Each manufacturer of glazing materials designed to meet the requirements of S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 shall affix a label, removable by hand without tools, to each item of such glazing material * * *

5. Subparagraph S5.1.2.5(b) would be revised to read as follows:

(b) Each manufacturer of glazing material designed to meet the requirements of paragraphs S5.1.2.4, S5.1.2.7, S5.1.2.8, or S5.1.2.9 may permanently and indelibly mark the lower center of each item of such glazing material, in letters not less than 3/16 inch nor more than ¼ inch high, the following words, "GLASS PLASTIC MATERIAL-SEE OWNER'S MANUAL FOR CARE INSTRUCTIONS."

6. The following subparagraph would be added after S5.1.2.6 to read as follows:

S5.1.2.7 *Item 15—Annealed Glass-Plastic For Use in All Positions In A Vehicle, Other Than The Windshield.* Glass-plastic glazing materials that comply with Tests Nos. 1, 2, 3, 4, 9, 12, 16, 17, 18, 19, 24 and 28, may be used anywhere in a motor vehicle except windshields. Tests Nos. 9, 12, 16 and 18 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

7. The following subparagraph would be added after S5.1.2.7 to read as follows:

S5.1.2.8 *Item 16A—Annealed Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 9, 12, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Test Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

8. The following subparagraph would be added after S5.1.2.8 to read as follows:

S5.1.2.9 *Item 16B—Tempered Glass-Plastic For Use In All Positions in A Vehicle Not Requisite for Driving Visibility.* Glass-plastic glazing materials that comply with Tests Nos. 3, 4, 6, 8, 16, 19, 24 and 28, may be used in a motor vehicle in all locations not requisite for driving visibility. Tests Nos. 9, 12 and 16 shall be conducted on the glass side of the specimen, i.e., the surface which would face the exterior of the vehicle. Tests Nos. 19 and 24 shall be conducted on the plastic side of the specimen, i.e., the surface which would face the interior of the vehicle.

9. A new paragraph S5.3 would be added to read as follows:

S5.3 In addition to the results specified in S5.7.3 of ANS Z26, no individual fragment produced during Test No. 7 shall have an overall length greater than 2 inches or a length-to-width ratio of greater than 3 to 1.

10. The second sentence of Paragraph S6.1 would be revised to read as follows:

S6.1 * * * The materials specified in S5.1.2.1, S5.1.2.2, S5.1.2.3, S5.1.2.4, S5.1.2.7, S5.1.2.8 and S5.1.2.9 shall be identified by the marks "AS 11C," "AS 12," "AS 13," "AS 14," "AS 15," "AS 16A" and "AS 16B," respectively.* * * * * * * * *

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23867 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 89-18; Notice 1]

RIN 2127-AC14

Federal Motor Vehicle Safety Standards; Glazing Materials

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Notice of proposed rulemaking.

SUMMARY: The purpose of this notice is to propose an amendment to Federal Motor Vehicle Safety Standard (FMVSS) No. 205, Glazing Materials, to require specimen clamping of Item 14 glass-plastic glazing (glazing with one or more layers of glazing and a layer of plastic on the surface facing the vehicle interior) for Test 26. In Test 26, a 5 pound ball is dropped onto ten individual specimens of glazing to determine whether the glazing material has satisfactory penetration resistance. No clamping is proposed in conducting Test 26 on Item 1 glazing. Item 1 is similar to Item 14, except Item 1 has no plastic layer on the inside surface. Comment is requested on the advisability of extending the clamping procedure to two other drop tests, Test 9 (that determines the behavior of the safety glazing under impact from a small, hard object) and 12 (that determines whether the safety glazing has a certain minimum strength and whether it is properly made), in measuring the performance of Item 14 glazing. The agency also proposes to prohibit tempered glass-plastic glazing in windshields and other locations requisite for driving visibility.

DATES: Comments must be received on or before November 27, 1989. Proposed effective date: If adopted, the new test procedure would be effective upon issuance of the final rule.

ADDRESS: All comments should refer to the docket number and notice number of this notice and be submitted, preferably in ten copies, to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Docket hours are from 8 a.m to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke Harper, Office of Vehicle Safety Standards, NRM-12, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590. Telephone (202) 366-4916.

SUPPLEMENTARY INFORMATION:

I. Background

Federal Motor Vehicle Safety Standard No. 205, Glazing Materials (49 CFR 571.205), specifies performance requirements for the types of glazing that may be used in motor vehicles. It also specifies the vehicle locations in which the various types of glazing may be used. The standard incorporates by reference, American National Standard Institute (ANSI) standard Z26.1, "Safety Code For Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," as amended through 1980 (Z26). The requirements in ANS Z26 are specified in terms of performance tests that the various types or "items" of glazing must pass. There are 14 "items" of glazing for which requirements are currently specified in the standard.

The standard includes 31 specific tests. Each item of glazing material is subjected to a selection group of these tests, as appropriate for the general use of the material. For example, 3-ply laminated windshield glazing, Item 1, is subject to 9 tests.

The only current items of glazing that may be used in the windshield of a motor vehicle are Item 1, Safety Glazing Material for Use Anywhere in a Motor Vehicle, Item 10, Bullet Resistant Glass for Use Anywhere in a Motor Vehicle, and Item 14, Glass-Plastic.

Item 14 (glass-plastic glazing) was added to FMVSS No. 205 by NHTSA in 1983 (See 48 FR 52061), without limitation as to the location of its use in

a motor vehicle. This item consists of glass on the outside surface and plastic on the inside surface. In adding Item 14, the agency anticipated that this type of glazing would consist of laminated glass to which a plastic layer was added on the inside surface. However, it is possible to manufacture the item with or without laminated glass. For example, it could consist of the current high penetration resistant (HPR) three-ply glazing to which one or more layers of plastic have been added to create a windshield of four or more plies, or it may simply consist of a single sheet of glass to which a layer of plastic has been added to the inside surface.

By letter dated July 24, 1986, General Motors Corporation (GM) wrote to the agency, noting that the addition of Item 14 to FMVSS No. 205 allows the use of two-ply glazing in windshields. GM stated that the advantages of the two-ply configuration over the conventional high penetration resistant three-ply (HPR) windshields include reduction of weight, lower cost, improved optical quality, more design flexibility, and less windshield breakage. GM questioned whether the current test procedure for penetration resistance is a relevant method for two-ply glazing. This test, known as Test 26, is intended to be used in determining whether laminated glass (used predominantly in windshields) has sufficient penetration resistance from a moderate-sized object. It consists of dropping a 5 pound steel ball into a 12 inch by 12 inch glass sample from a point 12 feet above the sample. The sample is centered on the top of a 17⅜ inch square wooden frame with a 11⅜ inch square opening. The test is deemed a failure if the ball passes "through" the sample. The five pound ball penetration resistance test accurately measures penetration resistance of Item 1 glazing and five-ply HPR Item 14 (glass-plastic) glazing. However, because two-ply glass-plastic glazing is much more flexible, during the test, the steel ball will break the glass and force the entire specimen through the frame without testing penetration resistance. Clamping will correct this test ambiguity.

Three-ply Item 1 glazing and five-ply glass-plastic glazing have different results for the five pound ball penetration resistance test, compared to the two-ply glass-plastic glazing, in the following respect. The traditional three-ply HPR windshield glazing is laminated glazing consisting of a sheet of plastic bonded between two sheets of glass. Five-ply glass-plastic glazing consists of the sheet of plastic bonded between two sheets of glass plus two layers of plastic on the inside of the vehicle facing the occupants. When the test ball for Test 26 drops onto a horizontal three-ply specimen, radial and circumferential cracks develop about the point of impact. The cracks have an appearance similar to a spider web. While both the upper and lower sheets crack, the cracks on the upper sheet of glass do not necessarily coincide with the cracks on the lower one. Due to the difference in the patterns of cracks, the cracks in one sheet are normally adjacent to unbroken glass in the other sheet, and vice versa. This unbroken glass provides a localized rigidity. The cumulative effect of this characteristic is that the three-ply glazing sample retains sufficient rigidity so that the sample does not fall through the test fixture during Test 26. The tensile strength of the layer of plastic provides the penetration resistance.

On the other hand, GM stated that the two-ply version of glass-plastic glazing, which is more flexible than three-ply or five-ply glazing, flexes when struck by the ball, which forces the glazing through the frame, without the ball penetrating the sample. GM asserted therefore that the test does not adequately test the ability of the two-ply sample to resist penetration of the ball. Since there is no specific prohibition of clamping the sample, GM requested an interpretation of FMVSS No. 205 to allow restraint of the test sample in the test fixture for Test 26.

By letter dated May 27, 1987, NHTSA responded that the agency could not adopt such a change in the test procedure by an interpretation letter. The agency stated that in order to address the problem and to ensure objectivity, it was necessary to issue a proposal to amend the standard to establish uniform requirements for providing additional support to two-ply glazing materials during Test 26. Therefore, the agency treated the GM letter as a petition for rulemaking.

NHTSA proposes modification of FMVSS No. 205 to require clamping of glass-plastic glazing, both laminated and non-laminated versions, for drop Test 26. No clamping is proposed for Test 26 for the non-glass-plastic version, Item 1. For reasons explained in Part VII of this preamble, public comment is also requested on the advisability of extending the clamping procedure to Test 9 and 12.

II. Need for the Change in Test Procedure

Every year, hundreds of thousands of American motorists suffer pain, disfigurement and unquantifiable psychological trauma from lacerative injuries caused by motor vehicle windshields. The HPR windshield, which has been standard in American motor vehicles since 1966, reduces the likelihood that occupants penetrate the windshield during a crash, and is very effective in preventing serious lacerative injuries. However, nearly 200,000 minor lacerations still occur annually due to occupant contact with the windshield. As noted above, the traditional HPR windshield consists of a sheet of plastic bonded between two sheets of glass. When a standard HPR windshield is struck, both the inner and outer glass layers tend to break, thus setting up edges of broken glass on the inner surface.

In 1983, NHTSA amended FMVSS No. 205 to permit the use of glass-plastic glazing. The agency hoped that use of glass-plastic glazing in windshields would reduce lacerative injuries by approximately two-thirds. The agency anticipated that laminated glass would be used in the production of glass-plastic glazing. The various manufacturers which took advantage of this amendment did, in fact, use four and five-ply anti-lacerative windshields. The most extensive user of the anti-lacerative glazing, GM, decided to discontinue use of the glazing after the 1987 model year. It reported that its decision was based on handling problems with the inner plastic surface, that apparently was too easily scratched, deliberately or inadvertently, resulting in warranty claims and consumer dissatisfaction.

If manufacturers such as GM had some additional incentive to offer the anti-lacerative windshield, that type of glazing might become more widely used and lacerations could be reduced. An incentive that would encourage its use would be the opportunity to reduce the cost and weight of windshield glazing. Use of a two-ply, instead of four or five-ply, version of glass plastic glazing could permit a reduction in materials of approximately 15 percent and a corresponding cost reduction.

There is an apparent impediment, however, to the use of two-ply glass-plastic glazing. Glass-plastic glazing must meet Test 26, but, as noted above, during Test 26, the two-ply glass-plastic glazing simply falls through the frame after impact from a five pound steel ball. It is unclear in those circumstances whether the sample of glazing has passed or failed the test. In a sense, the sample could be said to have passed the test since the ball does not actually penetrate or pass through the sample. However, since the sample falls through the frame, the penetration resistance ability of the glass-plastic, the reason for the test, is not really assessed.

NHTSA tentatively concludes that the current test procedure is not appropriate for the more flexible two-ply glass-plastic glazing. The shortcoming of the test procedure arises from the fact that Test 26 was designed for three-ply laminated glass (Item 1), which is heavier and more rigid than two-ply glass-plastic glazing. In this rulemaking, the agency is proposing to modify Test 26 so that it is appropriate for use in testing both types of glass-plastic glazing.

The proposed change in the test procedure would make clear whether a tested sample of two-ply glass-plastic glazing does in fact possess the requisite penetration resistance. Further, with this adjustment in the test procedure to allow two-ply glass-plastic glazing, manufacturers would be provided with an incentive to conduct further research into two-ply glazing, to produce lighter and more cost effective windshields, and in other ways improve the state of glazing technology.

III. GM Test Data on Injury Criteria During Crash Tests

NHTSA has evaluated the following available test data, provided by GM, to determine the potential effect on safety, if manufacturers were to use 2-ply glass-plastic glazing as opposed to the traditional three-ply high penetration resistant (HPR) glazing. The test data compared two-ply and three-ply laminated glazing in five measures of injury criteria during crash tests. These results showed lesser injury when the two-ply windshield was tested compared to the traditional three-ply HPR windshield. This held true both for windshields that were secured into position in the motor vehicle by clamping and for those bonded into position.

By letter dated October 24, 1986, GM submitted a summary of data on sled tests of unrestrained dummies at 30 miles per hour. Their tests compared five measures of injury criteria: head injury criteria (HIC), peak head deceleration, chest deceleration, neck moments and facial lacerations. In tests where the windshields were held in position by mechanical clamps to the frames, the injury criteria are reduced by the use of the two-ply windshield compared to the traditional three-ply HPR windshield. In more advanced design tests, where the windshields were bonded into position, HIC was decreased almost 25 percent, but the chest deceleration (G's) increased approximately 5 percent. In a demonstration film produced by Saint Gobain Vitrage (SGV), a comparison of clamped 12 inch by 12 inch specimens of the traditional three-ply HPR glazing and the two-ply Securiflex-2 glazing revealed significant advantages of the two-ply design. For a 28 mile per hour sled test, these benefits include a HIC reduction form 656 to 415, reduced neck moments, reduction of lacerations and no glass in the passenger compartment.

IV. Comparison of the Effects of Current and Proposed Test Procedures on Safety

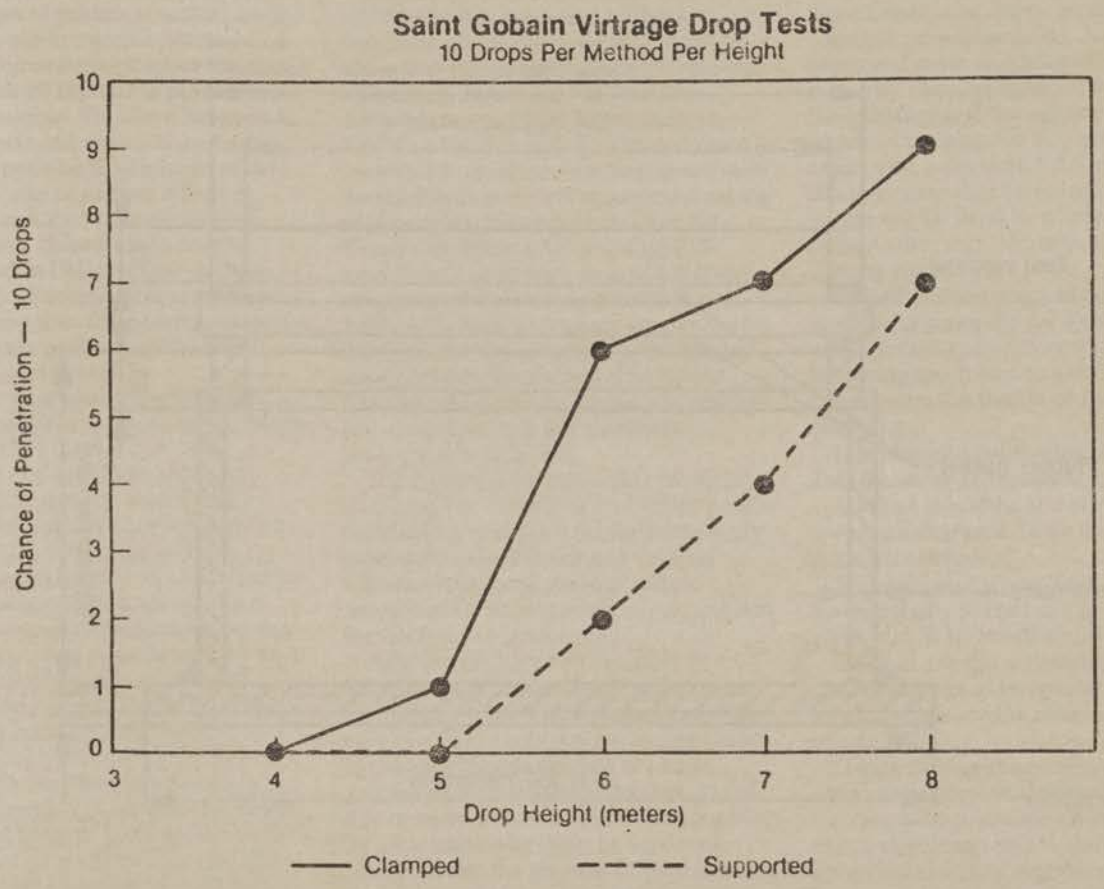
In the context of deciding whether clamping test samples in the five pound ball penetration resistance test would produce more objective results for two-ply glass-plastic glazing, the agency has examined the effects that clamping of test samples would have on compliance with Standard 205, and on occupant safety.

In order to quantify the difference in Test 26 results for clamped and unclamped test samples, the agency reviewed tests by two glazing manufacturers and an independent testing laboratory. Data submitted by a major glazing manufacturer, Libbey-Owens-Ford (LOF), as part of the GM information, indicated that for a given size and type windshield, clamping a standard three-ply windshield would cause the test samples to fail the 5 pound drop test at a lower height than when unclamped. In other words, the LOF data indicated that clamping created a more stringent test. Next, in the Saint Gobain Vitrage (SGV) film, more test failures were experienced with the clamped 12 inch by 12 inch test samples of laminated three ply HPR glazing than with the unclamped samples.

Finally, information was solicited by the agency from the German test facility, Staatliches Materialprufungsamt Nordheim-Westfalen (MPA). By letter dated March 16, 1987, Dr. K. Preusser provided three supporting documents related to the clamping issue. These included the German proposal for amendment of the Economic Commission of Europe (ECE) Regulation 43 international standard, a test protocol in which they studied the behavior of clamped samples, and a report of headform drop tests conducted on oversize samples. The German proposal recommended that the test samples be placed between two steel frames, with pressure applied, and movement of the test piece should not exceed 2 millimeters (mm). A 2260 grams (5 pounds) ball would be dropped onto the specimens from a height of four meters. The test report concludes that "Concerning the penetration of the ordinary laminated glass there is no decisive difference in the results of the 2260 gram (5 pounds) ball test between clamping the test piece or only laying it on the support." In the head form drop test report, the writer concludes that the use of unclamped samples (in this case, specifically, windshields) will produce erratic results, due to the non-uniform contact of the sample to the frame. Therefore, clamping would be a preferable procedure for these oversize samples.

NHTSA has evaluated the objectivity of the clamping procedure that it is proposing in this notice of proposed rulemaking. In this evaluation, NHTSA has reviewed the data from the 120 drop tests conducted by SGV in their video that involved the use of clamped specimens on a modified version of the current ANS Z26 fixture. There appeared to be no problem conducting the test. The SGV testing demonstrated the repeatability of the proposed test procedure. The testing showed clamping will result in a greater number of failures with increased drop height. This is because with increased height, the force with which the steel ball drops onto the glazing becomes greater. The testing also showed a consistent difference between the failure rate of clamped and unclamped samples. The results of this testing are presented in the following graph.

Saint Gobain Vitrage (SGV) Drop Tests



NHTSA tentatively concludes that requiring glass-plastic glazing to pass Test 26 while clamped is practicable based on the agency's consideration of the tests conducted by SGV and LOF and on the fact that both companies have already produced two-ply glazing and are waiting to begin mass production and market the product. Further, the agency believes that addition of clamping of glass-plastic glazing during Test 26 would not preclude use of the current five-ply design since five-ply glazing is basically Item 1 laminated glazing plus an inner layer of plastic and there have been no problems with Item 1 glazing passing the 5 pound ball drop test. Additionaly, the agency infers from the facts that ECE 43 currently requires clamping of glass-plastic specimens using the fixture in Figure 1 and that the Europeans have conducted extensive testing under that test procedure that the procedure is reliable for regulatory purposes.

V. Selection of a Revised Test Procedure

For the following reasons, it is proposed that NHTSA adopt a modified version of the clamping procedure in the current Economic Commisison of Europe (ECE) regulation on testing glass-plastic specimens. A discussion of procedures, utilized by the International Standards Organization (ISO), which are proposed to be incorporated into the clamping procedure also follows.

Currently, clamping is required in the most recent version of Economic Commission of Europe (ECE) Regulation 43 "Uniform Provisions Concerning the Approval of Safety Glazing and Glazing Materials." In ECE Regulation 43, the 2260 gram (g) (5 pound) ball penetration drop test procedure, as described in annex 3, states, "In the case of glass-plastics glazing the test piece shall be clamped to the support." The description of the device in the regulation is as follows:

Supporting fixture, such as shown in figure 1, composed of two steel frames, with machined borders 15 mm wide, fitting one over the other and faced with rubber gaskets about 3 mm thick and 15 mm wide and of hardness 50 IRHD. The lower frame rests on a steel box about 150 mm high. The test piece is held in place by the upper frame, the mass of which is about 3 KG. The supporting frame is welded onto a sheet of steel of about 3 KG. The supporting frame is welded onto a sheet of steel of about 12 mm thick resting of the floor with an interposed sheet of rubber about 3 mm thick and of hardness 50 IRHD.

Dimensions in millimeters

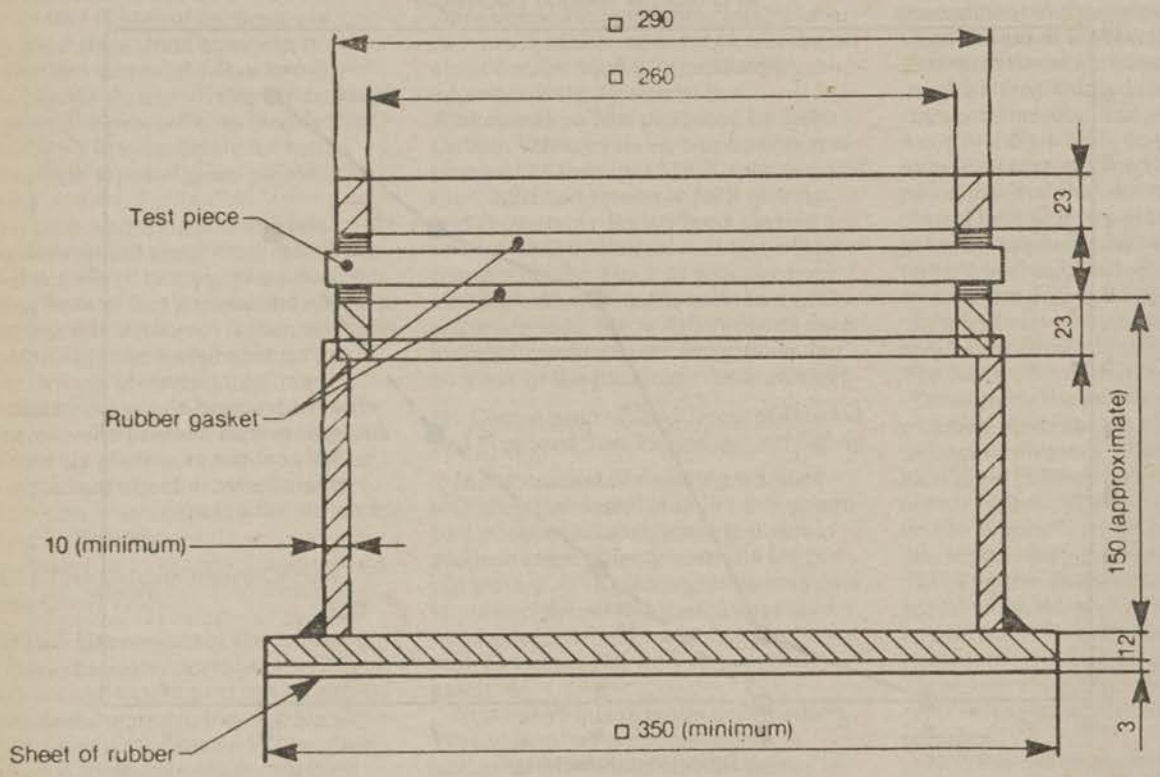


Figure 1 — Test Fixture For Clamped Specimens

A similar test setup is described in the International Standards Organization (ISO) proposed revision of Standard 3537–1975 (E) "Road Vehicles—Safety Glasses—Test Methods for Mechanical Properties". The ISO proposal includes an additional requirement that the test piece not move more than 2 millimeters (mm) at any point along the inside periphery of the fixture. Though not specifically explained, the 2 mm criterion was apparently selected as an additional requirement to minimize slippage during the test procedure.

The test data provided by SGV appeared to utilize a test setup similar to the one depicted in Figure 1 above, including the rubber gasket below the test sample. In selecting a test frame, NHTSA was concerned whether the rubber below the test sample, as specified in the ISO and the ECE test holding fixtures, would absorb energy to the extent that it would significantly alter the test. The current wooden holding fixture for drop tests specified in ANS Z26 has no rubber gasket. In an effort to determine the effects of the rubber under the test samples, NHTSA initiated a dialog with Dr. Siegfried H. Herliczek, of LOF, who had been involved in the technical support of GM's petition. Dr. Herliczek ran four test samples in the LOF clamping fixture to determine the difference in test results between the test with and without the rubber gasket. For the comparison , he ran standard three-ply glazing (.090-.030-.090 inch) and two-ply (.125 glass-.030 inch PVB-.004 inch polyester) test samples, once each with a rubber gasket on either side and once without a rubber gasket (specifically, with a hard Bakelite-type material as a hard gasket). The heights form which the 5 pound ball has to be dropped to get it to pass through the test specimens were similar for the samples with gaskets and without gaskets, within expected error. For the two-ply samples, they were not able to achieve failures; there was no penetration. It was reported that the glass on both the three-ply and two-ply samples mounted on the hard gasket broke as the pressure was applied, prior to the actual drop test. The LOF test fixture was designed with uniform pressure distribution using hydraulics. Therefore, the agency believes that glass failures would be even more prevalent with the more traditional mechanical clamping methods, due to load concentrations without the lower rubber gasket.

For these reasons, the agency concludes that clamping of glass-plastic samples of Item 14 glazing in Test 26, is a more realistic and practical test procedure for penetration resistance than the current procedure. Although the clamping will result in a more stringent test for penetration resistance of glass-plastic glazing, the resultant materials have the potential of having less perpendicular rigidity and therefore less injury causing potential than the now common HPR windshield.

It is also proposed that the rule should specify rubber gaskets above and below the test sample. The agency proposes the same type of rubber specified by the ECE, that is, rubber with a hardness of 50 IRHD (International Rubber Hardness Degrees). The 50 IRHAD is proven and is radily available. To allow for normal stock variance and material aging, the agency is proposing a tolerance of the rubber hardness of plus or minus 5 degrees. This is the same amount of tolerance used elsewhere in this standard and in FMVSS 116, "Motor Vehicle Brake Fluids". The agency is also proposing that the gaskets have the same thickness as those in the ECE procedure, i.e., 1/8 inch.

The agency considered whether to attempt to modify the existing test frame used under FMVSS No. 205 or to propose use of the ECE 43 clamping procedure. The agency tentatively concluded for several reasons that the current FMVSS 205 wooden frame would require extensive modification to become a functional clamping frame. First, the recessed ridge for holding the glass during testing is so deep, that even with the 1/8 inch gasket above and below the test sample, the 1/8 to 1/4 inch thick specimens may not be elevated enough to contact the flat upper surface that would be used to apply the clamping pressure. The lower frame would have to be modified to add a hard gasket as a spacer. Second, the wooden frame has no provisions for clamping. The frame would have to be modified in additional ways, such as drilling holes or adding clamps. Based on these considerations, the agency tentatively concluded the best alternative is to adopt the ECE test frame for clamping glass-plastic glazing for Test 26. A preliminary sketch of the fixture is provided in Figure 1.

VI. Comments on Clamping for Tests 9 and 12

Proposing to specify clamping for Test 26 raises the related question of whether clamping should be specified for other drop tests for Item 14 glazing. The agency is tentatively inclinded not to do so. In addition to Test 26, FMVSS No. 205 uses impact Tests 9 and 12, as identified in ANS Z26, to test Item 14 glass-plastic glazing. NHTSA notes that the objects dropped in those tests are considerably lighter than the 5 pound object used in Test 26 and therefore are less likely to create the problem experienced in conducting test 26. Test 9 is a 7-ounce dart/drop test from 30 feet to determine the behavior of safety glass under impact from small hard objects. Test 12 is an 8 ounce (0.5 pound) steel ball drop test from 30 feet to determine whether the safety glass has a minimum strength and is properly made.

Further, NHTSA notes that ECE R43 appears to be consistent with its judgment about the need for clamping since that regulation requires clamping only for its equivalent of Test 26. Addendum 42 of ECE Regulation 43, Revision 1, (24 February, 1988), Annex 3, section 2.2, indicates the 2260 gram (4.98 pounds) ball drop test requires clamping of glass-plastic samples. Section 2.1, which describes a 227 gram (g) (0.5 pound) ball drop test, does *not* require clamping of the sample. Additionally, there is no ECE equivalent test to Test 9, the dart test. Consequently, Test 26 is the only FMVSS 205 test that would have to add clamping of the test sample to harmonize with the clamping procedure in ECE R43.

The agency notes also that requiring clamping for Tests 9 and 12 might pose a problem by making it easier for two-ply glazing to pass Tests 9 and 12, thus allowing tempered glass-plastic windshields. This would pose a problem for the following reasons.

As a beginning point, as used in Standard 205, "laminated" glass is an ambiguous term. The term refers to the way the final glazing is assembled, not to the way the glass itself is finally processed. Laminated glass consists of one or more sheets of glass held together by an intervening layer or layers of plastic. After the glass is formed into sheets, it is finally processed in one of two ways. It is either reheated and cooled slowly, creating "annealed glass" or is toughened thermally or chemically creating "tempered glass."

The two-ply annealed glazing will apparently pass Tests 9 and 12 unclamped. The agency has come to this tentative conclusion because the petitioner, GM, has not indicated a need for clamping the specimen in Tests 9 and 12.

By clamping specimens in Tests 9 and 12, tempered glass-plastic also may pass all the AS 14 tests and thereby be certified for use in areas requisite for driving visibility. Currently, tempered glass-plastic windshields are in effect precluded by the existing tests in ANS Z26 that windshield glass must pass. The agency is concerned about the possibility enabling tempered glass plastic to pass those tests because of risk of reduced visibility through broken tempered glass-plastic. Tempered glass is normally single ply, toughened either thermally or chemically. Highly tempered glass, when broken, shatters into small cubes, an effect called dicing. This characteristic is preferable in single ply glazing to prevent lacerations. But when this dicing occurs on a laminate, the cracks of the dicing lines around the cubes will obscure vision, especially in glare conditions. Stone strikes are common on windshields. A shattered tempered glass windshield would instantly obscure forward vision. For these reasons, if the agency were to require clamping for Tests 9 and 12, it might also amend S5.1.2.5 of Standard 205 to ensure that tempered glass-plastic would not be used in windshields, and/or any other location requisite for driving visibility.

Although the agency is not inclined to specifying clamping for Tests 9 and 12, it nevertheless requests responses to the following questions to aid the agency in considering the merits of requiring such clamping:

1. Is clamping of the test specimens in Tsts 9 and/or 12 necessary?
2. What would be the effects on the specimen design if Tests 9 and/or 12 required clamping?
3. Would modifying Test 26 inadvertently permit use of tempered glass-plastic in windshields?
4. What are the advantages or disadvantages of tempered glass-plastic in windshiels, or the side and rear windows?

Depending on the public comments, the agency may, in the final rule, require the clamping procedure for Test 9 (the 7-ounce dart/drop test to determine the behavior of safety glass under impact from small hard objects) and Test 12 (the 8 ounce steel ball drop test to determine whether the safety glass has a minimum strength and is properly made). Wording for the clamping procedure for Tests 9 and 12 would be similar to the description for the procedure in Test 26, the 5 pound ball penetration resistance test. If the clamping procedure for Tests 9 and 12 is adopted, language prohibiting use of tempered Item 14 glass-plastic in windshields may also be included in the final rule.

VIII. Implementation Date

Because this rulemaking is to correct a problem in the existing test procedure for AS 14 glass-plastic glazing, it is proposed that the rule become effective upon issuance. The agency believes that due to the relatively simple and inexpensive nature of the additional clamping procedure for the 5 pound ball drop test, immediate effectiveness of this new procedure would not present a problem to testers. The agency is unaware of circumstances that would necessitate a phase in period for impiementation of the new testing procedure. Public comment is invited on

this aspect of the rulemaking. If the commenter wishes to recommend a phase in period for the new procedure, a recommend time period is requested.

IX. Regulatory Impacts

1. Cost and other impacts

NHTSA has analyzed this proposal and determined that it is neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of Department of Transportation regulatory policies and procedures. The agency estimates that the new Test 26 clamping procedure for two-ply glass-plastic glasing, if adopted, would require an expenditure of less than $200 in test equipment for fabricating a new test fixture, for each of the approximately ten testing companies or laboratories throughout the United States. The clamping procedure would add less than five minutes to the length of time needed to conduct each test. Public comment is invited on the likely costs and benefits that would be associated with the proposed changes in Test 26.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

2. Small Business Impacts

The agency has also considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). I certify that this proposed rule would not, if promulgated, have a significant ecoomic impact on a substantial number of small entities. This proposed rule would have no significant effect even if all of the approximately 10 testing entities for glazing in the United States were small businesses or other small entities (defined in 13 CFR 121.2 under SIC 8734 "Testing Laboratories" as those entities grossing less than $3.5 million a year). The rationale for this certification is that this proposed rule, if adopted, would require the purchase of less than $200 in new test equipment for each of the affected testing companies or laboratories that test motor vehicle glazing.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of the proposed rule and determined that, if adopted as a final rule, it would not have a significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

IX. Public Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, it is proposed that Federal Motor Vehicle Safety Standard No. 205, *Glazing Materials* (49 CFR 571.205), be amended as set forth below.

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follow:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.205 [Amended]

2. The introductory text to existing paragraph § S5.1.2.4 would be revised to read as follows:

S5.1.2.4 *Item 14—Glass-Plastics.* Glass-plastic glazing materials that comply with the labeling requirements of S5.1.2.5 and Tests Nos. 1, 2, 3, 4, 9, 12, 15, 16, 17, 18, 19, 24, 26, and 28, as those tests are modified in (a), (b), (c), (d), and (e) of this paragraph, may be used anywhere in a motor vehicle, except that it may not be used in convertibles, in vehicles that have no roof or in vehicles whose roofs are completely removable.

3(a). Alternative 1. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test No. 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gaskets shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber hardness Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece, beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

3(b). Alternative 2. Paragraph (e) would be added after paragraph (d) of S5.1.2.4 as follows:

(e) The glass-plastic glazing specimen tested in accordance with test Nos. 9, 12 or 26 shall be clamped in the test fixture in Figure 1 of this standard in the manner shown. The clamping gasket shall be made of rubber 3 millimeters (mm) thick of hardness 50 IRHD (International Rubber Hardness

Degrees) plus or minus five degrees. Movement of the test piece, measured after the test shall not exceed 2 mm at any point along the inside periphery of the fixture. Movement of the test piece beyond the 2 mm limit shall be considered an incomplete test, not a test failure. A specimen used in such an incomplete test shall not be retested.

4. Section 5.1.2. would be amended by adding Section S5.1.2.6 after Section 5.1.2.5 as follows:

S5.1.2.6 *Tempered Glass-Plastic Prohibition.* Glass that is strengthened by any method may not be used in glass-plastic glazing in any windshield or other location requisite for driving visibility.

Issued on: October 4, 1989.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 89-23866 Filed 10-5-89; 9:28 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331

[Ex Parte No. 55 (Sub-No. 73)]

Practice and Procedure; Miscellaneous Amendments; Revisions

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission is proposing to revise the above-numbered Parts of Title 49, Code of Federal Regulations as part of an effort to streamline and update its regulations. By this means, we intend to make our rules more understandable and easier to use.

DATE: Comments are due November 13, 1989.

ADDRESS: Send an original and, if possible, 10 copies of comments referring to Ex Parte No. 55 (Sub-No. 73) to: Case Control Branch, Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 275-7615, or Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: The vast majority of these revisions involve editing to remove obsolete, unnecessary, or redundant material from Parts that are being retained. These changes are too numerous to detail here. All interested parties are encouraged to study the appendix, which contains all the proposed changes, and compare them to the current rules. We will highlight some of the more significant changes.

Part 1136 requires that rail and motor carriers give advance notice and justification for commutation or suburban passenger fare increases. Notice to the public of such increases is already required by 49 CFR 1312.5(c) The Commission may not investigate, suspend, revise, or revoke a rate proposed by a motor passenger common carrier, acting independently, on the ground that such rate is unreasonable. 49 U.S.C. 10708(e). However, the Commission, on complaint, may review rates established by independent action. *Procedures—Complaints Against Bus Car. Rate & Fares,* 133 M.C.C. 240 (1983); 49 CFR part 1142. An independently established motor passenger carrier rate may become effective after only 1 day's notice. 49 CFR 1312.39(i) Independently established passenger carrier rates (motor and rail) have been challenged on only three occasions during the last 5 years (none on the motor side). Similarly, there have been no complaints or protests stemming from collective ratemaking activity by passenger carriers. For these reasons, we proposed to retain part 1136 only as it pertains to rail passenger carriers.

We propose to revise 49 CFR 1331.5 in substantial part. Part 1331 governs applications by rate bureaus seeking immunity from the antitrust laws to negotiate collective rates. The Motor Carrier Act of 1980 changed approval standards considerably by narrowing the range of actions that could be immunized. Section 5 of part 1331 was added to provide guidance for rate bureaus seeking approval of amended agreements filed under the mandate of the Act. Not until 1986, however, did the Commission give priority to reviewing existing agreements for compliance. Now, we have given final approval to about two thirds of the agreements, and have provisionally approved most others. Viewed in this context, 49 CFR 1331.5, as it currently reads, has served its purpose. To make part 1331 more meaningful, we propose: (1) Revising the title of section 5 to clarify that it governs all rate bureaus, not just motor passenger carrier bureaus; and (2) prescribing rules on retaining antitrust immunity to replace the rules on seeking approval of agreements since we have approved most agreements.

Finally, we propose to remove parts 1080, 1083, and 1085 in their entirety. Part 1080 covers the contents and filing of contracts between household goods freight forwarders and motor carriers. Part 1083 concerns the filing of contracts between household goods freight forwarders for joint loading and terminal services and facilities. Removal of these Parts is consistent with the relaxation of contract filing requirements and our experience that filing these contracts is not necessary to enfore the statute. Part 1085 requires that a household goods freight forwarder (HHGFF) give shippers certain information, including Commission office locations where complaints may be filed. The Part does not apply where the HHGFF has actual notice that the shipper has already received the information. Much of the traffic moves in foreign commerce and involves personnel relocations by the Department of Defense or by internationl corporations in the private sector. The Commission has received few complaints under this part. The opportunity for abuse is minimal, has not arisen, and does not warrant retention of Part 1085.

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pickup in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Environmental and Energy Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human environment or conservation of energy resources.

Initial Regulatory Flexibility Analysis

The Commission certifies that the proposed rules will not have a significant effect on a substantial number of small entities. Either they contain no substantive change from the existing regulations or they delete and remove obsolete or unnecessary material, and thus reduce the regulatory burden. The revised Parts should provide information that is both more accessible and understandable, and to that extent our action should benefit small entities.

Index

List of Subjects

49 CFR Part 1022

Intergovenmental relations.

49 CFR Part 1043

Insurance, Motor carriers, and Surety bonds.

49 CFR Part 1044

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49 CFR Part 1047

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Administrative practice and procedure, Motor carriers, and Railroads.

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49 CFR Part 1169

Administrative practice and procedure and Buses.

49 CFR Part 1170

Administrative practice and procedure, Buses, and Employment.

49 CFR Part 1331

Freight forwarders, Maritime carriers, Motor carriers, Pipelines, and Railroads.

Decided: September 27, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,

Secretary

For the reasons stated in the preamble, title 49, chapter X, parts 1022, 1043, 1044, 1047, 1051, 1058, 1061, 1063, 1067, 1070, 1080, 1081, 1083, 1084, 1085, 1091, 1104, 1136, 1143, 1161, 1167, 1169, 1170, and 1331 of the Code of Federal Regulations are proposed to be amended as follows:

1. Part 1022 is proposed to be revised to read as follows:

PART 1022—COOPERATIVE AGREEMENTS WITH STATES

Sec.

Authority: 49 U.S.C. 10101, 10321, and 11502.

§ 1022.1 Eligibility.

Any State may agree with the Interstate Commerce Commission to enforce the economic laws and regulations of that State and the United States concerning highway transportation.

§ 1022.2 Extent of agreement.

The written agreement, signed by a competent State authority and filed with the Commission's Office of the Secretary, shall specify the extent of the State's participation, as described below. The Commission will reciprocate to that extent.

§ 1022.3 Cancellation.

Either party may cancel or withdraw from all or part of a cooperative agreement by written notice indicating the effective date of such action.

§ 1022.4 Exchange of information.

Information acquired by a State agent, in his official duties, regarding violation of the economic laws of the United States concerning highway transportation or of the Commission's regulations, shall be communicated to the Regional Director of the Commission's Office of Compliance and Consumer Assistance.

§ 1022.5 Requests for assistance.

Either party to a cooperative agreement may request, in writing the other's assistance in obtaining evidence to enforce the economic laws and regulations governing highway transportation. Such evidence, obtained as time, personnel, and funds permit, shall be transmitted to the State authority or Regional Director, as the case may be, together with the name and address of any agent or personnel available to testify in an enforcement action.

§ 1022.6 Joint investigation or inspection.

The Regional Director and appropriate State authority may agree to conduct a joint inspection or investigation of the property, equipment, or records of motor carriers or others, to enforce the pertinent economic laws and regulations. They shall decide the location, time, and objectives of the joint effort, and shall select the persons who will supervise it and make the necessary decisions. Any agent or personnel of either agency having knowledge of the facts shall be made available to testify in an enforcement action.

§ 1022.7 Joint administrative activities.

To facilitate the interchange of information and evidence, and the conduct of the joint effort and any ensuing administrative action, the Regional Director and appropriate State authority shall, when warranted, schedule joint conferences. They shall inform each other of their enforcement capabilities and of any changes in their regulations.

§ 1022.8 Supplemental agreements.

The Commission and State may agree to supplement their agreement to further implement 49 U.S.C. 11502.

PART 1043—SURETY BONDS AND POLICIES OF INSURANCE

2. The authority citation for part 1043 continues to read as follows:

Authority: 49 U.S.C. 10101, 10321, 11701, and 10927; 5 U.S.C. 553.

3. Paragraph (a) of § 1043.10 is proposed to be revised to read as follows:

§ 1043.10 Fiduciaries.

(a) *Definitions.* The terms "insured" and "principal" as used in a certificate

of insurance, surety bond, and notice of cancellation, filed by or for a motor carrier, include the motor carrier and its fiduciary as of the moment of succession. The term "fiduciary" means any person authorized by law to collect and preserve property of incapacitated, financially disabled, bankrupt, or deceased holders of operating rights, and assignees of such holders.

* * * * *

4. Part 1044 is proposed to be revised to read as follows:

PART 1044—DESIGNATION OF PROCESS AGENT

Sec.
1044.1 Applicability.
1044.2 Form of designation.
1044.3 Eligible persons.
1044.4 Required States.
1044.5 Blanket designations.
1044.6 Cancellation or change.

Authority: 49 U.S.C. 10329, 10330, and 11705.

§ 1044.1 Applicability.

These rules, relating to the filing of designations of persons upon whom court process may be served, govern motor carriers and brokers and, as of the moment of succession, their fiduciaries (as defined at 49 CFR 1043.10(a)).

§1044.2 Form of designation.

Designations shall be made on Form BOC-3, *Designation of Agent for Service of Process.* Only one completed current form may be on file. It must include all States for which agent designations are required. One copy must be retained by the carrier or broker at its principal place of business.

§ 1044.3 Eligible persons.

All persons (as defined at 49 U.S.C. 10102(18)) designated must reside or maintain an office in the State for which they are designated. If a State official is designated, evidence of his willingness to accept service of process must be furnished.

§ 1044.4 Required states.

(a) *Motor Carriers.* Every motor carrier (of property or passengers) shall make a designation for each State in which it is authorized to operate and for each State traversed during such operations. Every motor carrier (including private carriers) operating in the United States in the course of transportation between points in a foreign country shall file a designation for each State traversed.

(b) *Brokers.* Every broker shall make a designation for each State in which its offices are located or in which contracts will be written.

§1044.5 Blanket designations.

Where an association or corporation has filed with the Commission a list of process agents for each State, motor carriers may make the required designations by using the following statement:

Those persons named in the list of process agents on file with the Interstate Commerce Commission by

_____

_____

(Name of association or corporation) and any subsequently filed revisions thereof, for the States in which this carrier is or may be authorized to operate, including states traversed during such operations, except those States for which individual designations are named.

§ 1044.6 Cancellation or change.

A designation may be cancelled or changed only by a new designation except that, where a carrier or broker ceases to be subject to § 1044.4 in whole or in part for 1 year, designation is no longer required and may be cancelled without making another designation.

PART 1047—EXEMPTIONS

5. The authority citation for part 1047 continues to read as follows:

Authority: 49 U.S.C. 10525, 10526, and 10931.

6. The title of the last center heading of part 1047, where it appears both in the table of contents and immediately before § 1047.45, is proposed to be revised to read as follows:

PARTIAL EXEMPTION FOR MOTOR TRANSPORTATION OF PASSENGERS INCIDENTAL TO TRANSPORTATION BY AIRCRAFT

* * * * *

7. Part 1051 is proposed to be revised to read as follows:

PART 1051—RECEIPTS AND BILLS

Sec.
1051.1 Bills of lading.
1051.2 Expense bills.
1051.3 Low value packages.

Authority: 49 U.S.C. 10321 and 11144; 5 U.S.C. 553.

§ 1051.1 Bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

(a) Names or consignor and consignee.
(b) Origin and destination points.
(c) Number of packages.
(d) Description of freight.
(e) Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a copy of the receipt or bill of lading as prescribed in 49 CFR part 1220.

§ 1051.2 Expense bills.

(a) *Property.* Every motor common carrier shall issue a freight or expense bill for each shipment transported containing the following information:

(1) Names of consignor and consignee (except on a reconsigned shipment, not the name of the original consignor).
(2) Date of shipment.
(3) Origin and destination points (except on a reconsigned shipment, not the original shipping point unless the final consignee pays the charges from that point).
(4) Number of packages.
(5) Description of freight.
(6) Weight, volume, or measurement of freight (if applicable to the rating of freight).
(7) Exact rate(s) assessed.
(8) Total charges due, including the nature and amount of any charges for special service and the points at which such service was rendered.
(9) Route of movement and name of each carrier participating in the transportation.
(10) Transfer point(s) through which shipment moved.
(11) Address where remittance must be made or address of bill issuer's principal place of business.

The shipper or receiver owing the charges shall be given the original freight or expense bill and the carrier shall keep a copy as prescribed at 49 CFR part 1220. If the bill is electronically transmitted (when agreed to by the carrier and payor), a receipted copy shall be given to the payor upon payment.

(b) *Charter service.* Every motor passenger common carrier providing charter service shall issue an expense bill containing the following information:

(1) Serial number, consisting of one of a series of consecutive numbers assigned in advance and imprinted on the bill.
(2) Name of carrier.
(3) Names of payor and organization, if any, for which transportation is performed.
(4) Date(s) transportation was performed.
(5) Origin, destination, and general routing of trip.
(6) Identification and seating capacity of each vehicle used.
(7) Number of persons transported.

(8) Mileage upon which charges are based, including any deadhead mileage, separately noted.

(9) Applicable rates per mile, hour, day, or other unit.

(10) Itemized charges for transportation, including special services and fees.

(11) Total charges assessed and collected.

The carrier shall keep a copy of all expense bills issued for the period prescribed at 49 CFR part 1220. If any expense bill is spoiled, voided, or unused for any reason, a copy or written record of its disposition shall be retained for a like period.

§ 1051.3 Low value packages.

The carrier and shipper may elect to waive the above provisions and use a more streamlined recordkeeping or documentation system for distribution of "low value" packages. This includes the option of shipping such packages under the released rates provisions at 49 U.S.C. 10730. The shipper is responsible ultimately for determining which packages should be designated as low value. A useful guideline for this determination is an invoice value less than or equal to the costs of preparing a loss or damage claim.

8. Part 1058 is proposed to be revised to read as follows:

PART 1058—IDENTIFICATION OF VEHICLES

Sec.
1058.1 Applicability.
1058.2 Method of identification.
1058.3 Size, shape, and color.
1058.4 Driveaway service.

Authority: 49 U.S.C. 10922, 10530, and 11106; 5 U.S.C. 553.

§ 1058.1 Applicability.

These rules govern all for-hire motor carriers except those providing: (a) Joint, through, regular-route passenger service under continuing lease or interchange arrangements, if the vehicle owner's name and "MC" number are displayed as prescribed at § 1058.2, and if the carriers have filed with the Commission's appropriate Regional Director(s) and posted in each terminal and ticket agency on the involved routes a published schedule showing the points between which each joint carrier assumes control and responsibility for the vehicle's operation; and (b) nonscheduled, charter, luxury-type passenger service using limousine-type vehicles with a capacity of six or fewer passengers.

§ 1058.2 Method of identification.

Each vehicle operated under its own power shall display on both sides the name (or trade name) and "MC" number(s) of the carrier under whose authority the vehicle is being operated. The "MC" number(s) shall be in the following form: "I.C.C. MC-_____" but shall not include any sub numbers. The name of any other person operating the vehicle shall appear on the vehicle following the words "operated by" in addition to the other information required by this section. Additional identification may be displayed if consistent with these rules.

§ 1058.3 Size, shape, and color.

The name(s) and number(s) prescribed above shall be displayed, by removable device if desired, in letters and figures in sharp color contrast to their background, and they shall be of a size, shape, and color readily legible in daylight from a distance of 50 feet while the vehile is stationary.

§ 1058.4 Driveaway service.

In driveaway service, a removable device may be affixed on both sides or at the rear of the single driven vehicle. In a combination driveaway operation, the device may be affixed on both sides of any one unit or at the rear of the last unit.

9. Part 1061 is proposed to be revised to read as follows:

PART 1061—LIMITATION OF SMOKING ON INTERSTATE BUSES

Authority: 49 U.S.C. 10521, 11101, and 11701.

§ 1061.1 Separate seating for smokers and nonsmokers.

(a) If otherwise permitted by law, motor common carriers of passengers may permit smoking of cigars, cigarettes, or pipes only in a smoking section, consisting of seats in the rear of the vehicle up to 30 percent of its capacity. This section does not apply to passenger carriers conducting charter operations.

(b) In unusual circumstances, the driver of the vehicle (or other carrier personnel) may make reasonable, minor modifications to assure passengers' comfort and safe, adequate, and expeditious transportation service.

10. Part 1063 is proposed to be revised to read as follows:

PART 1063—ADEQUACY OF INTERCITY MOTOR COMMON CARRIER PASSENGER SERVICE

Sec.
1063.1 Applicability.
1063.2 Definitions.
1063.3 Ticketing and information
1063.4 Baggage service.
1063.5 Terminal facilities.
1063.6 Service responsibility
1063.7 Equipment.
1063.8 Accommodations for handicapped disabled, blind, and elderly
1063.9 Identification—bus and driver
1063.10 Relief from provisions.

Authority: 49 U.S.C. 10102, 10321, 10701, 10702–10705, 10708, 10721, 10722, 10724, 10730 10741, 10761, 10762, 10764 10922, 11101 11141–11145, 11701, 11702 11707 11708, 11901, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1063.1 Applicability.

These rules govern only motor passenger common carriers conducting regular-route operations.

§ 1063.2 Definitions.

(a) "Carrier" means a motor passenger common carrier.

(b) "Bus" means a passenger-carrying vehicle, regardless of design or seating capacity, used in a carrier's authorized operations

(c) "Facility" means any structure provided by or for a carrier at or near which buses pick up or discharge passengers.

(d) "Terminal" means a facility operated or used by a carrier chiefly to furnish passengers transportation services and accommodations.

(e) "Station" means a facility, other than a terminal, operated by or for a carrier to accommodate passengers

(f) "Service" means passenger transportation by bus between authorized points or over authorized routes.

(g) "Commuter service," notwithstanding 49 CFR 1312.1(b)(33), means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations

(h) "Baggage" means property a passenger takes with him for his personal use or convenience.

(i) "Restroom" means a room in a bus or terminal equipped with a toilet, washbowl, soap or a reasonable alternative, mirror, wastebasket, and toilet paper.

§ 1063.3 Ticketing and information.

(a) *Information service.* (1) During business hours at each terminal or station, information shall be provided as to schedules, tickets, fares, baggage, and other carrier services.

(2) Carrier agents and personnel who sell or offer to sell tickets, or who provide information concerning tickets and carrier services, shall be competent and adequately informed.

(b) *Telephonic information service.* Every facility where tickets are sold shall provide telephonic information to the traveling public, including current bus schedules and fare information, when open for ticket sales.

(c) *Schedules.* Printed, regular-route schedules shall be provided to the traveling public at all facilities where tickets for such services are sold. Each schedule shall show the points along the carrier's route(s) where facilities are located or where bus trips originate or terminate, and each schedule shall indicate the arrival or departure time for each such point.

(d) *Ticket refunds.* Each carrier shall refund unused tickets upon request, consistent with its governing tariff, at each place where tickets are sold, within 30 days after the request.

(e) *Announcements.* No scheduled bus (except in commuter service) shall depart from a terminal or station until a public announcement of the departure and boarding point has been given. The announcement shall be given at least 5 minutes before the initial departure and before departures from points where the bus is scheduled to stop for more than 5 minutes.

§ 1063.4 Baggage service.

(a) *Checking procedures.* (1) Carriers shall issue receipts, which may be in the form of preprinted tickets, for all checked baggage.

(2)(i) If baggage checking service is not provided at the side of the bus, all baggage checked at a baggage checking counter at least 30 minutes but not more than 1 hour before departure shall be transported on the same schedule as the ticketed passenger.

(ii) If baggage checking service is provided at the side of the bus, passengers checking baggage at the baggage checking counter less than 30 minutes before the scheduled departure shall be notified that their baggage may not travel on the same schedule. Such baggage must then be placed on the next available bus to its destination. All baggage checked at the side of the bus during boarding, or at alternative locations provided for such purpose, shall be transported on the same schedule as the ticketed passenger.

(b) *Baggage security.* All checked baggage shal be placed in a secure or attended area prohibited to the public. Baggage being readied for loading shall not be left unattended.

(c) *Baggage liability.* (1) No carrier may totally exempt its liability for articles offered as checked baggage, unless those articles have been exempted by the Commission. (Other liability is subject to 49 CFR Part 1064.) A notice listing exempted articles shall be prominently posted at every location where baggage is accepted for checking.

(2) Carriers may refuse to accept as checked baggage and, if unknowingly accepted, may disclaim liability for loss or damage to the following articles:

(i) Articles whose transportation as checked baggage is prohibited by law or regulation;

(iii) Fragile or perishable articles, articles whose dimensions exceed the size limitations in the carrier's tariff, receptacles with articles attached or protruding, guns, and materials that have a disagreeable odor;

(iii) Money; and

(iv) Those other articles that the Commission exempts upon petition by the carrier.

(3) Carriers need not offer excess value coverage on articles of extraordinary value (including, but not limited to, negotiable instruments, papers, manuscripts, irreplaceable publications, documents, jewelry, and watches).

(d) *Express shipments.* Passengers and their baggage always take precedence over express shipments.

(e) *Baggage at destination.* All checked baggage shall be made available to the passenger within a reasonable time, not to exceed 30 minutes, afer arrival at the passenger's destination. If not, the carrier shall deliver the baggage to the passenger's local address at the carrier's expense.

(f) *Lost or delayed baggage.* (1) Checked baggage that cannot be located within 1 hour after the arrival of the bus upon which it was supposed to be transported shall be designated as lost. The carrier shall notify the passenger at that time and furnish him with an appropriate tracing form.

(2) Every carrier shall make available at each ticket window and baggage counter a single form suitable both for tracing and for filing claims for lost or misplaced baggage. The form shall be prepared in duplicate and signed by the passenger and carrier representative. The carrier or its agent shall receive the signed original, with any necessary documentation and additional information, and the claim check, for which a receipt shall be given. The passenger shall retain the duplicate copy.

(3) The carrier shall make immediate and diligent efforts to recover lost baggage.

(4) A passenger may fill out a tracing form for lost unchecked baggage. The carrier shall forward recovered unchecked baggage to the terminal or station nearest the address shown on the tracing form and shall notify the passenger that the baggage will be held on a will-call basis.

(g) *Settlement of claims.* Notwithstanding 49 CFR 1005.5, if lost checked baggage cannot be located within 15 day, the carrier shall immediately process the matter as a claim. The date on which the carrier or its agent received the tracing form shall be considered the first day of a 60-day period in which a claim must be resolved by a firm offer of settlement or by a written explanation of denial of the claim.

§ 1063.5 Terminal facilities.

(a) *Passenger security.* All terminals and stations must provide adequate security for passengers and their attendants and be regularly patrolled.

(b) *Outside facilities.* At terminals and stations that are closed when buses are scheduled to arrive or depart, there shall be available, to the extent possible, a public telephone, outside lighting, posted schedule information, overhead shelter, information on local accommodations, and telephone numbers for local taxi service and police.

(c) *Maintenance.* Terminals shall be clean.

§ 1063.6 Service responsibility.

(a) *Schedules.* Carriers shall establish schedules that can be reasonably met, including connections at junction points, to serve adequately all authorized points.

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first filing a written notice with the Commission's appropriate Regional Office(s). The carrier shall display conspicuously a copy of such notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

(c) *Trip interruptions.* A carrier shall mitigate, to the extent possible, any passenger inconvenience it causes by disrupting travel plans.

(d) *Seating and reservations.* A carrier shall provide sufficient buses to meet

passengers' normal travel demands, including ordinary weekend and usual seasonal or holiday demand. Passengers (except commuters) shall be guaranteed, to the extent possible, passage and seating.

(e) *Inspection of rest stops.* Each carrier shall inspect periodically all rest stops it uses to ensure that they are clean.

§ 1063.7 Equipment.

(a) *Temperature control.* A carrier shall maintain a reasonable temperature on each bus (except in commuter service).

(b) *Restrooms.* Each bus (except in commuter service) seating more than 14 passengers (not including the driver) shall have a clean, regularly maintained restrooms, free of offensive odor. A bus may be operated without a restroom if if makes reasonable rest stops.

(c) *Bus servicing.* Each bus shall be kept clean, with all required items in good working order.

§ 1063.8 Accommodations for handicapped, disabled, blind, and elderly.

(a) *Transportation.* No carrier shall deny transportation to any person on the basis of a handicap, physical disability, or blindness, or because that person cannot board a bus without assistance. A guide dog shall be provided free passage when accompanied by a blind person.

(b) *Assistance.* All carriers, whenever possible and on request, shall assist handicapped, disabled, blind, and elderly passengers in boarding buses (including advance boarding and seating) and using terminal accomodations and baggage service. A notice indicating where and from whom such assistance may be obtained shall be displayed prominently at all terminals.

(c) *Terminal accommodations.* (1) All terminals shall be constructed so that accommodations are accessible to handicapped, disabled, blind, and elderly passengers.

(2) All terminal construction or substantial renovation shall conform to the "American National Standard Specifications for Making Buildings and Facilities Accessible to, and Usable by the Physically Handicapped," Number A117.1–1961 (R1971) approved by the American National Standards Institute, Inc.

§ 1063.9 Identification—bus and driver.

Each bus and driver providing service shall be identified in a manner visible to passengers. The driver may be identified by name or company number.

§ 1063.10 Relief from provisions.

(a) *Petitions.* Where compliance with any rule would impose an undue burden on a carrier, it may petition the Commission either to treat it as though it were conducting a commuter service or to waive the rule. The request for relief must be justified by appropriate verified statements.

(b) *Notice to the public.* The carrier shall display conspicuously, for at least 30 days, in each facility and on each bus affected, a notice of the filing of any petition. The notice shall contain the carrier's name and address, a concise description of and reasons for the relief sought, and a statement that any interested person may file written comments with the Commission (with one copy mailed to the carrier) on or before a specific date that is at least 30 days later than the date the notice is posted.

11. Part 1067 is proposed to be revised to read as follows:

PART 1067—FITNESS PROCEDURES

Sec.
1067.1 Definition.
1067.2 Intervention by the Department of Transportation.
1067.3 Effect of adverse fitness finding on subsequent application.

Authority: 49 U.S.C. 3102, 10922, 10923, and 10927; 5 U.S.C. 552, 553, and 559.

§ 1067.1 Definition.

Fitness means an applicant's willingness or ability to conform to the Interstate Commerce Act and the regulations of the Interstate Commerce Commission and the Department of Transportation (DOT). (*See* 49 CFR 1160.5(a)(3).)

§ 1067.2 Intervention by the Department of Transportation.

(a) DOT may participate in application proceedings on the issue of fitness [by Memorandum of Agreement between the Commission and DOT, dated April 3, 1967, provision 2] by notifying the applicant and by filing a petition for leave to intervene setting forth generally the nature of the evidence it will present, within 30 days (protest period) of publication of a notice of such application in the *ICC Register.* Applicant may reply within 15 days of such filing. If DOT has not petitioned to intervene, its subsequent participation may be authorized at the Commission's discretion.

(b) This rule does not alter DOT's right to file a formal complaint with the Commission or to petition the Commission to institute on its own motion a formal investigation proceeding regarding a regulated carrier's practices.

§ 1067.3 Effect of adverse fitness finding on subsequent application.

An administratively final adverse fitness determination is not necessarily fatal to a subsequent application, which shall be considered on the same basis as that of any applicant not found unfit. Prior adverse findings may be officially noticed and may be found to bear on applicant's fitness.

PART 1070—HARBORS

12. Part 1070 is proposed to be amended as follows:

a. The authority citation for Part 1070 is revised to read as follows:

Authority: 49 U.S.C. 10541, 10543, 10544, and 10929.

b. Section 1070.1 is proposed to be amended by revising the introductory text and the introductory text of paragraphs (a) and (b) to read as follows:

§ 1070.1 Harbor limits.

The following harbors, within which transportation in interstate commerce by water is not part of a continuous through movement under common control, management, or arrangement to or from a place outside the limits, are exempt from regulation under 49 U.S.C. 10544(a):

(a) *New York, NY.* The waters within the area over which the Port of New York Authority has jurisdiction as shown by the heavy black line in the following map:

* * * * *

(b) *Philadelphia, PA.* The waters within the area enclosed by the heavy black line in the following map:

* * * * *

13. The title for parts 1080–1089 is proposed to be revised to read as follows:

PARTS 1080–1089—FREIGHT FORWARDERS—GENERAL

PART 1080—[REMOVED]

14. Part 1080 is proposed to be removed.

15. Part 1081 is proposed to be revised to read as follows:

PART 1081—BILLS OF LADING

Authority: 49 U.S.C. 10701, 10702, 10730, 10741, 10766, 10927, 11101, and 11707.

§ 1081.1 Bills of lading.

Every household goods freight forwarder (HHGFF) shall issue the shipper through bills of lading, covering transportation from origin to ultimate destination, on each shipment for which

it arranges transportation in interstate commerce. Where a motor common carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the HHGFF's name, the HHGFF, upon receiving the shipment at the "on line" or consolidating station, shall issue a through bill of lading on its form as of the date the carrier receives the shipment.

PART 1083—[REMOVED]

16. Part 1083 is proposed to be removed.

17. Part 1084 is proposed to be revised to read as follows:

PART 1084—SURETY BONDS AND POLICIES OF INSURANCE

Sec.

Authority: 49 U.S.C. 10102, 10321, and 10927; 5 U.S.C. 553.

§ 1084.1 Definitions.

(a) *Freight forwarder* means a person holding itself out to the general public (other than as an express, pipeline, rail, sleeping car, motor, or water carrier) to provide transportation of property for compensation in interstate commerce, and in the ordinary course of its business:

(1) Performs or provides for assembling, consolidating, break-bulk, and distribution of shipments; and

(2) Assumes responsibility for transportation from place of receipt to destination; and

(3) Uses for any part of the transportation a carrier subject to Commission jurisdiction.

(b) *Household goods freight forwarder* (HHGFF) means a freight forwarder of household goods, unaccompanied baggage, or used automobiles.

(c) *Motor vehicle* means any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used to transport property, but does not include any vehicle, locomotive, or car operated exclusively on a rail or rails. The following combinations will be regarded as one motor vehicle: (1) A tractor that draws a trailer or semitrailer; and (2) a truck and trailer bearing a single load.

§ 1084.2 General requirements.

(a) *Cargo.* A freight forwarder (including a HHGFF) may not operate until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, for loss of or damage to property.

(b) *Public liability.* A HHGFF may not perform transfer, collection, and delivery service until it has filed with the Commission an appropriate surety bond, certificate of insurance, qualifications as a self-insurer, or other securities or agreements, in the amounts prescribed at § 1084.3, conditioned to pay any final judgment recovered against such HHGFF for bodily injury to or the death of any person, or loss of or damage to property (except cargo) of others, or, in the case of freight vehicles described at 49 CFR 1043.2(b)(2), for environmental restoration, resulting from the negligent operation, maintenance, or use of motor vehicles operated by or under its control in performing such service.

§ 1084.3 Limits of liability.

The minimum amounts for cargo and public liability security are identical to those prescribed for motor carriers at 49 CFR 1043.2.

§ 1084.4 Surety bonds and certificates of insurance.

(a) The limits of liability under § 1084.3 may be provided by aggregation under the procedures at 49 CFR Part 1043.

(b) Each policy of insurance used in connection with a certificate of insurance filed with the Commission shall be amended by attachment of the appropriate endorsement prescribed by the Commission (or the Department of Transportation, where applicable).

§ 1084.5 Insurance and surety companies.

A certificate of insurance or surety bond will not be accepted by the Commission unless issued by an insurance or surety company that is authorized to issue such bonds or underlying insurance policies: (a) In each State in which the HHGFF is authorized to operate; or (b) in the State in which the HHGFF has its principal place of business or domicile, and will designate in writing upon request by the Commission a person upon whom process, issued by or under the authority of a court of competent jurisdiction, may be served in any proceeding at law or equity brought in any State in which the HHGFF operates, or (c) in any State, and is eligible as an excess or surplus lines insurer in any State in which business is written, and will make the designation of process agent prescribed in paragraph (b) of this section.

§ 1084.6 Qualifications as a self-insurer and other securities or agreements.

(a) *Self-insurer.* The Commission will approve the application of a freight forwarded to qualify as a self-insurer if it is able to meet its obligations for bodily-injury, property-damage, and cargo liability without adversely affecting its business.

(b) *Other securities and agreements.* The Commission will grant applications for approval of other securities and agreements if the public will be protected as contemplated by 49 U.S.C. 10927(c).

§ 1084.7 Forms and procedure.

(a) *Forms.* Endorsements for policies of insurance, surety bonds, certificates of insurance, applications to qualify as a self-insurer or for approval of other securities or agreements, and notices of cancellation must be in the form prescribed at 49 CFR part 1043.

(b) *Procedure.* Certificates of insurance, surety bonds, and notices of cancellation must be filed with the Commission in triplicate.

(c) *Names.* Certificates of insurance and surety bonds shall be issued in the full name (including any trade name) of the individual, partnership (all partners named), corporation, or other person holding or to be issued the permit.

(d) *Cancellation.* Except as provided in paragraph (e) of this section, certificates of insurance, surety bonds, and other securities and agreements shall not be cancelled or withdrawn until 30 days after the Commission receives written notice from the insurance company, surety, freight forwarder, or other party, as the case may be.

(e) *Termination by replacement.* Certificates of insurance or surety bonds may be replaced by other certificates of insurance, surety bonds, or other security, and the liability of the retiring insurer or surety shall be considered as having terminated as of the replacement's effective date, if acceptable to the Commission.

§ 1084.8 Acceptance and revocation by Commission.

The Commission may at any time refuse to accept or may revoke its acceptance of any surety bond, certificate of insurance, qualifications as a self-insurer, or other security or agreement that does not comply with these rules or fails to provide adequate public protection.

§ 1084.9 Fiduciaries.

(a) *Interpretations.* The terms "insured" and "principal" as used in a certificate of insurance, surety bond, and notice of cancellation, filed by or for a freight forwarder, include the freight forwarder and its fiduciary (as defined at 49 CFR 1043.10(a)) as of the moment of succession.

(b) *Span of security coverage.* The coverage furnished for a fiduciary shall not apply after the effective date of other insurance or security, filed with and accepted by the Commission for such fiduciary. After the coverage shall have been in effect 30 days, it may be cancelled or withdrawn within the succeeding 30 days by the insurer, the insured, the surety, or the principal 10 days after the Commission receives written notice. After such coverage has been in effect 60 days, it may be cancelled or withdrawn only in accordance with § 1084.7(d).

PART 1085—[REMOVED]

18. Part 1085 is proposed to be removed.

19. Part 1091 is proposed to be revised to read as follows:

PART 1091—ALASKAN MOTOR-OCEAN-MOTOR (AMOM) SUBSTITUTED SERVICE

Sec.
1091.1 Definition.
1091.2 Tariff information and election of service method.

Authority: 49 U.S.C. 10101–10103, 10301, 10306, 10311, 10321, 10502, 10521, 10561, 10562, 10701–10705, 10708, 10721–10724, 10741–10744, 10761–10763, 10766, 10921, 10922, 10928, 11101, 11102, 11108, 11349, 11501, 11502, 11701, 11702, 11705, 11706, 11708, 11904, 11906, 11909, 11910, and 11914; 5 U.S.C. 553 and 559.

§ 1091.1 Definition.

Alaskan Motor-Ocean-Motor (AMOM) Service means the use of a water common carrier subject to the Shipping Act, 1916, as amended, by an irregular-route motor common carrier authorized by the Interstate Commerce Commission to transport property in interstate or foreign commerce between points in Alaska, on the one hand, and, on the other, any point in the contiguous United States, for the movement of its loaded or empty equipment between a seaport in Alaska, on the one hand, and, on the other, a seaport on the West Coast of the contiguous United States.

§ 1091.2 Tariff information and election of service method.

Motor carriers using AMOM Service may publish tariffs setting forth different charges for AMOM and all-highway services. The tariff publications must allow the shipper to choose whether AMOM or all-highway service shall be used, and that, absent an election, the shipment will be transported over the lower-cost service. Tariffs embracing AMOM Service charges, including substituted service directories, if used, shall also set forth the underlying operating rights (overhead) relied upon, the service covered by the published charges, the points of substitution between modes of transportation, and the names of the participating carriers.

20. The heading of part 1104 is proposed to be revised to read as follows:

PART 1104—FILING WITH THE COMMISSION—COPIES—VERIFICATION—SERVICE—PLEADINGS, GENERALLY

21. Part 1136 is proposed to be revised to read as follows:

PART 1136—RAIL PASSENGER CARRIER COMMUTATION OR SUBURBAN FARE INCREASES

Authority: 49 U.S.C. 10321, 10707, 10708; 5 U.S.C. 559.

§ 1136.1 Filing and service requirements.

A rail passenger carrier proposing commutation or suburban fare increases shall concurrently file appropriate tariffs with the Commission and serve supporting verified statements on the Commission (at its headquarters office and at each Commission office in States affected by the proposal) and on the Governor and appropriate State or County regulatory agency in each affected State, certifying that the notice requirements of 49 CFR 1312.5 have been met.

22. Part 1143 is proposed to be revised to read as follows:

PART 1143—PREEMPTION OF STATE JURISDICTION: PASSENGER RATES

Sec.
1143.1 Applicability.
1143.2 Commission jurisdiction.
1143.3 Petition.
1143.4 Notification procedures.
1143.5 Opposition; deadlines.
1143.6 Rebuttal.

Authority: 49 U.S.C. 10321 and 11501(e); 5 U.S.C. 553.

§ 1143.1 Applicability.

These rules govern petitions for review, under 49 U.S.C. 11501, of State regulation of rates, rules, and practices of interstate passenger carriers providing intrastate service. (Commission preemption of State jurisdiction over passenger exit is covered at 49 CFR part 1169.)

§ 1143.2 Commission jurisdiction.

If an interstate passenger carrier has requested of a proper State authority permission to establish an increased intrastate rate, rule, or practice and all or part of the request has been denied, or the State has not taken final action (in whole or in part) on the request within 120 days, the carrier may petition the Interstate Commerce Commission for review.

§ 1143.3 Petition.

A petition for review shall include the following.

(a) A cover sheet indicating that the filing is authorized under 49 U.S.C. 11501 and that a decision must be made within 60 days.

(b) A copy of the entire State record, if available, and other new, relevant evidence. (If the basis for the petition is State inaction, petitioner shall also submit a statement by counsel or a verified statement by a competent witness that the State has not acted within 120 days after the request.)

(c) Written argument detailing reasons for review.

(d) Certification that the notification procedures at § 1143.4 have been met.

§ 1143.4 Notification procedures.

The petition for review shall be served, no later than its filing date, on the State Governor, the State authority, and on all parties to the State proceeding.

§ 1143.5 Opposition; deadlines.

Opposition statements may be filed as a matter of right by the Governor, the State authority, or by any party to the State proceeding within 15 days after the petition is filed. All others wishing to participate shall file a petition for leave to intervene within 15 days after the filing. Opposition statements and petitions to intervene shall include argument establishing that the State action was reasonable and may also address any new evidence submitted by petitioner. Petitions to intervene shall also explain why an appearance was not entered in the State proceeding but is appropriate in the Commission proceeding.

§ 1143.6 Rebuttal.

Rebuttal to an opposition statement shall be filed within 20 days after the petition is filed. Rebuttal to an intervention petition shall be filed within 10 days after such petition is filed.

23. Part 1161 is proposed to be revised to read as follows:

PART 1161—ISSUANCE UNDER 49 U.S.C. 10931 OF CERTIFICATES OF REGISTRATION TO SINGLE-STATE MOTOR CARRIERS

Sec.
1161.1 Applicability.
1161.2 Notice.
1161.3 State application proceedings.
1161.4 Application for Certificate of Registration.
1161.5 Appeal of State decision.

Appendix—Form of Notice of Filing State Application

Authority: 49 U.S.C. 10321 and 10931; 5 U.S.C. 559.

§ 1161.1 Applicability.

These rules govern applications for Certificates of Registration based on intrastate certificates issued by a State that concurrently find that the public convenience and necessity require operations in interstate and foreign commerce.

§ 1161.2 Notice.

An applicant for a Certificate of Registration shall notify the appropriate State authority of such filing consistent with its rules. Notice to interested persons will be given by publishing in the *ICC Register* a summary of the authority sought (prepared by the State in the form described in the appendix). The summary must be sent to the Interstate Commerce Commission sufficiently in advance of any State hearing on the application to afford interested persons a reasonable opportunity to be heard. No other notice is necessary, unless required by the State.

§ 1161.3 State application proceedings.

State rules govern the conduct of the State proceeding. Protests and requests for information will be directed to the State. The record in the State proceeding will be made available to the parties upon payment of costs prescribed by the State.

§ 1161.4 Application for Certificate of Registration.

(a) *Time for filing.* Within 30 days after service of the State certificate (containing the recitations required by 49 U.S.C. 10931), applicant shall file with the Commission an Application for Motor Certificate of Registration, Form OP–OR–100. Except for cause shown, failure to file an application within the 30-day period will waive any right to obtain a Certificate of Registration.

(b) *Notice.* The Commission will give notice of the application's filing date and docket number to the applicant and to all interested persons in the State proceeding.

(c) *Parties.* Any party that opposed the authorization of operations in interstate or foreign commerce in the State proceeding will be considered a party in the Certificate of Registration proceeding. Other persons may participate only upon a showing of good cause.

§ 1161.5 Appeal of State decision.

Any opposing party may file an appeal with the Commission within 30 days after the application for a Certificate of Registration is filed. The appeal should include a certified copy of the complete record made before the State (including a transcript of any testimony taken and any exhibits filed, at the expense of the person appealing, unless the record has already been filed by another party). Applicant may file a reply to an appeal within 20 days. Copies of each appeal and reply shall be served on the State Commission and on all parties to the State proceeding. The filing of an appeal will not affect the institution of intrastate operations under the State certificate. Failure to file an appeal waives further participation in the Certificate of Registration proceeding. The application and related appeals will be handled in a single proceeding. A Commission decision is final.

Appendix—Form of Notice of Filing State Application

Part I

(To be completed by applicant)

Notice is given that applicant has filed with

_____

(Name of State Authority)

an application for a certificate to conduct motor common carrier operations in intrastate commerce; that, in connection with such operations, applicant also is seeking authority to engage in transportation in interstate and foreign commerce within limits which do not exceed the scope of the intrastate operations which may be authorized to be conducted; and that the intrastate and interstate operations proposed to be conducted are as set forth below.

_____

1. (Name and business address of applicant)

_____

(Street) (City) (State)

_____

2. (Name and address of applicant's representative, if any)

_____

(Street) (City) (State)

3. Describe in full the operations proposed to be conducted in intrastate commerce, together with the extent to which applicant is seeking authority in connection with such intrastate operations to engage in transportation in interstate and foreign commerce.

_____

(Signature)

_____

(Title)

Date _____, 19_____.

Part II

(To be completed by State Authority)

Date of filing application _____

Docket number assigned _____

Date, time, and place application has been assigned for hearing, if known

_____

_____

(Signature)

_____

(Title)

_____

(Name of State Authority)

Date this notice forwarded to Interstate Commerce Commission, Washington, DC 20423, _____, 19_____.

24. Part 1167 is proposed to be revised to read as follows:

PART 1167—COMPENSATED INTERCORPORATE HAULING

Sec.
1167.1 Applicability.
1167.2 Notification.
1167.3 Change in participation.

Authority: 49 U.S.C. 10321 and 10524; 5 U.S.C. 559.

§ 1167.1 Applicability.

Compensated transportation service by a member of a corporate family for other members of the same family (Compensated Intercorporate Hauling or CIH) is exempt from Interstate Commerce Commission regulation if proper notice is given. To qualify for the exemption, the participants must be members of a corporate family in which the parent owns, either directly or indirectly, a 100 percent interest in the subsidiaries. However, no corporation operating chiefly as a for-hire carrier may use an affiliate operating under the exemption of 49 U.S.C. 10524(b) to transport freight tendered to it as a carrier.

§ 1167.2 Notification.

(a) *General requirements.* The corporate parent seeking to initiate CIH must submit a **Federal Register** notice is follows:

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling

operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office:

2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(b) *Affidavit and declaration.* The notice shall include the following affidavit and declaration (which need not be notarized) by a person legally qualified to act for the parent:

I, _____, affirm that _____ is a corporation which directly or indirectly owns a 100 percent interest in the subsidiaries participating in compensated intercorporate hauling under 49 U.S.C. 10524(b), listed in the attached notice.

I declare under penalty of perjury under the laws of the United States that the foregoing is true.

_____

(Signature and date)

(c) *To whom notice sent.* The original and one copy of the notice of intent to engage in CIH shall be sent to the Commission in an envelope marked: "CIH Notice." The Secretary's Office will issue an acknowledgment indicating whether the submission is in order, and giving a projected publication date. CIH operations may commence as soon as the required notice is placed in the mails or, if hand-delivered, upon receipt at the Commission's office.

(d) *Cover letter requirement.* Where the office that has prepared a notice for a corporate family differs from the one executing the notice, that office shall be identified in a cover letter attached to the tendered notice.

(e) *Miscellaneous.* The filing of a CIH notice does not initiate a proceeding before the Commission. Publication of a notice is a ministerial function and does not indicate Commission investigation or affirmation of the representations appearing in the notice concerning corporate affiliation nor does it create a right of protest.

(f) *Fees.* All required filings shall include the appropriate fee. *See* 49 CFR part 1002.

§ 1167.3 Change in participation.

(a) If the parent intends that an additional subsidiary participate in CIH, it shall file un updated notice.

(b) Whenever the corporate parent's interest in a subsidiary participating in CIH become less than 100 percent, operations under 49 U.S.C. 10524(b) by or for that subsidiary shall be discontinued and the parent shall file an updated notice within 10 days.

(c) Updated notices shall be submitted in the format required by § 1167.3(a), and will be published in the **Federal Register.**

(d) An updated notice need not be filed where an action by a corporate family affects the status of a member participating in CIH, but the scope of the operations remains unchanged—*e.g.*, absorption of a subsidiary into a parent resulting in extinction of its separate corporate status. However, name changes require an updated notice.

25. Part 1169 is proposed to be revised to read as follows:

PART 1169—PREEMPTION OF STATE JURISDICTION: PASSENGER EXIT

Sec.

Authority: 49 U.S.C. 10321 and 10935; 5 U.S.C. 553.

§ 1169.1 Applicability.

These rules govern petitions by motor passenger common carriers to discontinue regular-route service over any route in a State, or to reduce the level of service over a route to less than one trip per day (excluding Saturdays and Sundays). (Commission preemption of State jurisdiction over passenger rates is covered at 49 CFR part 1143.)

§ 1169.2 Petition.

The petition shall contain the following information:

(a) On a cover page: (1) Petitioner's name, "MC" number, and mailing address; (2) the words "Exit Petition:", followed by the affected State (a separate petition must be filed for each such State); and (3) the termini of the route(s) on which petitioner proposes to discontinue or reduce service.

(b) Verified statement(s) containing the following information: (1) Description of petitioner's pertinent operations and how they would be affected by the proposed discontinuance or reduction in service (petitioner must hold both interstate and intrastate authorities over the route(s); copies of such authorities, showing service dates, must be attached);

(2) Certification that petitioner requested the State's approval for the proposed discontinuance or reduction in service (indicating the date of such request), and the State either failed to act within 120 days or denied all or part of the request (a copy of the State decision must be attached); the petition shall be filed within 90 days after the final State action or inaction;

(3) Certification that petitioner is not controlled by a State or local government;

(4) Annual interstate and intrastate passenger and package express revenues generated by the service to be discontinued or reduced (but not including revenues which petitioner expects to receive in connection with other services which it will still operate), with an explanation of how the revenues were calculated and of any assumptions underlying the calculation;

(5) Description of the rates and pricing practices applicable to the affected service;

(6) Variable cost of operating the affected service, with an explanation of how the costs were calculated, and of any assumptions underlying the calculation (assumptions should be consistent with those used to estimate revenue);

(7) Description of any current operating subsidies or financial assistance applicable to the affected service, and of any proposals or discussions concerning operating subsidies or financial assistance during the year preceding the filing of the petition; and

(8) Description of other passenger transportation available on the affected route(s).

(c) If petitioner proposes to discontinue service, a request for revocation of its pertinent interstate authority; and

(d) Certification that copies of the petition have been served on: (1) The Governor of the State in which the transportation is provided; (2) the appropriate State regulatory body; (3) local governments in the affected areas; and (4) each party to any related State proceedings.

§ 1169.3 Objections.

(a) The Commission must receive an objection within 20 days after the petition is filed.

(b) The objection must contain at least the following information:

(1) Description of any operating subsidies or financial assistance known to have been offered petitioner to continue the involved service;

(2) Description of the adverse effect the proposed discontinuance or reduction in service would have on the traveling public, on the communities served, or on others; and

(3) Analysis of the interstate and intrastate revenues derived from the service, the pricing practices applied to the service, and the variable costs of operating the service.

(c) Within 15 days after an objection is filed, petitioner must furnish to the Commission and to each objector an estimate of, and data necessary to

determine the amount of, any annual subsidy or financial assistance required to continue the service. At the same time, petitioner may file rebuttal.

§ 1169.4 Commission action.

The Commission must take final action on a petition within 90 days after it is filed. The 90-day period will not begin to run until the petition is complete. If no objections are received within 20 days after a complete petition is filed, the Commission will grant the petition and revoke any pertinent interstate authority. The effective date will be 30 days after the decision is served. If timely objections are filed, the Commission will consider the evidence on the written record. There will be no oral hearing. Appeals are governed by 49 CFR 1115.3(b).

§ 1169.5 Offers of subsidies; continuation of service.

(a) Any financially responsible person who intends to offer petitioner an operating subsidy or financial assistance so it may continue providing the service, must notify the Commission and petitioner within 50 days after the petition is filed.

(b) The Commission may order petitioner to continue the affected service for 165 days after the petition is filed—even if permission to discontinue or reduce service is otherwise granted, but before it has become effective—if there is a responsible offer of subsidy or financial assistance that is reasonably likely to induce petitioner to continue the service voluntarily, or if additional time is needed to allow another carrier to take over the involved operations.

26. Part 1170 is proposed to be revised to read as follows:

PART 1170—EMPLOYEE PROTECTION FOR MOTOR PASSENGER CARRIERS

Sec.

Authority: 49 U.S.C. 10321; 5 U.S.C. 553; and Pub. L. 97–261, sec. 27.

§ 1170.1 Applicability.

Section 27 of the Bus Regulatory Reform Act of 1982 is designed to protect employees of bus companies who lose their jobs because of reduction or discontinuance of regular-route bus service. These rules govern applications under section 27 by individuals seeking a determination of eligibility for protection. To be eligible for protection in the form of priority in seeking reemployment, the individual must have worked for a bus company on or before September 20, 1980, and have been fired after September 20, 1982 because of a reduction or discontinuance of regular-route bus operations. Furloughed personnel who have a right of recall by their employer are not eligible.

§ 1170.2 Application.

(a) The application shall contain the following information:

(1) The caption "Bus Employment Protection Application", at the top of page one;

(2) The individual's name and address;

(3) The full name and "MC" number of the carrier by whom the individual was employed;

(4) The dates on which the individual's employment with that carrier began and terminated;

(5) The reason(s) for the termination;

(6) The specific discontinuance or reduction of service that caused the termination; and

(7) The individual's occupational specialty.

(b) The lower left corner of the envelope should be marked: "Bus Employment Protection Application:", followed by applicant's full name. (If there is more than one applicant, list only one name and indicate the number of others.)

(c) A copy of the application must be sent to the carrier by whom the individual was employed.

§ 1170.3 Opposition.

(a) Any interested person may contest the application within 20 days after its filing.

(b) A letter or other written statement contesting an application shall include evidence showing that discontinuance or reduction in service was not a contributing factor to the termination of applicant's employment, and/or that the applicant or the circumstances are not covered by the statutory criteria.

(c) The lower left corner of the envelope should be marked: "Bus Employment Protection Opposition:", followed by the applicant's name as prescribed at § 1170.2(b).

(d) Applicant may reply to any opposition within 15 days after it is filed. A motion must be filed within 15 days after the pleading it addresses is filed.

§ 1170.4 Commission action.

A decision disposing of an unopposed application will be served within 30 days after the application is filed. If the application is contested, a decision will be served within 60 days after the application is filed. Appeals are governed by 49 CFR 1115.2.

§ 1170.5 List of available jobs.

(a) Every carrier having annual gross revenues of over $3,000,000 derived from motor passenger common carrier operations shall, and any other motor passenger common carrier may, furnish to any Commission regional office a monthly list of available jobs, unless the carrier has no new job openings. The list must include a job description, job location, and the skills required for each available position.

(b) The Commission will publish and make available at all its offices a comprehensive list of available jobs, entitled *Jobs Available From Class I Motor Passenger Carriers.* A copy of the list will be mailed to each applicant, and to each eligible individual for 6 months following the Commission's determination of his eligibility, subject to renewal at his request. Additional copies will be available by paid subscription. Information may be obtained from the Office of the Secretary, Public Records Section, Interstate Commerce Commission, 12th & Constitution Avenue, NW., Washington, DC 20423.

27. Part 1331 is proposed to be revised to read as follows:

PART 1331—APPLICATIONS UNDER 49 U.S.C. 10706 TO ESTABLISH OR CONTROL AGREEMENTS BETWEEN OR AMONG CARRIERS

Sec.

Authority: 49 U.S.C. 10706 and 10321.

§ 1331.1 Form and content of application.

The application and supporting exhibits shall conform to 49 CFR Part 1104 and shall show, in the order and with the paragraph designations indicated, the following:

(a) Full name and business address of the carrier applicant(s); whether each applicant is a corporation, individual, or partnership; if a corporation, the State of incorporation; and if a partnership, the names of the partners and date of the partnership's formation.

(b) Full name and business address of each entity on whose behalf the application is filed and whether it is a corporation, individual, or partnership.

(c) Whether applicant and each entity on whose behalf the application is filed is a rail, motor, or water carrier, a household goods freight forwarder, or

express, sleeping-car, or pipeline company.

(d) If the agreement of which approval is sought pertains to a conference, bureau, committee, or other organization, a complete description of such organization, including any subunits, and of its or their functions and methods of operation, together with a description of the territorial scope of such operations, and a complete description of any working or other arrangement or relationship that such organization has with any other organization. If the agreement is of any other character, a precise statement of its nature and scope and the mode of procedure thereunder.

(e) The facts and circumstances relied upon to establish that the agreement will promote the national transportation policy at 49 U.S.C. 10101.

(f) The name, title, and address of the person to whom correspondence is to be sent.

§ 1331.2 Required exhibits.

There shall be filed with and made a part of each original application, and each copy, the following exhibits:

(a) As Exhibit 1, a true copy of the agreement.

(b) If the agreement pertains to a conference, bureau, committee, or other organization: (1) As Exhibit 2, a copy of the constitution, bylaws, or other documents or writings specifying the organization's powers, duties, and procedures, unless incorporated in the agreement filed as Exhibit 1; (2) as Exhibit 3, an organization chart; and (3) as Exhibit 4, a schedule of its charges to members or a statement showing how the expenses are divided among the members.

(c) As Exhibit 5, opinion of counsel that the application meets the requirements of 49 U.S.C. 10706, with specific reference to any specially pertinent provisions of articles of incorporation or association.

§ 1331.3 Procedure.

(a) Applicant shall serve a copy of the application by first class mail upon the regulatory body having jurisdiction over rates, fares, or charges of each State or territory covered by the agreement, and the original application filed with the Commission shall include a certificate naming the bodies upon whom the application has been served.

(b) The Commission will publish in the **Federal Register** a notice that an application has been filed under these rules and indicating how a hearing on the application may be obtained.

(c) A protest to an application should conform to 49 CFR Part 1104.

(d) The Commission's general rules of practice govern procedural matters not specifically covered by these rules.

§ 1331.4 New parties to an agreement.

Where a carrier becomes a party to an agreement which has been approved by the Commission, such approval will extend to such carrier upon the filing with the Commission by the carrier or its authorized agent of a verified statement that it has become a party to the agreement, which statement shall show the information prescribed at § 1331.1(b). Such carrier may provide transportation under joint rates or over through routes, but may not otherwise act with carriers of a different class (as defined at 49 U.S.C. 10706(d)).

§ 1331.5 Retaining antitrust immunity.

(a) Rate bureaus must comply with the terms of their agreements, as approved by the Commission. Failure to do so will result in lack of immunity for that activity.

(b) The bureaus are required to maintain detailed minutes of all meetings where immunized matters are discussed. The bureaus will be subject to withdrawal of their immunity for serious continuing violations of Commission standards, and individual tariff publications will be subject to rejection, suspension, or investigation for improprieties in the rate bureau process.

(c) Absent Commission approval, no other changes may be made in any approved agreement.

(d) For the purposes of the statute, the following definitions shall apply:

(1) A "general increase" is a proposed general adjustment of substantially all the rates published in a rate bureau's tariff(s).

(2) A "broad change in tariff structure" modifies in a relatively non-uniform fashion the relationship between most rates published in a rate bureau's tariff, and applies to a large area, either nationally or regionally.

(3) An "innovative fare" will be determined on a case-by-case basis; the Commission will, on request, issue opinions on whether particular rate proposals may be regarded as innovative. Two examples of an innovative fare are: (i) A fare for unlimited passenger travel; and (ii) an experimental fare providing for transportation at the passenger's option over the line of one or more carriers.

(4) A "promotional fare" generally has three characteristics: (i) Limited duration; (ii) attractive price or level of service quality; and (iii) some added feature in addition to those normally offered.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 90880-9180]

RIN 0648-AD02

Depletion of the Coastal-Migratory Stock of Bottlenose Dolphins in the Mid-Atlantic

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: Based on a review of the best available information on the status of the coastal-migratory stock of bottlenose dolphins in the U.S. mid-Atlantic, the National Marine Fisheries Service (NOAA Fisheries) is considering publication of a proposed rule designating this population stock as depleted under the Marine Mammal Protection Act (MMPA). This section is required by the MMPA when a species or population stock falls below its optimum sustainable population (OSP). If this population stock is designated as depleted, the MMPA requires the application of certain additional restrictions on taking and importation, and the preparation and implementation of a conservation plan to restore the sock to OSP. NOAA Fisheries is also requesting any additional scientific information on this action that may be available from interested parties, as required by the MMPA Amendments of 1988.

DATE: Comments or additional scientific information must be submitted on or before December 11, 1989.

ADDRESS: Dr. Nancy Foster, Director, Office of Protected Resources and Habitat Programs (F/PR), NOAA Fisheries, 1335 East-West Hwy., Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 301-427-2289.

SUPPLEMENTARY INFORMATION:

Background

During the summer and fall of 1987 and early 1988, an unusually large number of Atlantic bottlenose dolphins (*Tursiops truncatus*) were found dead and washed ashore (stranded) along the

U.S. east coast from New Jersey to central Florida. A number of state and Federal agencies investigated the causes and effects of this mass mortality event (die-off). The following report on the cause of the die-off is available by writing to the **ADDRESS** listed above.

Geraci, J.R. 1989. Clinical investigation of the 1987–88 mass mortality of bottlenose dolphins along the U.S. central and south Atlantic coast. Final Report to the National Marine Fisheries Service, U.S. Navy, Office of Naval Research, and the Marine Mammal Commission, April, 1989.

Dr. Geraci's report describes the evidence implicating a biological toxin as the proximate cause of the die-off. The dolphins were apparently poisoned by brevetoxin, a neurotoxin produced by the dinoflagellate *Ptychodiscus brevis*, Florida's red tide organism. Contributing to the ultimate demise of the animals was a host of microbial and environmental factors. Dr. Geraci also noted the possibility that high contaminant levels found in the dolphins' tissues (e.g., organochlorines) may have affected their resilience and rendered them more susceptible either to the toxin or to the microorganisms that eventually killed them.

NOAA's Southeast Fisheries Center reports on stock structure and abundance of the Atlantic bottlenose dolphin and has assessed the impact of the dolphin die-off. Copies of the following publications, which form the basis of our discussion of bottlenose dolphin status under the MMPA, are available by writing to the Coastal Resources Division, Southeast Fisheries Center, NOAA Fisheries, 75 Virginia Beach Drive, Miami, FL 33149:

Scott, G.P., D.M. Burn and L.J. Hansen. 1988a. The dolphin die-off: Long-term effects and recovery of the population. Proceedings of the Oceans '88 Conference. Baltimore, MD. October 31–November 2, 1988. pp. 819–823.

Scott, G.P., L.J. Hansen and D.M. Burn. 1988b. Preliminary report: status of the bottlenose dolphin stocks in the US Gulf of Mexico and US Atlantic Ocean. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD–87/88–23.

Burn, D.G. and G.P. Scott. 1988. Synopsis of available information on marine mammal-fisheries interactions in the southeastern United States: Preliminary Report. Southeast Fisheries Center, Miami, FL, Coastal Resources Division Contribution CRD–87/88–26.

Hersh, S.L. 1988a. Age class distribution of bottlenose dolphins stranded during the east coast die-off of 1987/88. NOAA Fisheries/Southeast Fisheries Center Contract Report. 45–WCNF–800633.

Hersh, S.L. 1988b. Analysis of skull and body morphometrics of bottlenose dolphins stranded during the 1987/1988 east coast die-off. NOAA Fisheries/SEFC Contract Report. 45–WCNF–800633.

Hersh, S.L. 1987. Stock structure of bottlenose dolphins (Genus *Tursiops*) in the southeastern U.S.: a review and management considerations. Final Report to NOAA Fisheries, Southeast Fisheries Center. Contract No. 40GF700715.

Rulemaking petition

The Center for Marine Conservation (CMC; formerly Center for Environmental Education) petitioned NOAA Fisheries, on November 11, 1988, to begin informal rulemaking to list the U.S. mid-Atlantic, coastal-migratory stock of bottlenose dolphins as depleted under the MMPA. On December 10, the CMC amended its petition with additional information and concerns regarding stock differentiation. CMC noted the scientific debate on the geographic "distinctness" of the coastal population and stated that all dead animals cannot with certainty be assigned to a coastal stock. In re-stating its position, the CMC recommended that NOAA Fisheries proceed with a depletion designation until such time as the question of stock differentiation is resolved. As discussed below, NOAA Fisheries believes that the stranded animals were primarily from a separate, coastal stock that migrates between Florida and New Jersey. Copies of the CMC's rulemaking petitions are available from the Information Contact listed above.

The MMPA Amendments of 1988 (Public Law 100–71) added a new section 115 to provide specific timetables and procedures for conducting status reviews, for rulemaking on depletion, and for preparing conservation plans for marine mammals. In this instance, no petition for a status report was received since the report was already completed and available in June, 1988 (Scott et al. 1988b). Based on information provided in the status report, CMC petitioned NOAA Fisheries to begin rulemaking procedures necessary to designate this stock as depleted under the MMPA. Before rulemaking can begin, however, new subsection 115(a)(2) requires publication in the **Federal Register** of a call to assist the Secretary [of Commerce] in obtaining scientific information from individuals and organizations concerned with the conservation of marine mammals, from persons in any industry which might be affected by the determination, and from academic institutions. In addition, the Secretary shall utilize, to the extent feasible, informal working groups of interested parties and other methods to gather the necessary information.

NOAA Fisheries finds that CMC's petition has substantial merit and is giving serious consideration to proposing this stock for depleted status. This advance notice of proposed rulemaking incorporates the "call for assistance" required by section 115(a)(2) and a summary review of the 1988 status report. Based on a review of any scientific submissions received as a result of this notice, and all comments received on our proposal, NOAA Fisheries will determine, prior to publication of any proposed rule, whether there is a need for informal working groups to gather additional information.

Status Report Summary

1. Stock Structure

Bottlenose dolphins are found in the U.S. Gulf of Mexico and in U.S. Atlantic waters. In the U.S. Atlantic, this species is found from Long Island, NY to the Florida Keys. North of Cape Hatteras, NC, bottlenose dolphins have a disjunct distribution with concentrations along the coast (in embayments and within several kilometers of the coast) and offshore near the continental shelf margin (from 60 to 200 kilometers from the coast). South of Cape Hatteras, the coastal/offshore distribution is less distinct.

During summer in the U.S. Atlantic, bottlenose dolphins are distributed along the coast as far north as Long Island, NY and offshore as far north as Nova Scotia, Canada. The main summertime, coastal bottlenose dolphin concentration is from North Carolina to New Jersey. During autumn, density distribution patterns observed from population surveys suggest that coastal animals migrate south to Florida. During winter, bottlenose dolphins in coastal U.S. Atlantic waters are distributed from south of Cape Hatteras to the northern and central Florida coast, but concentrate at the southern end of this range. During spring, concentrations shift northward along the coast to complete a hypothesized migratory cycle. It is not clear whether the offshore population follows a similar north-south pattern.

There appear to be both near-shore (coastal) and offshore stocks of bottlenose dolphins along the U.S. Atlantic coast and in other ocean areas. There are apparent morphological and biochemical differences between the coastal and offshore stocks found in South Africa, the eastern North Pacific and in the southeastern United States. For example, offshore animals are generally larger and have higher

concentrations of hemoglobin than coastal or warmer-water stocks. Some animals with intermediate blood characteristics have been found in the wild, suggesting some, probably low, frequency of genetic exchange between stocks. Within the coastal population there are probably local, resident stocks in certain embayments (e.g., near Savannah, GA) and a stock that migrates into and out of these embayments on a seasonal basis (coastal-migratory stock). The stranding data collected during 1987 and 1988, and the observed density distribution patterns along the U.S. Atlantic coast, support the hypothesis of a single coastal-migratory stock of bottlenose dolphins that ranges seasonally as far north as Long Island, NY and as far south as central Florida.

Both coastal-migratory and offshore stocks may have been affected by the die-off. The likelihood of an animal dying offshore, however, and then being stranded onshore is expected to be considerably less than for an animal dying near the coast. Thus, reported strandings may not include offshore animals that did not come ashore. Of 36 blood samples taken from affected animals, 35 exhibited coastal hemoglobin characteristics. One sample showed hybrid coastal/offshore characteristics. Resident, local stocks were apparently unaffected by the die-off. Best available information suggests that the observed mortality may have primarily affected the coastal-migratory stock of dolphins that ranges between Florida and New Jersey.

2. Population Abundance

Historically, about 15,000 bottlenose dolphins are thought to have lived in mid-Atlantic coastal waters (including coastal-migratory and resident stocks) based on records from the turn of the century. In 1979–81, the estimated average mid-Atlantic summer abundance of bottlenose dolphins is believed to have ranged from 4,300 to 12,900 animals (95% confidence level) including both coastal and offshore stocks, i.e., the total U.S. mid-Atlantic population. The best available information suggests that, in recent times, coastal North Carolina and Virginia supported 1,200 or more dolphins during part of the spring and summer. This number may have represented a substantial portion of the mid-Atlantic, coastal-migratory stock prior to the die-off. Population surveys of August, 1987 resulted in estimates of 350 to 1,300 animals in the coastal mid-Atlantic. Recent estimates may be conservative and represent surface abundance only.

The most direct way to assess the effect of the 1987–88 die-off on the dolphin population is to compare pre- and post die-off population abundance. In this case, consistent population abundance indices are not yet available; and, additional population survey data collection is needed from the northern and southern range of the stock. Consequently, potential impact of the die-off was estimated by comparing stranding rates reported during the die-off period to the prior 3-year average reported stranding rate. Inherent in this method of assessment is the assumption that reported stranding rate is a consistent index of stock mortality rate for the period of analysis.

During the 11 month period from June, 1987 through April, 1988, 742 stranded bottlenose dolphins were reported to the Smithsonian Institution's marine mammal stranding events program. This represents 10.11 times the average annual number of dolphins reported stranded during the previous three years. Assuming that the natural annual mortality rate is 7% (or 6.42% for 11 months), based on previously published reports, and assuming further that the rate of stranding is proportional to the mortality rate, the total mortality (m) during the 11 month period of the die-off can be estimated as $10.11 \times 6.42 = 64.9\%$. An annual birth rate (b) on the order of 11.5% has been estimated based on observations of the percent of calves in the coastal mid-Atlantic stock of dolphins affected by the die-off. Thus, a potential decline for this stock since early 1987 is estimated as $b-m = -53.4\%$

Higher assumed rates of natural mortality imply larger decreases in stock abundance. A review of the scientific literature suggests that rates of 5–10% may reasonably reflect the likely range of natural mortality in captive bottlenose dolphins. The relationship between captive dolphin natural mortality rates and wild population rates is unknown. Natural mortality rates in wild populations could be higher than in captive dolphins if (1) The risks of death due to natural causes such as disease, predation, and starvation are reduced in the captive environment, or (2) age classes with high rates of natural mortality in natural populations are under-represented in captive populations.

There are no available data to test the hypothesis that increased public awareness increases the probability of detection and reporting of stranded animals, nor to estimate the possible magnitude of change, especially along densely populated coastlines. Increases in this probability of more than 4-times over a 5–10% natural mortality range can result in estimates of population increase due to the die-off. An assumed doubling of the probability results in estimates of decline of 11.7%, 20.9%, and 34.8% for assumed annual natural mortality rates of 5%, 7%, and 10%, respectively. Alternate analysis of the stranding-rate data, stratifying over portions of the coast most densely populated, and for which increased public awareness would have the smallest expected impact on the probability of detecting and reporting strandings, consistently results in estimates of reduction greater than 40% over the 5–10% natural mortality rate range.

There is a large degree of uncertainty in the estimated magnitude of reduction in the dolphin population due to a lack of data and imprecision in estimates of natural mortality rates. Further data collection on population abundance levels and stock discreteness may reduce these uncertainties. On the basis of the best available information, however, NOAA Fisheries concludes that the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic probably declined by more than 50% as a result of the 1987–88 die-off.

3. Optimum Sustainable Population

The MMPA states that marine mammal species and population stocks should not be permitted to diminish below their OSP. NOAA Fisheries has defined OSP, in 50 CFR 216.3, as a range of population levels from the largest supportable within the ecosystem (carrying capacity) to the population level that results in maximum net productivity (MNP). MNP is the greatest net annual increment in population numbers resulting from additions to the population due to reproduction and growth, less losses due to natural mortality. MNP is often represented as a percentage of carrying capacity. For example, in northern fur seals MNP occurs when the population is at about 60% of its carrying capacity. In general, populations of large mammals appear to grow most rapidly when at numbers greater than 50% of carrying capacity.

By analogy with other large mammal populations, the population level expected to result in MNP for bottlenose dolphins is greater than 50% of carrying capacity. However, because of uncertainties regarding abundance estimates, carrying capacity has not been estimated for Atlantic or Gulf stocks of this species. Although there remain a number of uncertainties, including total mortality during the die-off, available information for the mid-

Atlantic coastal-migratory stock suggests that this stock may have been reduced by more than 50% due to the die-off. Assuming this level of stock reduction and a stable but unknown carrying capacity, NOAA Fisheries believes that this stock is likely to be below OSP and, thus, depleted under the MMPA.

A significant reduction in food availability or major changes in physical environmental factors, i.e., atmospheric or oceanographic conditions, if demonstrated, could be evidence of a change in carrying capacity for bottlenose dolphins in the coastal mid-Atlantic. But, relatively short-term, natural or man-induced mortality factors, such as increases in naturally-occurring biotoxins, would not necessarily be of such a sustained or widespread occurrence as to constitute a change in the carrying capacity of this environment for this species. We have no evidence of significant, permanent changes in this ecosystem that might prevent bottlenose dolphins from eventually attaining pre die-off levels.

The MMPA defines "depletion" to mean, among other things, "any case in which the Secretary [of Commerce], after consultation with the Marine Mammal Commission and the Committee of Scientific Advisors on Marine Mammals established under * * * this Act, determines that a species or population stock is below its [OSP]." NOAA Fisheries will request consultation and concurrence by the Marine Mammal Commission before publishing a proposed rule regarding depletion of the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic.

Consequences of a Depletion Designation

The MMPA Amendments of 1988 included a new section 114 which replaces most earlier provisions for granting incidental take authority to commercial fishermen with an interim exemption system valid until October 1, 1993. The purpose of the new system is to provide better information on interactions between commercial fisheries and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' inability to make OSP determinations for all species affected by the fisheries. The information collected in conjunction with the exemption system and information on the sizes and trends of marine mammal populations will be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries after October 1, 1993.

Depleted stocks may be taken under the interim exemption incidental to commercial fishing operations; however, no intentional lethal takes of depleted stocks or any cetaceans are authorized. Thus, a depletion finding for the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic will not necessarily affect commercial fisheries at least until 1993. If incidental take in a fishery is found to have a significant impact on a marine mammal population, NOAA Fisheries may issue emergency rules or conditions on exemptions under section 114 to mitigate adverse impacts.

Under the MMPA, small incidental takes that have a negligible impact on depleted stocks may be authorized for certain activities other than commercial fishing; and permits may be issued authorizing taking of depleted species for research purposes. The MMPA requires, however, that, when issuing a permit for research involving lethal taking from a depleted stock, NOAA Fisheries first determine that the research will directly benefit the stock, or that the research fulfills a critically important research need.

Depleted stocks may not be taken for public display purposes; however, the mid-Atlantic, coastal-migratory stock is not a source of public display animals. In recent years, permanent removals form the wild of bottlenose dolphins for public display have been authorized from Gulf of Mexico stocks and from the local population in the Indian-Banana River area on Florida's east coast. The status of these stocks relative to OSP has not yet been determined.

If the coastal-migratory stock of bottlenose dolphins in the mid-Atlantic is designated as depleted, NOAA Fisheries will prepare a Conservation Plan, as required by section 115(b) of the MMPA, for the purpose of conserving and restoring the stock to its OSP. In addition to the status of the stock and the cause of its decline, the Plan will include: (a) An assessment of the existing and possible threats to this population such as pollution and commercial fishing, (b) a discussion of critical information needs such as post die-off abundance indices and stock differentiation, (c) a description of research and management objectives, and (d) a schedule for implementation.

Dated: October 3, 1989.

James E. Douglas, Jr.,

Acting Assistant Administrator for Fisheries

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