

Sunshine Act Meetings

Federal Register

Vol. 55, No. 193

Thursday, October 4, 1990

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

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., October 15, 1990.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: Review of open season results.

CONTACT PERSON FOR MORE

INFORMATION: Tom Trabucce, Director, Office of External Affairs, (202) 523-5660.

Dated: October 1, 1990.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 90-23587 Filed 10-2-90; 10:04 am]

BILLING CODE 6760-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

DATE AND TIME: October 25, 1990, 11:15 a.m. to 4:30 p.m., October 26, 1990, 9:00 a.m. to 4:30 p.m.

STATUS: Open.

MATTERS TO BE DISCUSSED:

- Opening Remarks, Chairman Reid
- Approval of June Minutes
- Approval of Agenda
- Guest Speaker, Patricia Breivik, Chair, National Forum on Information Literacy
- Report, Hearings from Native Americans
- Chairman's Report
- Executive Committee Report and Recommendations

NCLIS Executive Director's Report (October 26)

Guest Speaker, Richard Akeroyd, Connecticut State Librarian
White House Conference Activities
NCLIS Committee Reports
Long-Term NCLIS Goal Planning and Program Priorities

Special provisions will be made for handicapped individuals by calling Barbara Whiteleather (202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: Peter R. Young, Executive Director, 111 18th Street NW., (Suite 301), Washington, DC 20036, 202-254-3100.

Dated: October 1, 1990.

[FR Doc. 90-23648 Filed 10-3-90; 1:48 pm]

BILLING CODE 7527-01-M

U.S. RAILROAD RETIREMENT BOARD NOTICE OF PUBLIC MEETING

Notice is hereby given that the Railroad Retirement Board will hold a meeting on October 11, 1990, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The agenda for this meeting follows:

Portion Open to the Public

- (1) RRB Automation Plan.
- (2) Congressional Reaction to the Possible Closing of the Raleigh, North Carolina, Base Point.
- (3) Incentive Awards Plan.
- (4) Satellite Claims Processing Demonstration Project.
- (5) Proposed Occupational Disability Physical Standards.
- (6) Regulations—Parts 202 and 301, Employers Under the Railroad Retirement

Act and Railroad Unemployment Insurance Act.

(7) Regulations—Part 323, Nongovernmental Plans for Unemployment or Sickness Insurance.

(8) Regulations—Part 320, Initial Determinations Under the Railroad Unemployment Insurance Act and Review of and Appeals from Such Determinations.

(9) Regulations—Parts 320 and 340, Initial Determinations Under the Railroad Unemployment Insurance Act and Reviews of and Appeals from Such Determinations; Recovery of Benefits.

(10) Regulations—Part 330, Determination of Daily Benefit Rates.

(11) Regulations—Part 203, Employees Under the Act.

(12) Regulations—Part 216, Eligibility for an Annuity.

(13) Regulations—Part 255, Recovery of Overpayments.

(14) Regulations—Part 200, General Administration.

(15) Regulations—Parts 200, 209 and 234, Railroad Employers' Reports and Responsibilities; Lump-Sum Payments.

(16) Employee Status—DJR Inc.—Legal Opinion L-90-58.

(17) Employee Status—Art Hathaway Backhoe Service.

Portion Closed to the Public

(A) Appeal from Referee's Denial of Disability Annuity, Michael L. Yankey.

(B) Appeal of Nonwaiver of Overpayment, Richard W. Hare.

The person to contact for more information is Beatrice Ezerski, Secretary to the Board, COM No. 312-751-4920, FTS No. 386-4920.

Dated: October 1, 1990.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 90-23634 Filed 10-2-90; 2:43 pm]

BILLING CODE 7905-01-M

Corrections

Federal Register

Vol. 55, No. 193

Thursday, October 4, 1990

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 64 and 98

[CGD 84-043]

RIN 2115-AB69

Portable Tanks for the Transportation of Bulk Hazardous Materials by Vessel

Correction

In rule document 90-21024 beginning on page 37406, in the issue of Tuesday, September 11, 1990, make the following correction:

§ 64.11 [Corrected]

1. On page 37410, in the first column, in § 64.11(e), in the third line, "guage" should read "gauge".

§ 98.30-5 [Corrected]

2. On page 37411, in the third column, in § 98.30-5, in the sixth line, the paragraph designation (ii) was omitted, and in the seventh line, "40 CFR" should read "49 CFR".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 26324; Notice No. 90-20]

RIN 2120-AD33

Airworthiness Standards; Emergency Exit Provisions for Normal, Utility, Acrobatic and Commuter Category Airplanes

Correction

In proposed rule document 90-20372 beginning on page 35544, in the issue of Thursday, August 30, 1990, make the following corrections:

1. On page 35545, in the first column, in the sixth line, "December 8, 1990)" should read "December 8, 1980)".

2. On the same page, in the same column, in the first complete paragraph, in the 23rd line, "of" should read "on".

3. On the same page, in the same column, in the second complete paragraph, in the 11th line, "exists" should read "exits".

4. On the same page, in the second column, in the 15th line, "such" should read "each".

5. On page 35546, in the third column, in the 17th line, "exist" should read "exits" each time it appears..

6. On page 35548, in the first column, in the 12th line, after "airplane" insert "and".

7. On the same page, in the second column, in the 18th line, "§ 23.812(i)" should read "§ 25.812(i)".

8. On the same page, in the same column, in the 24th line, "§ 23.812(j)" should read "§ 25.812(j)".

9. On the same page, in the same column, in the 32nd line, "§ 23.812(k)" should read "§ 25.812(k)".

10. On the same page, in the same column, in the last line, "§ 23.813" should read "§ 25.813".

11. On the same page, in the third column, in the 20th line, "§ 23.813" should read "§ 25.813".

12. On page 35549, in the first column, in the last paragraph, in the third line, "§ 25.895," should read "§ 25.805,".

13. On page 35550, in the first column, under *Remaining Provisions of Proposed Rule*, in the second line, "exists" should read "exits".

§ 23.807 [Corrected]

14. On page 35551, in the third column, in § 23.807(d)(3), in the seventh line, "exist" should read "exits".

§ 23.812 [Corrected]

15. On page 35552, in the third column, in § 23.812(f)(3), "conditions" should read "condition".

§ 23.813 [Corrected]

16. On page 35553, in the second column, in § 23.813, in the sixth line from the bottom, "choose" should read "chooses".

§ 23.815 [Corrected]

17. On the same page, in the third column, in amendatory instruction 10, in the second line, "existing" was misspelled.

BILLING CODE 1505-01-D

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91 and 93

[Docket No. 26351; SFAR No. 60]

Air Traffic Control System Emergency Operation

AGENCY: Federal Aviation Administration (FAA), DOT.**ACTION:** Final rule; request for comments.

SUMMARY: The Administrator of the FAA has determined that, if the sequestration provisions of the Gramm-Rudman-Hollings Act take effect on October 1, 1990, an emergency will exist requiring that immediate measures be taken in order to maintain air safety. All FAA employees, including air traffic controllers, may expect to be furloughed for a specified number of days within each pay period of work. If the furlough is implemented, such action will result in a reduction in the number of air traffic controllers available on the job and will significantly affect the FAA's ability to operate the Air Traffic Control (ATC) system and provide full ATC services. This Special Federal Aviation Regulation authorizes special provisions for the operation of the ATC system during the period that the emergency conditions exist in order to provide for the safe and orderly movement of air traffic.

EFFECTIVE DATE: September 28, 1990. The FAA will accept comments on the rule as long as it remains in force.

FOR FURTHER INFORMATION CONTACT: Mr. John M. Broderick, Program Manager, Civil Operations, ATM-100, Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8343. Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-204) Docket No. 26351, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., or by calling (202) 267-3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although this action is in the form of an emergency final rule which involves immediate flight safety throughout the United States, and, thus, was not preceded by notice and public procedure, comments are invited. Comments on the rule should be submitted to the address indicated above. Comments are specifically invited on any aspect of this emergency action which identifies a need to modify the regulation should the occasion arise in the future to operate the ATC system under emergency conditions. Commenters wishing the FAA to acknowledge receipt of their comments in response to this rule must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26351." The postcard will be date/time stamped and returned to the commenter.

Air Traffic Control System Emergency Operations

Background

If necessary, the FAA will begin a furlough of its employees beginning October 1, 1990. A furlough is being considered because the agency's operating funds may be significantly reduced pursuant to the Balanced Budget and Emergency Deficit Control Act of 1985 (P.L. 99-177), commonly known as the Gramm-Rudman-Hollings Act, as amended. For every nonexempted budget account in the Federal Government, the Gramm-Rudman-Hollings Act requires that agency expenditures be cut on a uniform basis. This reduction is referred to as "sequestration". The Gramm-Rudman-Hollings Act requires that the President's sequestration order apply this uniform percentage to every "program, project, and activity" (PPA) within each nonexempted budget account.

A furlough of the extent estimated to be required will result in a daily reduction of air traffic controllers operating on the job. The partial loss of the workforce will significantly affect the FAA's ability to operate the air traffic control (ATC) system and reduce the level of ATC services the FAA is capable of providing. The level of demand on the ATC system depends on several variables, including inclement weather, availability of equipment, and military priorities for national security. For example, during good weather conditions, there is less demand on the ATC system by general aviation users.

As a second example, the military may be given priority for ATC services due to the current Persian Gulf crisis.

However, the FAA is assessing current policies and developing new strategies to maximize service to the greatest number of users during a period of reduced resources. For example, ATC facility staff personnel, including staff regularly assigned responsibility for training, planning and procedures, military coordination, and special programs, will be used to augment the controller workforce.

Additionally, by utilizing traffic management procedures consistent with the pro rata reduction of services to users, an orderly movement of traffic will be better maintained. Such procedures will proportionally affect all civil users. Traffic management procedures use the published, advertised air carrier schedules to the maximum extent possible and allow the air carrier operators maximum control over their individual operations. These procedures also permit normal flight planning and the use of fuel conservation techniques by the users. Traffic management procedures can be applied to a single airport or to the system as a whole and are fully coordinated in advance, and updated as conditions at each airport change. Under normal conditions, the FAA's Air Traffic Control System Command Center has the ability to maintain an efficient flow of air traffic. With reduced ATC resources, it will be necessary to activate a more restrictive plan to reduce the number of scheduled instrument flight rules (IFR) operations and to require reservations for general aviation IFR flight activity. The two parts of this plan are designated as the National Air Traffic Reduced Complement Operations Plan and the General Aviation Reservation Program.

Under the rule adopted, the Director of the Office of Air Traffic System Management (Director) is authorized, as conditions warrant, to restrict, prohibit or permit visual flight rules (VFR) and/or IFR operations at any airport, terminal control area (TCA) or other terminal and en route airspace; to give priority at any airport to flights that are of military necessity, medical emergency flights, Presidential flights, and flights transporting critical Government employees; and to implement at any airport traffic management procedures including pro rata reduction of air carrier, commercial operator and general aviation operations.

The National Air Traffic Reduced Complement Operations Plan

General

When necessary, the National Air Traffic Reduced Complement Operations Plan (RCOP) will be implemented by issuance of an order of the Director. The RCOP assumes that an average of 75 percent of qualified controllers will be available for work. Flights necessary for National defense purposes and emergency flights will receive priority and will be accommodated ahead of all other flights. IFR clearances will be issued only in accordance with the provisions of the RCOP. VFR in terminal control areas (TCAs) may be restricted to arrivals and departures only; i.e., VFR flight in TCAs for purposes of transiting may not be authorized. However, restrictions will be relaxed or eliminated when sufficient ATC staffing is available to provide the requested services. Orders and information necessary to maintain the integrity of the ATC system will be disseminated, in accordance with § 91.139 of the FAR, by NOTAMs.

The RCOP

The National Air Traffic Reduced Complement Operations Plan will be the means for constraining air traffic demand to meet the anticipated reduced capacity level of the air traffic system due to Gramm-Rudman-Hollings budgetary constraints.

By controlling the flow of traffic in and out of key airports, the air traffic operating in the entire en route air traffic environment can be safely controlled or restricted as needed. Key airports, listed in Appendix 1, were designated from among the nations busiest airports since operations at those airports have the greatest impact on overall system demand. Each of the ATC facilities serving key airports developed an hourly airport acceptance rate (AAR) and an hourly airport departure rate (ADR), for the reduced staffing that may be required by the furlough action. These AAR and departure rates equate to the airports' reduced hourly capacities. The figures developed are based on best-case VFR conditions. Situations involving adverse weather conditions or other capacity limiting phenomena will be controlled by the Air Traffic Control System Command Center (ATCSCC) through normal traffic management initiatives.

The facilities were given the following specific assumptions to use in the development of hourly arrival and departure rates.

- Each person receives 2.5 days furlough per pay period—Equates to 25 percent reduction in staffing
- No overtime
- No annual leave or administrative leave in lieu of furlough
- No compensatory time
- No work beyond normal hours permitted/suffered
- Normal sick leave
- No on-the-job training
- Use of staff to supplement operation
- Reduced operational capabilities of stand alone TRACONS such as New York and Oakland Bay will influence airport AAR and ADR.

A comparison was made between the arrival and departure rates established by the air traffic facilities established at the key airports and the Official Airline Guide (OAG). The comparison was made to determine the percentage of traffic reduction required to meet the capacity level.

To implement this RCOP, each user operating at key airports will be required to reduce its scheduled arrivals and/or departures at each key airport by a percentage of its total flights in each hour. By multiplying the percentage reduction by the number of scheduled arrivals or departures at that airport during that hour, the user determines the number of flights to be cancelled to meet the requirements of the RCOP. Cancellations are to be sent to the ATCSCC Automation Staff so that the ATC data base can be updated. This method of reducing the number of flights impacts scheduled operators in proportion to the size of their operations at each airport, through a proportional reduction of each scheduled operator's normal schedule of flights. The FAA believes that this is the most equitable means of reducing demand on the ATC system.

Operational priority will be provided to flights identified by the Department of Defense (DOD) as necessary for Desert Shield and support activities. Other DOD activities will be handled on a case-by-case basis in accordance with reasonable priority identified by DOD. Flight service stations and the National Flight Data Center will handle safety-related traffic and duties and perform other services if workload and resources permit. Service within TCAs and airport radar service areas may be terminated during the period of reduced staffing. General aviation activity will be reduced as necessary through the General Aviation Reservation (GAR) Program. International flights will not be included in the initial phase of this plan. (Domestic legs of international flights will be included.)

The terms of the National Air Traffic Reduced Complement Operations Plan may be summarized as follows:

1. This plan is applied to all operations of air carriers, commuter operators, and general aviation operators at the key airports identified. The key airports initially designated under this plan are identified in Appendix 1. The Director may add or delete key airports as necessary by NOTAM.

2. The number of hourly arrivals and departures used as the basis for reductions at the key airports is determined by averaging the general aviation historical data and the OAG data for October 1, 1990 for that airport.

3. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAG.

4. Unscheduled flights such as charters, training, extra sections, ferry flights, etc., to airports designated by the RCOP will be approved on an individual basis by the ATCSCC if system capacity permits.

5. Users will determine their level of operations by taking the reduction percentage, multiplied by the number of normally scheduled arrivals or departures and subtracting the result from the number normally operated. The remainder should be rounded to the nearest whole number. Point 5 should always be rounded up. When only one scheduled arrival or departure is planned for a single hour, that operation does not need to be cancelled.

The Director may make adjustments to the plan, as necessary, 2-4 weeks after implementation. The capacities of the key airports could be adjusted up or down as necessary.

Need for Immediate Action

This action is similar to the action taken in 1981 that responded to a predicted strike by air traffic controllers. However, unlike the current budget situation, the FAA had sufficient time to respond to that strike and, therefore, was able to develop and publish for public comment a draft National Air Traffic Control Contingency Plan (NATCC) (45 FR 75096; November 13, 1980). Numerous comments were received. The NATCC was revised and updated based on those comments. The contingency plan was subsequently adopted (46 FR 15402; March 5, 1981).

It is now necessary to implement similar actions and procedures for the National Air Traffic Reduced Complement Operations Plan. While there is not sufficient time to precede this emergency rule with notice and a

- Furloughs would begin October 1.

public comment period, aviation industry representatives, commercial operators, and news media were invited to a meeting at FAA Headquarters in Washington, DC., on September 19, 1990, to be briefed on the plan and to provide comments to the FAA staff. A follow-up meeting of affected carriers was held on September 24, 1990, in response to a request by the Air Transport Association. The commercial entities and segments of the aviation industry impacted by this action, and the actions taken by the FAA in 1981 and being taken now are, for the most part, very similar. In adopting this plan, the FAA has considered both the comments received on the 1981 proposed plan and experience with implementation of that plan, as well as comments received at the meetings of September 19 and 24. The rule and plan adopted incorporate some of those comments. The FAA has determined that an emergency exists which is caused by the imminent action of the proposed furlough. Further, the situation dictates the immediate adoption of this regulation in the interest of safety in air commerce. Therefore, I find that further notice and public procedure are impracticable and contrary to the public interest; I further find for the same reasons that good cause exists for making this regulation effective in less than 30 days after its publication in the Federal Register.

Regulatory Evaluation

The FAA has determined that this rule is an emergency regulation under the provisions of Section 8 of Executive Order 12291 and paragraphs 9.k and 10.g of the Department of Transportation's Regulatory Policies and Procedures. It is impracticable for the FAA to prepare a regulatory evaluation of the rule adopted, because the safety and efficiency of the national air transportation system require immediate implementation of the rule.

Adoption of the Rule

Accordingly, the Federal Aviation Administration is amending part 91 and part 93 of the Federal Aviation Regulations, 14 CFR parts 91 and 93, by the adoption of Special Federal Aviation Regulation No. 60, as follows:

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 31(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq;

E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2402, and 2424; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

3. Special Federal Aviation Regulation No. 60 is added to parts 91 and 93 to read as follows:

Special Federal Aviation Regulation No. 60—Air Traffic Control System Emergency Operation

1. Each person shall, before conducting any operation under the Federal Aviation Regulations (14 CFR chapter I), be familiar with all available information concerning that operation, including Notices to Airmen issued under § 91.139 and, when activated, the provisions of the National Air Traffic Reduced Complement Operations Plan available for inspection at operating air traffic facilities and Regional air traffic division offices, and the General Aviation Reservation Program. No operator may change the designated airport of intended operation for any flight contained in the October 1, 1990, OAC.

2. Notwithstanding any provision of the Federal Aviation Regulations to the contrary, no person may operate an aircraft in the Air Traffic Control System:

a. Contrary to any restriction, prohibition, procedure or other action taken by the Director of the Office of Air Traffic Systems Management (Director) pursuant to paragraph 3 of this regulation and announced in a Notice to Airmen pursuant to § 91.139 of the Federal Aviation Regulations.

b. When the National Air Traffic Reduced Complement Operations Plan is activated pursuant to paragraph 4 of this regulation, except in accordance with the pertinent provisions of the National Air Traffic Reduced Complement Operations Plan.

3. Prior to or in connection with the implementation of the RCOP, and as conditions warrant, the Director is authorized to:

a. Restrict, prohibit, or permit VFR and/or IFR operations at any airport, terminal control area, airport radar service area, or other terminal and en route airspace.

b. Give priority at any airport to flights that are of military necessity, or are medical emergency flights, Presidential flights, and flights transporting critical Government employees.

c. Implement, at any airport, traffic management procedures, that may include reduction of flight operations. Reduction of flight operations will be accomplished, to the extent practical, on a pro rata basis among and between air carrier, commercial operator, and general aviation operations. Flights cancelled under this SFAR at a high density traffic airport will be considered to have been operated for purposes of part 93 of the Federal Aviation Regulations.

4. The Director may activate the National Air Traffic Reduced Complement Operations Plan at any time he finds that it is necessary for the safety and efficiency of the National Airspace System. Upon activation of the RCOP and notwithstanding any provision of the FAR to the contrary, the Director is authorized to suspend or modify any airspace designation.

5. Notice of restrictions, prohibitions, procedures and other actions taken by the Director under this regulation with respect to the operation of the Air Traffic Control system will be announced in Notices to Airmen issued pursuant to § 91.139 of the Federal Aviation Regulations.

6. The Director may delegate his authority under this regulation to the extent he considers necessary for the safe and efficient operation of the National Air Traffic Control System.

Issued in Washington, DC, on September 28, 1990.

James B. Busey,
Administrator.

[Note: This appendix will not appear in the Code of Federal Regulations.]

Appendix 1—Key Airports

ATL Atlanta Hartsfield International.
BNA Nashville International.
BOS Boston Logan International.
CLT Charlotte-Douglas International.
CVG Greater Cincinnati International.
DAL Dallas-Love.
DAY Cox-Dayton International.
DCA Washington National.
DEN Stapleton International.
DFW Dallas-Fort Worth International.
DTW Detroit Metropolitan Wayne County.
EWR Newark International.
FLL Ft. Lauderdale-Hollywood International.
HOU William B. Hobby.
IAD Washington-Dulles International.
IAH Houston Intercontinental.
IND Indianapolis International.
JFK John F. Kennedy International.
LAX Los Angeles International.
LGA La Guardia.
MCO Orlando International.
MDW Chicago Midway.
MEM Memphis International.
MIA Miami International.
ORD Chicago-O'Hare International.
PBI Palm Beach International.
PHL Philadelphia International.
PHX Phoenix Sky Harbor International.
PIT Greater Pittsburgh International.
RDU Raleigh-Durham International.
SAN San Diego-Lindbergh International.
SEA Seattle-Tacoma International.
SFO San Francisco International.
SJC San Jose International.
SLC Salt Lake City International.
STL Lambert-St. Louis International.

[FR Doc. 90-23444 Filed 10-3-90; 8:45 am]

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Federal Register

Thursday
October 4, 1990

PART III

Department of Transportation

49 CFR Parts 27 and 37

Transportation for Individuals With
Disabilities; Final Rule; Request for
Comments

DEPARTMENT OF TRANSPORTATION

49 CFR Part 27

[Docket 47192; Notice 90-28]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is revising its regulation to implement section 504 of the Rehabilitation Act of 1973, as amended, and section 16 of the Urban Mass Transportation Act of 1964, as amended, to be consistent with a court decision invalidating a portion of that rule. This rule is also responsive to comments on a March 1990 NPRM on this subject.

DATES: This rule is effective November 19, 1990. Comments should be received by November 5, 1990. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 47192, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at this address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington, DC 20590, Room 9316, 202-366-4011. Taped copies of the NPRM are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of

1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. The new section did not require equal access to transit for disabled persons or even comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.

Last year, the U.S. Court of Appeals for the Third Circuit determined that, while it was appropriate for the Department to take costs into account in formulating the rule, the three percent cost cap mechanism was arbitrary. The court directed the Department to revise the rule consistent with its opinion. The rule remains in effect pending the promulgation of a new final rule. Under a court-specified schedule, the Department agreed that a final rule would be issued by September 21, 1990.

Meanwhile, consistent with the Department's commitment to implementing the policies embodied in the ADA, then under consideration by Congress, the Department proposed to replace the existing mass transit regulation with one that adopted these policies (55 FR 11120; March 26, 1990). This NPRM covered requirements for the acquisition of accessible vehicles,

provision of supplemental paratransit service, alternative mechanisms for dealing with undue financial burdens of supplemental paratransit, and administrative provisions. The NPRM specifically noted that one alternative that the Department retained was to modify the existing section 504 rule simply by deleting the "cost cap" provision, which would fully meet the Department's legal obligations under the court decision.

On July 26, 1990, President Bush signed the ADA. As discussed in the preamble of the final rule establishing 49 CFR part 37, also published in today's *Federal Register*, the Department is issuing a final rule at this time to carry out the accessible vehicle acquisition requirements of the ADA and related requirements. That final rule also responds to comments on the March 1990 NPRM on these accessibility issues. Other issues on which comment was sought in the March 1990 NPRM (i.e., supplemental paratransit, undue financial burden, public participation) will be incorporated in a new NPRM, to be published subsequently, to implement the remainder of the ADA's transportation provisions.

The Final Rule

In view of these developments, the Department has decided to meet its obligation to the courts to modify its existing section 504 rule by issuing this final rule, amending 49 CFR part 27. This amendment has three major provisions.

A. The Cost Cap

This rule deletes the three percent "cost cap," the provision of the rule which the courts invalidated. The effect of this amendment will be to require any UMTA recipient electing to meet its part 27 obligations through a special service system to meet all service criteria, regardless of the cost of doing so.

Relatively few comments to the March 1990 NPRM addressed the issue of whether the option of removing the cost cap was a good one. Four transit authorities supported the idea, and one disability group opposed it (it appears that the latter commenter's objections are largely mooted by the enactment of the ADA, the promulgation of 49 CFR part 37, and the maintenance of effort provisions discussed below).

B. Maintenance of Effort

Under part 27, a recipient has the discretion, after following public participation procedures and obtaining UMTA approval of a significant program amendment, of switching its mode of compliance. For example, a recipient

complying with the rule through a special service system can decide, instead, to comply through an accessible bus system. Faced with an ADA requirement to purchase accessible buses and an amended part 27 that removes the cost cap, a recipient may have considerable incentive to make just such a change.

A switch of this sort, which is permitted under part 27, could have one notable negative effect. A recipient which complies with part 27, as it stands now, through an accessible bus system need not maintain any special service system. Therefore, a recipient which made this change could abandon or severely cut back its special service system, only to have to rebuild it when the supplemental paratransit requirements of the ADA become effective in early 1992. Such a course of action would be both inefficient in terms of use of resources and very disruptive of existing service patterns in the meantime. For recipients with little current accessible bus service, it would also mean a significant service gap to disabled passengers.

To prevent this negative effect, this rule adds a "maintenance of effort" provision. This provision requires any recipient which now complies with part 27 through a special service system, and wishes to switch to an accessible bus system as its mode of compliance, to maintain at least its existing level of special service pending the effective date of ADA supplemental paratransit requirements. The same requirement would apply to the special service component of a mixed system.

C. Compliance With ADA Requirements and UMTA Policy

The Department believes that, for transit providers receiving UMTA funds, compliance with requirements under ADA is essential to compliance with nondiscrimination obligations under section 504 as well. Consequently, a provision is being added to part 27 to make compliance with the Department's ADA rule a condition of receiving UMTA financial assistance. For example, an UMTA-assisted transit authority that fails, after August 25, 1990, to issue solicitations calling for new accessible buses, would be in violation of part 27 as well as the Department's ADA rule, and would be subject to funding sanctions under part 27.

This provision also tells UMTA recipients to notify UMTA if they intend to purchase inaccessible vehicles on the basis of solicitations issued before the August 26, 1990, effective date for purchase of accessible vehicles under

the ADA (e.g., a solicitation issued some years ago and under which extensions or new orders of buses may be made today). This information is required to facilitate UMTA's policy concerning the participation of UMTA financial assistance in the purchase of inaccessible vehicles. This policy, consistent with the Administration's support of the ADA bills, antedated the enactment of the ADA. UMTA has taken the position, under its discretionary grant authority, that it will no longer allow UMTA funds to participate in the acquisition of inaccessible buses and other vehicles, subject to review on a case-by-case basis.

Regulatory Process Matters

This rule is not a major rule under Executive Order 12291. It is a significant rule under the Department's Regulatory Policies and Procedures. There are not sufficient Federalism impacts to warrant a Federalism assessment. The Department certifies that there are not significant economic effects on a substantial number of small entities.

The maintenance of effort provision and the provision linking compliance with the ADA to compliance with part 27 were not part of the March 1990 NPRM. The Department is issuing these provisions as final rules at this time. Without the maintenance of effort provision, the removal of the cost cap could result in the negative consequence outlined above. The removal of the cost cap is necessary at this time in order to comply with the mandate of the court. Without the link between part 27 and ADA compliance, UMTA would not have an effective sanction mechanism for any recipients which failed to comply with ADA requirement. These reasons satisfy the Administrative Procedure Act's provision that a rule may be issued without prior opportunity for comment if such an opportunity would be unnecessary, impracticable, or contrary to the public interest. However, the Department is requesting comment on these two provisions for 30 days. If comments provide sufficient reason for doing so, the Department will modify the provisions prior to the effective date of this amendment.

List of Subject in 49 CFR Part 27

Mass transportation, Handicapped.

Issued this 28th day of September 1990, at Washington, DC.

Samuel K. Skinner,

Secretary of Transportation.

For the reasons set forth in the preamble, 49 CFR part 27 is amended as follows:

PART 27—[AMENDED]

1. The authority citation for 49 CFR part 27 continues to read as follows:

Authority: Sec. 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); sec. 18(a) of the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1612(a)); sec. 165(b) of the Federal-aid Highway Act of 1973 (49 U.S.C. 142 note). Subpart E is also issued under sec. 317(c) of the Surface Transportation Assistance Act of 1962 (49 U.S.C. 1612(d)).

2. The Table of Contents for subparts A and E of 49 CFR part 27 is revised to read as follows:

Subpart A—General

- Sec.
- 27.1 Purpose.
- 27.3 Applicability.
- 27.5 Definitions.
- 27.7 Discrimination prohibited.
- 27.9 Assurance required.
- 27.11 Remedial action, voluntary action, and compliance planning.
- 27.13 Designation of responsible employee and adoption of grievance procedures.
- 27.15 Notice.
- 27.17 Effect of State or local law.
- 27.19 Compliance with Americans with Disabilities Act requirements and UMTA policy.

Subpart E—Mass Transportation Services for Individuals With Disabilities

- Sec.
- 27.81 Program requirement.
- 27.83 Public participation and coordination.
- 27.85 Submission and review of program.
- 27.87 Provision of service.
- 27.89 Monitoring.
- 27.91 Requirements for small recipients.
- 27.93 Multi-recipient areas.
- 27.95 Full performance level.
- 27.97 Maintenance of effort.
- 27.99 [Reserved]
- 27.101 Technical exemptions.
- 27.103 Alternate procedures for recipients in States administering the section 5, 9, and 9A programs.

Appendix to Subpart E

3. By adding a new § 27.19 thereof, to read as follows:

§ 27.19 Compliance with Americans with Disabilities Act requirements and UMTA policy.

(a) Recipients subject to this Part shall comply with all applicable requirements of the Americans with Disabilities Act (ADA) of 1990 (Pub. L. 101-336) and the Department's regulations implementing the ADA (49 CFR part 37). Such compliance is a condition of receiving Federal financial assistance from the Department of Transportation. Any recipient not in compliance with this requirement shall be subject to enforcement action under subpart F of this part.

(b) Consistent with UMTA policy, any recipient of Federal financial assistance from the Urban Mass Transportation Administration whose solicitation was made before August 26, 1990, and is for one or more inaccessible vehicles, shall provide written notice to the Secretary (e.g., in the case of a solicitation made in the past under which the recipient can order additional new buses after the effective date of this section). The Secretary shall review each case individually, and determine whether the Department will continue to participate in the Federal grant, consistent with the provisions in the grant agreement between the Department and the recipient.

§ 27.85 [Amended]

4. By removing paragraph (a)(3) from § 27.85.

§ 27.95 [Amended]

5. By removing the words "subject to the limit on required expenditures provided for in § 27.97 of this subpart" from the second sentence of paragraph (a) of § 27.95, and ending that sentence with a period after the word "section."

6. By revising § 27.97 to read as follows:

§ 27.97 Maintenance of effort.

(a) Any recipient which, before the effective date of this section, has complied with this Subpart through a special service system or a mixed system, may change its mode of compliance to an accessible bus system. Such a change is subject to the public participation and plan approval requirements of §§ 27.83(e) and 27.85 of this subpart.

(b) Any recipient which changes its mode of compliance with this subpart as provided in this section shall maintain at least the level of special service it is providing on the date of issuance of this section, pending the effective date of final rules implementing the requirements of section 223 of the Americans with Disabilities Act (Pub. L. 101-336), with respect to paratransit as a complement to fixed route service.

§ 27.99 [Removed and Reserved]

7. By removing and reserving § 27.99 thereof.

Appendix to Subpart E—[Amended]

8. By removing from the Appendix to Subpart E the paragraph beginning "Subparagraph (a)(3) also requires * * * under the heading "Section 27.85 Submission and review of program;" the paragraphs beginning "Section 27.97 provides that recipients * * *," "If a recipient cannot provide service that fully meets the criteria * * *," "This

criterion is subject to 'tradeoff' * * * and "The service area criterion is subject to 'tradeoff' * * * under the heading "Section 27.95 Full performance level;" the portion of the appendix entitled "Section 27.97 Limit on required expenditures;" and the portion of the appendix entitled "Section 27.99 Eligible expenses."

[FR Doc. 90-23438 Filed 10-3-90; 8:45 am]

BILLING CODE 4910-62-M

49 CFR PART 37

[Docket Number 46861; Enactment]

RIN 2105-AB53

Transportation for Individuals With Disabilities

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule; request for comments.

SUMMARY: The Department is taking regulatory action to implement those portions of the Americans with Disabilities Act of 1990 that require private and public transportation providers to acquire accessible vehicles beginning August 26, 1990. This rule also incorporates the Department's response to comments on the accessible motor vehicle provisions of a March 1990 notice of proposed rulemaking to amend the Department's rule implementing section 504 of the Rehabilitation Act of 1973.

DATES: This rule is effective October 4, 1990. Comments should be received by January 2, 1991. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to Docket Clerk, Docket No. 46861, Department of Transportation, 400 7th Street, SW., Washington, DC 20590, Room 4107. For the convenience of persons who will be reviewing the docket, it is requested that commenters provide duplicate copies of their comments. Comments will be available for inspection at his address Monday through Friday from 9 a.m. through 5:30 p.m. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The docket clerk will date-stamp the postcard and mail it to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and

Enforcement, Department of Transportation, 400 7th St., SW., Room 10424, Washington, DC 20590. Telephone 202-366-9306 (voice); 202-755-7687 (TDD). For UMTA-related questions, Susan Schruth, Office of Chief Counsel, Urban Mass Transportation Administration, 400 7th Street, SW., Washington DC 20590, Room 9316. 202-366-4011. Taped copies of the final rule are available on request.

SUPPLEMENTARY INFORMATION:

Background

Since 1977, the Department has issued a series of regulations to implement section 504 of the Rehabilitation Act of 1973, section 16 of the Urban Mass Transportation Act, and related statutes with respect to mass transit services for persons with disabilities. A 1977 Urban Mass Transportation Administration (UMTA) regulation required Federally-funded transit authorities to make "special efforts" to provide transportation services to such persons. In 1979, the Department replaced the 1977 rule with a regulation to require the purchase of accessible buses and the retrofit of rail mass transit systems for accessibility. In a suit brought by the transit industry, the courts found that the 1979 rule exceeded the Department's authority under section 504 by imposing undue financial burdens on transit authorities.

In 1981, in response to this court decision, the Department published an interim final rule that, in effect, revived the 1977 "special efforts" approach. Responding to concerns that service provided by transit authorities under this rule was inadequate, Congress added a new section 16(d) to the UMTA Act in 1983. While the new section required the Department to issue a rule containing minimum service criteria for service to disabled persons, it did not require equal access to transit for disabled persons or comparable service. It did require the Department to issue a new rule containing minimum service criteria for service to disabled passengers.

The Department issued a rule to implement this statute in 1986. The rule contained six service criteria, which were used to measure adequate service to disabled passengers. In addition, to avoid the "undue burdens" problem that had resulted in the demise of the 1979 rule, the rule included a "cost cap". The cost cap provided that a transit authority did not have to spend more than three percent of its operating budget to comply with the rule, even if, as a result, the transit authority did not fully meet all the service criteria.