

## PART 91—AIRCRAFT LOAN GUARANTEE PROGRAM

CROSS REFERENCE: For a document re-voking Part 91 of Subtitle A of Title 49, see F.R. Doc. 68-6528, 14 CFR Part 199, *supra*.

### Chapter I—Department of Transportation

[Docket No. HM-1]

## PART 170—RULE-MAKING PROCE- DURES OF THE HAZARDOUS MA- TERIALS REGULATIONS BOARD

The purpose of this amendment is to add a new Part 170 "Rule-making Procedures of the Hazardous Materials Regulations Board" to Title 49 of the Code of Federal Regulations.

A notice of proposed rule making (Notice 67-1) regarding this action was published in the FEDERAL REGISTER on November 30, 1967 (32 F.R. 16437). A supplemental notice (Notice 68-3) was published on February 28, 1968 (33 F.R. 3439), and a public hearing on the entire proposal was held on March 19, 1968.

Interested persons were then afforded an opportunity to participate in the rule making through the submission of oral and written comments. Due consideration has been given to all relevant matter presented.

*Historical background.* The shipment and carriage of hazardous materials by carriers subject to the Interstate Commerce Act (rail, motor carrier, pipeline, inland waterway) is governed by sections 831-835 of Title 18, United States Code. Before April 1, 1967, this authority was exercised by the Interstate Commerce Commission. Since that date, the authority has been exercised by the Department of Transportation, pursuant to the Department of Transportation Act. The shipment and carriage of hazardous materials by air has since 1958 been governed by section 902(h) of the Federal Aviation Act of 1958, which authorizes the Federal Aviation Administrator to issue his own regulations or to adopt, in whole or in part, the regulations issued under Title 18 U.S.C. by the Interstate Commerce Commission (ICC). The FAA has, in the past, for the most part adopted the regulations issued by the ICC. The shipment and carriage of hazardous materials by vessel is governed by section 4472 of the Revised Statutes (46 U.S.C. 170) which authorizes the Commandant of the Coast Guard to define, describe, name, and classify hazardous materials and establish regulations for their carriage. It also requires him to "accept and adopt" for these purposes, the ICC regulations so far as they apply to shippers by common carriers by water.

Thus, the vast majority of the regulations applicable to hazardous materials were those adopted by the ICC in Title 49 of the CFR's.

(1) In adopting those regulations the ICC followed the normal requirements of the Administrative Procedure Act for notice to the public of proposed rules,

time for public comment, evaluation of comments and issuance of final rules. These procedures were not, however, completely set forth in the published procedural rules.

(2) While public hearings were specifically authorized in § 171.7 of Title 49, in the Administrative Procedure Act, and in the basic statutory authority, such hearings were not mandatory and, in fact, were rarely held.

(3) Within the ICC the rule-making authority with respect to hazardous materials was delegated to an employee board of the Commission called the Explosives and Other Dangerous Articles Board. This Board issued the notices, evaluated the comments and adopted final amendments for the Commission. Actions of this Board could be appealed to Division 3 of the Commission which consisted of three commissioners who reviewed the appeals. A second level of appeal could, in the discretion of the Commission, be made to the entire Commission after which the only recourse was to the courts.

(4) In the course of the rule-making procedure the ICC's section of Explosives and Other Dangerous Articles held frequent informal meetings and discussions with representatives of affected industry groups.

(5) Section 17(8) of the Interstate Commerce Act provided that the effective date of an amendment would, in the case of an employee Board regulation or Division regulation, be suspended upon the request by any interested person for reconsideration until further action by the Commission. This section of the Interstate Commerce Act was not, however, made applicable to the Department of Transportation by the Department of Transportation Act. Only those rules and regulations of the Interstate Commerce Commission that were effective before the Department's effective date were continued in effect. Thus, the procedural rules issued by the ICC but not the statutory rules were continued in effect by section 12 of the Department of Transportation Act, until changed and superseded by the rules adopted by the Department.

Upon establishment of the Department, effective April 1, 1967, the above described powers and duties of the ICC, FAA, and Coast Guard with respect to the transportation of hazardous materials were transferred to the Department of Transportation. As was stated in the original notice announcing the establishment of the Hazardous Materials Regulations Board (32 F.R. 14569), the Department considers it to be essential that shippers and carriers be able to refer to a cohesive set of authoritative regulations upon which they may rely in preparing, shipping, and transporting materials regardless of the mode of transportation. To this end the Secretary, by Departmental Order 1100.11 dated July 27, 1967, established a Hazardous Materials Regulations Board. One of the first acts of this Board was to issue Notice 67-1, proposed rules of procedure, on November 30, 1967 (32 F.R. 16437), for public comment.

*Analysis of comments.* In general, the bulk of comments received on the notices and at the hearing dealt with four major areas—(1) Special permit requirements; (2) the treatment of confidential and proprietary information received by the Board; (3) procedures for administrative appeal and automatic stay of rules; and (4) mandatory hearings.

(1) *Special permits.* Many of the comments received on Notice 67-1 were, so far as they related to special permits, reflected in the restatements of proposed §§ 170.13 and 170.15 contained in supplemental Notice 68-3 and were fully discussed in that notice. Other comments on this subject related to the providing of notice to the public, the Bureau of Explosives, and certain carriers of the granting of special permits. The Board has determined, as an administrative matter, that it will periodically publish, in the FEDERAL REGISTER, a listing of permits issued. The Board will also continue its policy of close cooperation with the Bureau of Explosives in this regard. The Board has determined, however, that it cannot accept a requirement that it furnish copies of special permits to carriers. In many cases special permits are issued without knowledge of the specific carrier or carriers to be used. Therefore, even if it adopted such a role, the Board could not comply with it. It is the duty of the holder of the permit to notify the carriers concerned of the provisions of the special permit, and no carrier is authorized or required to operate in ignorance of the terms of a special permit. As a result, under the prevailing situation the Board has elected to continue the practice that has been followed in the past in this regard, both by it and the ICC.

Several comments suggested deletion of the phrase "why the public interest would be served by the proposal" in § 170.13(b)(2). It should be made clear that the proposed language does not state that the granting of a permit depends upon a showing of a public interest. It merely requires that the petitioner submit information on this point. If there is no information that can be submitted, the petitioner may so state. It is the Board's position that the required information, or the absence of it, is pertinent to its considerations and will be of use to it in making its determinations, particularly in cases where there is some question as to the other justifications for the permit.

Finally, several comments stated that § 170.13(b)(4) should be narrowed to delete the requirement that the "composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture" be submitted with each applicable petition for a permit. The Board considers this information to be relevant to its consideration in the applicable cases. So far as this requirement relates to confidential information, the Board will accord it the desired protection (see discussion below).

(2) *Confidential and proprietary information.* In the written comments and at the public hearing, several persons questioned the protection to be afforded

confidential or proprietary information submitted with petitions for rule making or special permits. Under the "Freedom of Information Act" (section 552 of Title 5, United States Code), all records of each Government agency are open to public inspection except certain records that the statute specifically authorizes to be exempted. The regulations of the Department of Transportation relating to the public availability of information are set forth in Part 7 of Title 49 CFR. The general policy of the Department as stated in § 7.51 is that it will release a record that is otherwise authorized to be withheld under the statutory exemption "unless it determines that the release of that record would be inconsistent with a purpose of the section concerned."

In Notice 68-3 the restatement of § 170.15 stated that "The treatment of confidential or proprietary material furnished by any petitioner is governed by § 7.59 of this title". Section 7.59(a) states that the types of information that are within the statutory exemption include "Information furnished by any person, to the extent that the person furnishing the information would not customarily release it to the public" and "Information furnished and accepted in confidence". Section 7.59(b) states "The purpose of this section is to authorize the protection of records that are customarily privileged or are appropriately given to the Department in confidence \* \* \*. In any case in which the Department has obligated itself not to disclose information it receives, this section authorizes the Department to honor that obligation".

Section 7.59 therefore provides persons submitting confidential or proprietary information to the Hazardous Materials Regulations Board the same protection that is provided to all persons submitting these types of information to the Department. This protection is considered adequate and where applicable the affected materials will not be placed in the public docket.

(3) *Procedures for administrative appeal and automatic stay of rules.* As indicated previously, under the ICC, actions of the employee board that issued the notices and adopted the final amendments could automatically be appealed to a designated division of the Commission and the Commission could in its discretion grant a second level of appeal. Under section 17(8) of the Interstate Commerce Act, whenever, under certain circumstances, a final rule was appealed before its effective date, that effective date was stayed until final disposition of the appeal. Several comments indicated that the Board's procedural rules should provide both an administrative appeal procedure within the Department of Transportation and an automatic stay provision.

As the Hazardous Materials Regulations Board is presently constituted within the Department of Transportation an administrative appeal procedure is impractical and would appear to be unnecessary. It should be kept in mind that since the Board is made up for the

most part of the Administrators of the various operating administrations within the Department, the initial issuance of regulations will be from a higher source, and after more consideration, than was the case of employee board issued regulations of the ICC. To provide for a formal appeal procedure to the same Board (Administrators) that issued the rule in question would not appear to satisfy the desires of those persons who requested a "second chance" within the Department. In this connection, § 170.35 as proposed, provided for petitions for rehearing or reconsideration of rules. In cases where facts are submitted before the effective date of a rule that warrants postponement of the effective date, the Board will not hesitate to provide for a postponement. Furthermore, even where there is no postponement, if after evaluation of the comments, the Board determines that a revision of the rule is warranted, it will not hesitate to make or propose changes to the adopted rule.

With respect to "staying" the effect of adopted rules, proposed § 170.35 specifically provided that "Unless the Board otherwise provides, the filing of a petition under this section does not stay the effectiveness of a rule". In the absence of a procedure providing an appeal to a separate body within the Department, automatic stay would appear to serve no practical purpose except delay. Nor is the Board convinced that an automatic stay is an appropriate procedure for safety regulations even where a formal appeal is provided.

(4) *Hearings.* The proposed rules of procedure did not provide in every case for a public hearing. Proposed § 170.31 did provide that, whenever the Board should elect to hold a hearing, the hearing would be a nonadversary, factfinding type of hearing. Several of the comments were addressed to the lack of provision for a mandatory hearing, upon request, and to the lack of provision for a formal evidentiary type of hearing. As is stated in § 170.31, sections 556 and 557 of Title 5, United States Code (relating to the conduct of hearings required to be on the record) have no application to hearings held for the purposes of proposed rule-making action under the pertinent statutes. The purpose of any hearing held by the Board would be to provide the Board with information, views, and arguments relative to proposed rule-making action. The Board is not and should not be required to act solely on the narrowly developed information that would be produced at a formal hearing. It is only in the area of economic rule making such as the ICC, CAB, FTC, and FCC that evidentiary hearings are generally used. Seldom, if ever, are evidentiary hearings held in safety matters. The FAA, for example, and the Coast Guard have traditionally used the legislative type of hearing in safety rule making. Therefore, it would be inappropriate and unduly burdensome for the Board to attempt to provide formal evidentiary hearings.

Nor does the Board consider it necessary or appropriate that a hearing be required in every case where there is a request for one. In appropriate cases the

Board will not hesitate to hold an informal public hearing of the type prescribed in these rules. However, to require the Board to hold such a hearing whenever one interested party requests, would be to unnecessarily burden the Board and tie its hands administratively. In every proposed rule-making action of a substantive nature adequate time for public comment will be provided and the Board will consider all comments received. It is not necessary or appropriate in every case that interested parties be permitted to state their comments orally. However, if in any case, it would be helpful, the Board will not hesitate to call a hearing on any matter before it.

*Miscellaneous comments.* In addition to the above major areas of comment, comments were received on the following matters.

Several comments objected to the statement in proposed § 170.21(b) that "Unless the Board determines that notice and public rule-making proceedings are desirable, interpretive rules, general statements of policy, and rules relating to organizations, procedure, or practice are prescribed as final without notice or other public rule-making procedures". It must be noted that this authority is strictly limited to non-substantive rules, and not those affecting the rights, privileges, and duties of the regulated public and is therefore completely consistent with specific provisions of the Administrative Procedure Act (see 5 U.S.C. 553). Furthermore, the Board intends, whenever time permits, to provide for public participation in the adoption of rules, even these nonsubstantive rules, regardless of the fact that it is not required to do so.

Several comments suggested the addition of language to provide that the effective date for all regulations be at least 30 days after issue. In view of the fact that section 835(d) of Title 18, United States Code, specifies that all regulations take effect 90 days after issue "unless a shorter time is specified" and in view of section 553(d) of Title 5 United States Code which requires (except in certain enumerated cases) at least 30 days between issue and effective date, the Board does not consider it necessary to add this provision.

It was suggested that the rules provide for specific service of notices of proposed rule making on all parties. This comment must be rejected on practical grounds as it would be impossible for the Board to ascertain all interested parties in each case. However, the Board will furnish copies of notices to any person who requests to have his name placed on a mailing list for this purpose. Interested persons are invited to take advantage of this opportunity.

Notice 68-3 stated that the FAA was considering inclusion in Part 170 of the authority to grant deviations now in § 103.5 of the Federal Aviation Regulations. On the basis of comments received, the FAA has decided not to make the transfer at this time.

*Miscellaneous changes based on comments.* It was suggested that § 170.11(b) (4) be amended to delete the requirement

that persons petitioning the Board for the issue, amendment, or repeal of a rule be required to submit "arguments" to support the petition. The Board accepts this comment on the basis that "information" to support the request will suffice for the purpose.

Several comments suggested that § 170.21(a) be amended to provide, under normal circumstances, a minimum of 30 days for public comment on notices of proposed rule making issued by the Board. It has been the Board's policy, in all except emergency situations, to allow more than 30 days for comment on each notice. Therefore, the Board has accepted this comment and § 170.21(a) is amended accordingly.

Several comments requested that § 170.21(a) be amended to require the Board to incorporate a brief statement of findings as to why notice and public procedure are dispensed with in any case involving a substantive rule. Since this practice would be followed in any event, the Board has no objection to its incorporation in the regulation. The section has therefore been amended accordingly.

Several comments indicated a misunderstanding that § 170.29, which relates to additional rule-making procedures, would be used to initiate rule making without notice or other public procedure. Since § 170.21 provides for notice in all appropriate cases, this was not the intended meaning. To obviate any question in this regard, however, § 170.29 is amended by inserting the words "After issuing a notice of proposed rule making in any particular case," at the beginning of the section.

Several comments called attention to the fact that proposed § 170.35 would have required all petitions for reconsideration to be filed more than 10 days before the effective date of the rule. This would effectively prohibit the filing of such a petition in the case of any rule issued within 10 or less days before the effective date. In order to allow petitions for reconsideration of these rules of an emergency nature, a sentence has been added to allow petitions to be filed at any time before the effective date, if the effective date is less than 15 days after the date of issuance.

A comment requested information as to the meaning of proposed § 170.35(c) which stated that the Board will not consider repetitious petitions. It was the Board's intention that after it had denied a petition it would not consider repetitious petitions on the same subject for the same purpose. However, on reconsideration this would not appear to be a problem of great magnitude and the language could possibly be misconstrued to prevent multiple filings by different persons or groups. For these reasons the provision has been deleted.

All other comments suggesting changes, additions, or deletions were carefully considered. In the opinion of the Board, all comments that merited acceptance have been accepted.

This part applies to all rule-making activities of the Board in existence on or after its effective date.

In consideration of the foregoing, Title 49 of the Code of Federal Regulations is amended by inserting a new Part 170, as hereinafter set forth, effective July 1, 1968.

Subpart A—General

- Sec. 170.1 Applicability.
- 170.3 Initiation of rule making.
- 170.5 Participation in rule-making proceedings.
- 170.7 Regulatory docket.

Subpart B—Petitions for Rule Making

- 170.11 Filing of petitions for rule making.
- 170.13 Filing of petitions for special permits for waivers or exemptions.
- 170.15 Processing of petitions for rule making and special permits.

Subpart C—Procedures

- 170.21 General.
- 170.23 Contents of notices.
- 170.25 Petitions for extension of time to comment.
- 170.27 Consideration of comments received.
- 170.29 Additional rule-making proceedings.
- 170.31 Hearings.
- 170.33 Adoption of final rules.
- 170.35 Petition for rehearing or reconsideration of rule.

**AUTHORITY:** The provisions of this Part 170 issued under Title 18, U.S.C. secs. 831-835; sec. 9, Department of Transportation Act (49 U.S.C. 1657); Title VI and sec. 902(h), Federal Aviation Act of 1958 (49 U.S.C. 1421-1430, 1472(h)).

Subpart A—General

§ 170.1 Applicability.

(a) This part prescribes general rule-making procedures that apply to the issue, amendment, and repeal of hazardous materials regulations under title 18, U.S.C. 831-835 and title VI and section 902(h) of the Federal Aviation Act of 1958 (49 U.S.C. 1421-1430 and 1472(h)). The regulations issued under those authorities are designated as the "Hazardous Materials Regulations" of the Department of Transportation.

(b) The Hazardous Materials Regulations Board, established by Department of Transportation Order 1100.11, dated July 27, 1967 (hereinafter referred to as the "Board") is composed of the Assistant Secretary for Research and Technology as Chairman; and the Commandant, U.S. Coast Guard, Federal Aviation Administrator, Federal Highway Administrator, and Federal Railroad Administrator, or their designees, as members. The General Counsel of the Department is the legal adviser to the Board and the Director of the Office of Hazardous Materials is the Secretary to the Board.

(c) The signature of the Board member issuing a notice or adopting a regulation for a mode of transportation determines the applicability of that notice or rule to that mode of transportation. Where more than one mode is involved, the requisite number of authorized signatures is included.

(d) Records of the Board relating to rule-making proceedings, including the regulatory docket maintained under § 170.7, are available for inspection as

provided in Part 7 of the regulations of the Secretary of Transportation (Part 7 of this title).

§ 170.3 Initiation of rule making.

The Board initiates rule making on the motion of any of its members. The Board also considers the recommendations of other agencies of the U.S. Government and of interested persons.

§ 170.5 Participation in rule-making proceedings.

Any person may participate in rule-making proceedings by submitting written information or views. The Board may also allow any person to participate in additional rule-making proceedings, such as informal meetings or hearings, held with respect to any rule.

§ 170.7 Regulatory docket.

Records of the Board concerning rule-making actions, including notices of proposed rule making, comments received in response to those notices, petitions for rule making (including special permits for waiver or exemption), petitions for rehearing or reconsideration, grants and denials of special permits, denials of petitions for rule making, records of additional rule-making proceedings under § 170.29 and final rules are maintained in current docket form in the Department.

Subpart B—Petitions for Rule Making

§ 170.11 Filing of petitions for rule making.

(a) Any person may petition the Board to issue, amend, or repeal a rule.

(b) Each petition filed under this section must—

(1) Be submitted, in duplicate, to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590.

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be.

(3) Explain the interest of the petitioner in the action requested.

(4) Contain information to support the action sought.

§ 170.13 Filing of petitions for special permits for waivers or exemptions.

(a) Any person may petition the Board for a special permit for a waiver or exemption from any provision of Parts 171-190 of this chapter or Part 103 of Title 14 (14 CFR Part 103).

(b) Each petition must be submitted in duplicate to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590, and contain the following information:

(1) The regulatory provisions involved.

(2) The justification for the permit, including any reasons why the regulations are not appropriate, why the public interest would be served by the proposal, and the basis upon which the proposal would provide an adequate and reasonable degree of safety.

(3) A detailed description of the proposal, including when appropriate, drawings, plans, calculations, procedures, test results, previous approvals or permits, a list of specification containers, if any, to be used, a list of modified specification containers, if any, to be used, and a description of the modifications, and any other supporting information.

(4) The chemical name, common name, hazard classification, form, quantity, properties, and characteristics of the material covered by the proposal, including composition and percentage (specified by volume or weight) of each chemical, if a solution or mixture.

(5) Any relevant shipping or accident experience with the container proposed.

(6) The proposed mode of transportation, and any special transportation controls needed.

(7) The name, address, and telephone number of the petitioner, and that of the motor carrier if a tank motor vehicle is to be used.

(8) A statement or recommendation regarding any changes to the regulations which would be desirable to obviate the need for similar special permits.

(c) Unless there is good reason for priority treatment, each petition is considered in the order in which it is received. To permit timely consideration, petitions should be submitted at least 45 days before the requested effective date.

#### § 170.15 Processing of petitions for rule making and special permits.

(a) General: The Board considers the information submitted by the petitioner and any other available pertinent information. Unless otherwise directed by the Board, no public hearing, argument, or other proceeding is held directly on a petition before its disposition.

(b) Grants: If the Board finds that the petitioner's proposal would provide adequate safety and is otherwise justified, the Board issues the special permit under this subpart or initiates rule-making action under Subpart C of this part.

(c) Denials: If the Board finds the petitioner's proposal would not provide adequate safety or is not otherwise justified, the Board denies the petition. The Board will inform the petitioner of the basis for the denial.

(d) The treatment of confidential or proprietary material submitted by any petitioner is governed by § 7.59 of this title.

#### Subpart C—Procedures

##### § 170.21 General.

(a) Unless the Board finds, for good cause, that notice is impracticable, unnecessary, or contrary to the public interest (and incorporates the finding and a brief statement of the reasons therefor in the preamble to the rule), a notice of proposed rule making is issued and interested persons are invited to participate in the rule-making proceedings with respect to each substantive rule. Normally,

the Board will provide a minimum of 30 days for comment on each notice.

(b) Unless the Board determines that notice and public rule-making proceedings are desirable, interpretive rules, general statements of policy, and rules relating to organization, procedure, or practice are prescribed as final without notice or other public rule-making proceedings.

(c) In its discretion, the Board may invite interested persons to participate in the rule-making proceedings described in § 170.29.

##### § 170.23 Contents of notices.

(a) Each notice of proposed rule making is published in the FEDERAL REGISTER, unless all persons subject to it are named therein and are served with a copy.

(b) Each notice, whether published in the FEDERAL REGISTER or served, includes—

(1) A statement of the time, place, and nature of the proposed rule-making proceeding;

(2) A reference to the authority under which it is issued;

(3) A description of the subjects and issues involved or the substance or terms of the proposed rule;

(4) A statement of the time for the submission of written comments and the number of copies required; and

(5) A statement of how and to what extent interested persons may participate in the proceeding.

##### § 170.25 Petitions for extension of time to comment.

(a) Any person may petition the Board for an extension of time to submit comments in response to a notice of proposed rule making. The petition must be submitted in duplicate not later than 7 days before expiration of the time stated in the notice. The filing of the petition does not automatically extend the time for petitioner's comments.

(b) The Board grants the extension only if it is in the public interest and the petitioner shows good cause for the extension. If an extension is granted, it is granted to all persons by publication in the FEDERAL REGISTER.

##### § 170.27 Consideration of comments received.

All timely comments are considered before final action is taken on a rule-making proposal. Late filed comments may be considered so far as practicable.

##### § 170.29 Additional rule-making proceedings.

After issuing a notice of proposed rule making in any particular case, the Board may initiate any further rule-making proceedings that it finds necessary or desirable. For example, it may invite interested persons to present oral arguments, participate in conferences, appear at informal hearings, or participate in any other proceeding.

##### § 170.31 Hearings.

(a) Sections 556 and 557 of title 5, United States Code (relating to the conduct of hearings required to be on the record) do not apply to hearings held under this part. As a factfinding proceeding, each hearing is nonadversary and there are no formal pleadings or adverse parties. Any rule issued in a case in which a hearing is held is not necessarily based exclusively on the record of the hearing.

(b) The Board designates one or more of its members or a representative to conduct any hearing held under this part. The General Counsel or a member of his staff serves as legal officer at the hearing.

##### § 170.33 Adoption of final rules.

If the Board adopts a rule, it is published in the FEDERAL REGISTER, unless all persons subject to it are named and are served with a copy.

##### § 170.35 Petition for rehearing or reconsideration of rule.

(a) Any interested person may petition the Board for reconsideration of any rule issued under this part. Such a petition must be transmitted, in duplicate, to the Secretary, Hazardous Materials Regulations Board, Department of Transportation, 400 Sixth Street SW., Washington, D.C. 20590, at least 10 days before the effective date of the rule. However, in any case in which a rule becomes effective in less than 15 days after issuance, the petition may be filed at any time before the effective date. Petitions that are not timely filed will be considered as petitions for rule making filed under § 170.11. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not possible, is not practicable, is unreasonable, or is not in the public interest.

(b) If the petitioner requests the consideration of additional facts, he must state the reason they were not presented to the Board within the allotted time.

(c) Unless the Board otherwise provides, the filing of a petition under this section does not stay the effectiveness of a rule.

Issued: May 22, 1968.

W. J. SMITH,  
Commandant,  
U.S. Coast Guard.

A. SCHEFFER LANG,  
Administrator,  
Federal Railroad Administration.

LOWELL K. BRIDWELL,  
Administrator,  
Federal Highway Administration.

SAM SCHNEIDER,  
Board Member,  
Federal Aviation Administration.

[F.R. Doc. 68-6562; Filed, June 3, 1968; 8:49 a.m.]