determine the amount of such liquidated damages, the following amount, which is a fair measure of damages and not a penalty, shall apply:

(1) The amount of the liquidated damages shall be computed by multiplying the tonnage on the approved diversion application (Form RAC-1000) by the harvest cost determined and announced by the Committee.

(2) Each approved applicant shall, with the respect to liquidated damages not paid by July 1, pay to the Committee interest on such unpaid liquidated damages at the rate of the prime rate of the bank in which the Committee has its reserve pool funds deposited, on the day the liquidated damages become delinquent, plus 2 percent, and further such rate of interest shall be added to the unpaid amount, monthly, until the liquidated damages plus applicable interest are paid.

(3) Liquidated damages and interest collected by the Committee pursuant to this subparagraph shall be deposited in the reserve pool fund of the reserve pool applicable to the particular diversion program and be distributed to the equity holders in that pool.

(r) *Notification.* If any changes are made in the terms and conditions of the diversion program after a producer's application has been approved, the Committee will notify the producer of such changes and the producer will be given 10 calendar days to agree to the revised terms, or to withdraw from the program. Failure of the producer to notify the Committee in writing of its intention to withdraw from the program within 10 calendar days from the date of the Committee's notice will constitute agreement to the revised terms and conditions.

(s) *Additional opportunity for vine removal.* (1) The Committee may announce a date later than that provided in § 989.156(b), by which producers, who agree to remove the vines on a production unit, or portion thereof may file an application to participate in a raisin diversion program. The announced date shall be not later than May 1, except this date may be extended 30 days for the 1985 calendar year. The diversion certificates will be issued only for the production units or portions thereof from which the vines are removed. The total tonnage available to such applicants shall not exceed the tonnage determined by deducting the tonnage approved for applications received on or before December 20 from the total tonnage announced as eligible by the Committee for diversion. Applications shall be considered and approved on a first-come, first-served, basis and shall not be given preference over the tonnage approved for applications received on or before December 20. The vines shall be removed from the production units or portion thereof for which such applications are approved not later than June 1, except this date may be extended 30 days for the 1985 calendar year.

(2) Producers who agree to remove the vines pursuant to this paragraph shall notify the Committee in advance of the date when such vines will be removed in order to allow a representative of the Committee to observe and verify such vine removal.

(3) The determination of the tonnage allowed for acreage removed for less than a total production unit would be computed by multiplying the previous year's tonnage produced and verified on the entire unit by the ratio of the acreage removed divided by the acreage contained in the total production unit.

Dated: August 16, 1985.

Thomas R. Clark,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 20128 Filed 8-21-85; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Reg. Y. Docket No. R-0549]

Bank Holding Companies and Change in Bank Control; Application Required for Relocation of Subsidiary Bank to Another State

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final interpretation.

SUMMARY: This interpretation sets forth the Board's view that a bank holding company may not, without the Board's prior approval under section 3 of the Bank Holding Company Act and compliance with the interstate banking restrictions of the Act, relocate a subsidiary bank from the holding company's home state to another state.

EFFECTIVE DATE: July 24, 1985.

FOR FURTHER INFORMATION CONTACT: James V. Mattingly, Deputy General Counsel (202/452-3430), Pamela G. Nardolilli, Attorney (202/452-3289), Legal Division, or Joy W. O'Connell, Telecommunication Device for the Deaf (TDD) (202/452-3244), Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION:

List of Subjects in 12 CFR Part 225

Banks, Banking, Federal Reserve System, Holding Companies, Reporting and recordkeeping requirements.

For the reasons stated above, the Board amends 12 CFR Part 225 as set forth below:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

1. The authority for Part 225 remains as follows:

Authority: 12 U.S.C. 1841 *et seq.* and 12 U.S.C. 1817(j).

2. Section 225.114 to read as follows:

§ 225.144 Application Required for the Relocation of a Subsidiary Bank to Another State.

(a) The Board has recently considered whether a bank holding company may relocate one of its subsidiary banks, pursuant to the approval of the Comptroller of the Currency under 12 U.S.C. 30, from the holding company's home state [1] to another state without the approval of the Board under section 3 of the Bank Holding Company Act ("BHC Act") and without compliance with the interstate banking provisions of the Douglas Amendment to the BHC Act. (12 U.S.C. 1842 (a) and (d)). After a review of the terms and purposes of the BHC Act, the Board concludes that the relocation of a subsidiary bank of a bank holding company from the holding company's home state to another state requires the Board's prior approval under the BHC Act and is subject to the interstate banking provisions of the Douglas Amendment to the BHC Act. The retention by a bank holding company of control of a bank after its relocation outside of the holding company's home state, while simultaneously controlling a bank in its home state, creates a multi-state bank holding company, and, in the Board's view, is inconsistent with, and constitutes an evasion of, the terms and intent of the BHC Act that a bank holding company not expand its banking operations outside its home state without the express approval of the other state.

(b) The BCH Act establishes a comprehensive federal framework governing the operations and acquisitions of bank holding companies. Section 3(a) of the BHC Act provides that a bank holding company must obtain the approval of the Board, under specified competitive, financial, managerial and convenience and need factors before acquiring control of a bank. 12 U.S.C. 1842(a). The Douglas Amendment provides that the Board may not approve any application under section 3 that would allow a bank holding company to acquire control of or any interest in a bank located outside of the holding company's home state, unless the acquisition is specifically authorized by the state in which the bank to be acquired is located.

(c) The Douglas Amendment was adopted to prevent the creation or expansion of interstate banking networks through acquisition by a bank holding company of control of a bank located outside of the holding company's home state, without the explicit approval of the state in which the bank is located. (*See Florida Dep't of Banking* v. *Board of Governors*, 760 F.2d 1135, 1141 (11th Cir. 1985); *Credit and Commerce American Holdings, N.V.*, 65 Federal Reserve Bulletin 254, 255–56 (1979)). Under the terms of the BHC Act, the Board's authority to grant approval to a bank holding company to control a bank is limited to banks located within the holding company's home state or in states that have specifically authorized the acquisition. The Board has no authority to grant approval to a bank holding company to control a bank outside of the holding company's home state, without appropriate state statutory authorization. Thus, a bank holding company's authority to control a bank, which derives from the Board's approval under the BHC Act for the acquisition of the bank, must necessarily be limited by, and cannot be broader than, the Board's authority to grant approval for the acquisition in the first place. In other words, a bank holding company's authority to continue to control a bank acquired pursuant to the terms of the BHC Act is subject to the limitation of the BHC Act that the bank remain located in the state specified in its application to the Board to acquire the bank. A change in the location of the bank to a place outside of the holding company's home state constitutes a material change in an essential predicate for the Board's approval for the acquisition of the bank, transforming the proposal from one that the Board could approve to one that the Board did not and could not have lawfully approved.

(d) Accordingly, the Board believes that a bank holding company's authority to continue to control a bank is limited by the requirements of the Douglas Amendment such that the bank must remain in the state in which it was located at the time the Board granted approval for its acquisition and that a bank holding company may not, without the Board's prior approval under the BHC Act and compliance with the state authorization provisions of the Douglas Amendment, take action that would cause it to control a bank outside of its home state.

(e) The Board believes that this interpretation of the Act is not only consistent with the terms of the BHC Act, but is necessary in order to give effect to the Congressional intent underlying the Douglas Amendment to maintain state control over the acquisition of banks within their borders. As the legislative history of the Douglas Amendment indicates, prior to the enactment of the BHC Act, the acquisition and control of banks by bank holding companies was not regulated, and thus bank holding companies could establish networks of subsidiary banks in numerous states, while their subsidiary banks were limited by the McFadden Act and state law to branching in a single state. (102 Cong. Rec. 6858 (1956); H.R. No. 609, 84th Cong., 1st Sess. 3–4 (1955)). The United States Supreme Court has stated that the Douglas Amendment was enacted for the express purpose of eliminating this "loophole" in order to maintain "local, community-based control over banking. (*Northeast Bancorp, Inc.* v. *Board of Governors*, 105 S. Ct. 2545, 2553 (1985)).

(f) In the debate surrounding the enactment of the amendment, Senator Douglas described the amendment as intended "to prevent bank holding companies from expanding across State lines, unless the States give them explicit permission to do so," and that the "immediate practical effect [of the Amendment] would be to bar the expansion of bank holding companies across State lines." [2] The Senator stated that his proposal was "a logical continuation of the McFadden Act, which tried to prevent the Federal power from being used to permit national banks to expand across State lines in a way contrary to State policy . . . ." *Id.* and that it would "carry over into the field of holding companies the same provisions which already apply for branch banking under the McFadden Act. . . ." (102 *Cong. Rec.* 6858 (1956)).

(g) The principle of the McFadden Act, as applied to bank holding companies, requires that a bank holding company may not establish a subsidiary bank outside of its home state, unless authorized by the host state. While Congress has phrased the Douglas Amendment in terms of the application requirements of the BHC Act, it is clear that Congress was concerned with the substance of preventing further interstate expansion through the bank holding company device without express state authorization.

(h) In the Board's view, an interpretation of the BHC Act that would allow a bank holding company to acquire a bank in its home state and, without further approval under the BHC Act, relocate that bank to another state would nullify the stated purpose of the Douglas Amendment to ensure that the holding company form is not used to evade state restrictions against interstate banking. (*Northeast Bancorp*, 105 S. Ct. at 2550–52). Using the relocation device, a multi-bank holding company could expand into the adjoining state by relocating the main office of a subsidiary national bank located within thirty miles of a state border, while retaining control of its other subsidiary banks in its home state, regardless of whether the adjoining state has consented to entry by out-of-state bank holding companies.

(i) The Board has found no evidence that Congress intended section 30, which governs the relocation of the main office of a national bank, to create an exception to the provisions of the Douglas Amendment. Section 30 was enacted in 1886, and provided that a national bank may change its place of operations to any other place within the same state, not more than thirty miles distant, with the approval of the Comptroller of the Currency and shareholders. 24 Stat. 18. The Comptroller had interpreted this provision as not requiring the Comptroller's approval if the bank's place of operations was only moved within the city in which it was located. (S. Rep. No. 121, 85th Cong., 1st Sess. 17 (1957)). In 1959, Congress overturned this interpretation by amending section 30 to subject all changes of location by a national bank to the Comptroller's approval. *Id.*

(j) The amended section 30 does not contain the language in the previous version limiting changes in office location to within the state where the bank is located. The omission of this provision is not explained in the legislative history. There is, however, no indication in the relevant history that Congress affirmatively intended that the amendment to section 30, which was part of a package of technical amendments to the federal banking laws, create a specific exception to the

[2] 102 Cong. Rec. 6859–60 (1956). *Accord*, (Remarks of Senator Bennett) (the Douglas Amendment constitutes "a flat, unequivocal prohibition against bank holding companies crossing State lines . . . a blanket prohibition which can only be lifted by specific affirmative action by the States. . . .")

provisions or general policy of the Douglas Amendment—adopted three years earlier—against the establishment of new interstate bank holding companies without the consent of the states involved. The Board cannot attribute to a technical amendment, in the absence of compelling legislative history, any intention to abandon one of the central policies behind the enactment of the BHC Act in 1956.

(k) Finally, the Board believes that the relocation by a bank holding company of a subsidiary bank from the holding company's home state to another state, while continuing to retain a bank in its home state, would constitute an evasion of the Douglas Amendment that would warrant, if not require, the exercise by the Board of its authority under section 5(b) of the BHC Act to take necessary action to carry out the purposes and prevent evasions of the Act. 12 U.S.C. 1844(b).

Board of Governors of the Federal Reserve System, August 16, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-20030 Filed 8-21-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-ANE-4; Amdt. 39-5122]

Airworthiness Directives; Marvel-Schebler Products Division

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Revocation of Airworthiness Directive.

SUMMARY: Airworthiness Directive (AD) 66-05-04 required replacing metal floats in Marvel-Schebler carburetors with composite floats. The FAA has determined that the AD does not adequately correct the condition for which it was intended. Therefore, AD 66-05-04 is being revoked.

EFFECTIVE DATE: October 2, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Jerry Robinette, Atlanta Aircraft Certification Office, ACE-140A, FAA, 1075 Inner Loop Road, College Park, Georgia 30337; telephone (404) 763-7435.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to revoke AD 66-05-04 was published in the Federal Register on April 15, 1985 (50 FR 14717). The proposal resulted from a determination that the AD is no longer applicable. This determination was based upon the finding that composite floats are not compatible with certain low lead fuels. The floats become saturated by the fuel and sink in the carburetor float bowl. Facet Aerospace Products Company (current manufacturer of Marvel-Schebler Products) has discontinued the manufacture of the composite floats in favor of a redesigned metal float. The redesigned metal floats are the only replacement floats now available. Facet Aerospace Products Company Service Bulletin No. A1-84A refers to this subject.

Interested persons have been afforded an opportunity to participate in the making of this amendment. The comment period closed June 12, 1985. Three comments were received.

All three commenters concurred with the proposal; however, one was concerned with the possibility of someone using the original metal floats or the replacement composite ones and suggested a new AD to require frequent periodic inspections of original metal floats and replacement composite floats until the installation of the new redesigned metal floats. The problems associated with the original metal floats and the composite floats are such that a catastrophic failure is highly unlikely. A pilot will be able to detect impaired performance before a float problem of this nature reaches a dangerous level; therefore, safety would not be jeopardized. In addition, the expense involved in frequent inspections would have a significant adverse economic impact on owners/operators and would not appreciably affect safety. Based on the preceding, it is felt that a new AD is not justified. Therefore, in accordance with the agency's policy of eliminating unnecessary regulations when possible, AD 66-05-04 will be revoked.

Conclusion

The FAA has determined that this revocation is an action which will have no cost for any aircraft. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is minimal; and (4) will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

Engines, Air transportation, Aircraft, Aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the FAA amends Part 39 of the FAR as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By revoking the following AD:

AD 66-05-04 Amdt. 39-189 effective.

Issued in Burlington, Massachusetts, on August 9, 1985.

Robert E. Whittington,

Director, New England.

[FR Doc. 85-20025 Filed 8-21-85; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 810

Mass Transit and Special Use Highway Projects

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending its regulation on mass transit and special use highway projects to incorporate statutory changes mandated by the Federal-Aid Highway Act of 1981 and the Surface Transportation Assistance Act of 1982. Revisions are also made to update references to other regulations or statutes and to reflect administrative changes. The revisions provide the basic criteria for determining whether mass transit and special use highway projects are eligible for Federal-aid funding under 23 U.S.C. 137, 142, and 149.

DATE: These final amendments are effective on September 23, 1985.

For additional information, see "SUPPLEMENTARY INFORMATION."

FOR FURTHER INFORMATION CONTACT: James Carney, Office of Engineering, 202-426-0450 or Hugh T. O'Reilly, Office of the Chief Counsel, 202-426-0761, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: On April 26, 1984, FHWA published an NPRM (49 FR 17968) proposing to amend the regulations on mass transit and special use highway projects. The amendments were to incorporate statutory changes and minor administrative provisions.

There were 51 comments in response to the NPRM. Of these, 45 were from individual motorcyclists or motorcycle associations presenting views on § 810.104(e). The rest of the comments were from State Departments of Transportation, city governments and a public transit authority. All these comments and concerns were considered in the development of the final rule as set forth below.

Discussion of Comments

Section 810.6 Prerequisites for Projects Authorized by 23 U.S.C. 137, 142 or 149.

One commenter questioned the proposed change to Section 810.6(a) which added the phrase "or serving" to projects which are required to be based on the planning process described in 23 CFR Part 450. As the commenter noted, this change would require that a project financed with secondary funds would have to be based on the urban transportation planning process because the project was found to serve the urbanized area. A project such as a fringe parking lot outside the urbanized area boundary would have to go through the urban planning process. The FHWA agrees that this requirement extends beyond the intent of applicable legislation and regulations and has removed this provision. However, projects under this final rule are for the primary purpose of improving urban transportation and, therefore, except as otherwise provided by 23 CFR 450.202(a) they should be coordinated with local urbanized area authorities which may be affected, to the extent necessary, to insure compatibility with the Urban Transportation Plan. A requirement to this effect has been added to the language of § 810.6(b).

Section 810.102 Eligible projects.

Two other commenters expressed desires for more guidance and discussion regarding eligible projects in § 810.102. The guidance would explain in more detail both eligibility of specific work and the types of projects which would be eligible. The purpose of this regulation is to describe in rather general terms the types of projects eligible for Federal-aid highway funding under sections 137, 142, and 149 of Title 23, U.S.C. It would be inappropriate to discuss at length the specific parameters of work eligibility considering the number and diverse types of projects which could be subject to this regulation.

In order to explain more fully how to determine what class of funds might be used for projects eligible under this section, paragraph (c) of § 810.106 has been modified. The modification provides that there is flexibility in the class of funds used (primary, secondary, and urban system funds) depending on the system on which the project is located or the system that substantially benefits from the project. For Interstate funds to be used, the Interstate System must be the system that substantially benefits from the project.

In order to meet the test of "system that substantially benefits," the project must be reasonably related to and in the proximity of roads and streets on that system. In this regard urban system funds may be used for such a project which is physically located outside an urbanized area provided the project is located on or in close proximity to a Federal-aid system route and can be shown to substantially benefit the urban system inside the urbanized area.

Section 810.104 Applicability of other provisions.

Of the 51 comments responding to the NPRM, 45 were from motorcyclists or motorcycle organizations presenting an almost singular view regarding § 810.104(e). Their view is that all carpool/HOV lanes should be made available to motorcycles. They support this view with statements that motorcycles are very fuel efficient, are safer vehicles, and would be safer if allowed to use carpool lanes. Many of their views do not pertain to the language of § 810.104(e), but rather that FHWA has not taken the action intended by the legislation. Some questioned the validity of the State's certification that motorcycle use of carpool lanes would create a safety hazard. They cited as an example the fact that the State of Washington had opened HOV lanes to motorcycles and there were no resulting safety problems. In response to these comments, FHWA has reviewed its position regarding the implementation of section 163 of the 1982 STAA. The provisions are viewed as prospective only and they apply to approval by FHWA of new projects to construct, reconstruct or resurface carpool lanes or sections of a highway which have carpool lanes within the project terminal. The provisions would not apply to engineering or study projects as some of the commenters suggested. Based on this review, FHWA proposes no change in the language of § 810.104(e) as proposed

In reference to comments on the validity of the State's certification, FHWA expects that the States would base such certifications on valid assumptions and evaluations of the safety issues involved as necessary to support the certification. The FHWA does not have authority to go behind a State's certification or to argue the validity of the evaluations used to support it.

The FHWA appreciates the desires of motorcyclists to use carpool lanes for their own safety. The introduction of motorcycles to existing HOV facilities is a matter for determination by each State Highway Agency subject to the State's finding that such use will be safe and will not adversely affect the integrity of the HOV facility.

Section 810.106 Approval of fringe and transportation corridor parking facilities.

One commenter raised a question about the use of the word "proximate" in § 810.106(a)(2). As it relates to fringe parking facilities, proximate is intended to mean "close". The land for the parking facility need not abut the Federal-aid highway, but would have to be close enough to be obviously related and provide reasonably direct access to the highway.

One commenter suggested lifting the requirement in § 810.106(a)(4) that fees at parking facilities be limited to the cost of maintenance and operation (including cost of shuttle service). Lifting this requirement would permit facility operators to price the parking at market rates for some users and give preferential rates to parkers who transfer to mass transportation. The FHWA has little flexibility in this area because the law is specific in this regard. Fees may not exceed the cost of operation and maintenance. This language stems from the basic tenent of Federal-aid highway laws which provides that projects financed with Federal-aid funds must be free of tolls.

Section 810.212 Use to be without charge.

One other commenter presented a conflict between the provisions of § 810.212 and State statutes in that use of lands for publicly-owned transit facilities shall be without charge. The State statutes have been interpreted to require the State to receive payment for the use of land purchased for highway purposes. The effect of the conflict between the State statutes and § 810.212 is to preclude the State from entertaining any use of highway right-of-way by public mass transit.

The FHWA does not have much latitude because 23 U.S.C. 142(g) provides for the use to be without charge. The problem in one State would not seem to warrant extending the regulation beyond the law.

Section 810.304 Submission of projects.

Section 105(d) of the 1982 STAA requires that each State use 40 percent of its apportionment of Federal-aid urban system funds for work to reconstruct, rehabilitate, resurface and restore existing highway facilities (4R). The requirement is applicable to funds apportioned for FY 1984, 1985 and 1986 unless the State certifies to the Secretary of the Department of Transportation that the percentage is in excess of the 4R needs, in which case those funds also may be used for eligible FAUS purposes, including nonhighway public mass transit projects.

These requirements are monitored on a statewide basis which will afford some flexibility in meeting the minimum 40 percent and are not a direct burden on any particular urban area. For example an individual urbanized area could use less than 40 percent of its urban system funds for 4R work if the other areas and the State obligated sufficient funds to accomplish the minimum percentage.

The intent of the provision in § 810.304(b) is to have the State assess the effect of the proposed use of urban system funds for a nonhighway public mass transit project on the ability of the State to meet the 40 percent requirement before the transfer is made.

The FHWA has determined that this document is neither a major rule under Executive Order 12291 nor a significant regulation under DOT regulatory procedures. The FHWA has also determined that the change reflected in this action will have only minimal economic impact. The proposed revisions are more in the nature of technical and terminology amendments and are generally incorporating statutory requirements. Accordingly, a full regulatory evaluation is not required. For this reason and under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 810

Grant Program—transportation, Highways and roads, Mass transportation, Parking.

In consideration of the foregoing, the FHWA hereby amends Title 23, Code of Federal Regulations, by revising Part 810 to read as set forth below.

Issued on: August 14, 1985.

Lester P. Lamm,

Deputy Administrator.

PART 810—MASS TRANSIT AND SPECIAL USE HIGHWAY PROJECTS

Subpart A—General

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

Authority: 23 U.S.C. 137, 142, 149 and 315; sec. 4 of Pub. L. 97–134, 95 Stat. 1699; secs. 118, 120, and 163 of Pub. L. 97–424, 96 Stat. 2097; 49 CFR 1.48(b) and 1.51(f).

Subpart A—General

§ 810.2 Purpose.

The purpose of this regulation is to implement sections 137, 142, and 149 of title 23, U.S.C.

§ 810.4 Definitions.

(a) Except as otherwise provided terms defined in 23 U.S.C. 101(a) are used in this subpart as so defined.

(b) The following terms, where used in the regulations in this subpart have the following meanings:

(1) Exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes-one or more lanes of a highway facility or an entire highway facility where high occupancy vehicles, trucks or emergency vehicles or any combination thereof, are given, at all times or at any regularly scheduled times, a priority or preference over some or all other vehicles moving in the general stream of mixed highway traffic. Carpool lane(s)—is any high occupancy vehicle lane which allows use by carpools.

(2) Fringe and transportation corridor parking facilities—those facilities which are intended to be used for the temporary storage of vehicles and which are located and designed so as to facilitate the safe and convenient transfer of persons traveling in such vehicles to and from high occupancy vehicles and/or public mass transportation systems including rail. The term "parking facilities" includes but is not limited to access roads, buildings, structures, equipment, improvements and interests in land.

(3) High occupancy vehicle—a bus or other motorized passenger vehicle such as a carpool or vanpool vehicle used for ridesharing purposes and occupied by a specified minimum number of persons.

(4) Highway traffic control devices—traffic control devices as defined by the currently approved "Manual on Uniform Traffic Control Devices for Streets and Highways." [1]

(5) Metropolitan Planning Organization—that organization designated as being responsible, together with the State, for carrying out the provisions of 23 U.S.C. 134, as required by 23 U.S.C. 104(f)(3), and capable of meeting the requirements of sections 3(e)(1), 5(1), 8 (a) and (c) and 9(e)(3)(G) of the Urban Mass Transportation Act of 1964, as amended, 49 U.S.C. 1602(e)(1), 1604(1), 1607 (a) and (c) and 1607a(e)(3)(G). This organization shall be the forum for cooperative transportation decisionmaking.

(6) Nonhighway public mass transit project—a project to develop or improve public mass transit facilities or equipment. A project need not be physically located or operated on a route designated as part of the Federal-aid urban system, but must be included in and related to a program for the development or improvement of an urban public mass transit system which includes the purchase and rehabilitation of passenger buses and rolling stock for fixed rail facilities, and the purchase, construction, reconstruction or improvement of fixed rail passenger operating facilities. Such projects may also include the construction, reconstruction or rehabilitation of

[1] The MUTCD is incorporated by reference at 23 CFR 625.3.

passenger loading and unloading facilities for either bus or rail passengers.

(7) Passenger loading areas and facilities (including shelters)—areas and facilities located at or near passenger loading points for safety, protection, comfort, or convenience of high occupancy vehicle passengers. The term "areas and facilities" includes but is not limited to access roads, buildings, structures, equipment, improvements, and interest in land.

(8) Responsible local officials—(i) In areas under 50,000 population, the principal elected officials of general purpose local governments; or (ii) In urbanized areas, the principal elected officials of general purpose local governments acting through the Metropolitan Planning Organization.

§ 810.6 Prerequisites for projects authorized by 23 U.S.C. 137, 142, or 149.

(a) Projects in an urbanized area must be based on a continuing comprehensive transportation planning process, carried on in accordance with 23 U.S.C. 134 as prescribed in 23 CFR Part 450, Subpart A and included in the transportation improvement program required by 23 CFR Part 450, Subpart B.

(b) Except as otherwise provided by 23 CFR 450.202, projects under this subpart located outside the urbanized area boundaries should be coordinated with the appropriate local officials of the urbanized area as necessary to insure compatibility with the area's urban transportation plan.

(c) All proposed projects must be included in a program of projects approved pursuant to 23 CFR Part 630, Subart A (Federal-Aid Program Approval and Authorization).

§ 810.8 Coordination.

The Federal Highway Administrator and the Urban Mass Transportation Administrator shall coordinate with each other on any projects involving public mass transit to facilitate project selection, approval and completion.

Subpart B—Highway Public Transportation Projects and Special Use Highway Facilities

§ 810.100 Purpose.

The purpose of the regulations in this subpart is to implement 23 U.S.C. 137, 142(a)(1), 142(b), and 149, which authorize various highway public mass transportation improvements and special use highway facilities as Federal-aid highway projects.

§ 810.102 Eligible projects.

Under this subpart the Federal Highway Administrator may approve on any Federal-aid system projects which facilitate the use of high occupancy vehicles and public mass transportation systems so as to increase the traffic capacity of the Federal-aid system for the movement of persons. Eligible projects include:

(a) Construction of exclusive or preferential high occupancy vehicle, truck, or emergency vehicle lanes, except the construction of exclusive or preferential lanes limited to use by emergency vehicles can be approved only on the Federal-aid Interstate System;

(b) Highway traffic control devices;

(c) Passenger loading areas and facilities (including shelters) that are on or serve a Federal-aid system; and

(d) Construction or designation of fringe and transportation corridor parking facilities. For parking facilities located in the central business district the Federal-aid project must be limited to space reserved exclusively for the parking of high occupancy vehicles used for carpools or vanpools.

§ 810.104 Applicability of other provisions.

(a) Projects authorized under § 810.102 shall be deemed to be highway projects for all purposes of Title 23, U.S.C., and shall be subject to all regulations of Title 23, CFR.

(b) Projects approved under this subpart on the Federal-aid Interstate System for exclusive or preferential high occupancy vehicle, truck, and emergency vehicle lanes are excepted from the minimum four-lane requirement of 23 U.S.C. 109(b).

(c) Exclusive or preferential lanes on the Interstate System, including approaches and directly related facilities, can be constructed with Interstate construction funds only if they were approved in the 1981 Interstate Cost Estimate.

(d) The Federal proportional share of a project approved under this subpart shall be as provided in 23 U.S.C. 120 for the class of funds involved. The Federal share for Interstate substitution projects is 85 percent except for signalization projects which may be 100 percent as provided by 23 U.S.C. 120(d). The provisions of section 120(d) Title 23 U.S.C. may also be applied to regularly funded projects under Section 810.102 of this subpart as follows:

(1) Signalization projects.

(2) Passenger loading area and facilities which principally serve carpools and vanpools.

(3) Fringe and transportation corridor parking facilities or portions thereof which are reserved exclusively for use by carpool and vanpool passengers and vehicles.

(e) As required by section 163 of the Surface Transportation Assistance Act of 1982, approval of Federal-aid highway funding for a physical construction or resurfacing project having a carpool lane(s) within the project limits may not be granted unless the project allows the use of the carpool lane(s) by motorcycles or it is certified by the State that such use will create a safety hazard. This requirement does not apply to high occupancy vehicle lanes which exclude carpools or to carpool lanes constructed by the State without the use of Federal-aid Highway funds. The issue of the extent of utilization of these facilities including those constructed prior to January 6, 1982 with Federal-aid Highway funds is a matter for individual determination by the State Highway Agency.

§ 810.106 Approval of fringe and transportation corridor parking facilities.

(a) In approving fringe and transportation corridor parking facilities, the Federal Highway Administrator:

(1) Shall make a determination that the proposed parking facility will benefit the Federal-aid systems by improving its traffic capacity for the movement of persons;

(2) May approve acquisition of land proximate to the right-of-way of a Federal-aid highway;

(3) May approve construction of publicly-owned parking facilities on land within the right-of-way of any Federal-aid highway, including the use of the airspace above and below the established gradeline of the highway pavement, and on land, acquired with or without Federal-aid funds which is not within the right-of-way of any Federal-aid highway but which was acquired in accordance with the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (84 Stat. 1894, 42 U.S.C. 4601 *et seq.*);

(4) May permit the charging of fees for the use of the facility, except that the rate of the fee shall not be in excess of that required for maintenance and operation and the cost of providing shuttle service to and from the facility (including compensation to any person for operating such facility and for providing such shuttle service);

(5) Shall determine that the State, or the political subdivision thereof, where the project is to be located, or any agency or instrumentality of such State or political subdivision, has the authority and capability of constructing, maintaining, and operating the facility.

(6) Shall receive assurance from the State that the facility will remain in

public ownershp as long as the facility is needed and that any change in ownership shall have prior FHWA approval;

(7) Shall enter into an agreement with the State, political subdivision, agency, or instrumentality governing the financing, maintenance, and operation of the parking facility; and

(8) Shall approve design standards for constructing the facility as developed in cooperation with the State highway agency.

(b) A State political subdivision, agency, or instrumentality thereof may contract with any person to operate any parking facility constructed under this section.

(c) In authorizing projects involving fringe and transportation corridor parking facilities, the class of Federal-aid funds (primary, secondary, or urban system) used for projects under this subpart may be either funds designated for the Federal-aid system on which the facility is located or the Federal-aid system substantially benefited. For Interstate funds to be used for such eligible projects the Federal-aid Interstate system must be the system which substantially benefits. The benefiting system is that system which would have otherwise carried the high occupancy vehicle or rail passengers to their destination. Interstate construction funds may be used only where the parking facility was approved in the 1981 Interstate Cost Estimate and is constructed in conjunction with a high occupancy vehicle lane approved in the 1981 Interstate Cost Estimate.

§ 810.108 Designation of existing facilities.

(a) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing parking facilities (such as at shopping centers or other public or private locations) for fringe and transportation corridor parking.

(1) Eligible activities include the acquisition of or the initial and renewal costs for leasing existing parking space, signing of and modifications to existing facilities, trail blazer signs, and passenger loading areas and facilities.

(2) The approval criteria in 23 CFR 810.106 (a)(1), (4), (5), (7) and (8) apply to these parking facilities.

(b) In accordance with the provisions of 23 CFR 810.102, the Federal Highway Administrator may approve on any Federal-aid system the work necessary to designate existing highway lanes as high occupancy vehicle lanes.

(1) Eligible activities include preliminary engineering, signing, pavement marking, traffic control devices, minor physical modifications and initial inspection or monitoring of use.

(2) Such improvements may be approved on any public road if they facilitate more efficient use of any Federal-aid highway.

(c) Interstate construction funds may be used only where the proposed projects were approved in the 1981 Interstate Cost Estimate.

Subpart C—Making Highway Rights-of-Way Available for Mass Transit Projects

§ 810.200 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(g), which permits the Federal Highway Administrator to authorize a State to make available to a publicly-owned mass transit authority existing highway rights-of-way for rail or other non-highway public mass transit facilities.

§ 810.202 Applicability.

(a) The provisions of this subpart are applicable to the rights-of-way of all Federal-aid highways in which Federal-aid highway funds have participated or will participate in any part of the cost of the highway.

(b) The provisions of this subpart do not preclude acquisition of rights-of-way for use involving mass transit facilities under the provisions of Subparts B and D of this part. Rights-of-way made available under this subpart may be used in combination with rights-of-way acquired under Subparts B and D of this part.

§ 810.204 Application by mass transit authority.

A publicly-owned mass transit authority desiring to utilize land existing within the publicly acquired right-of-way of any Federal-aid highway for a rail or other nonhighway public mass transit facility may submit an application therefor to the State highway agency.

§ 810.206 Review by the State Highway Agency.

The State highway agency, after reviewing the application, may request the Federal Highway Administrator to authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility. A request shall be accompanied by evidence that utilization of the land for the proposed purposes will not impair future highway improvements or the safety of highway users.

§ 810.208 Action by the Federal Highway Administrator.

The Federal Highway Administrator may authorize the State to make available to the publicly-owned mass transit authority the land needed for the proposed facility, if it is determined that:

(a) The evidence submitted by the State highway agency under Section 810.206 is satisfactory;

(b) The public interest will be served thereby; and

(c) The proposed action in urbanized areas is based on a continuing, comprehensive transportation planning process carried on in accordance with 23 U.S.C. 134 as described under 23 CFR Part 450, Subpart A.

§ 810.210 Authorization for use and occupancy by mass transit.

(a) Upon being authorized by the Federal Highway Administrator, the State shall enter into a written agreement with the publicly-owned mass transit authority relating to the use and occupancy of highway right-of-way subject to the following conditions:

(1) That any significant revision in the design, construction, or use of the facility for which the land was made available shall receive prior review and approval by the State highway agency.

(2) The use of the lands made available to the publicly-owned mass transit authority shall not be transferred to another party without the prior approval of the State highway agency.

(3) That, if the publicly-owned mass transit authority fails within a reasonable or agreed time to use the land for the purpose for which it was made available, or if it abandons the land or the facility developed, such use shall terminate. Any abandoned facility developed or under development by the publicly-owned mass transit authority which was financed all or in part with Federal funds shall be disposed of in a manner prescribed by OMB Circular A-102, Attachment N. The land shall revert to the State for its original intended highway purpose.

(b) A copy of the use and occupancy agreement and any modification under paragraphs (a) (1), (2), and (3) of this section shall be forwarded to the Federal Highway Administrator.

§ 810.212 Use to be without charge.

The use and occupancy of the lands made available by the State to the publicly-owned transit authority shall be without charge. Costs incidental to making the lands available for mass transit shall be borne by the publicly-owned mass transit authority.

Subpart D—Federal-Aid Urban System Nonhighway Public Mass Transit Projects

§ 810.300 Purpose.

The purpose of this subpart is to implement 23 U.S.C. 142(a)(2), which allows the Urban Mass Transportation Administrator, by delegation of the Secretary, to approve nonhighway public mass transit projects as Federal-aid urban system projects.

§ 810.302 Eligible projects.

(a) Eligible projects are those defined as nonhighway public mass transit projects in Section 810.4 of this part subject to the limitations in paragraph (b) of this section.

(b) All projects under this subpart for the construction, reconstruction, or improvement of fixed rail facilities shall be located within the urban boundaries established under 23 U.S.C. 101(a).

§ 810.304 Submission of projects.

(a) An application for an urban system nonhighway public mass transit project shall be developed by a public body as defined under the UMTA Discretionary Capital Assistance Program and shall be prepared in accordance with procedures for the same Discretionary Capital Assistance program.

(b) The application shall be submitted concurrently to the State highway agency and to the UMTA Administrator. The State highway agency, if it concurs, shall submit a request to the FHWA Administrator for a reservation of apportioned Federal-aid urban system funds. The State shall include in its submission advice that such reservation of funds will not impair its ability to comply with the provisions of section 105(d) of Pub. L. 97–424 (if a State certifies it does not need forty percent of its Federal-aid urban system funds for 4R work, and the Secretary accepts such certification, the State may spend that unneeded amount for other eligible FAUS purpose, including nonhighway public mass transit projects).

§ 810.306 Reservation of funds.

(a) The FHWA Administrator shall review the State request, determine whether sufficient Federal-aid urban system funds are available, and notify the State highway agency and the UMTA Administrator of the reservation of funds.

(b) The apportioned funds reserved for the proposed project under paragraph (a) of this section shall remain available for obligation unless the FHWA Administrator is notified that the application has been disapproved by the UMTA Administrator, or unless the responsible local officials in whose jurisdiction the project is to be located and the State highway agency jointly request the withdrawal of the project application.

§ 810.308 Approval of urban system nonhighway public mass transit projects.

(a) An urban system public mass transit project may be approved by the UMTA Administrator when it is determined that:

(1) The application and project are in accordance with the current UMTA procedures relating to discretionary capital assistance grants; and

(2) Notification has been received from the FHWA Administrator that sufficient apportioned Federal-aid urban system funds are available to finance the Federal share of the cost of the proposed project.

(b) Approval of the plans, specifications, and estimates of a nonhighway public mass transit project shall be deemed to occur on the date the UMTA Administrator approves the project application. This approval which is subject to the availability of obligation authority at the time of approval, will obligate the United States to pay its proportional share of the cost of the project.

(c) Upon approval of an urban system nonhighway public mass transit project, the UMTA Administrator will execute a grant contract covering implementation of the project.

§ 810.310 Applicability of other provisions.

The Federal proportional share of the cost of an urban system nonhighway public mass transit project approved under this subpart shall be equal to the Federal share which would have been paid if the project were a highway project as determined under 23 U.S.C. 120(a).

[FR Doc. 85-20078 Filed 8-21-85; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 3

[CGD 85-052]

Mobile Marine Inspection Zone and Captain of the Port Zone Boundary Realignment

AGENCY: Coast Guard, DOT.

ACTION: final rule.

SUMMARY: This rule adds a 5-mile section of the Tennessee-Tombigbee Waterway, south of the Bay Springs Lock and Dam, to the Mobile, Alabama Marine Inspection Zone and Captain of the Port Zone. This section is located within the Eighth Coast Guard District boundary, but is not currently included in any Marine Inspection Zone or Captain of the Port Zone. This rule corrects the discrepancy by adding this section to the adjacent Marine Inspection Zone and Captain of the Port Zone in the Eighth Coast Guard District.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Lieutenant Michael V. Franchini, Project Manager, Office of Marine Environment and Systems, telephone 202-426-9578. Normal working hours are between 7:00 a.m. and 3:30 p.m. Monday through Friday, except holidays.

SUPPLEMENTARY INFORMATION: Since these amendments are matters relating to agency organization, they are exempt from the notice of proposed rulemaking requirements in 5 U.S.C. 553(b)(3)(A), and since these amendments are not substantive, they may be made effective in less than 30 days after publication in the **Federal Register** under 5 U.S.C. 553(d)(3).

Drafting Information

The principal persons involved in drafting this proposed rulemaking are Lieutenant Michael V. Franchini, Project Manager, of the Office of Marine Environment and Systems, and Lieutenant David M. Shippert, Project Counsel, of the Office of Chief Counsel.

Discussion

When 33 CFR 3.40–10 was promulgated on September 5, 1974 (39 FR 32131) the Tennessee-Tombigbee Waterway did not exist. In a final rule on January 16, 1978 (43 FR 2372) the Eighth Coast Guard District boundary was revised to include the proposed canal section of the waterway, which begins, going south, at the Bay Springs Lock and Dam. However, the revision did not include the northernmost 5 miles of the canal section in a Marine Inspection Zone or Captain of the Port Zone. The discrepancy was discovered by personnel at the Mobile Marine Inspection and Captain of the Port Office in November 1984 before the waterway opened.

Regulatory Evaluation

This final rule is exempt from the provisions of Executive Order 12291 since it pertains to matters of agency organization as provided in section 1(a)(3) of the Order. However, it is noted that this final rule is considered to be non-major under Executive Order 12291 and nonsignificant under DOT