''Department of Transportation,''; adding ''1200 New Jersey Avenue, SE'' before ''Washington, DC''; and adding ''–0001'' to the zip code ''20590''.

**§ 199.229 [Amended]**

■ 25. Section 199.229(c) is amended by adding ''–0001'' to the zip code.

**Authority:** 49 U.S.C. 60101 *et seq.*

Issued in Washington, DC on January 9, 2009.

**Carl T. Johnson,**

*Administrator.*

[FR Doc. E9–628 Filed 1–15–09; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 356, 365, and 374**

**[Docket No. FMCSA–2008–0235]**

**RIN 2126–AB16**

## Elimination of Route Designation Requirement for Motor Carriers Transporting Passengers Over Regular Routes

**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** FMCSA discontinues the administrative requirement that applicants seeking for-hire authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate. The Agency will register such carriers as regular-route carriers without requiring the designation of specific regular routes and fixed end-points. Once motor carriers have obtained regular-route, for-hire operating authority from FMCSA, they will no longer need to seek additional FMCSA approval in order to change or add routes. Each registered regular-route motor carrier of passengers will continue to be subject to the full safety oversight and enforcement programs of FMCSA and its State and local partners.

**DATES:** This rule is effective March 17, 2009. The compliance date for this rule is July 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. David Miller, Regulatory Development Division, (202) 366–5370 or by e-mail at: *FMCSAregs@dot.gov*.

**SUPPLEMENTARY INFORMATION:**

### I. Description of the Rulemaking

FMCSA is discontinuing the administrative requirement that motor carriers must describe specific routes and provide maps of these routes when seeking authority to provide regular-route, for-hire transportation of passengers in interstate commerce. Except for carriers who are public recipients of governmental assistance, regular-route passenger carriers will be issued motor carrier certificates of registration that are not route specific.

Designation of regular routes in motor carrier operating authority is not currently required by statute and administratively discontinuing this requirement will streamline the registration process by eliminating the need for motor carriers to file new applications when seeking to change or expand their routes. It will also benefit new entrants by simplifying the OP–1(P) application for operating authority. Designation of regular routes is an administrative requirement associated with the economic regulation of the passenger carrier industry. With the elimination of certain economic regulations beginning in 1980, the Agency believes continuing the practice of approving applications for changing and adding routes is unnecessary and offers no additional safety benefits to the public or the commercial passenger carrier community.

However, the Agency will continue to require public recipients of governmental assistance to designate specific routes when applying for regular-route authority because 49 U.S.C. 13902(b)(2)(B) permits persons to challenge specific regular-route transportation service provided by public entities on the ground that authorizing such service is not consistent with the public interest. Eliminating the route designation requirement in these circumstances would prevent the Agency from evaluating proposed transportation services under the public interest standard, in violation of its statutory mandate.

This final rule amends several FMCSA regulations that reference authorized routes or points of service in order to make them consistent with the Agency's discontinuation of the route designation requirement. The OP–1(P) application form will also be changed to eliminate the current route-designation and mapping requirements. Because changes to the OP–1(P) form must be approved by the Office of Management and Budget (OMB), and FMCSA plans to seek approval of additional modifications to the form in response to recent legislative changes unrelated to route designation requirements, the OMB approval process is expected to take several months. As a result, FMCSA will not implement the new procedures until 180 days after publication of this final rule.

### II. Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 (MCA) (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935) authorized the Interstate Commerce Commission (ICC) to regulate motor carriers by, among other things, issuing certificates of operating authority to motor carriers of property and passengers operating in interstate commerce. Section 207(a) of the MCA stated that ''no certificate shall be issued to any common carrier of passengers for operations over other than a regular route or regular routes, and between fixed termini [end-points], except as such carriers may be authorized to engage in special or charter operations.'' Section 208(a) of the MCA required that certificates issued to regular-route passenger carriers specify the routes, end-points, and intermediate points to be served under the certificate. Section 208(b) permitted occasional deviations from authorized routes, if permitted by ICC regulations.

These MCA provisions were subsequently recodified without substantive change as 49 U.S.C. 10922(f)(1)–(3). However, they were repealed by the ICC Termination Act of 1995 (ICCTA) (Pub. L. 104–88, 109 Stat. 888, Dec. 29, 1995). The statutory registration requirements specific to passenger carriers are now codified at 49 U.S.C. 13902(b). Section 103 of the ICCTA retained some of the former registration requirements of section 10922 applicable to regular-route passenger carriers but eliminated many others, including 49 U.S.C. 10922(f)(1)–(3).

The ICCTA also transferred the ICC's authority to issue for-hire motor carrier operating authority to the Secretary of Transportation (Secretary). Section 101 of the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1750, Dec. 9, 1999) (MCSIA) created the FMCSA and directed the Administrator of the FMCSA to carry out the duties and powers vested in the Secretary by Title 49 United States Code, Chapters 133 through 149. These powers include the authority of the Secretary, under 49 U.S.C. 13301(a), to prescribe regulations governing registration requirements for motor carriers transporting passengers in interstate commerce for compensation. In addition to the statutory delegation, the Secretary has administratively delegated this authority to the FMCSA Administrator under 49 CFR 1.73(a).

**III. Notice of Proposed Rulemaking**

Although the ICCTA no longer required regular-route operating authority to specify routes and fixed end-points, FMCSA continued to require applicants seeking such authority to submit maps and a detailed description of proposed operating route(s) as attachments to the Form OP–1(P) application. Carriers proposing to add routes to their operating systems were required to file new applications in order to do so. Pursuant to Part 365 of Title 49, Code of Federal Regulations (CFR), the route descriptions submitted by an applicant were published in the *FMCSA Register* and subject to protests by interested parties. The number of protests received has been very small, an average of one protest per year between 2003 and 2007.

On August 7, 2008, FMCSA published a Notice of Proposed Rulemaking (NPRM) (73 FR 45929) requesting public comment on its proposal to discontinue the route designation requirement and make conforming changes to its regulations. FMCSA proposed to henceforth issue motor carrier certificates of registration authorizing service as a regular-route passenger carrier without designating specific regular routes or fixed end-points. As a result of this proposal, registered regular-route passenger carriers would no longer need to submit a new application to FMCSA in order to add new routes or change existing routes. The Agency asserted that the paperwork and administrative burden on both the industry and the Agency would be reduced as a result of eliminating the need to file and process multiple applications containing detailed routes.

FMCSA proposed to modify existing certificates of regular-route authority to make them consistent with the broader authority that would be issued to new entrants pursuant to the final rule in this proceeding. Such certificates would supersede any route-specific authority issued by FMCSA or its predecessor agencies.

In order to implement this proposal, FMCSA proposed to amend various sections of Title 49 CFR to make them consistent with the Agency's proposed registration procedures. These amendments included: (1) Removing 49 CFR 356.3, which prescribes the extent to which passenger carriers may serve points not located on their ''authorized routes''; (2) modifying 49 CFR 365.101, which identifies the types of operating authority applications filed with the Agency, to reflect that the Agency would no longer grant authority to passenger carriers to operate over specific routes; (3) eliminating references to ''authorized points'' or ''authorized routes'' in 49 CFR 374.303(f) and 374.311(a); and (4) amending 49 CFR 374.311(b) by removing the requirement that carriers file notices of schedule and route changes with FMCSA. Regular-route motor passenger carriers would still be required to post notices of schedule changes in each affected bus and carrier facility for the convenience of their passengers.

The basis for the NPRM was FMCSA's belief that the route designation requirement no longer serves a useful purpose. The requirement was enacted primarily to protect existing carriers serving particular routes from competition. Subsequent legislative changes limited the ability of existing carriers to protest applications based on economic grounds and there was no measurable nexus between the route designation requirement and motor carrier safety.

In the NPRM, FMCSA noted that the proposal would result in uniform treatment of regular-route motor passenger carriers and passenger carriers that provide charter and special transportation (as well as property carriers), who need only file a single application in order to provide nationwide interstate transportation. Applicants would remain subject to the applicable statutory fitness standards in 49 U.S.C. 13902(a) and potential safety problems would be addressed through new entrant safety audits, compliance reviews, or vehicle inspections. The Agency believed there was no justification for treating regular-route passenger carriers differently from other carriers to ensure their compliance with the Federal Motor Carrier Safety Regulations.

In summary, the Agency concluded that the current route designation requirement, and the related requirement that existing registered carriers file new applications when adding or changing routes, had no discernible safety benefit, yet burdened the industry and the Agency with unnecessary paperwork.

**IV. Discussion of Comments to the NPRM**

FMCSA received eight comments in response to the NPRM. Commenters included three transportation companies—Greyhound Lines, Inc., Coach USA, Inc., and Peter Pan Bus Lines, Inc; two labor organizations—the Amalgamated Transit Union (ATU) and the Transportation Trades Department, AFL-CIO (TTD); one trade association—the American Bus Association (ABA); one State regulatory agency—the Missouri Department of Transportation, Motor Carrier Services Division (MoDOT); and one public interest advocacy group—the Disability Rights Education and Defense Fund (DREDF). The commenters opposed the Agency's proposal. The three primary objections regarding the proposal were: (1) It would adversely impact motor carrier safety; (2) it would prevent meaningful implementation of the recently enacted Over-the-Road Bus Transportation Accessibility Act of 2007; and (3) it would create serious problems in determining the scope of Federal preemption of State authority to regulate the intrastate regular-route transportation of passengers.

*A. Impact on Motor Carrier Safety*

The six transportation industry-related commenters raised concerns regarding motor carrier safety issues. Greyhound urged FMCSA to propose procedures that would enable the Agency to conduct a meaningful assessment of a passenger carrier's fitness to comply with regulatory requirements before allowing it to operate or expand its interstate operations. Greyhound agreed there was little need for route descriptions under the current system, where applications are rarely protested and grants of operating authority are virtually automatic. However, Greyhound believed that if FMCSA decides to ''reinstitute'' a system where it conducts a thorough investigation of a bus carrier's fitness prior to granting operating authority, route descriptions would be essential. According to Greyhound, FMCSA must know the specific route(s) over which an applicant will operate in order to determine whether the applicant has a sufficient number of qualified drivers and vehicles, as well as adequate safety management controls, to operate safely over these routes. It contended that such an analysis is mandated by 49 U.S.C. 13902(a)(1), which requires FMCSA to register a person to provide transportation as a motor carrier only if it finds the person willing and able to comply with the applicable regulations and safety fitness requirements. The ABA and other commenters echoed Greyhound's views.

Along similar lines, Coach USA believed that the application process is an important tool in monitoring and enhancing safety compliance because it provides an additional incentive for existing carriers to maintain compliance. This incentive would be lost if carriers are no longer required to file new applications to expand their

operations. Coach USA also believed that FMCSA will have difficulty assessing the adequacy of a regular-route carrier's safety program during a new entrant safety audit or compliance review unless it knows whether the carrier plans to operate in a large geographic area or a small one.

Peter Pan believed that the minimal cost of the route designation requirement is outweighed by the benefits of continuing existing procedures, which allow knowledgeable parties to raise safety compliance concerns by protesting new applications. Peter Pan interpreted the NPRM as suggesting that the States will oversee safety compliance issues connected with expanded service, and questioned the ability of the States to do so adequately. Peter Pan claimed FMCSA has not offered any meaningful justification for the proposed change.

ATU and TTD agreed with Greyhound that disclosure of route designations can play a crucial role in enforcing and ensuring compliance with safety regulations, since the requirements to operate a limited route differ from those necessary to run a nationwide network. ATU believed route designations can also assist inspectors in locating operators for additional safety audits, inspections and compliance reviews, while TTD contended that FMCSA must know the routes of cross-border bus operations to ensure such carriers comply with safety regulations and do not engage in cabotage.

*FMCSA Response:*

FMCSA acknowledges the commenters' concerns about highway safety. However, this rulemaking does not affect the applicability of any of the Agency's safety regulations intended to prevent crashes and save lives. Neither FMCSA nor its predecessor agencies have considered the routes over which a passenger carrier proposes to operate when investigating the carrier's fitness prior to granting operating authority. The fitness standard set forth in 49 U.S.C. 13902(a)(1) pertains to a carrier's overall willingness and ability to comply with safety and other applicable regulations, not whether the carrier has sufficient drivers or equipment to operate over a particular route. Accordingly, the statute does not mandate a route-specific safety fitness analysis, as claimed by Greyhound. If Congress had intended to mandate such an analysis, it presumably would have not eliminated the statutory requirement that operating authority specify routes and end points. Moreover, although the commenters contend that scrutiny of particular routes is important for safety reasons, they do not point to a single protest filed with FMCSA or its predecessor agencies alleging that an applicant would be unable to operate safely over a specific route based on the length or other characteristics of the route.

While FMCSA recognizes the need to continue to give closer scrutiny to passenger carrier applications, it has focused its efforts on carriers that try to reinvent themselves as new entities, after demonstrating serious safety compliance problems identified through compliance reviews, new entrant safety audits and vehicle inspections. The Agency believes its resources are more effectively and efficiently directed to identifying and taking appropriate action against such problem carriers rather than scrutinizing the specific routes carriers propose to serve and speculating about their ability to safely operate over those routes.

While the multiple application requirement can theoretically provide an incentive for existing carriers to maintain compliance, the very small number of applications that are protested indicates that it does not serve this purpose in actual practice. Contrary to claims that operating authority is granted automatically through a computer-driven system, FMCSA provides public notice of all applications and considers all legitimate protests.

While Greyhound claimed, inaccurately, that the Agency's system ignored a protest and granted an application, that claim does not reflect what actually happened. In that case—No MC–405969, Fung Wah Bus Transportation, Inc.—there was a lengthy delay in delivering the protest to FMCSA. As a result, the Agency did not learn about the protest until after the authority was issued. The Agency considered the protest after it was discovered, but rejected it because it raised issues that the Agency believed at the time it could not lawfully consider in evaluating the applicant's fitness to receive new operating authority.

Regular-route passenger carriers are the only motor carriers regulated by FMCSA that must file multiple applications to expand their interstate operations. Passenger carriers providing charter or other non-regular route services, as well as property carriers, are required to file only a single application covering all potential operations in interstate commerce. Safety compliance monitoring for these carriers is carried out through new entrant safety audits, compliance reviews and vehicle inspections. These monitoring activities provide ample incentives to maintain compliance with the Federal Motor Carrier Safety Regulations, because problem carriers may be placed out of service for lack of safety fitness or be assessed civil penalties for regulatory noncompliance. The commenters have not shown that requiring regular-route carriers to file new applications when expanding their operations has any discernible impact on motor carrier safety.

Contrary to the statement by Peter Pan, FMCSA did not suggest in the NPRM that States would be responsible for overseeing compliance issues connected with potential expansion of regular-route service. Rather, the Agency was soliciting comment on the potential impact of its proposal on the statutory preemption of State regulation of intrastate transportation, which is discussed in more detail below.

Coach USA's comment that FMCSA will have difficulty assessing the adequacy of a regular-route carrier's safety program during a new entrant safety audit or compliance review unless it knows the size of the geographic area in which the carrier plans to operate misconstrues the nature of these safety assurance processes. New entrant safety audits and compliance reviews are designed to provide a snapshot of the carrier's basic safety management controls and regulatory compliance at the time of the audit or compliance review. During the safety audit or compliance review, the auditor or investigator can readily determine the scope of the carrier's existing operations by asking carrier officials or reviewing the carrier's records. Such reviews are not intended to speculate about future safety compliance based on potential future expansion or contraction of a carrier's operations, regardless of whether the carrier transports passengers or property. For example, a new property carrier may only operate a small number of trucks at the time of the new entrant safety audit, but may plan to expand its service territory and lease or purchase a significant number of additional vehicles in the future. The safety audit determines the carrier's compliance based on its existing operations, not future plans that may never come to fruition. In the event the carrier eventually follows through on its expansion plans, vehicle inspections would identify potential safety problems that warrant closer scrutiny of the carrier through a compliance review. Contrary to ATU's comments, route designations are not needed to locate carriers for additional safety audits, inspections and compliance reviews. Safety audits and compliance reviews are generally conducted at the carrier's principal place of business and vehicle

inspections are not scheduled to coincide with a carrier's designated route system.

Finally, TTD's comment that FMCSA must know the routes of cross-border bus operations to ensure such carriers comply with safety regulations and do not engage in cabotage fails to take into account that FMCSA is not issuing operating authority to regular-route passenger carriers domiciled in Mexico. If the Agency does so in the future, there is an extensive safety monitoring system in place, which includes pre-authorization safety audits, mandated safety inspection decals and compliance reviews designed to ensure compliance with the applicable safety regulations (see 49 CFR Part 365, Subpart E, and 49 CFR Part 385, Subpart B).

Cabotage is generally defined as the prohibited point-to-point transportation of property or passengers within the United States by foreign-domiciled motor carriers. Identifying routes in a foreign motor carrier's operating authority would not ensure that the carrier does not engage in cabotage. If a carrier were issued broad general regular-route operating authority in accordance with the final rule, it would still need to publish schedules listing pickup and drop-off locations along the route to make the operation financially viable. Such schedules would be more useful to enforcement officials in identifying potential cabotage violations than a route described in the carrier's operating certificate, which would not indicate pickup and drop-off times and locations.

*B. The Over-the-Road Bus Transportation Accessibility Act of 2007*

The Over-the-Road Bus Transportation Accessibility Act of 2007 (OTRB Act), Public Law 110–291, 122 Stat. 2915, became law on July 30, 2008. This legislation was enacted in response to the Fung Wah case mentioned in the previous section of this preamble. In that case, FMCSA determined that it lacked statutory authority to consider compliance with the Department of Transportation's (DOT) Americans With Disabilities Act (ADA) accessibility regulations in determining whether a passenger carrier should be granted interstate operating authority. The OTRB Act directed FMCSA to determine: (1) An over-the-road bus (OTRB) company's willingness and ability to comply with DOT's ADA accessibility requirements in 49 CFR Part 37, Subpart H, before granting new operating authority to provide interstate passenger transportation; and (2) an OTRB company's compliance with 49 CFR Part 37, Subpart H, in determining whether to suspend or revoke existing operating authority. The Act also required DOT and the U.S. Department of Justice to enter into a Memorandum of Understanding delineating their respective roles and responsibilities in enforcing the DOT ADA regulations.

Most of the commenters expressed concern that the Agency's proposal would prevent meaningful implementation of the OTRB Act. The commenters noted that without route designations, FMCSA would be unable to assess whether an applicant for new operating authority has adequate equipment and systems to comply with the ADA. Moreover, eliminating the need for existing carriers to seek new authority before expanding their operations would eliminate FMCSA's ability to assess ADA compliance before allowing route expansion. DREDF supported an ABA proposal that would have FMCSA: (1) Investigate all bus applications that are protested on ADA grounds and issue a written decision setting forth the grounds for approval or denial of the application; (2) include ADA compliance as a pass/fail factor in the new entrant safety audit because noncompliance with ADA regulations is indicative of breakdowns in a carrier's management controls; (3) make clear that a bus company's failure to comply with DOT's ADA regulations is grounds for revocation of operating authority; and (4) establish procedures for investigating ADA compliance and determining whether revocation is appropriate.

*FMCSA Response:*

The OTRB Act requires that FMCSA determine compliance with DOT's ADA accessibility regulations as an additional element to consider in determining an applicant's fitness to receive new operating authority. Other statutory fitness criteria include compliance with FMCSA's commercial and safety regulations, the Agency's safety fitness standards, and the applicable financial responsibility regulations. In amending 49 U.S.C. 13902(a), Congress placed compliance with the ADA regulations on the same footing as compliance with the commercial and safety regulations. Therefore, the Agency will consider ADA compliance (as it does with compliance issues regarding the other applicable regulations) when protesting parties allege that an applicant's failure to comply with the ADA regulations requires the Agency to withhold new operating authority, or when the Agency otherwise has reason to believe the applicant may not be ADA-compliant. The Agency's decision to withhold operating authority will be based on its evaluation of whether the applicant is willing and able to prospectively comply with the regulations and is not intended to be a sanction for past noncompliance. Accordingly, although past noncompliance with regulatory requirements is certainly an important factor in evaluating a carrier's fitness, it does not automatically bar an applicant from receiving new operating authority.

This change in the Agency's application procedures will not prevent meaningful implementation of the OTRB Act. The Act amended 49 U.S.C. 13905 to permit FMCSA to suspend or revoke a carrier's operating authority based on willful noncompliance with the DOT ADA regulations. Consequently, it is unnecessary to wait for a carrier to file a new application before filing a complaint with the Agency requesting suspension or revocation of the carrier's operating authority. FMCSA also has the authority to initiate a suspension or revocation proceeding based on findings of willful noncompliance discovered during compliance reviews, new entrant safety audits or other means. Unlike denial of an application for new authority based on ADA noncompliance, suspension or revocation can be more comprehensive, affecting the carrier's ability to operate over all of its existing routes, not just the new routes proposed in the application. Moreover, the Agency is in the process of implementing the Act's requirement to enter into a Memorandum of Understanding (MOU) with the U.S. Department of Justice to more effectively coordinate enforcement of DOT's ADA accessibility regulations.

DREDF's comment supporting ABA's proposal to include ADA compliance as a pass/fail factor in the new entrant safety audit raises issues that are beyond the scope of this rulemaking proceeding, which is limited to modifying the Agency's regulations to correspond with its removal of the route-designation requirement.

*C. State Preemption Issues*

As was noted in the NPRM, 49 U.S.C. 13902(b)(3) preempts States from regulating intrastate service provided by interstate regular-route passenger carriers over interstate routes. If a regular-route passenger carrier obtains operating authority from FMCSA, a State is prohibited from requiring the carrier to obtain operating authority to provide intrastate service on an interstate route operated by the carrier. Because the preemption is limited to operations over specific routes, FMCSA requested comment on whether elimination of route designations in FMCSA operating certificates would make this preemption provision more

difficult to enforce and perhaps result in increased State regulation of intrastate regular-route transportation.

Under 49 U.S.C. 14501(a)(1)(A), States are also preempted from regulating the scheduling of interstate or intrastate transportation (including discontinuance of or reduction in the level of service) on an interstate route. FMCSA requested comment on whether elimination of route designations will affect this preemption provision.

Greyhound contended that section 13902(b)(3) clearly shows that Congress intended for Federal operating authority to be issued on a route-specific basis. It claimed that without specific route designations, preemption would be impossible to administer because, on the one hand, States could argue that the lack of a specific route designation would permit them to license all regular-route intrastate service within their borders while, on the other hand, interstate carriers could argue that the broad scope of their interstate authority prohibits the States from licensing any intrastate service they provide. Greyhound argued that elimination of route designations would also encourage States to regulate schedules and rates on all intrastate bus routes, thus vitiating the section 14501(a)(1)(A) preemption.

Coach USA pointed out that a route-specific certificate issued by FMCSA is important evidence of the interstate service provided by the carrier which makes it easier to preempt States from regulating intrastate transportation provided over a carrier's designated interstate routes. Removal of route designations, it claims, would make it more difficult to administer the statutory preemption.

MoDOT submitted the lengthiest comment regarding this issue. Contrary to Greyhound and Coach USA, who indicated that removal of the route designation requirement could encourage the States to significantly increase their regulatory presence, MoDOT argued that FMCSA's proposal would radically expand the Federal preemption of State and local laws regulating wholly intrastate commerce in excess of the statutory limits intended by Congress and would unlawfully deregulate market entry into the intrastate passenger transportation industry.

MoDOT asserted that elimination of the route designation requirement would negate any meaningful distinction between regular-route and irregular-route service since irregular-route service, at least under Missouri law, includes transportation not restricted to any specific route or routes within the carrier's authorized service area. Consequently, MoDOT believed that the FMCSA proposal would effectively preempt State and local entry regulations with reference to all intrastate transportation of passengers provided by federally-authorized motor carriers within any State.

*FMCSA Response:*

We do not agree with Greyhound that section 13902(b)(3) requires FMCSA regular-route operating authority to be route specific. That provision authorizes federally-registered carriers to provide regular-route transportation entirely in one State if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers. There is no reference to authorized routes in section 13902(b)(3), as there was in former 49 U.S.C. 10922(d)(2), which authorized the ICC to issue interstate operating authority that would allow interstate carriers to provide intrastate transportation on a route over which a carrier has, or will be granted, Federal authority. The ICCTA, the same statute that eliminated the route designation requirements of 49 U.S.C. 10922(f)(1)–(3), also eliminated the authorized route language that appeared in former section 10922(d)(2). Therefore, an FMCSA-licensed passenger carrier need only provide interstate transportation of passengers over a regular route in order to provide intrastate transportation along that route. There is no requirement that the route be specified in the motor carrier's FMCSA operating authority certificate in order to qualify as an interstate route for purposes of implementing section 13902(b)(3).

FMCSA also disagrees with MoDOT's assertion that elimination of the route designation requirement effectively eliminates the distinction between regular-route and irregular-route service. Passenger carriers will continue to receive operating authority based on the type of service being provided—regular-route or charter and special operations. Carriers registered to provide regular-route service are required by 49 CFR 374.305(c) to provide printed schedules to the traveling public at all facilities where tickets are sold. Such schedules must show for each route operated by the carrier: (a) The points along the route where facilities are located or where the bus trips originate or terminate; and (b) the arrival or departure time for each such point. Even without these regulatory requirements, regular-route carriers would need to provide such schedules out of business necessity in order to attract ridership along their routes.

In the absence of route designations in a carrier's operating certificate, the States can readily obtain copies of schedules from carriers to determine which routes they are operating over. After obtaining these schedules, the States would still have to show a lack of sufficient nexus between intrastate transportation provided over the route and legitimate interstate service over the route in order to legally regulate the intrastate transportation. Accordingly, we believe the most significant difficulties in implementing section 13902(b)(3) would result from establishing the presence or absence of legitimate interstate transportation along the route, not the elimination of the route designation requirement. Based on the comments, the precise impact of eliminating the route designation requirement on Federal preemption of State regulation of intrastate regular-route transportation is still uncertain.

In conclusion, FMCSA adopts its proposal to discontinue the requirement that applicants seeking for-hire operating authority to transport passengers over regular routes submit a detailed description and a map of the route(s) over which they propose to operate. The Agency will continue to require public recipients of governmental assistance to designate specific routes when applying for regular-route authority because eliminating the route designation requirement in these circumstances would prevent the Agency from evaluating proposed transportation services under the public interest standard, in violation of its statutory mandate.

In order to implement the Agency's new policy, FMCSA removes 49 CFR 356.3, which prescribes the extent to which passenger carriers may serve points not located on their ''authorized routes.'' The final rule also amends: (1) 49 CFR 365.101 to reflect that the Agency will no longer be granting authority to passenger carriers to operate over specific routes; (2) 49 CFR 374.303(f) and 374.311(a) by removing language indicating that the Agency grants authority to operate over specific routes; and (3) 49 CFR 374.311(b) by removing the requirement that carriers must file with FMCSA notices of schedule and route changes. FMCSA will continue to require regular-route motor passenger carriers to post notices of schedule changes in each affected bus and carrier facility for the convenience of their passengers.

**V. Regulatory Analyses and Notices**

*Executive Order 12866 (Regulatory Planning and Review); DOT Regulatory Policies and Procedures*

FMCSA has determined that this action is not significant under Executive Order 12866. This rule does not have an annual effect on the economy of $100 million or more and does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The rule does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients, and does not raise novel legal or policy issues arising out of legal mandates or the Administration's priorities. FMCSA prepared a regulatory impact assessment for this rule as required by Executive Order 12866, but the final rule and the regulatory impact assessment have not been reviewed by OMB because it was determined to be not significant under the Executive Order.

The Agency prepared a regulatory impact assessment for the NPRM, which evaluated route deregulation options under three industry growth/change scenarios. Based on these scenarios, FMCSA estimated annual net benefits to the industry of $36,000 to $44,000 from avoided costs related to the elimination of the route designation application requirement. Evaluated over a 10-year period, the estimated net present value of the industry cost savings ranged from $222,000 to $341,000 based on discount rates of 3 to 7 percent depending on whether one uses a 3-year average, 5-year average, or 5-year median. No comments were received disputing these figures.

*Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996*

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies, as a part of each rulemaking, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. FMCSA evaluated the effects of this proposed rule on small entities as required by the RFA.

All new entrant regular-route carriers are affected by the proposed rulemaking action because all such carriers must file an OP–1(P) application to obtain regular-route authority. Existing regular-route carriers are affected only if they seek to expand their routes. New entrants and existing carriers submitted an average of 92 regular-route authority applications each year between 2003 and 2005. Currently, there are 272 active regular route authority carriers. The Small Business Administration (SBA) Small Business Size Standard for Interurban and Rural Bus Transportation is no more than $6.5 million in gross annual revenue. Based on U.S. industry statistics for 2002 provided by the SBA Office of Advocacy, 279 out of 323 firms in the interurban and rural bus transportation industry (roughly 86 percent) reported annual receipts of less than $5 million. Additionally, carriers with annual gross revenues between $5 million and $6.5 million would also be classified as small businesses, though FMCSA is unable to quantify the number of carriers within this range. Absent more current detailed data, the Initial Regulatory Flexibility Analysis prepared for the NPRM assumed that approximately 86 percent of regular route authority carriers are small entities. Comments received on the NPRM did not dispute these figures or provide additional data.

This rule is a deregulatory action implementing a policy change intended to provide relief to industry. There are no additional costs specific to these entities as a result of this rulemaking, and the underlying policy change provides applicants with a cost saving of approximately $300 for each application. Therefore, FMCSA certifies this action will have no significant economic impact on a substantial number of small entities.

*Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531 *et seq.*) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $136.1 million or more in any 1 year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA determined that this rule would not have an impact of $136.1 million or more in any 1 year.

*Environmental Impacts*

The Agency analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality regulations implementing NEPA (40 CFR 1500–1508), and FMCSA's NEPA Implementation Order 5610.1 published March 1, 2004 (69 FR 9680). This action is categorically excluded under Appendix 2, paragraph 6.d of the Order (regulations governing applications for operating authority) from further environmental documentation. The Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance. (See 40 CFR 93.153(c)(2).) It would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely allows passenger carriers to make changes to their regular routes without FMCSA approval. Such alterations are routinely approved under current Agency procedures.

*Environmental Justice*

The FMCSA evaluated the environmental effects of this rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations. None of the alternatives analyzed in the Agency's categorical exclusion determination, discussed under National Environmental Policy Act, would result in high and adverse environmental impacts.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from OMB for each collection of

information it conducts, sponsors, or requires. This rulemaking would affect a currently-approved information collection request (ICR) covered by OMB Control Number 2126–0016, entitled ''Licensing Applications for Motor Carrier Operating Authority.'' This ICR has an annual burden of 55,738 burden hours, and will expire on January 31, 2009.

FMCSA is authorized to register for-hire motor passenger carriers under the provisions of 49 U.S.C. 13902. The form used to apply for operating authority with FMCSA is Form OP–1(P) for motor passenger carriers. This form requests information on the applicant's identity, location, familiarity with safety requirements, and type of proposed operations. The OP-1(P) application form will be changed to eliminate the current route-designation and mapping requirements. Changes to the OP-1(P) form must be approved by the Office of Management and Budget (OMB); consequently, FMCSA will seek OMB approval of this change, as well as other modifications to the form in response to recent legislative changes unrelated to route designation requirements.

The Agency's discontinuation of its current requirement that motor carriers seeking authority to transport passengers over regular routes submit to FMCSA a detailed description and map of the proposed route(s) for approval would reduce the currently approved ICR annual burden by 180 hours [2 hours to provide description and map of regular routes in Form OP–1(P) × 90 regular route applications per year = 180 hours]. The estimated annual burden for this ICR would decrease to 55,558 hours [55,738 currently approved annual burden hours − 180 hours less time to complete Form OP-1(P) regular route applications = 55,558]. No comments were received regarding Paperwork Reduction Act issues.

*Executive Order 12988 (Civil Justice Reform)*

This rulemaking meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, entitled ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden.

*Executive Order 12630 (Taking of Private Property)*

FMCSA has analyzed this rule under Executive Order 12630, entitled ''Governmental Actions and Interference with Constitutionally Protected Property Rights.'' We do not anticipate that this action would effect a taking of private property or otherwise have taking implications under Executive Order 12630.

*Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and FMCSA has determined that this rulemaking would not warrant the preparation of a Federalism assessment. We have determined that this proposed action would not affect the States' ability to discharge traditional State government functions.

*Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this action under Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that it is not a significant energy action within the meaning of section 4(b) of the Executive Order and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required.

*Executive Order 12372 (Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

*Executive Order 13175 (Tribal Consultation)*

FMCSA has analyzed this action under Executive Order 13175, dated November 6, 2000, and believes that it would not have substantial direct effects on one or more Indian tribes; would not impose substantial compliance costs on Indian tribal governments; and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

**List of Subjects**

*49 CFR Part 356*

Administrative practice and procedure, Routing, Motor carriers.

*49 CFR Part 365*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

*49 CFR Part 374*

Aged, Blind, Buses, Civil rights, Freight, Individuals with disabilities, Motor carriers, Smoking.

■ For the reasons discussed above, FMCSA amends title 49, Code of Federal Regulations, chapter III, subchapter B, as set forth below:

## PART 356—MOTOR CARRIER ROUTING REGULATIONS

■ 1. The authority citation for part 356 continues to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13301 and 13902; and 49 CFR 1.73.

**§ 356.3 [Removed and Reserved].**

■ 2. Remove and reserve § 356.3.

## PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 3. The authority citation for part 365 continues to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 16 U.S.C. 1456; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.73.

■ 4. Amend § 365.101 by removing and reserving paragraph (f) and revising paragraph (e) to read as follows:

**§ 365.101 Applications governed by these rules.**

* * * * *

(e) Applications for certificates under 49 U.S.C. 13902(b)(3) to operate as a motor carrier of passengers in intrastate commerce over regular routes if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

(f) [Reserved].

* * * * *

## PART 374—PASSENGER CARRIER REGULATIONS

■ 5. The authority citation for part 374 continues to read as follows:

**Authority:** 49 U.S.C. 13301 and 14101; and 49 CFR 1.73.

■ 6. Amend § 374.303 by revising paragraph (f) to read as follows:

**§ 374.303 Definitions.**

* * * * *

(f) *Service* means passenger transportation by bus over regular routes.

* * * * *

■ 7. Amend § 374.311 by revising paragraphs (a) and (b) to read as follows:

**§ 374.311 Service responsibility.**

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

(b) *Continuity of service.* No carrier shall change an existing regular-route schedule without first displaying

conspicuously a notice in each facility and on each bus affected. Such notice shall be displayed for a reasonable time before it becomes effective and shall contain the carrier's name, a description of the proposed schedule change, the effective date thereof, the reasons for the change, the availability of alternate service, and the name and address of the carrier representative passengers may contact.

* * * * *

Issued on: January 6, 2009.

**John H. Hill,**

*Administrator.*

[FR Doc. E9–363 Filed 1–15–09; 8:45 am]

**BILLING CODE 4910–EX–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 679

**[Docket No. 071106671–8010–02]**

**RIN 0648–XM71**

## Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Non–American Fisheries Act Crab Vessels Catching Pacific Cod for Processing by the Inshore Component in the Central Regulatory Area of the Gulf of Alaska

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Temporary rule; closure.

**SUMMARY:** NMFS is prohibiting directed fishing for the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non–American Fisheries Act (AFA) crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

**DATES:** Effective 1200 hrs, Alaska local time (A.l.t.), January 13, 2009, until 1200 hrs, A.l.t., September 1, 2009.

**FOR FURTHER INFORMATION CONTACT:** Josh Keaton, 907–586–7228.

**SUPPLEMENTARY INFORMATION:** NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson–Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The A season allowance of 2009 Pacific cod sideboard limits apportioned to non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA is 588 metric tons (mt) for the GOA, as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008).

In accordance with § 680.22(e)(2)(i), the Regional Administrator, has determined that the A season allowance of the 2009 Pacific cod sideboard limits apportioned to non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA will soon be reached. Therefore, the Regional Administrator is establishing a sideboard directed fishing allowance for Pacific cod as 550 mt in the inshore component in the Central Regulatory Area of the GOA. The remaining 38 mt in the inshore component in the Central Regulatory Area of the GOA will be set aside as bycatch to support other anticipated groundfish fisheries. In accordance with § 680.22(e)(3), the Regional Administrator finds that this sideboard directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

### Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the sideboard directed fishing closure of Pacific cod apportioned to non–AFA crab vessels catching Pacific cod for processing by the inshore component in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of January 12, 2009.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 680.22 and is exempt from review under Executive Order 12866.

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

Dated: January 13, 2009.

**Emily H. Menashes,**

*Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.*

[FR Doc. E9–917 Filed 1–13–09; 4:15 pm]

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