2 Other agencies.

* * * * *

(c) Review the approved item reduction study and notify GSA in writing if the activity is to be retained or deleted as a user of any item coded as "not authorized for procurement." This notification will allow the preparer of the study to complete coordination of the study and update the DLSC Total Item Record (TIR).

* * * * *

(e) Request, as appropriate, the retention of a nonstandard item in their supply system by forwarding a letter to General Services Administration (FRIS), Washington, D.C. 20406. The request shall include but not be limited to the following information:

(1) The specific end-use of end-item application;

(2) A technical explanation comparing the physical and functional characteristics of the nonstandard item with each authorized-for-procurement item;

(3) The duration of the requirement for the item or how long the end-item will be retained in the agency's supply system; and

(4) Economic considerations from a technical standpoint. GSA will evaluate the request and inform the agency of its acceptance or rejection.

22. Section 101-30.705 is revised to read as follows:

§ 101-30.705 GSA assistance.

Activities requiring assistance in fulfilling their responsibilities under the program shall contact the General Services Administration (FRI), Washington, D.C. 20406.

(Sec. 205(c), 63 Stat. 390; (40 U.S.C. 486(c)))

Dated: June 22, 1981.

Ray Kline,

Acting Administrator of General Services.

[FR Doc. 81-20230 Filed 7-9-81; 8:45 am]

BILLING CODE 6820-24-M

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

45 CFR Part 1176

Part-Time Career Employment

AGENCY: National Endowment for the Humanities.

ACTION: Final rule.

SUMMARY: The Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95-437) provides for and encourages part-time employment of Federal employees. The following final regulation of the National Endowment for the Humanities sets forth the provisions of the law and the criteria and procedures for administering the program in the Endowment.

EFFECTIVE DATE: August 10, 1981.

FOR FURTHER INFORMATION CONTACT: David C. Johnstone, Personnel Officer, National Endowment for the Humanities, Room 410, 806 15th Street, N.W., Washington, DC 20506 (202) 724-0356.

SUPPLEMENTARY INFORMATION: Proposed rulemaking was published on pages 65635-65637 of the **Federal Register** of October 3, 1980, and inviting comments until November 30, 1980. No comments were received.

Rulemaking Requirements

In connection with various rulemaking requirements, the National Endowment for the Humanities has determined that:

1. This rule does not impose a burden under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

2. This rule is not a "major rule" within the meaning of Executive Order 12291 of February 17, 1981 (46 FR 13193, February 19, 1981), "Federal Regulation."

3. This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

Chapter XI, Title 45 of the Code of Federal Regulations is amended by adding Part 1176, Subchapter D, to read as follows:

PART 1176—PART-TIME CAREER EMPLOYMENT

Sec.

1176.1 General.
1176.2 Definitions.
1176.3 Criteria.
1176.4 Establishing and converting part-time positions.
1176.5 Annual plan.
1176.6 Review and evaluation.
1176.7 Publicizing vacancies.
1176.8 Exceptions.
1176.9-1176.99 [Reserved]

Authority.—Federal Employees Part-Time Career Employment Act of 1978, Pub. L. 95-437, 92 Stat. 1055, 5 U.S.C. 3401-3408.

§ 1176.1 General.

(a) Purpose. Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents with opportunities to balance family responsibilities with the need for added income, and assisting students who must finance their own education or vocational training. In view of this, the National Endowment for the Humanities will operate a part-time career employment program, consistent with its responsibilities and in accordance with Public Law 95-437, the Federal Employees' Part-Time Career Employment Act of 1978.

(b) Program Coordinator. The Personnel Officer is responsible for program operation and coordination.

§ 1176.2 Definitions.

(a) "Part-time employment" means employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to the Act or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(b) "Career employment" includes competitive and excepted service employees in tenure groups I and II.

§ 1176.3 Criteria.

Positions becoming vacant, unless excepted as provided by Section 1176.8, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.

(b) Workload.

(c) Employment ceilings and budgetary considerations.

(d) Availability of qualified applicants willing to work part-time.

§ 1176.4 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-

time positions. Criteria listed in Section 1176.3 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

§ 1176.5 Annual plan.

(a) An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, and will be transmitted to the Office of Personnel Management with the required report to OPM on the status of the program as of September 30 of each year.

(b) Beginning in FY 1981 in administering personnel ceilings, part-time career employees shall be counted against ceiling authorizations as a fraction. This will be determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

§ 1176.6 Review and evaluation.

Regular employment reports will be used to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

§ 1176.7 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacanies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.

(b) State Employment Offices.

(c) Veterans' Administration Recruiting Bulletins.

§ 1176.8 Exceptions.

(a) The Personnel Officer may except positions from inclusion in this program to provide fewer than 16 hours per week. This will normally be done in furtherance of special hiring programs such as the Stay-in-School or Handicapped Employment Program.

(b) On occasions when it becomes necessary to allow supervisors and managers to temporarily increase the hours of duty of employees above 32 hours per week for limited and specific periods of time to meet heavy workloads, perform special assignments, permit employee training, etc., the Endowment policy is as follows:

(1) Requests to work NEH employees on a 32 hour/week appointment more than 32 hours must be submitted in advance to the Personnel Office;

(2) Justification should be concise but specific and must state the exact time frame for the increase in hours above 32 hours per week; and

(3) The Program Coordinator will decide if the request meets the intent of the law and this agency's policy.

§§ 1176.9–1176.99 [Reserved]

Dated: June 25, 1981.

Joseph D. Duffey,

Chairman, National Endowment for the Humanities.

[FR Doc. 81-19813 Filed 7-9-81; 8:45 am]

BILLING CODE 7536-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1002 and 1128

[Ex Parte No. 395]

Feeder Railroad Development Program

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: These final rules set out the procedures for implementing the feeder railroad development program eatablished by section 401 of the Staggers Rail Act of 1980 (Rail Act). The purpose of the program is to provide shipper groups and communities with an alternative to inadequate rail service of abandonment and with an opportunity to preserve feeder lines prior to the total downgrading of such lines. To carry out this purpose, the Rail Act authorizes the Commission to require a railroad to sell certain rail lines under specific circumstances to a financially responsible person who files an application to purchase with the Commission.

EFFECTIVE DATE: These rules are effective on the date of their publication in the **Federal Register.**

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or

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SUPPLEMENTARY INFORMATION: On October 23, 1980 (45 FR 73106, November 4, 1980), we issued proposed rules for the feeder railroad development program in accordance with section 401 of the Rail Act. Comments on the proposed rules were due on December 4, 1980. The Rail Act required us to promulgate regulations and procedures by December 14, 1980, which was only 10 days after the date when comments were due. Because we could not adequately address all of the issues raised in the comments and formulate final rules within such a limited time, on December 12, 1980, we adopted the proposed rules as interim rules effective December 19, 1980 (45 FR 83506, December 19, 1980).

Upon Analysis of the comments received, we have made some modifications to the rules, most of which are clarifying in nature. Although all the comments are not specifically discussed in this report, they all were considered in developing the final rules. Pursuant to 5 U.S.C. 553, the final rules will become effective upon their publication in the **Federal Register.** Further delay in implementing these rules would impede the timely execution of our functions under section 401 of the Rail Act.

Before discussing the comments, we will highlight the salient features of the program.

Background

The purpose of the feeder railroad development program (feeder line program) is to provide shipper groups and communities with an alternative to inadequate rail service or abandonment and with an opportunity to preserve feeder lines prior to the total downgrading of such lines. To accomplish this, the Rail Act authorizes us to require railroads to sell certain rail lines under specific circumstances to financially responsible persons who file applications to acquire in accordance with our procedures.

The law is quite specific as to the type of lines that are eligible for purchase under the program. Only two categories of rail properties qualify: (1) lines for which we find that the public convenience and necessity permit or require the sale; and (2) lines that appear in category 1 or 2 of the carrier's system diagram map as potentially subject to abandonment but for which the carrier has not filed an application to abandon. For the first 3 years after the effective date of the Rail Act, eligibility is limited to only those lines that carried less than 3 million gross ton miles of traffic per mile in the preceding calendar year.

The law further states that we can require the sale of eligible rail property only at a price not less than the Constitutional minimum value of the line. The Rail Act states that the Constitutional minimum value is presumed to be the net liquidation value or going concern value of the line, whichever is greater.

We have a number of responsibilities under this program in addition to determining the acquisition cost of a line. At the request of the acquiring party and subject to payment of reasonable compensation, we can

require the selling carrier to provide trackage rights to the acquiring party to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the acquiring party. For certain lighter density lines, we can also, upon petition of the acquiring carrier, require the establishment of reasonable joint rates and divisions between the parties. While we must require the selling carrier to protect the interests of employees on the line, the acquiring party will be required to use, to the maximum extent practicable, the employees who normally worked on the line.

The statute further provides that the acquiring carrier may elect to be exempt from any of the provisions of Title 49 of the *United States Code*, except with respect to joint rates. The law also extends this exemption option to lines abandoned during the 18 months prior to October 1, 1980 and subsequently acquired by a financially responsible person. Additionally, the owner of the acquired line may determine preconditions, such as subsidy payments, which shippers must meet in order to obtain service. If the purchasing carrier proposes to sell or abandon the line in the future, the original selling carrier shall have the right of first refusal to purchase the line.

Discussion

Our discussion of the comments is divided into two sections: I General and II. Specific. The first section addresses general concerns raised regarding implementation of the program. The second covers comments addressed to specific procedures set out in the proposed rules.

I. General Concerns

Railroad Concerns. The Association of American Railroads (AAR) is concerned that a prospective State purchaser dissatisfied with our valuation of the property could "walk away" from the proceeding and start a condemnation proceeding under that State's jurisdiction with the hope of obtaining a more favorable determination of value by a local court. AAR suggests that we require information as to whether a State has condemnation powers. If a State has this power, the AAR proposes that we require the State to deposit with the carrier at least 25 percent of the estimated value of the line, which deposit shall be forfeited if the State fails to acquire the property in accordance with our order and starts a State condemnation proceeding.

States may not exercise eminent domain powers as a vehicle to circumvent a federally-mandated statutory scheme under which we are granted exclusive jurisdiction to require a railroad to cease operations over one of its rail lines or to transfer the line to a new operator. There is no legal capacity in any State to alter the status of a common carrier insofar as its interstate obligations are concerned; such capacity lies wholly within the federal jurisdiction. *Boston and Maine Corp. Discontinuance of Service*, 324 I.C.C. 418, 451 (1965). Therefore, we see no need to require a bond or other form of security from a State purchaser.

Upon invoking our jurisdiction, the party's only remedy if dissatisfied with our final determination of property value is to seek judicial review in a United States Court of Appeals pursuant to 28 U.S.C. 2321a and 28 U.S.C. 2342. Under these sections, the Court of Appeals has exclusive jurisdiction to review, enjoin, set aside, or determine the validity of all our final orders.

Boston and Maine Corporation (B&M) is concerned that certain operators may acquire properties under the program for their long-term real estate value rather than their value as railroad property. To protect against such speculation, the B&M suggests that we set up a procedure whereby the selling carrier would have right of first refusal if the applicant ultimately proposed to abandon or sell the property and the proceeds from any sale which were in excess of net liquidation, plus appreciation, would be returned to the selling carrier. B&M further suggests that a required operating period of 25 years be imposed as a protective measure.

These concerns are addressed by the Rail Act itself. First, the Rail Act already affords the selling carrier the right of first refusal if the party who acquired the line later proposes to sell or abandon it. However, the statute makes no provision for the original selling carrier to receive proceeds from a subsequent sale by an applicant. The value of the property to be paid the selling carrier, as mandated by the statute, is the higher of net liquidation value or going concern value. We will consider all appropriate factors to determine the Constitutional minimum value of the line. Last, the statute requires that applicants provide a minimum 3-year period of service, and our rules provide for careful scrutiny of the financial responsibility and operating plans of the applicant. This should serve to screen out speculators and insure that parties who acquire property are dedicated to the operation of the line and are capable of providing the service.

Ontario Midland Railroad maintains that if a feeder line involves property of the Consolidated Rail Corporation (Conrail), the purchaser should not have to pay a price in excess of what Conrail paid, subject to adjustment for inflation. It believes an acquiring community will, in effect, be underwriting part of Conrail's massive debt by paying a substantial mark-up above what Conrail itself paid.

The Rail Act makes no distinction as to Conrail properties. The legislation requires that the Constitutional minimum value be paid for any rail line required to be sold under the program. Similarly, no distinction is made with respect to Conrail properties in cases of subsidy or acquisition when we make a finding permitting abandonment. There is no basis for treating Conrail properties differently under the feeder line program.

AAR criticized the use of final offer arbitration as a method for determining the acquisition price of property to be acquired under the program. The AAR questions whether the arbitrary selection of either the selling or acquiring carrier's price conforms with the valuation process required under section 401 of the Rail Act. It further questions whether this procedure would be used.

The Rail Act does not specify the process to be used in determining the value of a rail line. The purpose of including final offer arbitration is to provide parties with an alternative procedure for determining the sale price of a line which reduces the time and expense for both parties in their efforts to prove (or disprove) the Constitutional minimum value. We have selected this process because we believe that, by using a method where one of the two numbers submitted by the parties will be chosen, the parties will have a strong incentive to settle as many differences as possible prior to the arbitration stage. This will reduce the discrepancy between their respective offers as much as possible. Because the parties will know one another's offers before selecting the arbitration option, the boundaries of the risk they assume by going to binding arbitration are well known. In our selection of one figure over the other, of course, we will consider which amount best satisfies the statutory requirement of Constitutional minimum value.

Most importantly, since both parties must consent to the use of this form of arbitration, any party who does not like the procedure cannot be forced to use it.

Because final offer arbitration is a totally voluntary process and one that takes into account Constitutional minimum value, as required by the statute, we see no conflict with section 401 of the Rail Act.

Rail User Concerns. The National Grain and Feed Association (NGFA) believes that we may be too narrowly interpreting the exception to the exemption powers conferred by 49 U.S.C. 10910(g)(1). Under that section, a purchaser can elect to be exempt from the provisions of Title 49 with the exception of the provisions of Chapter 107 which govern transportation under a joint rate. NGFA Interprets this section to mean that an acquiring party providing any transportation subject to a joint rate cannot elect to be exempt from any of the provisions of Title 49. We do not believe the Congress intended such a restricted reading of the exemption provision.

Since any branch line purchased under this program would involve joint rates with the selling railroad, the exemption provision as interpreted by NGFA would be meaningless. We do not believe that Congress intended to enact a provision that could not be used. Further, the language of section 10910(g)(1) is quite specific. It provides that a party may elect to be exempt from any of the provisions of Title 49, "except that such a person may not be exempt from the provisions of Chapter 107 of this title with respect to transportation under a joint rate." Accordingly, we adhere to the position that a party may exempt itself from any of the provisions of Title 49 except those under Chapter 107 that govern transportation under a joint rate.

Because of the eligibility of Category 1 and 2 lines under the feeder line program, NGFA suggested that the rules be modified to require railroads to: (1) update their system diagram maps; and (2) indicate on their maps which of their lines in categories 1 and 2 carried less than 3 million gross ton miles of traffic per mile (MGTM/M) in the preceding year.

With respect to the first request, section 1121.23(c) of our abandonment regulations (49 CFR Part 1121) already requires railroads to revise their system diagram maps annually. Further, under section 1121.22, the carrier must: (1) serve the map itself plus any amendments upon the Governor, the public service commission, and the designated rail planning agency of each State within which the carrier operates or owns a line of railroad; (2) publish a black and white copy of the map in newspapers of general circulation in the counties where Category 1, 2, or 3 lines or lines with amended status are located; (3) post copies of the newspaper notice in each station or terminal on each line in Category 1, 2, or 3 or each amended line; and (4) furnish a copy of its map, at reasonable cost, upon request of any interested party. Since the abandonment regulations already set adequate requirements for ensuring updated system diagram maps and notice to the public, we see no need for additional regulations in this area.

With respect to NGFA's second request, we do not consider it reasonable to require railroads to indicate on their maps every line in Category 1 and 2 that carried less than 3MGTM/M of traffic in the preceding year. First, the railroad's cost of collecting and keeping these data on every Category 1 and 2 line would be considerable. Second, State rail planning agencies may have these data in some cases as a result of their rail planning activities under the Local Rail Service Assistance Program. Under this program, certain lines that carried less than 3MGTM/M of traffic or less during the prior year are eligible for preabandonment rehabilitation assistance. Third, a prospective purchaser is free to request these data from the railroad for a particular line upon payment of the reasonable cost to the railroad of assembling this information.

State Concerns. A number of concerns were registered with respect to the State role in the feeder line program. Of particular concern was a State's ability to exercise the right of first refusal if railroad property acquired under the feeder line program is subsequently put up for sale or abandonment. Some States indicated they have laws that give them the right of first refusal for any railroad property offered for sale, lease, or abandonment. Other States reserve this right as a condition to providing financial assistance. It was also stated that States may condition their provision of financial assistance on the assurance that service will be provided for a period of 5 years or more. The States questioned whether these factors might create a problem since the feeder line program provisions require a guarantee of only 3 years of service on a line acquired under the program.

As already noted, the Rail Act is quite specific as to right of first refusal. Under 49 U.S.C. 10910(h), if a purchaser proposes to sell or abandon all or any portion of a line purchased under the feeder line program, it must offer the right of first refusal to the railroad from which it purchased the property. However, it should be recognized that under the Rail Act any railroad who wishes to exercise this right must be in a position to pay a price equal to the sum of the price paid by the purchaser plus the fair market value (less deterioration) of any improvements made, as adjusted for inflation.

The statutory requirement of at least 3 years of service should not create any problem for a State. This requirement is simply to establish a minimum period of service, and does not preclude a State from establishing a longer period of service as a condition to eligibility for State funds.

The Illinois Department of Transportation (Illinois DOT) questioned how we would determine the adequacy of existing rail service in finding whether the public convenience and necessity permit or require the sale of a line. More specifically, it questioned whether this determination would be done on a case-by-case basis or through a rulemaking aimed at setting nationwide standards. Illinois DOT is concerned that we might engage in nationwide application of criteria developed on the basis of unique local circumstances. In such a case, it believes a formal rulemaking would be an appropriate approach.

The Rail Act sets out the criteria we must assess in determining whether the public convenience and necessity permit or require the sale of a line. The applicant bears the burden of proving these criteria, which include the refusal of the railroad to make efforts within a reasonable time to provide adequate service, inadequacy of current service, lack of adverse financial and operational effects on the operating railroad if the line is sold, and the likelihood of improved service if the line is transferred.

Because all these factors, including the adequacy of existing rail service, involve local service needs and considerations unique to the owning railroad, we believe these applications require case-by-case analysis.

II. Specific Concerns

Purpose and Scope, Section 1128.1. Those comments which addressed the scope of the program were concerned with the eligibility of lines under the program and the application of the standard of 3 million gross ton miles of traffic per mile (3MGTM/M) during the first 3 years of the program.

Concern exists in identifying which lines are eligible for the feeder line program, particularly lines of the bankrupt Chicago, Rock Island and Pacific Railroad Company (Rock Island) and Chicago, Milwaukee, St. Paul and

Pacific Railroad Company (Milwaukee Road). Under the Rail Act, only two categories of rail lines qualify for the program: (1) lines for which we find the public convenience and necessity permit or require the sale; and (2) lines that appear in category 1 or 2 of the carrier's System Diagram Map but for which the carrier has not filed an application to abandon. The standard of 3MGTM/M of traffic or less applies to these lines only for the first 3 years of the program. Since the Rail Act specifically excludes lines for which abandonment applications have been filed, Rock Island and Milwaukee Road lines that were the subject of abandonment applications do not qualify.

In discussing the eligibility of lines, we should also clarify the status of rail lines abandoned during the 18-month period preceding the effective date of the Rail Act and subsequently acquired by a financially responsible person. Some parties thought these lines qualified for the program. Under the provisions of the Rail Act, these lines are not eligible for acquisition under the program. However, they are eligible for exemption from the provisions of Title 49 of the United States Code (with the exception of the Chapter 107 provisions governing transportation under a joint rate).

Under the first 3 years of this program, eligible lines are limited to those carrying less than 3MGTM/M of traffic in the preceding calendar year. Some parties wanted to know how to make the necessary computation and whether the limitation applies to a given line or just to the portion of the line sought to be acquired. Section 1128.1 of the final rules defines the term to include the tare (empty) weight of the cars carrying the cargo plus the weight of the cargo. This is the commonly used method in the industry for estimating the traffic density for a line when gross ton miles must be determined. If freight only was to be considered, Congress would have used the term gross ton miles of revenue freight. This section also specifies that the 3MGTM/M standard applies to the portion of the line to be acquired.

Notice of Intent to Purchase, Section 1128.2. Under § 1128.2 of the regulations, a person giving notice of its intent to acquire a rail line must be financially responsible. A number of the comments requested that we define the term "financially responsible person." It was suggested that financially responsible persons should be limited to those comprised of or affiliated with shipper groups. Apparently, it is feared that other persons may give the appearance of financial responsibility only to have financial difficulty or to withdraw service shortly after acquiring a railroad line.

Section 1128.2(a) of the final regulations states that the term financially responsible person may include a shipper or group of shippers; a State, local, or regional government or transportation authority; a Class III railroad; or any other entity (except a Class I or Class II railroad or an entity affiliated with a Class I or II railroad).

We do not believe that limiting the term to shipper-affiliated groups is appropriate. This could preclude possible operations by independent financially responsible entities capable of providing efficient and long-term service. Further, there are a number of safeguards built into the program. The Rail Act requires that each applicant be able to pay the Constitutional minimum value of the property and be able to prove ability to provide adequate service for at least 3 years. We will carefully scrutinize all evidence as to financial responsibility before requiring the sale of property to any applicant. In addition, rail users and other concerned parties will have an opportunity to comment on the merits of any application.

The AAR suggested that the determination of an applicant's financial responsibility be made prior to negotiations and disclosure of data by the carrier. The railroads are concerned with possible harassment, futile negotiations, and the time-consuming and expensive collection of data for parties who are not financially qualified.

We share these concerns, but do not believe a preliminary determination of financial responsibility is necessary at the notice stage. Section 1128.2(b) of the notice provisions requires an applicant to submit preliminary evidence of its financial responsibility in the notice of intent. If the railroad considers these data deficient, it can request that the prospective purchaser voluntarily submit additional data sufficient to establish a preliminary showing of financial responsibility. If the railroad can demonstrate that a preliminary showing of financial responsibility has not been made, it can petition us for appropriate relief. Also, section 1128.3(a) of the final rules requires that an applicant reasonably compensate the selling railroad for providing data generally not available to the public. This should help to screen out parties who may not be financially responsible.

The proposed regulations required that copies of the notice of intent be provided to the Commission, the Designated State Agency in the State(s) in which the property is located, the owning railroad, and all significant users of rail service located on the line. It was requested that the regulations also require that a copy be made available to a designated official of railway labor. We agree, and have amended section 1128.2(a) to require a copy of the notice of intent to be sent to the Railway Labor Executives' Association, 400 1st Street, N.W., Washington, D.C. 20001.

Application to Purchase, Section 1128.3.

Financial Responsibility. A primary concern was the type of evidence required to establish financial responsibility. The parties who commented on this point argued that additional guidance and some uniformity is needed for this critical aspect of the acquisition process. We agree. Accordingly, § 1128.3(b)(4) of the final rules is amended to require that evidence of financial responsibility must include, but not be limited to: balance sheets, *pro forma* income statements for at least 3 years, and sources of funds for acquisition and operation (such as federal, state, shipper, and private contributions), including any loan commitments and/or dedication of funds for this proposal.

We do not believe it is necessary to require that binding contracts guaranteeing shipper participation be submitted or that federal and State funding agreements actually be in place prior to an applicant invoking our jurisdiction, as suggested by AAR. As noted above, § 1128.3(b)(4) now requires that an applicant specify in the application all sources of funds for acquisition and operation, including federal, state, shipper, and private contributions. Section 1128.3(b)(9) of the regulations further requires that an applicant include in the application any preconditions to be placed on shippers in order for them to receive service (such as assuming a share of any subsidy payments). It further provides that, if the application is approved, no further preconditions will be placed on shippers without our approval. This information, plus any related comments filed during the proceeding, generally should provide sufficient information to assess the financial responsibility of the applicant and the feasibility of the proposed acquisition.

Negotiations. In the area of negotiations, more specific guidelines were desired concerning the report to be submitted on the status of negotiations. Accordingly, § 1128.3(b)(11) of the final rules specifies that these status reports should include a description of the negotiations (participants, dates of

meetings, and progress), points of agreement, specific areas of disagreement, and general problems.

Trackage Rights. The proposed regulations required only a description of the trackage rights which would be required by the acquiring party to allow for reasonable interchange with the selling carrier or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by an applicant. More specific guidelines were requested because of the limited nature of these trackage rights and our need, as well as that of the affected railroads, to assess the effect of these trackage rights on the owning railroad's operations. This concern also seemed valid. Section 1128.3(b)(14) of the final rules specifies that trackage rights requests shall include a description of the actual trackage required, the specific need for this trackage, the frequency of proposed operations, specific times of operation, alternatives to trackage rights, if any, and any other pertinent data relating to the proposed operations.

Some of the comments also questioned the anticipated extent (mileage) of these trackage rights. There was concern on the part of railroads that these trackage rights might be used as a vehicle to obtain access to distant interchange points. As a result, assurances were sought that reasonable interchange points would be established.

To avoid any possible misunderstanding, § 1128.3(b)(14) of the final rules specifies that the interchange point will be at the point closest to the junction with the line of the owning carrier that will allow for an efficient interchange of traffic. This will reduce the possibility of abuse and minimize interference with other train movements.

One party questioned what would happen if the noncontiguous feeder lines between which trackage rights were needed to move power equipment or empty rolling stock were connected by the selling carrier's trackage rights over another railroad. Under these circumstances, we cannot require the transfer of trackage rights to the acquiring carrier. The law authorizes us to require these trackage rights only of the selling carrier. However, this does not preclude the acquiring railroad from negotiating for trackage rights or direct interchange with the other railroad.

The AAR requested that the regulations specify the following with respect to trackage rights: (1) the purchasing railroad's crews must pass the owning carrier's operating rules examination before being allowed to operate trains over trackage subject to connecting rights, and (2) the purchaser must agree to indemnify the owning railroad for loss and damage arising out of its exercise of trackage rights, unless such loss and damage is caused by the negligence of the owning line. The railroads maintain that knowledge of the owning carrier's operating rules is essential from a safety aspect as these operating rules specify the signal and train control procedures applicable to a particular carrier's operations. They make the point that the presence of inexperienced crews and the additional train movements created by these trackage rights could pose a safety hazard.

The railroads have raised legitimate safety concerns in this area. Accordingly, the final rules will require knowledge of the selling railroad's operating rules. Under § 1128.3(b)(14), an applicant will now be required to submit with its application a statement agreeing that its train and engine crew personnel will take the operating rules examination before operating trains over the property of the selling carrier subject to the trackage rights.

The railroads' request concerning insurance also is reasonable. Accordingly, § 1128.3(b)(8) of the final rules specifies that the applicant's liability insurance must include coverage sufficient to indemnify the selling carrier from all personal and property damage resulting from operations by the feeder line operator in exercising trackage rights, unless the loss or damage is caused by the negligence of the owning line.

Joint Rates/Divisions. The AAR suggested that the application requirements be amended to provide that any applicant who requests joint rates or divisions be required to provide detailed evidence demonstrating the reasonableness of the proposal including estimates of costs and anticipated revenues. AAR fears that because of the marginal nature of many of the feeder lines, purchasers will try to seek a change in divisions, rather than increasing rates, in an effort to have the connecting carrier subsidize the feeder line operation. Accordingly, AAR wants the applicant to submit detailed evidence demonstrating the reasonableness of the proposed division.

We agree that the language in the final rules should be more specific with respect to the type of evidence to be submitted for requested joint rates and divisions. Section 1128.3(b)(15) of the final rules requires a description of any necessary division agreements, the railroads involved in the proposed division(s), the estimated revenues from such division(s), and the total costs of operating the line segments (including trackage rights). Applicants are required to justify on a cost basis the reasonableness of a proposed division or joint rate. As set out in the proposed rules, in setting joint rates or divisions between the selling carrier and the acquiring party, we will not set the rate for the selling railroad's share of the joint rate at less than the applicable revenue/variable cost percentage set by 49 U.S.C. 10709(d)(2) (as amended by section 202 of the Rail Act) unless the selling carrier specifically asks us to do so.

Reasonable Compensation for the Collection of Data. The AAR maintains that the carriers should be allowed to charge a prospective purchaser for supplying data not generally available to the public. The collection of data can be a time-consuming and expensive process for the railroad, particularly in this type of proceeding. Accordingly, § 1128.3(a) of the final rules provides for such compensation.

Copies of the Application. Several comments pointed out that the proposed regulations did not specify upon whom copies of the application should be served. Section 1128.3(a) of the final rules requires that copies of the application shall be served on the Commission, the Designated State Agency in the States in which the property is located, the owning railroad, all significant users of rail services located on the line, and the Railway Labor Executives' Association and shall be made available to interested parties upon request.

Transfer of Title. It was suggested that the regulations clarify that once the sale is made, transfer should be of all of the right, title, and interest in the property, without reserving leases or licenses, mineral rights, or other residual property rights, unless the parties specifically agree otherwise. Since the value established for the property should take into account such leases, licenses, and rights, § 1128.3(b)(4) of the final rules requires that in determining the value of the line, the applicant identify separately the amounts, if any, included for such rights, licenses, and leases. If the purchaser wishes to exclude these items, a statement to this effect should be included.

Procedures for Handling Applications, Sections 1128.4 and 1128.5. Further clarification of the procedures for handling competing applications was requested. Accordingly, §§ 1128.4(d) and 1128.5(d), which cover category 1 and 2 applications and applications seeking public convenience and necessity

findings, respectively, specify that: (1) competing applications must be filed within 30 days of the filing of an initial application, as was provided for in the proposed rules; (2) these applications are subject to the same information and service requirements as the initial application; and (3) parties will have 30 days from the date competing applications are filed during which to comment. We will weigh the financial responsibility and service capability of each applicant, plus any comments by the affected railroad, shippers and communities indicating their order of preference.

It was also requested that all evidence be verified and that the regulations include a statement that incomplete applications will be rejected on their face. With respect to the former request, § 1128.3(a) of the final regulations specifies that all evidence be submitted in the form of verified statements. The latter concern was already addressed in the proposed regulations. Sections 1128.4(a) and 1128.5(a) provide that we will accept or reject an application with respect to its completeness within 15 days in the case of applications for category 1 or 2 lines and within 30 days in the case of lines involving a public convenience and necessity finding.

The time period for filing replies to comments on the application was considered inadequate. Sections 1128.4(c) and 1128.5(c) of the final rules extend the reply period from 15 to 20 days to allow parties additional time.

Commission Order, Section 1128.6. Section 1128.6(c) of the regulations provides that if an application requires us to set joint rates or divisions, we will do so based on the evidence of record in the proceeding. However, unless specifically requested to do so by the selling carrier, we will not set the rate for the selling railroad's share of the joint rate at less than the level set by 49 U.S.C. 10709(d)(2) (for the year in which the acquisition is made). NGFA did not believe we adequately explained why we would guarantee a selling carrier a division which equalled the minimum threshold level for our maximum ratemaking jurisdiction.

Our basis for this approach is two-fold. First, under section 202 of the Rail Act, we have no jurisdiction over rates that fall below this threshold level. To be consistent with this provision, we cannot force a selling railroad to accept a rate below that level. Second, if we were to set the selling carrier's share of divisions below that threshold level, rail users might try to buy the line as a way to circumvent the railroad's right to establish rates up to that level. This would thwart Congress' clear intent that we not interfere with or mandate rates below Congressionally-determined levels.

Acquisition Cost, Section 1128.7. The AAR pointed out that the owning railroad should be able to use qualified in-house real estate personnel in setting property valuations. The AAR believes railroads should not have to pay appraisers when they have in-house experienced personnel whose job is to determine land values. Section 1128.7(d)(1)(iv) of the regulations states the railroad must submit an appraisal by a qualified appraiser if it wishes to challenge applicant's evidence of net liquidation value. This section does not preclude a railroad from using in-house personnel. However, to avoid any ambiguity, the term qualified appraiser will be defined to include qualified in-house real estate personnel.

The AAR questioned the inclusion of equipment as an element in the appraisal value of property under § 1128.7(d)(1)(ii) of the regulations. It points out that section 401 does not permit any condemnation of rail equipment. The use of the term "equipment" in the proposed regulations was not intended to mean locomotives or freight cars but equipment such as signalling equipment on the line. In order to remove possible misunderstanding in the area, the term "equipment" is deleted from § 1128.7(d)(1)(ii).

We invited comments on what methodology, if any, should be used to determine net liquidation and going concern values, or whether parties should be free to submit whatever information they think persuasive. Although those parties who commented indicated they would like guidance in this area, no methodology or suggested guidelines were offered. Accordingly, no standard definitions are adopted, and we will assess net liquidation and going concern value assessments on a case-by-case basis.

Concern was registered with respect to the timing and form of payment of the purchase price for the property. The AAR maintains that the purchase price should be paid in full in cash 60 days after the issuance of an administratively final order requiring the property's sale. The regulations do provide a specific period of time for consummation of the sale. Under §§ 1128.7(d)(1)(vi) and 1128.7(d)(2)(viii), the parties have 60 days from the date of our decision to consummate the sale, whether they select the adjudicatory procedure for determining net liquidation and going concern values or the final offer arbitration process. The final regulations do not specify the terms or form of payment of the purchase price. This is a matter which properly falls within the negotiation process. For example, a railroad might accept a lower price, if immediate cash payment is offered. The reverse may also be true. The timing and nature of the payment may, thus, become an important part of the negotiation, and should not be subject to a uniform rule.

The AAR maintains that ascertainment of value of a line is of sufficient importance to require oral hearing. The rules provide two methods for determining the purchase price of a line: (1) the acquiring parties may attempt to prove net liquidation value and going concern value under § 1128.7(d)(1) of the regulations, or (2) both parties (the purchaser and railroad) may select final offer arbitration under § 1128.7(d)(2). If the latter option is chosen, an oral hearing is not necessary because both parties will have agreed to the sale of the property at the price we select. However, under the first option, where contested valuations are involved, no such agreement has been reached. The acquiring party and the railroad will each present their own evidence regarding the value of the property. Based on the evidence submitted, we will determine the price at which the railroad must sell the property. Oral hearings may help us develop a complete and sufficient record and resolve discrepancies in such cases; however, we intend to convene oral hearings infrequently, and only in complex cases where written submissions are likely to offer insufficient evidence upon which to determine an equitable sale price. Accordingly, section 1128.7(b) of the final rules provides that we may, upon request by either party, conduct oral hearings.

This Notice of Final Rules is issued under 5 U.S.C. 553, and 49 U.S.C. 10910. The rules do not significantly affect the quality of the human environment, the conservation of energy resources, or adversely affect the economic interests of small businesses or organizations.

Other Matters

In our proposed rules we failed to include the filing fee for applications filed under these regulations. We have determined that the appropriate fee will be $300. That filing fee will be reflected in 49 CFR 1002.2(d)(49).

Our proposed rules did not include the number of copies of applications or pleadings required by these rules. An applicant must file an original and 10 copies of its application. An original and 10 copies of any other pleading must

also be filed. This requirement will be included as 49 CFR 1128.7.

It is ordered

1. Chapter X of Title 49 of the *Code of Federal Regulations* is amended by adding, as Part 1128, the regulation set forth in the Appendix.

2. This decision is effective upon the date published in the **Federal Register.**

Decided: June 26, 1981.

By the Commission, Acting Chairman Alexis, Commissioners Gresham, Clapp, Trantum, and Gilliam. Commissioner Clapp concurred with a separate expression.

Agatha L. Mergenovich,

Secretary.

Commissioner Clapp, concurring:

The rules we adopt today implement section 401 of the Staggers Rail Act of 1980. Through section 401 and establishment of the Feeder Railroad Development Program, Congress intended to provide shipper groups and government agencies with an alternative to inadequate rail service and to provide an opportunity for preservation of feeder lines prior to total downgrading of the lines. Under these rules, a prospective purchaser must give public notice of intent to purchase at least 90 days before an application is filed. What the rules may not make clear is that a deficient *notice* may cause the Commission to reject the *application* filed three months or more after the *notice.* This could obviously delay proposed acquisitions or give competing applications an advantage.

Some of the problems associated with defective notices could be eliminated through early identification and correction. Providing for prior review of proposed notices by Commission staff personnel, for example, could have been useful. Alternatively, we could have provided for quick rejection of deficient notices.

Fortunately, those who stand to lose most through filing faulty notices have it within their power to exercise caution in filing notices. Without the necessary care, I fear that the intent of Congress, as expressed in section 401, may be frustrated.

Appendix

PART 1128—FEEDER RAILROAD DEVELOPMENT PROGRAM

Sec.

1128.1 Purpose and scope.
1128.2 Notice of intent to purchase.
1128.3 Application to purchase.
1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the owning carrier's system diagram map.
1128.5 Procedures for handling an application seeking a finding of public convenience and necessity.
1128.6 Commission order.
1128.7 Acquisition cost.
1128.8 Copies

Authority: 5 U.S.C. 553; 49 U.S.C. 10910.

§ 1128.1 Purpose and scope.

Under 49 U.S.C. 10910, the Commission can require the sale of certain rail lines to a financially responsible person. To be eligible for such sale, either the line must appear in category 1 or 2 of the owning railroad's System Diagram Map (but the railroad has not filed an application to abandon it), or the public convenience and necessity, as specifically defined in Section 10910, must permit or require the sale of the line. Furthermore, until October 1, 1983, section 10910 is only applicable to lines that carried less than three million gross ton miles of traffic per mile in the preceding calendar year. The term three million gross ton miles, as used in these regulations, shall be calculated by adding the ton miles of the cargo and the ton miles related to the tare (empty) weight of the freight cars used to transport the cargo in the loaded movement. In calculating the gross ton miles, only those related to the portion of the line segment being purchased shall be included. This Part sets forth the regulations and procedures to carry out the provisions of this program.

§ 1128.2 Notice of intent to purchase.

(a) A financially responsible person who wishes to acquire a rail line pursuant to these procedures shall, at least 90 days prior to applying to the Commission for such purpose, notify the following persons or entities of its intent to purchase a line of railroad: the Interstate Commerce Commission; the Designated State Agency in the States(s) in which the property is located; the owning railroad; all significant users of rail services located on the line; and the Railway Labor Executives' Association, 400 1st Street, N.W., Washington, D.C. 20001. As used in this part, the term "financially responsible person" can include: a shipper or group of shippers; a State, local or regional government or transportation authority; a Class III railroad; or any other entity (except a Class I or II railroad or an entity affiliated with a Class I or II railroad). "Significant user" means (1) each of the 10 rail patrons who originated and/or received the largest number of carloads on the line (or each patron if there are fewer than 10), and (2) any other rail patron who originated and/or received 50 or more carloads on the line proposed for acquisition during the 12-month period preceding the month in which the Notice is filed.

(b) The Notice shall contain the following information: the docket number, the identity of the applicant, and identification of the properties that the applicant wishes to purchase; a statement of the basis upon which the line is eligible for this program (including (1) applicable tonnage and (2) system diagram map designation or service deficiency allegations directed to the public convenience and necessity test); the applicant's reasons for wishing to acquire the properties; and preliminary evidence of the applicant's financial responsibility. Additionally, the Notice must contain a summary of the essential terms to be contained in the application, including an estimate of the net liquidation value of the property (with appraisal, if available), and an indication that the acquiring party is prepared to offer at least that amount to the owning railroad. It should specifically state any preconditions to service which the applicant would impose and the extent of the exemption from Title 49 provisions which the applicant would elect. The Notice shall also state that any interested party may submit comments or recommendations to the Commission with respect to the Notice and application, and that other interested and financially responsible persons may also propose to acquire the property. The Notice shall also name the applicant's representative to whom inquiries and requests for applications may be made.

(c) Before notice is given, the applicant must obtain a docket number from the Commission's Section of Finance. The Notice shall be served by certified mail on each party identified in subparagraph (a) above, and shall be posted in each station on the line and published in a local newspaper at least once a week for three consecutive weeks. An affidavit shall be filed stating that the service requirements of this subparagraph have been met. The Commission will publish a summary of the Notice in the **Federal Register.** If an applicant wishes to publish in a local newspaper a summary of the Notice, the applicant must include in the summary the name and address of applicant's representative to whom interested parties may request a copy of the full Notice.

§ 1128.3 Application to purchase.

(a) Not less than 90 days after filing the Notice required in § 1128.2 of these regulations, the party wishing to acquire the line may file an application with the Commission for the purchase of the rail properties described in the Notice. All applications filed under these regulations, whether they are initial applications or competing applications, must be served upon the persons or entities listed in § 1128.2(a) of these regulations and made available to interested parties upon request. All

statements or information filed in support of or in opposition to the application shall be verified. The applicant shall pay the railroad the reasonable costs of providing data that would not otherwise be available or arrayed in the format desired. The railroad shall itemize by major category the expenses charged to the applicant such as xeroxing, labor costs associated with reproduction and assimilation of the data, and computer time.

(b) The Application shall contain the following information:

(1) The name and address of the proposed purchaser.

(2) The names and addresses of its officers and directors.

(3) A description of applicant's affiliation with any railroad.

(4) Information sufficient to establish that the applicant is a financially responsible person as defined in § 1128.2(a) of these regulations. Evidence of financial responsibility shall include, but not be limited to, balance sheets and *pro forma* income statements for at least three years and the identification of all sources of funds for acquisition and operation of the line (such as federal, state, shipper, and/or private contributions), including any loan commitments and/or dedication of funds for this proposal. In this regard, the applicant must demonstrate its ability: (i) to pay the higher of the net liquidation value or going concern value of the line; and (ii) to cover expenses associated with providing service over the line (such as, but not limited to, operating costs, rents, and taxes) for the first three years after acquisition of the line.

With regard to paragraph (b)(4)(i) of this section, estimates of net liquidation and going concern values, and complete descriptions of the methods by which such calculations were made, must be included. An appraisal by a qualified person of the net liquidation value of the line must also be included. In determining the value of the line, the amounts, if any, included for rights, such as mineral rights, licenses, and leases, shall be identified separately. If the purchase is to exclude these items, a statement to this effect shall be included.

(5) An offer to purchase the line at the higher of the two estimates submitted pursuant to subparagraph (4).

(6) The dates for the proposed period of operation of the line covered by the application.

(7) An operating plan that identifies the proposed operator; attaches any contract that the applicant may have entered into with the proposed operator; describes in detail the service that is to be provided on the line, including all interline connections; and demonstrates that adequate transportation will be provided over the line for at least three years from the date of acquisition.

(8) A description of the extent of the applicant's and the operator's liability insurance. If trackage rights are requested, the insurance shall be at a level sufficient to indemnify the owning railroad against all personal and property damages that result from negligence on the part of the operator in exercising the trackage rights.

(9) Any preconditions (such as assuming a share of any subsidy payments) that will be placed on shippers on order for them to receive service, and a statement that if the application is approved, no further preconditions will be placed on shippers without Commission approval. (THIS STATEMENT WILL BE BINDING UPON THE APPLICANT IF THE APPLICATION IS APPROVED.)

(10) The name and address of any person(s) that will subsidize the operation of the line.

(11) A statement that the applicant has negotiated with the owning railroad for the purchase of the properties and a report on the status of those negotiations. The status report shall include, but not be limited to, a description of the negotiations (participants, dates of meetings, and progress), points of agreement, specific areas of disagreement, and general problems.

(12) A statement that the applicant will seek a finding by the Commission that public convenience and necessity (PC&N) permit or require the acquisition, or a statement that the line is currently in category 1 or 2 of the owning railroad's System Diagram Map. If the latter, a copy of the relevant portion of the map must be attached to the application. If the applicant seeks a finding of PC&N from the Commission, then the application must contain evidence sufficient to permit the Commission to find that:

(i) the rail carrier operating the line refused within a reasonable time to make the necessary efforts to provide adequate service to shippers who transport traffic over the line;

(ii) the transportation over the line is inadequate for the majority of shippers who transport traffic over the line;

(iii) the sale of the line will not have a significantly adverse financial effect on the rail carrier operating the line;

(iv) the sale of the line will not have an adverse effect on the overall operational performance of the rail carrier operating the line; and

(v) the sale of the line will be likely to result in improved railroad transportation for shippers who transport traffic over the line.

With regard to paragraph (b)(12) (i) of this section, the applicant's evidence shall detail the nature of the claimed service inadequacy, the specific complaints of shippers on the line, the type of service requested, the owning railroads' responses to those requests, and the time period involved.

With regard to paragraph (b)(12) (ii) of this section, the applicant should identify all significant users on the line, estimate the tonnage and carloads shipped or received by each, and submit statements by a majority of the users explaining why the present service is inadequate.

(13) A statement of the extent to which the applicant intends to elect exemption from any of the provisions of Title 49, United States Code, and a statement that if the application is approved, no further exemptions will be elected. (This Statement Will Be Binding Upon the Applicant if the Application is Approved.)

(14) A description of any trackage rights required over the owning railroad that are needed to allow reasonable interchange or to move power equipment or empty rolling stock between noncontiguous feeder lines operated by the applicant, and an estimate of the reasonable compensation for such rights, including a full explanation of how the estimate was reached. The description of the trackage rights shall include, but not be limited to, the following information: milepost or other identification for each segment of track; the need for the trackage rights (interchange of traffic, movement of equipment, etc.); frequency of operations; times of operation; any alternative to the use of the tracks; and any other pertinent data. Trackage rights that are necessary for the interchange of traffic shall be limited to the closest point to the junction with the owning railroad's line that allows the efficient interchange of traffic. A statement shall be included that the applicant agrees to have its train and crew personnel take the operating rules examination of the railroad over which the operating rights are exercised.

(15) A description of any joint rates and divisions agreements that must be established. The description(s) shall include, but not be limited to, the following information: the railroad(s) involved; the estimated revenues that will result from the division(s); and the total costs of operating the line segment

purchased (including the trackage rights fees).

(16) The extent to which the owning railroad's employees who normally service the line will be used.

(17) If the application is filed before October 1, 1983, information sufficient to allow the Commission to determine that the line sought to be acquired carried less than three million gross ton miles of traffic per mile in the preceding calendar year.

(18) A statement of the applicable time period for filing comments and submitting competing applications, with the Commission's address where they should be filed.

(c) The Commission may, if it finds that the circumstances of the application suggest a pattern of litigation that constitutes unfair harassment of the owning railroad, issue an order requiring applicant to show cause why the application should not be summarily dismissed.

§ 1128.4 Procedures for handling an application for a line contained in category 1 or 2 of the owning carrier's system diagram map.

Only applications seeking to acquire a line contained in category 1 or 2 of the owning carrier's System Diagram Map shall be subject to the following procedures:

(a) The Commission shall accept or reject an application with respect to its completeness within 15 days of its receipt.

(b) The railroad and other interested parties wishing to comment shall file within 30 days of the filing date of the application their verified statements commenting on the application.

(c) Verified reply statements shall be filed within 20 days after comments are received.

(d) Competing applications shall be filed within 30 days of the initial application's receipt. Parties have 30 days from the date competing applications are filed with the Commission to comment on them. All competing applications are subject to the same requirements imposed on initial applications in § 1128.3 of these regulations. Comments on competing applications shall be verified and indicate the order or preference between applications and the specific reasons for such preference.

(e) When the Commission finds that (1) the traffic level on the line sought to be acquired was less than three million gross ton miles of traffic per mile in the preceding calendar year (Note: this finding will *not* be required for applications filed after October 1, 1983); (2) the line is classified in category 1 or 2 of the owning railroad's System Diagram Map, and (3) the applicant is a "financially responsible person" as defined in § 1128.2(a) of these regulations, it shall issue an order requiring that the rail line involved be sold to the applicant, upon payment by the applicant of the Constitutional minimum value of the properties, established in accordance with § 1128.7 of these regulations.

§ 1128.5. Procedures for handling an application seeking a finding of public convenience and necessity.

Only applications seeking a public convenience and necessity finding shall be subject to the following procedures:

(a) The Commission shall accept or reject an application with respect to its completeness within 30 days of its receipt.

(b) The railroad and other interested parties wishing to comment shall file within 60 days of the filing date of the application their verified statements commenting on the application.

(c) Verified reply statements shall be filed no later than the 80th day after the filing date of the application.

(d) Competing applications shall be filed within 30 days of the initial application's receipt. Parties have 30 days from the date competing applications are filed with the Commission to comment. All competing applications are subject to the same requirements imposed on initial applications in § 1128.3 of these regulations. Comments on competing applications shall be verified and indicate the order of preference between applications and the specific reasons for such preference.

(e) The applicant shall bear the burden of proving the statutory criteria set forth in § 1128.3(b)(12). All evidence filed in support of these contentions shall be in the form of verified statements.

(f) If the Commission determines that the statements and the reply statements do not contain sufficient evidence to permit a decision on the merits, the Commission will set the proceeding for further oral or written hearing.

(g) If the Commission finds that the applicant has not successfully carried the burden of proof with respect to one or more of the statutory criteria, the Commission shall deny the application.

(h) If the Commission finds that the applicant has successfully carried the burden of proof with respect to each criteria, it shall order the properties covered by the application to be sold to the applicant upon payment by the applicant of the Constitutional minimum value of these properties, established in accordance with § 1128.7 of these regulations.

§ 1128.6. Commission order.

(a) In Any Commission decision that orders a line to be sold, the Commission will also address any related issues raised in the application.

(b) If trackage rights are sought in the application, the Commission shall, based on the evidence of record, set the adequate compensation for such rights, if the parties have not agreed to a price.

(c) If the application requires the Commission to set joint rates or divisions, the Commission shall do so, based on the evidence of record in the proceeding. Unless specifically requested to do so by the selling carrier, the Commission will not set the rate for the selling railroad's share of the joint rate at less than the applicable level (for the year in which the acquisition is made) set by 49 U.S.C. 10709(d)(2), which limits Commission maximum ratemaking jurisdiction to rates above certain cost/price ratios.

§ 1128.7. Acquisition cost.

(a) If the applicant and the owning railroad agree between themselves on an acquisition price, that price shall be the final price and not subject to any of the requirements of this subpart.

(b) If the Commission has issued an order requiring the rail properties covered by an application to be sold to the applicant, and the owning railroad and the applicant cannot agree on a sale price, the Commission will, upon a request by the applicant, determine the value of the properties which shall not be less than the Constitutional minimum value, as that term is defined in 49 U.S.C. 10910(b)(1)(B).

The Commission may, upon request of either party, conduct an oral hearing to determine the value of the property.

(c) A request by the applicant that the Commission set the Constitutional minimum value of the properties to be sold shall be made within 60 days of the Commission's order requiring the properties to be sold, and must be accompanied by a statement by the applicant that it has attempted unsuccessfully to negotiate with the railroad during that period and describing the status of the negotiations.

(d) The Commission shall make available to the parties two separate procedures under which the Constitutional minimum value may be set. In its petition asking the Commission to set the Constitutional minimum value, the applicant must state its preferred method.

(1) If the applicant chooses to submit evidence sufficient to prove both the net liquidation value (NLV) and the going concern value (GCV) of the rail properties approved for sale, the following procedures shall apply:

(i) Applicant must submit information and evidence proving NLV and GCV with its petition asking the Commission to set the Constitutional minimum value.

(ii) The appraisal submitted with the application shall be a sufficient submission as to NLV, but must be broken into the constituent parts of NLV (for example, land, track, material, and facilities).

(iii) Applicant shall be free to submit whatever evidence it deems persuasive of GCV, and may seek to use the Commission's discovery procedures for information that is vital to applicant's case and is exclusively in the control of the owning railroad.

(iv) The owning railroad may submit evidence within 30 days of applicant's petition regarding NLV and GCV. If it wishes to challenge applicant's evidence of NLV, the railroad must submit an appraisal by a qualified appraiser that meets the requirements of paragraph (d)(1)(ii) of this section. If it wishes to challenge applicant's evidence of GCV, the railroad shall submit whatever evidence it deems persuasive. The term "qualified appraiser" as used in this subsection includes qualified railroad personnel whose primary job responsibilities include the valuing or appraising of land and other railroad assets.

(v) The Commission shall determine the acquisition cost based on the record of the proceedings, and such determination shall be final.

(vi) The applicant shall have 60 days (or whatever other period the parties agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission or, within 30 days, notify the owning railroad of its decision not to acquire the line.

(2) As an alternative to the procedures in paragraph (d)(1) of this section the parties may choose final offer arbitration. This method, if selected, shall be binding on both parties, and the sale shall be consummated at the arbitrated price, unless both parties agree to withdraw from this option. If arbitration is not used, then the procedures in paragraph (d)(1) of this section will be followed. Under final offer arbitration, the following procedures shall apply:

(i) The applicant shall, in its petition asking the Commission to determine the Constitutional minimum value of the properties, state its selection of the arbitration option.

(ii) The petition must include a signed statement by the railroad agreeing to final offer arbitration as described in these regulations.

(iii) The applicant must certify in the petition that the applicant and the owning railroad have exchanged final offers for the purchase and sale of the properties.

(iv) The petition must include the same final offers the parties previously exchanged (unless they have both agreed to a modification) along with: (A) a statement by each that it believes the offer satisfies the Constitutional minimum value requirement of the Staggers Rail Act of 1980; (B) an explanation by each of the factors to which the difference between the two offers is attributable; and (C) an explanation by each of why its figure better meets the statutory requirements.

(v) The Commission shall select whichever of the two offers better meets the statutory requirement of Constitutional minimum value. The Commission will pick one of the two offers, and will not select a different amount.

(vi) The applicant shall have 60 days (or whatever other period the parties agree to) from the date of the Commission's decision to consummate the sale at the price set by the Commission, unless both parties agree to a withdrawal of the application.

§ 1128.8 Copies.

An original and 10 copies of an application, verified statement, comment or any other pleading required by these rules should be submitted to the Secretary, Interstate Commerce Commission, Washington, DC, 20423. The outside envelope and the first page of any document submitted under these rules should be clearly marked "Feeder Line Development."

PART 1002—FEES

§ 1002.2 [Amended]

49 CFR 1002 is amended by adding 49 CFR 1002.2(d)(49) to read as follows:

* * * * *

(d) * * *

(49) An application filed under 49 U.S.C. 10910, Feeder Line Development Program $300

[FR Doc. 81-20084 Filed 7-9-81; 8:45 am]
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