

applied before the *Voice of Dixie* decision, the Report and Order adopted today suggests otherwise in at least one passage. In adopting the Contractor's recommendation (with minor modifications) we noted that:

"The test to be used regarding the showing required to reopen the question of the adequacy of the ascertainment survey, by way of motion to enlarge issues, will be limited to *misrepresentation* or *gross omission* of some *decisively significant* area which would make the survey *totally unacceptable*." (Par. 54; emphasis added).

My initial opinion was that this standard for review of the staff's action was one which would permit acceptance of ascertainment showings only minimally complying with the *Primer* and other Commission policies. For if the staff determined that the application substantially complied with our policies (a determination in which "only the applicant and the staff are involved") even if it did not, it seemed to me that a review standard requiring a showing of "misrepresentation or gross omission of some decisively significant area which would make the survey totally unacceptable" in most instances precluded any further examination of the showing.

However, to the extent that that language suggested a standard other than that which existed prior to *Voice of Dixie*, it is not so intended by the Commission. In discussion at the meeting at which we adopted this Report the staff assured us that the review standard permitted an ALJ to enlarge issues if a showing was made that the applicant's ascertainment survey did not substantially comply with our policies. And the tests for substantial compliance are those applied before the *Voice of Dixie* case. (See *Report and Order*, note 9). Also reassuring are subsequent passages in the Report and Order at paragraph 54: "(W)e will return to the previous body of precedent which identified substantial compliance as being sufficient. These criteria shall be applied *at all levels of the adjudicative process* * * * (emphasis added).

I am also concerned that insufficient notice was given to interested parties about the change in the Commission's policy regarding the acceptability of ascertainment showings. The focus of the Report and the discussions both outside and within the Commission have been on the procedural aspects of the Report and the efforts to ameliorate the backlog in applications for new broadcast facilities. Since the procedural changes as well as the Commission's reversal of the *Voice of Dixie* policy apply to petitions to deny new applications, I considered urging the Commission to submit the Report for further public comment with a special emphasis put on the ascertainment issue.

I am persuaded, however, that the backlog situation in processing our new applications compels us to move as quickly as possible and that we have technically complied with all notice and comment requirements. Moreover, those interested groups which have not commented in this proceeding but might have done so if it were clear that a change in the ascertainment compliance standard was intended, still have an

opportunity to comment by filing for reconsideration of the Commission's action.

One final point. The changes made today are procedural in nature and are not intended to eliminate the substantive ascertainment requirements or the procedural requirements of the *Primer*. *Primer on Ascertainment of Community Problems by Broadcast Applicants*, 27 FCC 2d 650 (1971). Nor are they intended to denigrate the requirement of substantial compliance with the *Primer*. Finally they are not intended to affect the ascertainment showings required of renewal applicants who are subject to the renewal *Primer*. *Ascertainment of Community Problems by Renewal Applicants*, 57 FCC 2d 248 (1975), *recon. granted in part*, 61 FCC 2d 1 (1976). The Commission is looking into the substance of ascertainment and the *Primer* requirements in another proceeding. I am sure the Commission intends the staff to apply the existing rules in the interim, and interested parties should be guided accordingly.

[FR Doc. 79-16916 Filed 6-15-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Materials Transportation Bureau

General Information, Regulations, and Definitions; Matter Incorporated by Reference

[Docket No. HM-22; Amdt. No. 171-48]

49 CFR Part 171

AGENCY: Materials Transportation Bureau (MTB), Research and Special Programs Administration, DOT.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to update the reference in 49 CFR 171.7(d)(1) to the ASME Boiler and Pressure Vessel Code in order to recognize the 1977 edition of the ASME Code and the addenda thereto through December 31, 1978.

EFFECTIVE DATE: July 18, 1979.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Standards Division, Office of Hazardous Materials Regulation, Department of Transportation, 2100 Second Street, S.W., Washington, D.C., 20590, telephone 202-755-4902.

SUPPLEMENTARY INFORMATION: On April 23, 1979, the MTB published a notice of proposed rulemaking in the *Federal Register* (44 FR 23880), proposing to update the ASME code reference in § 171.7(d). The basis for this proposal was a petition from the Compressed Gas Association requesting that the reference be updated to reflect current improvements in the standard. The MTB has reviewed the complete standard and

concur with the improvements except for the provisions on ultrasonic testing of welds (paragraph UW-11(a)(7)).

Since publication of this notice, the MTB has not received any comments on this docket. Therefore, the ASME code through 1977 and the addenda published thereto through December 31, 1978, will be referenced in § 171.7(d) with the exception of paragraph UW-11(a)(7) as proposed by the notice.

In consideration of the foregoing, Title 49, Code of Federal Regulations, § 171.7(d)(1) is revised to read as follows:

§ 171.7 Matter incorporated by reference.

* * * * *
(d) * * *

(1) ASME Code means section VIII (Division I) and IX of the 1977 edition of the "American Society of Mechanical Engineers Boiler and Pressure Vessel Code," and addenda thereto through December 31, 1978, except paragraph UW-11(a)(7) of the code does not apply.

* * * * *

(49 U.S.C. 1803, 1804, 1808; 49 CFR 1.53 and App. A to Part 1)

Note.—The Materials Transportation Bureau has determined that this final rule will not result in a major economic impact under the terms of Executive Order 12044 and DOT implementing procedures (44 FR 11034), nor an environmental impact statement under the National Environmental Policy Act (49 U.S.C. 4321 et seq.). A regulatory evaluation is available in the docket.

Issued in Washington, D. C. On June 7, 1979.

L. D. Santman,
Director, Materials Transportation Bureau.

[FR Doc. 79-16882 Filed 6-15-79; 8:45 am]
BILLING CODE 4910-60-M

Federal Highway Administration

49 CFR Part 395

[BMCS Docket No. MC-86; Amdt. No. 78-6]

Drivers Declared Out of Service

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Regulations (FMCSR) are being amended by changing the criteria by which a driver may be placed out of service. With some exceptions, upon detection, a driver will be declared out of service for 8 consecutive hours for not having drivers' logs current on the day of examination and the prior 7 consecutive days. In the past, drivers who complied with the request to produce a log and who were found to be