

Water Penetration Test

	Option A		Option B	
	End Leakage grams	Weight Gain grams	End Leakage grams	Penetration mm (in.)
Control.				
Heat Age.				
Humidity Exposure.				
Temperature Cycling.				

Insulation Compression

	Failures
Control	_____
Heat Age	_____
Humidity Exposure	_____
Temperature Cycling	_____

Jacket Slip Strength @ 50½C

	Load in newtons (pound-force)
Control	_____
Heat Age	_____
Humidity Exposure	_____
Temperature Cycling	_____

Filler Exudation (grams)

Heat Age	_____
Humidity Exposure	_____
Temperature Cycle	_____

Surge Test (kilovolts)

Conductor to Conductor.	_____
Shield to Conductors .	_____

Dated: May 5, 1993.

Robert Peters,

Acting Under Secretary, Small Community
and Rural Development.

[FR Doc 93-11895 Filed 5-19-93; 8:45 am]

BILLING CODE 3410-15-F

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Regulations
Termination of Waiver of the
Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Amendment to Notice to
terminate the waiver of the
Nonmanufacturer Rule for mainframecomputers and certain associated
peripheral equipment acquired on the
same procurement.

SUMMARY: The Business Administration is amending its notice of a decision to terminate its waiver of the Nonmanufacturer Rule for mainframe computers and certain associated peripheral equipment acquired on the same procurement. The SBA had published a termination notice on February 19, 1993, with an effective date of May 20, 1993. The Agency is now inviting public comment on this matter.

DATES: Comments must be submitted on or before June 21, 1993.

ADDRESSES: Written comments should be addressed to Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Jeanne M. Sclater, Director, Office of Procurement Policy and Liaison, (202) 205-6465 or James Parker at (703) 695-2435.

SUPPLEMENTARY INFORMATION: On February 19, 1993, SBA published in the Federal Register a notice to terminate the waiver of the Nonmanufacturer Rule for mainframe computers and certain associated peripheral equipment acquired on the same procurement. 58 FR 9112 (1993). Since the publication of this notice, SBA has received a number of comments from interested parties arguing that this waiver to the Nonmanufacturer Rule should not be repealed. In light of such comments, SBA now invites the public to express its views concerning SBA's intent to terminate the waiver for mainframe computers. In the interim, SBA postpones the effective date of the termination of the mainframe waiver until it has had adequate time to evaluate any comments received in response to this publication and until such time as a determination on the mainframe waiver is published in the Federal Register.

The SBA believes that there are small manufacturers of computers that meet performance characteristics previously attributed only to mainframe computers, such as mini-computers and super-minicomputers. The Agency believes this to be particularly true when two or more units of such equipment can be connected to function as one.

SBA also believes that in some instances the existence of the mainframe waiver has led, and for continuing cases has the potential to lead, to abuse by affixing a "mainframe" label to a procurement which in fact describes performance characteristics that are typical of hardware often called mini-computers, super-minicomputers, or "mainframe-equivalent" computers merely to enjoy the benefits of the waiver. In this way, a procuring agency would be able to purchase specific computer hardware manufactured by a large business when in fact other computer hardware manufactured by small business is available to satisfy the actual procurement need. SBA believes that such an action would be contrary to the intent of the Small Business Act in general and to the waiver provision to the Nonmanufacturer Rule contained in section 8(a)(17) of the Small Business Act, 15 U.S.C. 637(a)(17), specifically.

Further, the SBA believes that the statutory authority of the Administrator to grant waivers on a case-by-case, or solicitation-specific basis, allows agencies which in fact need to procure equipment which cannot be produced by small business manufacturers to obtain a waiver of the Nonmanufacturer Rule when such a waiver is required. The statutory authority for solicitation-specific waivers is found at section 8(a)(17)(B)(iv) of the Small Business Act.

Based on the above, SBA solicits comments with respect to SBA's prior Notice to terminate the waiver of the Nonmanufacturer Rule for mainframe computers and certain associated peripheral equipment acquired on the same procurement and with respect to this amendment thereto. SBA requests specific comments concerning the

following items: (1) The definition of mainframe—whether there is a meaningful definition of this term for Federal procurement purposes and what the definition should be; and (2) whether other computer hardware, including mini-computers or super-minicomputers, also have the performance capability to meet such a definition.

All comments to these and other issues raised by the public will be duly considered by SBA in determining whether to finalize its intent to terminate the mainframe waiver.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 93-12115 Filed 5-19-93; 8:45 am]

BILLING CODE 5025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-NM-124-AD; Amendment 39-8576; AD 93-09-10]

Airworthiness Directives; McDonnell Douglas Model DC-8 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC-8 series airplanes, that requires that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this AD are not met, and that new wear limits be incorporated into the FAA-approved maintenance inspection program. This amendment is prompted by an accident in which a transport category airplane executed a rejected takeoff (RTO) and was unable to stop on the runway due to worn brakes. The actions specified by this AD are intended to prevent loss of braking effectiveness during a high energy RTO.

EFFECTIVE DATE: June 21, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-131L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an

airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC-8 series airplanes was published in the *Federal Register* on October 26, 1992 (57 FR 48478). That action proposed to require that all landing gear brakes be inspected for wear and replaced if the wear limits prescribed in this proposal are not met, and that new wear limits be incorporated into the FAA-approved maintenance inspection program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

Several commenters request that paragraph (a) of the proposal be revised to increase the maximum brake wear limit for the brake assemblies on Model DC-8-63 series airplanes. The commenters request specifically that the brake wear limit for Bendix part number 2601412-1 (McDonnell Douglas part number 5759262-5001) be expanded from 0.5 inch to 0.75 inch. The commenters state that expanding the maximum brake wear limit for this brake will be cost effective and will not compromise safety. The commenters note that McDonnell Douglas Service Bulletin 32-181, dated October 29, 1992, which was issued subsequent to the notice, provides a means to rework this brake so that a 0.75-inch wear limit may be established. The FAA concurs in part with the commenters' request. The FAA does not agree to increase the maximum brake wear limit for Bendix brake part number 2601412-1. The FAA has evaluated a series of dynamometer test data and analyses concerning brakes installed on Model DC-8 series airplanes and has determined that expanding the brake wear limit for this specific brake will not prevent loss of braking effectiveness during a high energy rejected takeoff. However, should an operator modify Bendix brake part number 2601412-1 in accordance with the cited McDonnell Douglas service bulletin and, accordingly, change the part number to 2601412-2, the maximum brake wear limit for that modified brake may be expanded to 0.75 inch. In order to include the maximum wear limit of such modified brakes in the FAA-approved inspection program, paragraph (a) of the final rule has been revised to include Bendix brake part number 2601412-2 and its respective wear limit.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the

adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 337 McDonnell Douglas Model DC-8 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 222 airplanes of U.S. registry will be affected by this proposed AD, that it will take approximately 80 work hours per airplane to accomplish the proposed actions, and that the average labor rate is \$55 per work hour. (There are 8 brakes per airplane.) The cost of required parts to accomplish the change in wear limits for these airplanes (that is, the cost resulting from the requirement to change the brakes before they are worn to their previously approved limits for a one-time change) will be approximately \$5,600 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be \$2,220,000, or \$10,000 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39

of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-09-10 McDonnell Douglas: Amendment 39-8576. Docket 92-NM-124-AD.

Applicability: All Model DC-8 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the loss of main landing gear braking effectiveness, accomplish the following:

(a) Within 180 days after the effective date of this AD, inspect the main landing gear brakes having the part numbers indicated below to determine wear. Any brake worn more than the maximum wear limit specified below must be replaced, prior to further flight, with a brake that is within this limit.

Douglas brake part No.	Bendix part No.	Maximum wear limit (inches)
5610206-5001	150787-1	0.7
	150787-2	0.7
5713612-5001	151882-1	0.7
	151882-2	0.7
5773335-5001	154252-1	0.5
5773335-5501	154252-2	0.5
5759262-5001	2601412-1	0.5
	*2601412-2	0.75

* Brakes having this part number include part number 2601412-1 brakes that have been modified in accordance with McDonnell Douglas Service Bulletin 32-181, dated October 29, 1992.

(b) Within 180 days after the effective date of this AD, incorporate the maximum brake wear limits specified in paragraph (a) of this AD into the FAA-approved maintenance inspection program.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on June 21, 1993.

Issued in Renton, Washington, on May 11, 1993.

Darrall M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-11878 Filed 5-19-93; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 12

[T.D. 93-34]

Extension of Import Restrictions on Antique Ceremonial Textiles of Coroma, Bolivia

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations to reflect the extension of the import restrictions on antique ceremonial textiles from Coroma, Bolivia which were imposed by T.D. 89-37. The Deputy Director of the United States Information Agency (USIA) has determined that the emergency conditions which originally warranted the imposition of import restrictions still exist. Accordingly, the restrictions will continue to be in effect for an additional three years, and the Customs Regulations are being amended to indicate this extension.

EFFECTIVE DATE: May 20, 1993.

FOR FURTHER INFORMATION CONTACT:

Legal Aspects: John Atwood, Chief, Intellectual Property Rights Branch, (202) 482-6960.

Operational Aspects: Jan Priestley, Office of Trade Operations, (202) 927-1136.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to the provisions of the Convention on Cultural Property Implementation Act, the Deputy Director of the United States Information Agency (USIA), after consultation with the Secretaries of State and Treasury, determined that significant antique ceremonial textiles from Coroma, Bolivia were in danger of pillage and looting, and that an emergency condition existed which warranted the imposition of a prohibition on the importation of such articles into the United States. In T.D. 89-37, the Customs Service announced the imposition of import restrictions and identified the types of articles covered by the restrictions.

The Deputy Director of the USIA has considered the recommendations of the Cultural Property Advisory Committee and determined that the emergency conditions which warranted imposition of the initial restrictions still exist and has decided to extend the import restrictions for another three years. (See *Federal Register* of May 5, 1993 (58 FR 26811).)

Accordingly, Customs is amending § 12.104g (19 CFR 12.104g) to reflect the extension of the import restriction.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), do not apply.

Executive Order 12291

Because this document does not result in a "major rule" as defined by Executive Order 12291, a regulatory analysis is not required.

Inapplicability of Notice and Delayed Effective Date

Because this amendment reflects the extension of emergency import restrictions on cultural property which is currently subject to pillage and looting, pursuant to section 553(b)(B) of the Administrative Procedure Act, no notice of proposed rulemaking or public procedure is necessary. For the same reason, a delayed effective date is both impracticable and contrary to the public interest.

Drafting Information

The principal author of this amendment was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects in 19 CFR Part 12

Cultural property, customs duties and inspections, Imports.

Amendment to the Regulations

Accordingly, part 12 of the Customs Regulations (19 CFR part 12) is amended as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general and specific authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

Sections 12.104–12.104i also issued under 19 U.S.C. 2612.

* * * * *

§ 12.104 [Amended]

2. Section 12.104g(b) is amended in the table by adding "extended by 93–34" immediately after the entry "89–37" in the column headed "T.D. No." adjacent to the entry for Bolivia.

Samuel H. Banks,

Acting Commissioner of Customs.

Approved: May 5, 1993.

Ronald K. Noble,

Assistant Secretary of the Treasury.

[FR Doc. 93–11937 Filed 5–19–93; 8:45 am]

BILLING CODE 4820–02–M

19 CFR Parts 19, 113, and 144

[T.D. 92–81]

RIN 1515–AA22

Duty-Free Stores

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of effective date.

SUMMARY: This document rescinds the notice published in the Federal Register on October 16, 1992, delaying the effective date of the final Customs Regulations amendments relating to duty-free stores. The duty-free store regulations were published in the Federal Register as T.D. 92–81 on August 20, 1992, with an effective date of October 19, 1992. The effect of this document rescinding the delay of effective date is to make the duty-free store regulations effective as of the original effective date, October 19, 1992. **EFFECTIVE DATE:** The October 16, 1992 notice delaying the effective date of T.D. 92–81 is rescinded as of May 20, 1993. T.D. 92–81 became effective on October 19, 1992.

FOR FURTHER INFORMATION CONTACT: Michael Jackson, Office of Cargo Enforcement and Facilitation (202–927–0510).

SUPPLEMENTARY INFORMATION:**Background**

On August 20, 1992, Customs published a final rule document in the Federal Register (57 FR 37692) amending the Customs Regulations to designate duty-free stores as a new class of Customs bonded warehouse. The regulations incorporated operating procedures for the administration of these facilities. The final rule was published as T.D. 92–81. The final rule was published after a notice of proposed rulemaking was published on May 5, 1991 in the Federal Register (56 FR 22833) and the comments that were solicited from that notice were carefully reviewed and analyzed. The effective date of T.D. 92–81 was set forth in the August 20, 1992 Federal Register document as October 19, 1992.

In letters dated October 6 and 13, 1992, a major trade association voiced a number of concerns with respect to the final rule. Prompted by these correspondences, Customs determined that it should delay the effective date of the final rule to review several important aspects of the rule. Accordingly, Customs published a document in the Federal Register (57 FR 47409), delaying the effective date of the final rule until further notice.

While Customs has further reviewed aspects of the duty-free store rules including a recent survey of a sampling of duty-free stores around the country, Customs has determined that the indefinite suspension of the effective date of T.D. 92–81 is inoperative based upon a reading of *Natural Resources Defense Council Inc. v. U.S. Environmental Protection Agency*, 683 F.2d 752 (3d Cir. 1982) and *Environmental Defense Fund Inc. v. Anne M. Gorsuch*, 713 F.2d 802, 815 et seq. (D.C. Cir. 1983). Accordingly, by this document, Customs is rescinding the delay of effective date published on October 16, 1992, and is providing notice that the effective date of T.D. 92–81 is October 19, 1992.

It should be noted, however, that in recognition of the publication of the delay of effective date and the fact that some duty-free store operators may have relied on that document, Customs assures duty-free store operators that Customs will not take adverse action against any party for failure to comply with the duty-free store regulations for 90 days from the date of publication of today's notice in the Federal Register. *Cf. Heckler v. Community Health Services, Inc.*, 467 U.S. 51, 60–61 (1984).

Dated: May 13, 1993.

John B. O'Loughlin,

Acting Assistant Commissioner, Commercial Operations.

[FR Doc. 93–11938 Filed 5–19–93; 8:45 am]

BILLING CODE 4820–02–M

PENSION BENEFIT GUARANTY CORPORATION**29 CFR Part 2671****Election of Single-Employer Plan Status**

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This rule repeals 29 CFR part 2671, which contained rules for the election of single-employer plan status pursuant to section 4303 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980. Because the election period has expired, the regulation is no longer needed. This rule informs the public that the PBGC is removing part 2671 from the Code of Federal Regulations.

EFFECTIVE DATE: May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Renae R. Hubbard, Special Counsel, Office of the General Counsel (Code

22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, D.C. 20006; 202-778-8850 (202-778-1958 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Multiemployer Pension Plan Amendments Act of 1980 ("the Multiemployer Act") expanded the definition of "multiemployer plan" in a manner that would change the status of some plans from "single-employer plans" to "multiemployer plans." See sections 3(37)(A) and 4001(a)(3) of the Employee Retirement Income Security Act of 1974 ("ERISA") and section 414(f) of the Internal Revenue Code ("Code"); H.R. Rep. No. 869, 96th Cong., 2d Sess. 4, 12-13. ERISA section 4303, also added by the Multiemployer Act, provided that a plan that was a single-employer plan under the previous definition of "multiemployer plan," but not under the revised definition, could make an irrevocable election to continue to be treated as a single-employer plan if it met certain statutory tests. The election had to be made within one year after the date of the enactment of the Multiemployer Act (September 26, 1980) according to procedures established by the Pension Benefit Guaranty Corporation ("PBGC"). See also section 3(37)(E) of ERISA and section 414(f)(5) of the Code.

On May 19, 1981, the PBGC promulgated 29 CFR part 2671, the purpose of which was to establish procedures for making the election of single-employer plan status provided for in ERISA section 4303. Sections 2671.2 and 2671.3 of the PBGC's regulation provided that a plan would meet the election deadline if (1) it was amended on or before September 26, 1981, to provide for it to be treated as a multiemployer plan for all purposes under ERISA and the Code and (2) a written notice of the amendment was filed with the PBGC within 60 days after adoption of the amendment. Pursuant to § 2671.4, the PBGC would review the filing to determine whether or not the plan met the statutory eligibility tests and had complied with the regulatory procedure, and would then formally approve or disapprove the election.

Because of the lapse of time since the election deadline expired and the irrevocability of any election out of multiemployer plan status, the regulation is no longer needed. Accordingly, the PBGC is removing part 2671 from the CFR. For the same reasons, the PBGC finds, pursuant to section 553 of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*), that notice and public procedure on this

final rule are unnecessary and that good cause exists for making the rule effective immediately.

E.O. 12291 and the Regulatory Flexibility Act

Since part 2671 is no longer needed and its removal does not affect any existing entity, the PBGC has determined that this is not a "major rule" for the purposes of Executive Order 12291 and certifies, as provided in section 605 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), that sections 603 and 604 do not apply.

List of Subjects in 29 CFR Part 2671

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

PART 2671—[REMOVED]

In consideration of the foregoing, under the authority of the Pension Benefit Guaranty Corporation at 29 U.S.C. 1302(b)(3) and 1453, part 2671 of subchapter H of chapter XXVI, title 29, Code of Federal Regulations, is removed and reserved.

Issued in Washington, DC, this 13th day of May, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93-11987 Filed 5-19-93; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 204

[Docket No. R-149]

RIN 2133-AB04

Claims Against the Maritime Administration Under the Federal Tort Claims Act

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: This rule reflects an increase, from \$25,000 to \$100,000, in the amount of a claim under the Federal Tort Claims Act against the agency that it may now settle under authority that has been delegated by the Attorney General to the Secretary of Transportation (DOT), and redelegated by the Secretary to all DOT Administrators.

DATE: This rule is effective on May 20, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra L. Jenkins, Chief, Division of Litigation, Office of the Chief Counsel, Maritime Administration, Washington, DC 20590 Tel. (202) 366-5191.

SUPPLEMENTARY INFORMATION: The regulations at 46 CFR part 204 set forth the requirements and procedures for administrative settlement of claims against the United States, involving the Maritime Administration (MARAD) of the DOT, under the Federal Tort Claims Act, as amended, 28 U.S.C. 2672. The controlling regulations have been promulgated by the Department of Justice (DOJ) at 28 CFR part 14—Administrative Claims Under the Federal Tort Claims Act. MARAD's regulations supplement those of the DOJ and provide specific guidance regarding the processing of tort claims by MARAD. These amendments merely conform MARAD's regulations to those of the DOJ with respect to the dollar amount of settlement authority of the DOT for tort claims (AG Order No. 1583-93), published in the appendix to 28 CFR part 14 (57 FR 13320; April 16, 1992). DOT directives have been issued to implement the increase in the delegated settlement authority by amendment to 46 CFR part 1 (58 FR 6897; Feb. 3, 1993).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedure

This rulemaking has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies, or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises in domestic or export markets.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034; February 26, 1979). It merely conforms MARAD regulations to the provisions of controlling DOJ regulations with respect to the monetary limit on authority to settle tort claims. Because the economic impact should be minimal, further regulatory evaluation is not necessary.

Since this is in the nature of rule of agency procedure, notice with opportunity for public comment is not required pursuant to provision of the Administrative Procedure Act, 5 U.S.C. 553.

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains no reporting requirements that require approval by the Office of Management and Budget.

List of Subjects in 46 CFR Part 204

Administrative practice and procedure, authority delegations, tort claims.

PART 204—[AMENDED]

Accordingly, MARAD hereby amends 46 CFR part 204 as follows:

1. The authority citation continues to read as follows:

Authority: 28 U.S.C. 2672, 28 CFR 14.11; 49 CFR 1.45(C) (2) and (3).

2. Section 204.7 is revised to read as follows:

§ 204.7 Delegation of authority.

(a) Subject to written approval of the Attorney General of the United States of any payment in excess of \$100,000, the Chief Counsel of the Maritime Administration is authorized to deny or settle and authorize payment of tort claims.

(b) The Associate Administrator for Administration is authorized to deny or settle and authorize payment of all tort claims in an amount not exceeding \$50,000.

(c) The Superintendent, United States Merchant Marine Academy (Academy), is authorized to deny or settle and authorize payment of tort claims originating from occurrences at the Academy in amounts not exceeding \$20,000.

3. Section 204.8 is revised to read as follows:

§ 204.8 Where to file claims.

Claims shall be filed with the appropriate official as follows:

(a) Chief Counsel (MAR-200), Maritime Administration, Department of Transportation, Room 7232, Nassif Building, 7th and D Streets SW., Washington, DC 20590 (All claims over \$50,000).

(b) Associate Administrator for Administration (MAR-300), Maritime Administration, Room 7217, Nassif Building, 7th and D Streets SW., Washington, DC 20590 (All claims over \$20,000, but not over \$50,000, originating at the Academy, and all other claims not over \$50,000).

(c) Superintendent (MMA-5100), United States Merchant Marine Academy, Maritime Administration, Kings Point, N.Y. 11024 (All claims not over \$20,000 originating at the Academy).

By Order of the Maritime Administrator.

Dated: May 17, 1993.

James E. Saari,

Secretary.

[FR Doc. 93-11983 Filed 5-19-93; 8:45 am]

BILLING CODE 4910-01-M

46 CFR Part 340

[Docket No. R-134]

RIN 2133-AA85

Part 340—Priority Use and Allocation of Shipping Services, Containers, Chassis, and Port Facilities and Services for National Security and National Defense Related Operations

AGENCY: Maritime Administration, DOT.

ACTION: Final rule.

SUMMARY: The regulations at 46 CFR part 340, while providing for priority use of intermodal cargo containers by defense agencies, do not specifically provide for allocation and priority use of chassis (a vehicle built specifically for the purpose of transporting a container so that when the chassis and container are assembled the unit produced serves the same function as a road trailer). This revision broadens the scope of the regulations to include chassis and chassis suppliers in the scheme of priority use and allocations. It is intended to remedy a potential problem whereby chassis to carry containers may not be made available to the Maritime Administration for use by a U.S. defense agency in times of deployment of U.S. Armed Forces. The revision also contains conforming and nonsubstantive clarifying amendments to existing provisions.

EFFECTIVE DATE: May 5, 1993.

FOR FURTHER INFORMATION CONTACT: John W. Carnes, Chief, Division of Port and Intermodal Operations, Office of Port and Intermodal Development, Maritime Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-4357.

SUPPLEMENTARY INFORMATION: The regulations at 46 CFR part 340 establish procedures for priority use and allocation of existing commercial services and facilities by defense agencies, under commercial terms, in connection with deployment of the Armed Forces of the United States, under authority of Title I of the Defense Production Act of 1950 (DPA), as amended (50 U.S.C. App. 2061 *et seq.*). Title I of the DPA authorizes the President to require that performance under contracts or orders (other than contracts of employment) which the President deems necessary or appropriate to promote the national defense shall take priority over performance under any other contract or order. The DPA also authorizes the President to allocate materials and facilities in such manner, upon such conditions, and to such extent as the President deems necessary to promote the national defense. Part 14 of Executive Order 12656 (53 FR 47491) assigns emergency preparedness functions to the Secretary of Transportation, and the regulation at 49 CFR 1.45 further delegates such authority from the Secretary to Administrators.

These regulations now specify the procedures by which the Maritime Administrator (Administrator) may issue orders regarding allocation and priority use of shipping services, containers, and port facilities and services in time of imminent or actual deployment of the Armed Forces. These procedures permit national defense requirements to be met with minimum interference with commercial operations, and minimize the need to requisition property to meet defense requirements in time of crisis and war.

The existing regulations at 46 CFR part 340 establish procedures for allocation and priority use of containers by defense agencies. MARAD is revising these regulations to specifically include chassis and chassis suppliers within their scope because the employment of containers in intermodal surface movements could necessitate the use of chassis. The definitions in § 340.2 will include "chassis" and "chassis supplier" in paragraphs (f) and (g), and conforming amendments are being

made, wherever appropriate, to include chassis as being subject to priority allocation for the exclusive use by a defense agency for a specified period, should the need for chassis arise. The definition of "port facilities and services" is being expanded to include "terminals", and the definition of "shipping service" is being clarified. Any other changes being made to existing provisions are nonsubstantive and are intended to clarify the procedures.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation and DOT Regulatory Policy and Procedures)

This rulemaking has been reviewed under Executive Order 12291 and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of \$100 million or more. There will be no increase in production costs or prices for consumers, individual industries, Federal, State or local Governments, agencies or geographic regions. Furthermore, it will not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. It has been determined that it is not a significant rule within the definition in DOT's Regulatory Policies and Procedures, 44 FR 11034 (1979).

This rulemaking relates to a military function of the United States that is exempt from application of E.O. 12291 and implementing DOT Order 2100.5. It sets forth procedures utilized in connection with the current deployment of the Armed Forces of the United States and other requirements of the nation's defense. Accordingly, it is exempt from application of the Administrative Procedure Act (5 U.S.C. 553), and is being published without provision for public comment, to become effective upon publication.

The economic impact of this rule has been found to be so minimal that further evaluation is unnecessary. The rule principally affects private or government entities in the shipping, port management, and warehousing and stevedoring business, which usually do not qualify as small business entities under existing criteria. Accordingly, the Maritime Administration certifies that the rulemaking will not exert a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*).

Federalism

This rule has also been reviewed under Executive Order 12612, Federalism, and it has been determined that it does not have sufficient implications for federalism to warrant preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this information will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has concluded that this rule does not affect the environment and that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

The rule contains no reporting requirement for the collection of information within the scope of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 46 CFR Part 340

Chassis, containers, harbors, maritime carriers and national defense.

Accordingly, 46 CFR part 340 is revised to read as follows:

PART 340—PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS

Sec.

- 340.1 Scope.
- 340.2 Definitions.
- 340.3 General provisions.
- 340.4 Shipping services.
- 340.5 Containers and chassis.
- 340.6 Port facilities and services.
- 340.7 Application to contractors and subcontractors.
- 340.8 Priorities for materials and production.
- 340.9 Compliance.

Authority: Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*); Executive Order 10480, as amended (18 FR 4939); Executive Order 12656 (53 FR 47491); 44 CFR Part 322; 49 CFR 1.45; Department of Transportation Orders 1100.60, as amended: 1900.8 and 1900.7D.

§340.1 Scope.

This part establishes procedures for assigning priority for use by defense agencies, on commercial terms, of commercial shipping services, containers and chassis, and port facilities and services and for allocating vessels employed in commercial

shipping services, containers and chassis, and port facilities and services for exclusive use by defense agencies (as defined in 340.2), at any time where appropriate under provision of title I of the Defense Production Act of 1950 (50 U.S.C. App. 2061 *et seq.*) as determined by the Secretary of Transportation. The procedures will provide the means to require vessel and port operators to provide defense agencies with existing commercial services and facilities not obtainable through established transportation procurement procedures. Thus the procedures will minimize interference with commercial operations and ensure rapid response to defense needs in times of crisis or war.

§340.2 Definitions.

As used in this regulation:

(a) *Administrator* means the Maritime Administrator, Department of Transportation, who is, *ex officio*, the Director, National Shipping Authority, within the Maritime Administration (MARAD). Pursuant to 49 CFR 1.45(a)(5), the Maritime Administrator is authorized to carry out emergency preparedness functions assigned to the Secretary by Executive Order 12656 (53 FR 47490, November 18, 1988).

(b) *Container* means any type of container for intermodal surface movement that is 20 feet in length or longer, 8 feet wide, and of any height, including specialized containers, with International Standards Organization standard fittings.

(c) *Container service* means the intermodal movement, which includes an ocean movement leg, of goods in containers.

(d) *Container service operator* means a vessel operator (defined in § 340.2(v)) that provides containerized ocean shipping service.

(e) *Container supplier* means a U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802) company which manufactures containers, is a container service operator, or is in the business of leasing containers.

(f) *Chassis* means a vehicle built specifically for the purpose of transporting a container so that when the chassis and container are assembled the unit produced serves the same function as a road trailer.

(g) *Chassis supplier* means a U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802) company which is a container service operator or is in the business of leasing chassis.

(h) *Defense agency* means the Department of Defense, or any other department or agency of the Federal Government as determined by the

Secretary of Transportation, for the purposes of this regulation.

(i) *FEMA* means the Federal Emergency Management Agency.

(j) *NAO* means the NSA Allocation Order, which is an order allocating the exclusive use of a vessel employed in commercial shipping service, a container, a chassis, or a port facility for the purposes of providing its services to a defense agency for a specified period.

(k) *NSA* means the National Shipping Authority, which is the emergency shipping operations activity of the Department of Transportation (MARAD).

(l) *NSPO* means an NSA Service Priority Order, which is an order directing that priority of service be given to the movement of cargoes of a defense agency.

(m) *Planning order* means a notification of tentative arrangements to meet anticipated defense agency requirements, issued by NAO or NSPO format, for planning purposes only.

(n) *Port authority* means any state, municipal, or private agency, or firm that (1) owns port facilities (2) manages such facilities for common-user commercial shipping services under lease from an owner; (3) owns or operates a proprietary port facility or terminal; and (4) otherwise leases or licenses and manages a port facility.

(o) *Port facilities and services* means (1) all port facilities, for coastwise, intercoastal, inland waterways, and Great Lakes shipping and overseas shipping, including, but not limited to wharves, piers, sheds, warehouses, terminals, yards, docks, control towers, container equipment, maintenance buildings, container freight stations and port equipment, including harbor craft, cranes and straddle carriers; and (2) port services normally used in accomplishing the transfer or interchange of cargo and passengers between vessels and other modes of transportation, or in connection therewith.

(p) *Secretary* means the Secretary of Transportation or his or her designees to whom emergency authorities under the Defense Production Act of 1950 have been delegated, i.e., the Director of Office of Emergency Transportation or the Departmental Crisis Coordinator.

(q) *Secretarial Review* means the process by which the Secretary or his or her designee(s) exercises review, coordination, and control over departmental emergency preparedness programs and/or matters.

(r) *Shipper* means a civilian or Government agency that owns (or is responsible to the owner for) goods transported in waterborne service.

(s) *Shipping service* means a commercial service which provides for the movement of passengers or cargo by one or more modes of transportation and includes a waterborne movement leg in the overseas, coastwise, intercoastal, inland waterways, or Great Lakes shipping trades.

(t) *Vessel* means a vessel employed in commercial service for waterborne movement of passengers or cargo in the overseas, coastwise, intercoastal, inland waterways or Great Lakes shipping trades, or any portion of the cargo-carrying capacity of such vessel.

(u) *Vessel operator* means a company owning and/or operating, to and from any U.S. port, an ocean-going overseas, coastwise, intercoastal, inland waterways or Great Lakes vessel that is U.S.-flag, or foreign-flag and U.S.-citizen controlled (pursuant to 46 App. U.S.C. 802), or foreign-flag and non-citizen controlled that is made available to the United States (as described in § 340.3(j)).

§ 340.3 General provisions.

(a) The provisions of this rule apply pursuant to authority granted to the President by Title I, Defense Production Act of 1950, as amended (50 U.S.C. App. 2061 *et seq.*) that authority having been delegated to the Secretary of Transportation, with respect to civil transportation services, by § 322.3(b) of Title 44, Code of Federal Regulations. In order to give priority to performance under contracts deemed necessary or appropriate to promote the national defense and to allocate materials and facilities in such manner, upon such conditions and to such extent as necessary or appropriate to promote the national defense, the following procedures shall be applicable:

(1) In connection with deployment of the Armed Forces of the United States, or other requirements of the nation's defense, a defense agency (as defined in § 340.2(h) of this part) may request priority use or allocation of vessels employed in commercial shipping services, containers, chassis, or port facilities and services.

(2) The Secretary may authorize initiation of priority and allocation authority in accordance with administrative and statutory authorities.

(3) The Administrator, on approval by the Secretary to initiate the use of priority and allocation authority under this regulation and in conformance with national program priorities, may direct owners and/or operators of vessels, containers, chassis, or port facilities to give priority usage to the defense agency or may allocate vessels, containers,

chassis, or facilities for the defense agency's use during specified periods.

(b) A defense agency may transmit requests for assignment of priority for use or for allocation of vessels, containers, chassis, and port facilities and services to the Secretary by letter, memorandum, or electrical message.

(c) Justification for requested priorities or allocations may include references to military operations plans. When classified, justifications may be provided separately by correspondence or staff coordination. NSPOs and NAOs will not include classified information.

(d) The Administrator shall determine, before issuing an NSPO or NAO, that the action is necessary to meet the requirements of the national defense (as determined by the defense agency) and conforms to Secretarial guidance for coordinating the Department's crisis response, and that the proposed approach is the most effective way to do so. The Administrator, in conjunction with the defense agency, shall coordinate with vessel operators, container suppliers, chassis suppliers, port authorities and the Coast Guard to identify vessels, equipment and facilities to meet requirements covered by NSPOs and NAOs. The Administrator shall ensure that arrangements to provide defense support under NSPOs and NAOs satisfy the defense agency's requirements with minimum disruption to commercial activities.

(e) When resources are required for movement of hazardous or other special cargo, the Administrator shall ensure that the Commandant of the Coast Guard and the Captain of the Port and other concerned hazardous materials officials of the U.S. Department of Transportation, as required, are notified and that the views of all concerned agencies and interests are obtained and reflected in actions taken pursuant to this regulation. Any action taken pursuant to this regulation shall conform with existing regulations for the safe transportation of hazardous materials and/or cargoes, subject to Department of Transportation exemptions.

(f) The Secretary shall notify FEMA of the intention to issue any directive granting priority for use or allocation of vessels, containers, chassis, or port facilities and services, and shall provide information copies of NSPOs and NAOs as required to the defense agency concerned, FEMA, the Interstate Commerce Commission and the Coast Guard.

(g) Defense agencies which foresee difficulty in meeting their needs for vessels employed in commercial

shipping services, containers, chassis, or port facilities and services shall coordinate with MARAD, the Coast Guard, vessel operators, container suppliers, chassis suppliers, and port authorities concerned before the need arises. The Administrator, after Secretarial review, may issue planning orders for information and guidance of affected agencies confirming tentative arrangements to meet the defense agencies' needs. No action will be taken to give effect to those arrangements until NSPOs and NAOs are issued at the time the services, equipment, or facilities are required.

(h) Defense agencies shall pay for services covered by NSPOs and NAOs on the basis of commercial tariffs, or on the basis of contracts concluded between the operator interests and the defense agencies concerned, or on the basis of existing contracts where both parties so agree.

(i) Defense agencies shall be responsible for payment of costs arising from:

- (1) Shifting ships to unoccupied berths for defense use;
- (2) Discharging commercial cargo to free ships for defense use; and
- (3) Such other costs as may be agreed between the defense agency and the provider of service.

(j) The provisions of this regulation shall apply to foreign vessels, containers, and chassis only when and to the extent that such vessels, containers, and chassis are available to the United States because of control by U.S. citizens, (46 App. U.S.C. 802) or by provision of international agreements for use of shipping services and related resources for the common defense.

(k) Recipients of NSPOs and NAOs shall notify the Administrator, without undue delay, when they cannot comply or are experiencing difficulty in complying with the provisions of the Orders.

§ 340.4 Shipping services.

(a) When a defense agency requires shipping services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

- (i) The type of service required;
- (ii) The route over which priority of service is required;
- (iii) The period during which priority of service is required; and
- (iv) Justification for priority use of the requested service.

(2) The Administrator, pursuant to the circumstances specified in § 340.4(a)(1), shall identify vessel operators that can provide the necessary service and issue NSPOs in coordination with the Secretary to those operators directing that priority be given to the movement and delivery of the defense agency's cargo and/or passengers by the type of service specified in the NSPO during the specified period.

(3) Each vessel operator in receipt of an NSPO shall:

(i) Give precedence to the cargoes of the defense agency in provision of equipment, loading, ocean transport and delivery; and

(ii) Coordinate with other operators in receipt of NSPOs applicable to the same priority movement program to ensure movement of the defense agency's cargoes on first available sailings.

(b) When a defense agency has need for vessels employed in commercial service on a continuing basis for national defense operations for a specified period or for the duration of a defense emergency which they cannot obtain through established transportation procurement practices, the following procedures shall apply:

(1) The agency shall transmit to the Secretary, with a copy to the Administrator, a request specifying the kinds of services required, the arrangements under which the agency proposes that the services be acquired, managed and compensated, and justification for allocation of the required vessels.

(2) The Administrator, upon receiving guidance from the Secretary, shall identify vessel operators that can supply the requested services and issue NAOs to operators directing that specified vessels be made available for use of the defense agency for specified periods. As far as practicable, the economic impact will be balanced among operators.

(3) Each vessel operator in receipt of an NAO shall provide vessels in coordination with the defense agency as specified in the NAO.

§ 340.5 Containers and chassis.

(a) When a defense agency requires priority use of containers and/or chassis not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

- (i) The route over which or the area in which priority use of containers and/or chassis is required;

(ii) The period during which priority use is required;

(iii) The approximate time-phased movement requirement in containers and/or chassis of specified sizes and types or in 20-foot equivalent units (TEU); and

(iv) Justification for priority use of containers and/or chassis.

(2) The Administrator pursuant to the circumstances in § 340.5(a)(1) shall:

(i) Identify container service operators capable of meeting the requirement; and

(ii) Issue NSPOs or NAOs in coordination with the Secretary to those container service operators, directing that priority be given to supply of containers and/or chassis against the defense requirement.

(3) Each container service operator in receipt of an NSPO shall:

(i) Coordinate with the defense agency on schedules for spotting empty containers and/or chassis and for movement of containerized cargoes; and

(ii) Supply containers and/or chassis to the defense agency in accordance with the defense agency's scheduling needs or supply the first available containers and/or chassis if those needs cannot be met.

(b) When a defense agency requires the allocation of containers and/or chassis on a continuing basis for national defense operations, the following procedures shall apply:

(1) The agency shall transmit to the Secretary, with a copy to the Administrator, request specifying:

(i) The number of containers and/or chassis required by type;

(ii) The general terms and conditions under which the agency proposes to acquire the needed containers and/or chassis and compensate the owners or operators;

(iii) The expected duration of the lease, if the containers and/or chassis are to be leased;

(iv) The locations at which the agency will take possession of the containers and/or chassis and the required delivery schedule; and

(v) Justification for allocation of containers and/or chassis.

(2) The Administrator in coordination with the Secretary shall identify container and chassis suppliers that can supply the required containers and/or chassis, and shall provide, so far as practicable, for balancing the defense agency's requirement against other requirements for containers and/or chassis so as to minimize disruption of inventory distribution, and shall issue NAOs to suppliers, directing the allocation of specified numbers of containers and/or chassis by type for exclusive use of the defense agency for a specified period.

(3) Each container and chassis supplier in receipt of an NAO shall deliver the containers and/or chassis specified in the NAO to the defense agency at the places and times specified in the NAO or separately agreed upon with the defense agency, under terms and conditions agreed upon with the defense agency.

§ 340.6 Port facilities and services.

(a) When a defense agency requires priority use of port facilities and services not obtainable through established transportation procurement practices, the following procedures shall apply:

(1) Except during periods of Presidentially-declared national defense emergencies, when requests shall be transmitted to the Administrator, the agency shall transmit a request to the Secretary specifying:

(i) The ports at which priority use of port facilities and services are required and the kinds of facilities and services required at each port;

(ii) The approximate scale and duration of the operation for which priority support is required; and

(iii) Justification for priority use of port facilities and services.

(2) The Administrator in coordination with the Secretary shall issue NSPOs to the port authorities concerned, directing that priority be given to the receipt, in transit handling, and outloading of the defense agency's cargo during a specified period and specifying the facilities and services required.

(3) Each port authority in receipt of an NSPO shall:

(i) Make such dispositions of commercial cargoes and ships loading or discharging commercial cargoes as may be necessary to accommodate priority movement of the defense agency's cargoes; and

(ii) Ensure receipt, in transit handling and outloading of the defense agency's cargoes as rapidly as possible.

(b) When a defense agency requires the allocation of port facilities for exclusive use of the agency on a continuing basis, the following procedures shall apply:

(1) The agency shall transmit a request to the Secretary, with a copy to the Administrator specifying:

(i) The ports at which the allocation of facilities is required and the kinds of facilities needed at each port;

(ii) The general terms and conditions under which the agency proposes to acquire the needed facilities and compensate the owners or leaseholders;

(iii) The periods during which the facilities will be required; and

(iv) Justification for allocation of facilities.

(2) The Administrator in coordination with the Secretary shall identify facilities that meet the defense agency's needs, and shall issue to each concerned port authority and NAO directing the allocation of specified facilities for exclusive use of the defense agency during a specified period.

(3) Each port authority in receipt of an NAO shall make the specified facilities available to the defense agency for the specified period under terms and conditions agreed upon with the defense agency.

§ 340.7 Application to contractors and subcontractors.

(a) Vessel operators, port authorities and container and chassis suppliers requiring priorities for production services in order to comply with NSPOs and NAOs must submit their priority requirements for such services to the Maritime Administrator for action in accordance with Departmental policies governing supporting resource support.

(b) Vessel operators, port authorities and container and chassis suppliers requiring priorities for fuel in order to comply with NSPOs and NAOs must submit their priority requirements for fuel in accordance with Departmental policies governing supporting resources.

§ 340.8 Priorities for materials and production.

(a) Vessel operators, port authorities and container and chassis suppliers may request priority ratings to obtain production materials and services necessary to comply with orders issued under this regulation. Requests for priority rating authority must be made through and sponsored by the Maritime Administrator, in accordance with the Defense Priorities and Allocation System (15 CFR part 330 *et seq.* (49 FR 30412, July 30, 1984)) and Departmental policies governing supporting resources support.

(b) Vessel operators, port authorities and container and chassis suppliers may request priority ratings to obtain fuels necessary to comply with orders issued under this regulation. Requests for priority ratings will be made in accordance with regulations issued by the Department.

§ 340.9 Compliance.

Pursuant to section 103 of the Defense Production Act, 1950 (50 U.S.C. App. 2073), any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than \$10,000 or imprisoned for not more than one year, or both.

By order of the Director, National Shipping Authority.

Dated: May 17, 1993.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 93-11984 Filed 5-19-93; 8:45 am]

BILLING CODE 4910-81-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1011, 1171, and 1180

[Ex Parte No. 55 (Sub-No. 91)]

Technical Amendments—Delegation of Authority

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission adopts rules codifying or repositioning all delegations of authority to the Director of the Office of Proceedings in a central location; streamlining the regulations by updating citations, removing obsolete material, and clarifying the rules; codifying authority delegated to the Secretary of the Commission and to the Office of Tariffs; transferring to the Secretary of the Commission an existing delegation to the Director of the Office of Proceedings to issue informal opinions and interpretations; delegating certain authority to the Motor Carrier Board; and redelegating certain authority from the Motor Carrier Board to the Regional Motor Carrier Boards. These changes are intended to make the rules easier to understand and follow and reflect recent statutory revisions and organizational revisions.

EFFECTIVE DATE: The rules are effective May 20, 1993, unless otherwise noted.

FOR FURTHER INFORMATION CONTACT: Richard L. Gagnon, (202) 927-5263 (TDD for hearing impaired: (202) 927-5721).

SUPPLEMENTARY INFORMATION: The following delegations to the Director of the Office of Proceedings are being codified at 49 CFR 1011.8(c): (1) Authority to issue notices of exemption under 49 U.S.C. 10505, in class exemption proceedings, for rail finance transactions under 49 U.S.C. 11343 and the implementing regulations at 49 CFR 1180.2(d) (1)-(7); (2) authority to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C; (3) authority to impose, modify, or remove environmental and historic preservation conditions in all proceedings where a draft decision would not otherwise be circulated to the entire Commission; (4)

authority to reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105; (5) authority to reject applications by Burlington Northern Railroad Company to abandon lines in North Dakota exceeding the 350-mile cap of section 402 of Public Law 97-102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991); (6) authority to extend the 120-day limit within which 49 U.S.C. 10706(b)(3)(B)(vii) mandates that rate bureaus shall finally dispose of rules or rates docketed with them; and (7) authority, absent controversy or unusual circumstances, to issue notices of provisional recertification under State Intrastate Rail Rate Authority, 5 I.C.C.2d 680, 684 (1989).

In an effort to place all delegations to the Director of the Office of Proceedings in a central location, 49 CFR part 1011, the following codified delegations are being relocated to 49 CFR 1011.8(c): (1) Authority to waive the rules at 49 CFR part 1152, subpart C—Procedures Governing Notice, Applications, Financial Assistance, and Acquisition for Public Use on appropriate petition; and (2) authority to issue notices of exemption under 49 U.S.C. 10505 for acquisition and operation transactions under 49 U.S.C. 10901.

The Secretary of the Commission was recently delegated authority to issue informal opinions and interpretations, except with regard to tariffs. Consistent therewith, the Director of the Office of Proceedings' authority at 49 CFR 1180.4(c)(6)(iii) to issue informal opinions and interpretations regarding the information in and the format of applications for rail transactions under 49 U.S.C. 11343 is being redelegated to the Secretary. The Secretary's delegated authority is being codified at 49 CFR 1011.8(b)(2).

Also being codified is the delegation to the Office of Tariffs of authority to reject tariffs, schedules, railroad transportation contracts, and railroad transportation contract summaries filed with the Commission that violate applicable statutes and regulations (49 CFR 1011.8(d)(1)), and to issue informal opinions and interpretations on carrier tariff provisions (49 CFR 1011.8(d)(2)).

In an effort to promote administrative efficiencies, the Motor Carrier Board is being delegated the following: (1) Authority to issue decisions (a) substituting applicants in non-rail licensing proceedings and (b) changing the name of a party in finance

proceedings where authority has not yet been issued; (2) authority to issue decisions on requests by motor passenger contract carriers for exemption from the tariff filing requirements of 49 U.S.C. 10702(b), 10761(b), and 10762(f); and (3) authority to decide all routine appeals from initial actions of the Motor Carrier Board (non-routine appeals from initial actions of the Motor Carrier Board would be certified by the Board to the Secretary of the Commission for disposition).

The Motor Carrier Board has been delegated authority, at 49 CFR 1011.6(h)(4), to process applications under 49 U.S.C. 10530 filed by, and to issue certificates of registration to, foreign motor carriers and foreign motor private carriers. Both the Secretary of the Commission and the Motor Carrier Board have delegated authority to dispose of procedural matters related to these applications. All of this authority is being redelegated to the Regional Motor Carrier Boards to facilitate processing the cases (the language barrier presents special challenges that the Regional Boards are uniquely equipped to handle) as well as to enhance the Commission's enforcement of the moratorium under 49 U.S.C. 10922(l)(1).

The Motor Carrier Safety Act of 1984, Public Law No. 98-554, 98 Stat. 2832 (1984), required motor carriers of a contiguous foreign country covered by the moratorium at 49 U.S.C. 10922(l)(1) to obtain certificates of registration each year in order to continue operating in the United States. Such carriers previously had been exempt from the Commission's regulation. In addition, these carriers were required to demonstrate that they maintained specified levels of insurance coverage, that they had complied with U.S. Department of Transportation safety regulations, and that they had paid any applicable Federal heavy vehicle taxes under 26 U.S.C. 4481. The Commission adopted regulations implementing this statute at 49 CFR part 1171. The moratorium now applies only to Mexico, having been lifted for Canada, and has been extended to September 19, 1994.

With the enactment of the Anti-Drug Abuse Act of 1988, Public Law 100-690, 102 Stat. 4181 (1988)—specifically title IX, subtitle B thereof (the Truck and Bus Safety and Regulatory Reform Act of 1988)—the 1984 Act was expanded to require all Mexican for-hire and private carriers of exempt and regulated commodities to obtain certificates of registration. In addition, the annual renewal requirement was repealed, allowing the initial certificates of

registration to remain in effect indefinitely if the carrier otherwise complies with the statute and regulations and the moratorium is not revoked or modified. The 1988 Act also permitted Mexican carriers to have insurance policies of limited duration and to show proof of insurance at the international boundary line (on a per-trip basis) rather than filing certificates of insurance with the Commission.

Effective June 21, 1993, Mexican carriers seeking authority from the Commission will no longer be required to file Form OP-2 with the Commission's headquarters in Washington, DC. Rather, all carriers domiciled in the Mexican States of Campeche, Chiapas, Chihuahua, Coahuila, Durango, Guanajuato, Guerrero, Hidalgo, Mexico, Michoacan, Nuevo Leon, Oaxaca, Puebla, Queretaro, Quintana Roo, San Luis Potosí, Tabasco, Tamaulipas, Tlaxcala, Veracruz, Yucatan, and Zacatecas shall file an original and one copy of Form OP-2 with the Regional Director, Interstate Commerce Commission, 55 Monroe Street, suite 550, Chicago, IL 60603. Those carriers domiciled in the Mexican States of Aguascalientes, Baja California Norte, Baja California Sur, Colima, Jalisco, Morelos, Nayarit, Sinaloa, and Sonora shall file an original and one copy of Form OP-2 with the Regional Director, Interstate Commerce Commission, 211 Main Street, suite 500, San Francisco, CA 94105.

Finally, 49 CFR part 1011 is being streamlined by updating citations, removing obsolete matter, and clarifying the rules to resolve questions of interpretation.

List of Subjects

49 CFR Part 1011

Administrative practice and procedure, Authority delegations (Government agencies), Organization and functions.

49 CFR Part 1171

Administrative practice and procedure, Insurance, Motor carriers.

49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: May 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and McDonald.
Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, parts 1011.

1171, and 1180 of the Code of Federal Regulations are amended as follows:

1. Part 1011 is revised to read as follows:

PART 1011—COMMISSION ORGANIZATION; DELEGATIONS OF AUTHORITY

Sec.

- 1011.1 General.
- 1011.2 The Commission.
- 1011.3 Divisions of the Commission.
- 1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.
- 1011.5 Delegations to individual Commissioners.
- 1011.6 Employee Boards.
- 1011.7 Delegations of authority by the Chairman of the Commission.
- 1011.8 Delegations of authority by the Commission.

Authority: 49 U.S.C. 10301, 10302, 10304, 10305, 10321; 31 U.S.C. 9701; 5 U.S.C. 553.

§ 1011.1 General.

(a) This part describes the organization of the Commission, and the assignment of jurisdiction and responsibilities to the Commission, individual Commissioners or employees, and employee boards.

(b) As used in this part, *matter* includes any case, proceeding, question, or other matter within the Commission's jurisdiction; and *decision* includes any decision, ruling, order, or requirement of the Commission, an individual Commissioner or employee, or an employee board.

§ 1011.2 The Commission.

(a) The Commission reserves to itself for consideration and disposition:

(1) All rulemaking and similar proceedings involving the promulgation of rules or the issuance of statements of general policy.

(2) All investigations and other proceedings instituted by the Commission, except as may be ordered in individual situations.

(3) All administrative appeals in a matter previously considered by the Commission.

(4) All other matters submitted for decision except those assigned to an individual Commissioner or employee or an employee board.

(5) Except for matters assigned to the Chairman of the Commission under § 1011.5(a)(6),

(i) The determination of whether to reconsider a decision being challenged in court;

(ii) The disposition of matters that have been the subject of an adverse decision by a court; and

(iii) The determination whether to file any memorandum or brief or otherwise

participate on behalf of the Commission in any court.

(6) The disposition of all matters involving issues of general transportation importance, and the determination whether issues of general transportation importance are involved in any matter.

(7) All appeals of initial decisions issued by the Director of the Office of Proceedings under authority delegated at § 1011.8(c). Appeals must be filed within 10 days after service of the Director decision or publication of the notice, and replies must be filed within 10 days after the due date for appeals or any extension thereof.

(b) The Commission may bring before it any matter assigned to an individual Commissioner or employee or employee board.

§ 1011.3 Divisions of the Commission.

The Commission may establish such divisions as it considers necessary to handle any matter before it.

§ 1011.4 The Chairman, Vice Chairman, and Senior Commissioner present.

(a)(1) The Chairman of the Commission is appointed by the President as provided by 49 U.S.C. 10301(b). The Chairman has authority, duties, and responsibilities assigned under 49 U.S.C. 10301(f) and described in this part.

(2) The Vice Chairman is elected by the Commission for the term of 1 calendar year.

(3) In the Chairman's absence, the Vice Chairman is Acting Chairman, and has the authority and responsibilities of the Chairman. In the Vice Chairman's absence, the Chairman, if present, has the authority and responsibilities of the Vice Chairman. In the absence of both the Chairman and Vice Chairman, the senior Commissioner present, based on time of continuous service as a member of the Commission, is Acting Chairman, and has the authority and responsibilities of the Chairman and Vice Chairman.

(b)(1) The Chairman is the executive head of the Commission and has general responsibility for:

(i) The overall management and functioning of the Commission;

(ii) The formulation of plans and policies designed to assure the effective administration of the Interstate Commerce Act and related Acts;

(iii) Prompt identification and early resolution, at the appropriate level, of major substantive regulatory problems; and

(iv) The development and use of effective staff support to carry out the duties and functions of the Commission.

(2) The Chairman of the Commission exercises the executive and administrative functions of the Commission, including:

(i) The appointment, supervision, and removal of Commission employees, except those in the immediate offices of Commissioners other than the Chairman;

(ii) The distribution of business among such personnel and among administrative units of the Commission; and

(iii) The use and expenditure of funds.

(3) In carrying out his functions, the Chairman is governed by general policies of the Commission and by such regulatory decisions, findings, and determinations as the Commission by law is authorized to make.

(4) The appointment by the Chairman of the heads of offices and bureaus is subject to the approval of the Commission. All heads of offices report to the Chairman.

(c)(1) The Chairman presides at all sessions of the Commission and sees that every vote and official act of the Commission required by law to be recorded is accurately and promptly recorded by the Secretary or the person designated by the Commission for that purpose.

(2) Regular sessions of the Commission are provided for by Commission regulations. The Chairman may call the Commission into special session to consider any matter or business of the Commission. The Chairman shall convene a special session to consider any matter or business on request of a member of the Commission unless a majority of the Commission votes either not to hold a special session or to delay conference consideration of that item, or unless the Chairman finds that special circumstances warrant a delay. Notwithstanding the two immediately preceding sentences of this paragraph, on the written request of any member of the Commission, the Chairman shall schedule a Commission conference to discuss and vote on significant Commission proceedings involving major transportation issues, and such conference shall be held within a reasonable time following the close of the record in the involved proceeding.

(3) The Chairman exercises general control over the Commission's argument calendar and conference agenda.

(4) The Chairman acts as correspondent and speaks for the Commission in all matters where an official expression of the Commission is required.

(5) The Chairman brings any delay or failure in the work to the attention of the supervising Commissioner, employee, or board, and initiates ways of correcting or preventing avoidable delays in the performance of any work or the disposition of any matter.

(6) The Chairman may appoint such standing or *ad hoc* committees of the Commission as he considers necessary.

(7) The Chairman of the Interstate Commerce Commission and the Secretary of the U.S. Department of Transportation shall take appropriate action to implement 49 U.S.C. 1483.

(8) The Chairman may reassign related proceedings to a board of employees and may remove a matter from an individual Commissioner or employee or employee board for consideration and disposition by the Commission.

(9) The Chairman may authorize any officer, employee, or administrative unit of the Commission to perform a function vested in or delegated to the Chairman.

(10) The Chairman authorizes the institution of investigations on the Commission's own motion, and their discontinuance at any time before hearing, except for investigations under 49 U.S.C. 10708.

(11) The Chairman approves for publication all publicly-issued documents by a bureau or office, except:

(i) Those authorized or adopted by the Commission or an individual Commissioner that involve decisions in formal proceedings;

(ii) Decisions or informal opinions of a bureau or office, or an initial decision of a hearing officer; and

(iii) Documents prepared for court cases or for introduction into evidence in a formal proceeding.

§ 1011.5 Delegations to Individual Commissioners.

(a) The following matters are referred to the Chairman of the Commission:

(1) Entry of reparation orders responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR part 1133.

(2) Extensions of time for compliance with orders and procedural matters in any formal case or pending matter, except appeals taken from the decision of a hearing officer on requests for discovery.

(3) Postponement of the effective date of orders in proceedings that are the subject of suits brought in a court to enjoin, suspend, or set aside the decision.

(4) Dismissal of complaints and applications on the unopposed motion of any party.

(5) Requests for access to waybills and to statistics reported under orders of the Commission.

(6) Exercise of control over litigation arising under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a), except for determinations whether to seek further judicial review of:

(i) A decision in which a court finds under 5 U.S.C. 552(a)(4)(F) that Commission personnel may have acted arbitrarily or capriciously in improperly withholding records from disclosure; or

(ii) A decision in which a court finds under 5 U.S.C. 552a(g)(4) that Commission personnel acted intentionally or willfully in violating the Privacy Act.

(7) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903 and the Commission must find, under 49 U.S.C. 10904(b), that the public convenience and necessity require or permit the abandonment or discontinuance.

(8) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed.

(b) The following matters are referred to the Vice Chairman of the Commission:

(1) Matters within the jurisdiction of the Accounting Board if certified to the Vice Chairman by the Board or if removed from the Board by the Vice Chairman.

(2) Matters involving the admission, disbarment, or discipline of practitioners before the Commission under 49 CFR part 1103.

(3) In cases of calamitous visitation:

(i) Reduced rates authorization under 49 U.S.C. 10721;

(ii) Relief from the provisions of 49 U.S.C. 10730; and

(iii) Relief from the long and short haul restrictions of 49 U.S.C. 10726.

(c) The Chairman, Vice Chairman, or any other Commissioner to whom a matter is assigned under this part may certify such matter to the Commission.

(d) The Chairman shall notify all Commissioners that a petition for a stay has been referred to the Chairman for disposition under paragraphs (a) (2) or (3) of this section. The Chairman shall also inform all Commissioners of the decision on that petition before service of such decision. At the request of a Commissioner, made at any time before the Chairman's decision is served, the

petition will be referred to the Commission for decision.

§ 1011.6 Employee boards.

This section covers matters assigned to boards of employees of the Commission. Except as provided at paragraph (f) of this section, a board may certify any matter assigned to it to the Commission.

(a) *Suspension/Special Permission Board.* This board has authority to act initially on matters involving tariff provisions and railroad contracts as follows:

(1) In matters arising from 49 U.S.C. 10707 and 10708 relating to suspension and/or investigation of a tariff matter, the board is not authorized to act on petitions or requests relating to rates, classifications, rules, or practices filed in purported compliance with decisions of the Commission or to act in connection with suspensions to be taken during or after formal hearings and investigations. The board is authorized:

(i) To not suspend a rate or a classification, rule, or practice related to a rate, or to suspend such rate, classification, rule, or practice and order an investigation;

(ii) To institute investigations into rates, fares, charges, and practices of regulated carriers; and

(iii) Before the submission of evidence, to discontinue any proceeding when the proposed rate, classification, rule, or practice has been cancelled.

(2) In matters arising from 49 U.S.C. 10726, the board is authorized to grant or withhold relief from the long and short haul transportation requirements of that statute, except for proceedings made the subject of formal hearings, matters prompted by an order or requirement of the Commission, matters arising from general increase proceedings, or in cases of calamitous visitation where the Vice Chairman has been delegated authority at 49 CFR 1011.5(b)(3).

(3) In matters arising from 49 U.S.C. 10701, 10702, 10761, and 10762, the board is authorized to grant or withhold special tariff authority or other permissible waivers of rules regarding tariffs or schedules, including authorization for the cancellation of suspended tariffs or schedules, that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) In matters arising from 49 U.S.C. 10713, the board is authorized:

(i) To grant or withhold discovery of railroad transportation contracts;

(ii) To institute investigations of railroad transportation contracts; and

(iii) To grant or withhold relief from 49 CFR 1313.7(a), (b), (c), and (d) governing the construction and filing of railroad transportation contracts and railroad transportation contract summaries.

(b) *OCCA boards*—(1) Insurance Board.—(i) Matters arising under 49 U.S.C. 10924 and 10927, regarding bonds or other security to assure financial responsibility of brokers, and 49 U.S.C. 10927, regarding motor carriers providing bonds, insurance, or other security for the protection of the public, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(ii) Matters arising under 49 U.S.C. 10329 and 10330 regarding the designation by motor carriers and brokers of persons on whom orders and notices may be served and the designation of agents on whom service of process may be made, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(iii) Matters arising under 49 U.S.C. 11711 regarding review and approval of claim dispute settlement programs submitted by motor common carriers of household goods, and revocation or suspending approval of such programs if the carrier(s) fail to comply with that statute. The Insurance Board shall certify a representative sampling of proposed dispute settlement programs to the Commission.

(2) *Motor Carrier Leasing Board*. Matters arising under 49 U.S.C. 10321, 11101, and 11107 and the implementing regulations at 49 CFR part 1057 regarding the lease and interchange of vehicles by motor carriers, except matters involving taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(3) *Railroad Service Board*. Matters regarding car-service except controversies between carriers as to compensation, under 49 U.S.C. 11123, 11124, 11127, and 11128, which have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(4) *Revocation Board*. Entry of show cause orders under 49 U.S.C. 11701 and 10925 (b)(1), (c)(1), and (c)(3) directed to motor carriers, brokers, water carriers, and household goods freight forwarders who have failed to submit the proper application fee or to file required annual reports; and determination of uncontested motor carrier, broker, water carrier, and household goods freight

forwarder suspension, change, or revocation proceedings under 49 U.S.C. 10925 that have not involved taking testimony at a public hearing. The Motor Carrier Board is delegated revocation authority in connection with licensing matters at § 1011.6(g)(7).

(5) Any matter referred to an OCCA Board that is subsequently assigned for taking testimony at a public hearing shall be withdrawn from the board.

(6) The Railroad Service Board will establish and oversee modified hearing procedures implementing section 226 of the Staggers Rail Act of 1980, Public Law No. 96-448, which revises 49 U.S.C. 11123(a) and provides for issuance of extensions of emergency service orders by the Commission. Each order issued under revised 49 U.S.C. 11123(a) will contain a notice of the hearing procedures to be followed with respect to any extension of that order.

(c) *Released Rates Board*. Matters arising under 49 U.S.C. 10730(a) regarding applications to establish released rates and ratings that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits.

(d) *Accounting Board*. (1) Authority:

(i) To permit departure from general rules prescribing uniform systems of accounts for carriers and other persons under the revised Interstate Commerce Act, subtitle IV of title 49 of the U.S. Code, and from the regulations governing the forms and recording of passes for carriers and other persons under the Act;

(ii) To prescribe rates of depreciation to be used by railroad and water carriers;

(iii) To issue special authorizations permitted by the regulations governing the destruction of records of carriers subject to the Act;

(iv) To grant extensions of time for filing annual, periodical, and special reports in matters that do not involve taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits; and

(v) To issue valuation reports in matters that do not involve taking testimony at public hearings or the submission of evidence by opposing parties in the form of affidavits.

(2) The board may certify any matter assigned to it to the Vice Chairman of the Commission.

(e) *Special Docket Board*. Disposition of Special Docket proceedings under 49 CFR 1130.2 (e) and (f).

(f) *Regional Motor Carrier Boards*. (1) Matters arising under 49 U.S.C. 10928 regarding applications for temporary authority by common or contract

carriers by motor vehicle or water, except matters involving broad questions of policy, matters in which the decision of the boards would be inconsistent with a decision of the Commission, and matters in which substantially the same question is already before the Commission.

(2) Effective June 21, 1993, authority to process applications (including all matters related thereto) under 49 U.S.C. 10530 filed by, and issue certificates of registration to, foreign motor carriers and foreign motor private carriers.

(g) *Motor Carrier Board*. (1) Pre-publication matters in operating rights applications of motor carriers, water carriers, household goods freight forwarders, and property brokers.

(2) Motor passenger carrier and water carrier finance applications under 49 U.S.C. 11343-11344, and small carrier transfer applications under 49 U.S.C. 10926.

(3) Temporary authority applications related to finance proceedings under 49 U.S.C. 11349.

(4) Applications that have not involved taking testimony at a public hearing or the submission of evidence by opposing parties in the form of affidavits, under:

(i) 49 U.S.C. 10321, relating to the transfer of brokers' licenses; and

(ii) 49 U.S.C. 10931 and 10932, relating to the transfer of Certificates of Registration and rights to operate pending determination of applications for Certificates of Registration.

(5) Issuance of decisions substituting applicants in non-rail licensing proceedings and finance proceedings where operating authority has not yet been issued.

(6) Issuance of decisions on requests by motor passenger contract carriers for exemption from the tariff filing requirements of 49 U.S.C. 10702(b), 10761(b), and 10762(f).

(7) Authority to decide all routine appeals from initial actions of the Motor Carrier Board. Non-routine appeals from initial actions of the Motor Carrier Board shall be certified by the Board to the Secretary of the Commission for disposition.

§ 1011.7 Delegations of authority by the Chairman.

(a)(1) This section provides for delegations of authority by the Chairman of the Interstate Commerce Commission to individual Commission employees.

(2) The Chairman of the Commission may remove for disposition any matter delegated under this section, and any matter delegated under this section may be referred by the Commission

employee to the Chairman for disposition.

(b)(1) The Chairman of the Commission will decide appeals from decisions of employees acting under authority delegated under this section. Appeals must be filed within 10 days after the date of the employee's action, and replies must be filed within 10 days after the due date for appeals. Appeals are not favored and will be granted only in exceptional circumstances to correct a clear error of judgment or to prevent manifest injustice.

(2) The Chairman may on his own motion review, reverse, or modify any decision of an employee acting under authority delegated under this section.

(c)(1) As used in this paragraph, *procedural matter* includes, but is not limited to, the assignment of the time and place of hearing; the assignment of proceedings to Administrative Law Judges; the issuance of decisions directing special hearing procedures; the establishment of dates for filing statements in cases assigned for handling under modified (non-oral hearing) procedure; the consolidation of proceedings for hearing or disposition; the postponement of hearings and of procedural dates; the waiver of formal specifications for pleadings; and extensions of time for filing pleadings. It does not include interlocutory appeals from the rulings of hearing officers; nor does it include postponement of the effective date of:

- (i) Decisions pending judicial review,
- (ii) Decisions of the entire Commission,
- (iii) Cease and desist orders,
- (iv) Orders suspending or revoking operating authority, or
- (v) Final decisions where petitions for discretionary review have been filed under 49 CFR 1115.5.

(2) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of procedural matters arising before issuance of an initial decision in proceedings assigned for handling under oral hearing procedure or assigned to an Administrative Law Judge under modified procedure is delegated to the Chief Administrative Law Judge of the Commission. Notwithstanding this delegation, Commissioners, Administrative Law Judges, and Joint Boards appointed under 49 U.S.C. 10341-10344 retain the authority to dispose of procedural matters in proceedings assigned to them.

(3) Unless otherwise ordered by the Commission in individual proceedings, authority to dispose of routine procedural matters in proceedings assigned for handling under modified

procedure, other than those assigned to an Administrative Law Judge, or arising after issuance of an initial decision by a hearing officer in a proceeding that has been the subject of an oral hearing, is delegated to the Secretary of the Commission. The Secretary shall also have authority, unless otherwise ordered by the Chairman or by a majority of the Commission in individual proceedings, to decide whether operating rights application and complaint proceedings shall be handled under the modified procedure or be assigned to the Office of Hearings. In carrying out these duties, the Secretary shall consult, as necessary, with the General Counsel and the Director of any other Commission Office to which an individual proceeding has been assigned.

(d) Except as provided at 49 CFR 1113.3(b)(1), authority to dismiss a complaint on complainant's request, or an application on applicant's request, is delegated to the Secretary and to the Chief Administrative Law Judge.

(e) The entry of reparation orders, responsive to findings authorizing the filing of statements of claimed damages as provided at 49 CFR 1133.2, is delegated to the Director of the Office of Tariffs.

(f) Authority to grant or deny access to waybills and to statistics reported under orders of the Commission is delegated to the Director of the Office of Economics.

(g) Certain accounts in the Uniform Systems of Accounts, 49 CFR parts 1200 through 1207, require Commission approval to use. Authority to grant or deny requests for use of these accounts is delegated to the Director of the Office of Economics, the Deputy Director of Economics—Accounts, and the Chief of the Section of Audit and Accounting.

(h) The Secretary of the Commission is delegated authority, under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, to:

(1) Sign and transmit to the Small Business Administration certifications of no significant economic effect for proposed rules, that if adopted by the Commission, will not have a significant economic impact on a substantial number of small entities; and

(2) Sign and transmit findings regarding waiver or delay of an initial regulatory flexibility analysis or delay of a final regulatory flexibility analysis.

(i) Issuance of certificates and decisions when no protest is received within 30 days after an abandonment or discontinuance application is filed under 49 U.S.C. 10903, and the Commission must find, under 49 U.S.C. 10904(b) that the public convenience

and necessity require or permit the abandonment or discontinuance, is delegated to the Director of the Office of Proceedings.

(j) Issuance of certificates and decisions authorizing Consolidated Rail Corporation to abandon or discontinue service over lines for which an application under section 308 of the Regional Rail Reorganization Act of 1973 has been filed is delegated to the Director of the Office of Proceedings.

§ 1011.8 Delegations of authority by the Commission to specific offices of the Commission.

(a) *Office of Public Assistance.* (1) There is established an Office of Public Assistance. The Office assumes the functions previously assigned to the former Office of Special Counsel, the former Small Business Assistance Office, and the State/Community Affairs Liaison position formerly in the Office of Legislation and Governmental Affairs.

(2) The Office shall be managed by a Director, who also serves as Special Counsel of the Commission, and by a Deputy Director, who also serves as the Small Business Assistance Officer of the Commission. The Special Counsel shall be appointed by the Chairman, subject to the approval of a majority of the Commission.

(3) The mission of the Office is to assist the Commission and the public in determining and representing the public interest, with regard to the Interstate Commerce Act and related statutes. The primary function of the Office is to act as the focal point to coordinate Commission activities ensuring that:

(i) The public interest is fully developed in proceedings before the Commission and especially to contribute to the development of a complete record in proceedings in which important aspects of the public interest otherwise would not be explored adequately, particularly proceedings affecting the interests of bus passengers, household goods shippers, owner operators, and classes II and III rail carriers and the shippers they serve;

(ii) Small and minority-owned transportation entities, transportation-related entities, consumer groups, small communities, carriers and shippers, and State regulatory officials are advised on the applicability of the law and of the availability of assistance from the Commission as this applies to their enterprise; and

(iii) The Commission is advised on policy matters regarding its small business assistance functions and programs.

(4) The Office will participate as a party in Commission proceedings, including rulemakings, only on the filing of a petition seeking, and on the approval of a majority of the Commission granting, such recourse.

(5) The Office of Hearings, in noticing cases for public hearings, shall advise parties of the availability of assistance from the Office of Public Assistance.

(b) *Office of the Secretary.* The Secretary of the Commission is delegated the following authority:

(1) Whether (in consultation with involved Offices) to waive filing fees set forth at 49 CFR 1002.2(f).

(2) To issue, on written request, informal opinions and interpretations (exclusive of informal opinions and interpretations on carrier tariff provisions), which are not binding on the Commission. In issuing informal opinions or interpretations, the Secretary shall consult with the Director of the appropriate Commission office. Such requests must be directed to the Office of the Secretary, Legal Branch, Interstate Commerce Commission, Washington, DC 20423. Authority to issue informal opinions and interpretations on carrier tariff provisions is delegated at 49 CFR 1011.8(d)(2) to the Office of Tariffs.

(c) *Office of Proceedings.* The Director of the Office of Proceedings shall have authority initially determinative of the following:

(1) Whether to designate protested abandonment proceedings for investigation (including action on requests for oral hearing).

(2) Whether offers of financial assistance satisfy the statutory standards of 49 U.S.C. 10905(d) for the purpose of negotiations or, in exemption proceedings, for purposes of partial revocation and negotiations.

(3) Whether: (i) To impose, modify, or remove environmental and historic preservation conditions; and

(ii) In abandonment proceedings, to impose public use conditions under 49 U.S.C. 10906 and the implementing regulations at 49 CFR 1152.28.

(4) In abandonment proceedings, when a request for interim trail use/rail banking is filed under 49 CFR 1152.29, determining whether the National Trails System Act, 16 U.S.C. 1247(d), is applicable and, where appropriate, issuing Certificates of Interim Trail Use or Abandonment (in application proceedings) or Notices of Interim Trail Use or Abandonment (in exemption proceedings).

(5) In any abandonment proceeding where interim trail use/rail banking is an issue, to make such findings and issue decisions as may be necessary for

the orderly administration of the National Trails System Act, 16 U.S.C. 1247(d).

(6) Whether to institute requested declaratory order proceedings under 5 U.S.C. 554(e).

(7) In all exemption proceedings under 49 U.S.C. 11343(e) involving non-rail intermodal parties, to make such findings as necessary and to issue notices of exemption.

(8) To issue decisions, after 60 days' notice by any person discontinuing a subsidy established under 49 U.S.C. 10905 and at the railroad's request:

(i) In application proceedings, immediately issuing certificates of abandonment or discontinuance; and

(ii) In exemption proceedings, immediately vacating the decision that postponed the effective date of the exemption.

(9) In proceedings under the Feeder Railroad Development Program under 49 U.S.C. 10910 and the implementing regulations at 49 CFR part 1151:

(i) Whether to accept or reject primary applications under § 1151.2(b); competing applications under § 1151.2(c); and incomplete applications under § 1151.2(d).

(ii) Whether to grant waivers from specific provisions of 49 CFR part 1151.

(10) In exemption proceedings subject to environmental or historic preservation reporting requirements, to issue a decision, under 49 CFR 1105.10(g), making a finding of no significant impact where no environmental or historic preservation issues have been raised by any party or identified by the Commission's Section of Energy and Environment.

(11) Whether to issue notices of exemption under 49 U.S.C. 10505:

(i) For acquisition, lease, and operation transactions under 49 U.S.C. 10901 and the implementing regulations at 49 CFR part 1150, subpart D; and

(ii) For rail transactions under 49 U.S.C. 11343 and the implementing regulations at 49 CFR 1180.2(d).

(12) Whether to issue rail modified certificates of public convenience and necessity under 49 CFR part 1150, subpart C.

(13) Whether to waive the regulations at 49 CFR part 1152, subpart C, on appropriate petition.

(14) To reject applications, petitions for exemption, and verified notices (filed in class exemption proceedings) for noncompliance with the environmental rules at 49 CFR part 1105.

(15) To reject applications by Burlington Northern Railroad Company to abandon rail lines in North Dakota exceeding the 350-mile cap of section

402 of Public Law 97-102, 95 Stat. 1465 (1981), as amended by The Department of Transportation and Related Agencies Appropriations Act, 1992, Public Law 102-143, section 343 (Oct. 28, 1991).

(16) Whether to extend the 120-day limit within which 49 U.S.C. 10706(b)(3)(B)(vii) mandates that rate bureaus shall finally dispose of rules or rates docketed with them.

(17) Whether, absent controversy or unusual circumstances, to issue notices of provisional recertification under *State Intrastate Rail Rate Authority*, 5 I.C.C.2d 680, 684 (1989).

(d) *Office of Tariffs.* The Office of Tariffs is delegated the authority to:

(1) Reject tariffs, schedules, railroad transportation contracts, and railroad transportation contract summaries filed with the Commission that violate applicable statutes, rules, or regulations, except when such summary rejection of facially defective tariff filings would give rise to potential undercharge problems. In such event, the defective tariff filings shall not be rejected and instead shall become effective on schedule provided that corrections are filed within 15 days. Any rejection of a tariff, schedule, contract, or summary may be by letter signed by or for the Director, Office of Tariffs, or the Chief, Section of Tariff Maintenance and Compliance, Office of Tariffs.

(2) Issue, on written request, informal opinions and interpretations on carrier tariff provisions, which are not binding on the Commission.

2. The heading for Part 1171 is revised to read as follows:

PART 1171—APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

3. The authority citation for part 1171 continues to read as follows:

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

4. In § 1171.3, paragraph (c) is revised to read as follows:

§ 1171.3 Procedures used generally.

* * * * *

(c) Form OP-2 may be obtained at any of the Commission's Regional Offices or by contacting the Commission's Office of Public Assistance.

* * * * *

5. Section 1171.5 is revised to read as follows:

§ 1171.5 Where to send the application.

(a) The original and one copy of the application shall be filed with the Regional Office that has jurisdiction

over applicant's point of domicile (the instructions to the application provide more specific information), or at such other location as the Commission may designate in special circumstances. A check or money order for the amount of the filing fee set forth at 49 CFR 1002.2(f)(1), payable to the Interstate Commerce Commission in United States dollars, must be submitted.

(b) One copy of the application shall be sent to the U.S. Department of Transportation, Federal Highway Administration, Office of Motor Carriers, Washington, DC 20590.

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

6. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343-11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

7. In § 1180.4, paragraph (c)(6)(iii) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(c) * * *

(6) * * *

(iii) The Commission's Office of the Secretary will provide informal opinions and interpretations, which are not binding on the Commission, regarding the format of or information to be included in the application.

* * * * *

[FR Doc. 93-11982 Filed 5-19-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185-3021]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for pollock by operators of vessels using non-pelagic trawl gear in bycatch limitation zone 2 (Zone 2) in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 1993 prohibited species bycatch allowance of *C. bairdi* Tanner crab to the pollock/Atka mackerel/"other species" category in Zone 2 of the BSAI has been reached. **EFFECTIVE DATES:** Effective 12 noon, Alaska local time (A.L.T.), May 14, 1993, through 12 midnight, A.L.T., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S.

vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

The 1993 *C. bairdi* Tanner crab bycatch allowance for the trawl pollock/Atka mackerel/"other species" category, which is defined at § 675.21(b)(1)(iii)(F), is 1,146,167 animals (58 FR 8703, February 17, 1993).

The Director of the Alaska Region, NMFS, has determined, in accordance with § 675.21(c)(1)(ii), that the 1993 prohibited species bycatch allowance of *C. bairdi* Tanner crab to the pollock/Atka mackerel/"other species" category in Zone 2 of the BSAI has been reached. Therefore, NMFS is prohibiting directed fishing for pollock by operators of vessels using non-pelagic trawl gear in Zone 2 in the BSAI from 12 noon, A.L.T., May 14, 1993, through 12 midnight, A.L.T., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.21 and complies with Executive Order 12291.

List of Subjects in 50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 14, 1993.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-11941 Filed 5-14-93; 8:45 am]

BILLING CODE 3510-22-M