

State	Location	Community No.	Effective date of eligibility	Current effective map date
Do	Carlisle, City of, Lonoke County.	050312do	Do.
Do	England, City of, Lonoke County.	050133do	Do.
Do	Ward, City of, Lonoke County	050372do	Do.
Region IX				
California	Shasta County, Unincorporated Areas.	060358do	Do.

* -do- =Ditto.

** Designates communities converted from Emergency Phase of participation to the Regular Phase of participation.

Code for reading fourth and fifth columns: Emerg.-Emergency; Reg.-Regular; Rein.-Reinstatement; Susp.-Suspension; With.-Withdrawn; NSFHA.-Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: August 16, 2006.

David I. Maurstad,

Director, Mitigation Division, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. 06-7181 Filed 8-25-06; 8:45 am]

BILLING CODE 9110-12-P

**GENERAL SERVICES ADMINISTRATION
DEPARTMENT OF DEFENSE
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

48 CFR Part 52

Federal Acquisition Regulation; Solicitation Provisions and Contract Clauses

CFR Correction

In Title 48 of the Code of Federal Regulations, Parts 52 to 99, revised as of October 1, 2005, on pages 32 and 33, section 52.208-9 is corrected to read as follows:

52.208-9 Contractor Use of Mandatory Sources of Supply or Services.

As prescribed in 8.004, insert the following clause:

Contractor Use of Mandatory Sources of Supply or Services (JUL 2004)

(a) Certain supplies or services to be provided under this contract for use by the Government are required by law to be obtained from nonprofit agencies participating in the program operated by the Committee for Purchase From People Who Are Blind or Severely Disabled (the Committee) under the Javits-Wagner-O'Day Act (JWOD) (41 U.S.C. 48). Additionally, certain of these supplies are available from the Defense Logistics Agency (DLA), the General Services Administration (GSA), or the Department of Veterans Affairs (VA). The Contractor shall obtain mandatory supplies or services to be provided for Government use under this contract from the specific sources indicated in the contract schedule.

(b) The Contractor shall immediately notify the Contracting Officer if a mandatory source is unable to provide the supplies or services by the time required, or if the quality of supplies or services provided by the mandatory source is unsatisfactory. The Contractor shall not purchase the supplies or services from other sources until the Contracting Officer has notified the Contractor that the Committee or a JWOD central nonprofit agency has authorized purchase from other sources.

(c) Price and delivery information for the mandatory supplies is available from the Contracting Officer for the supplies obtained through the DLA/GSA/VA distribution facilities. For mandatory supplies or services that are not available from DLA/GSA/VA, price and delivery information is available from the appropriate central nonprofit agency. Payments shall be made directly to the source making delivery. Points of contact for JWOD central nonprofit agencies are:

- (1) National Industries for the Blind (NIB), 1901 North Beauford Street, Suite 200, Alexandria, VA 22311-1705, (703) 998-0770.
- (2) NISH, 2235 Cedar Lane, Vienna, VA 22182-5200, (703) 560-6800.

(End of clause)

[61 FR 2631, Jan. 26, 1996, as amended at 61 FR 67430, Dec. 20, 1996; 66 FR 65368, Dec. 18, 2001; 67 FR 56120, Aug. 30, 2002; 69 FR 34230, June 18, 2004]

[FR Doc. 06-5525 Filed 8-25-06; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR parts 350, 390, and 392

[Docket No. FMCSA-2002-13015]

RIN 2126-AA78

Enforcement of Operating Authority Requirements

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA or the

Agency) adopts as final, with minor changes, its interim regulations as published in the **Federal Register** in August 2002. Since that time, enforcement officials have discovered many carriers operating without the required operating authority or beyond the scope of their authority. By making minor changes to the rule, FMCSA facilitates enforcement of these regulatory requirements by the agency's employees and its State counterparts. Clarifying that operating authority means registration as required by statute assists State enforcement officers in identifying the correct violation and not confusing operating authority with other registration requirements.

DATES: *Effective Date:* September 27, 2006. *Petitions for Reconsideration* must be received by the Agency not later than September 27, 2006.

FOR FURTHER INFORMATION CONTACT: David Mancl, phone (202) 493-0442, e-mail david.mancl@dot.gov, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

Docket: For access to the docket to read background documents or comments received on the interim final regulations, including all correspondence referenced in this document, go to <http://dms.dot.gov> at any time or to room PL-401 on the Plaza Level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act: Anyone may search the electronic form of all comments received into any of DOT's dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, or other entity). You may review DOT's complete Privacy Act Statement in the **Federal Register** (65 FR 19477, April 11, 2000). This statement is also available at <http://dms.dot.gov>.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Section 205 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106–159, 113 Stat. 1748] amended 49 U.S.C. 13902 by authorizing the Secretary of Transportation to place out of service vehicles operated by motor carriers that fail to comply with registration requirements under 49 U.S.C. 13902. Paragraph (e)(1) of section 13902 reads as follows:

(e) Penalties for failure to comply with registration requirements.—In addition to other penalties available under law, motor carriers that fail to register their operations as required by this section or that operate beyond the scope of their registrations may be subject to the following penalties:

(1) Out-of-service orders.—If, upon inspection or investigation, the Secretary determines that a motor vehicle providing transportation requiring registration under this section is operating without a registration or beyond the scope of its registration, the Secretary may order the vehicle out-of-service. Subsequent to the issuance of the out-of-service order, the Secretary shall provide an opportunity for review in accordance with section 554 of title 5, United States Code; except that such review shall occur not later than 10 days after issuance of such order.

Under 49 CFR 1.73(a)(5), the Secretary's authority to carry out the functions relating to section 13902 registration requirements is delegated to the FMCSA Administrator. On August 28, 2002 (67 FR 55162), FMCSA published an interim final rule (IFR) implementing section 205 by requiring that a vehicle providing transportation requiring registration under 49 U.S.C. 13902 be ordered out of service if determined to be operating without registration or beyond the scope of the carrier's registration. Accordingly, the IFR and this final rule are authorized by section 13902(e).

Background

The IFR added a new section (392.9a) to 49 CFR part 392 to prohibit a commercial motor vehicle (CMV) providing transportation requiring registration under 49 U.S.C. 13902 from operating unless the carrier complies with the registration requirements. For example, a motor carrier fails to obtain registration pursuant to section 13902 but is later discovered hauling appliances in a CMV for a department store from one State to another. Under 49 CFR 392.9a(b), the vehicle would be placed out of service and the carrier may be subject to additional penalties under 49 U.S.C. 14901. Under 49 CFR 392.9a(c), the carrier would be entitled to a hearing to review the out-of-service order within 10 days of the issuance of

the order. In addition, the IFR amended the reference to registration requirements enforced by the States in 49 CFR 350.201(t)(1) to add 49 CFR 392.9a.

The IFR became effective September 27, 2002 and closed a loophole that could have been used to circumvent the Federal Motor Carrier Safety Regulations (FMCSRs). Before the issuance of the IFR, motor carriers who operated without registration would be cited for a violation during a roadside inspection and then be allowed to continue operating.

The States are currently required to enforce these registration requirements as a condition for receiving Motor Carrier Safety Assistance Program (MCSAP) funds. States had until September 27, 2005 to adopt the new regulations. To date, all States have adopted 49 CFR 392.9a. The States, acting through the Commercial Vehicle Safety Alliance (CVSA), have amended or revised their enforcement tolerances (the North American Standard Out-of-Service Criteria) to include a new part for registration enforcement to ensure uniformity in implementing section 205 of MCSIA. From the September 2002 effective date through May 2004, FMCSA completed 840 enforcement reports citing violations of 49 CFR 392.9a. Out of 4,405 violations discovered, 1,315 counts were asserted in Notices of Claim. FMCSA settled 1,045 of these counts with penalties totaling \$1,109,648.00.

Revisions to the IFR

Since implementation of the IFR, operational experience with 49 CFR 392.9a has been positive, although a few problems have been identified. Most issues that have arisen in implementing the IFR could be resolved through policy directives rather than regulatory change but a few issues are best resolved by minor revisions in the rule text.

1. The use of the word "registration" has been inconsistently interpreted by Federal and State enforcement personnel because the term is used in several different contexts at the Federal and State levels. Enforcement personnel have mistakenly cited other registration violations, such as vehicle registration and failure to submit the MCS-150, under 49 CFR 392.9a. FMCSA has revised the rule to make it easier to understand and has replaced the term "registration" with the term "operating authority" in 49 CFR 350.201(t) and 49 CFR 392.9a. The final rule amends the definitions in 49 CFR 390.5 to include the term "operating authority." This definition clarifies that operating

authority means registration required under 49 U.S.C. 13902.

2. Currently, the definition of "out-of-service order" in 49 CFR 390.5 includes references to other parts of the FMCSRs that specifically call for a driver or vehicle to be placed out of service. Adding 49 CFR 392.9a to the definition of out-of-service order in 49 CFR 390.5 updates this definition to reflect FMCSA's current out-of-service rules.

3. Since the effective date of the IFR, numerous violations of 49 CFR 392.9a have been discovered. To strengthen the quality of data FMCSA collects in the Motor Carrier Management Information System (MCMIS), it is more effective to list the two violations separately rather than listing both violations in the same paragraph. The final rule lists operating without authority as 49 CFR 392.9a(1) and operating beyond the scope of authority as 49 CFR 392.9a(2). This clarifies which violation is being cited in enforcement actions.

Discussion of Public Comments

FMCSA received 18 public comments on the IFR from 17 commenters. Commenting were seven State Police and State DOTs—Iowa DOT (Iowa), Oregon DOT (Oregon), Idaho State Police (Idaho), Georgia Department of Motor Vehicle Safety (Georgia), New York State DOT and New York Division of State Police (New York), California Highway Patrol (California), and Missouri State Highway Patrol (Missouri); four trade associations—National School Transportation Association (NSTA), Health and Personal Care Logistics Conference (H&PCLC), Pennsylvania Farm Bureau (PA Farm Bureau), and American Bus Association (ABA); one North American enforcement association—Commercial Vehicle Safety Alliance; three motor carriers—Wertz Motor Carriers (Wertz), United Parcel Service (UPS), and Adirondack Transit Lines, Inc. (Adirondack); one individual—Ken Carr; and Advocates for Highway and Auto Safety (Advocates).

Of the 18 comments, four (from Iowa, Wertz, Advocates, and Adirondack) supported the IFR and the resulting enforcement actions. One comment (from CVSA) suggested that the term "out-of-service" be changed to "cease operations" in several locations. This comment was addressed separately in FMCSA's disposition of a September 4, 2003 petition submitted by CVSA. In its petition, CVSA requested amending the FMCSRs by changing the term "out-of-service" to "cease operations." CVSA also proposed adding a definition for the term "cease operations order" to 49 CFR 390.5. FMCSA was not able to

substantiate CVSA's concern regarding lack of uniform enforcement and concluded CVSA's petition did not set forth sufficient safety or enforcement concerns to warrant initiation of a rulemaking proceeding. Accordingly, the petition was denied.

The other comments are discussed below together with FMCSA's responses on the issues raised.

Implementation & Training

Several comments concerned training materials and training sessions for employees and the databases that will be used for roadside inquiries. Another concern with implementation is the requirement that the States adopt this rule and implement it as part of their standard roadside inspection. As the Missouri State Highway Patrol stated, "This places the entire enforcement effort on the shoulders of the state MCSAP agencies, agencies that do not process registration forms nor grant operating authority." CVSA stated that most jurisdictions do not have the legislative authority to enforce the requirements. Commenters pointed out that to avoid issuing erroneous out-of-service orders for administrative violations, enforcement personnel must base such orders on accurate and real-time registration information. Those commenters suggested that currently this information must be obtained from several databases, which are not all sufficiently accurate and consistent even if they could be made available to enforcement personnel at any time. Several States, including Idaho, Georgia, and New York, have questioned the reliability of FMCSA's database to provide quality information in a timely manner. Comments have also arisen concerning the need for training of inspectors to help them identify when a carrier is required to have operating authority. Idaho suggested that States will need time to phase in the requirements because of training issues. New York argued that FMCSA will need to provide training to States.

FMCSA Response: In November 2002, FMCSA provided all of its field offices with procedures for enforcing the operating authority requirements during roadside inspections. FMCSA recognizes the necessity of timely and accurate data. FMCSA's Licensing and Insurance (L&I) Web site contains "real time" data that identifies the most current information available for each motor carrier. This site, which is the only Web site that must be checked to verify compliance, is accessible 24 hours a day. If officers and inspectors do not have Internet access during roadside inspections, a toll-free number (1-800-

832-5660) is available from 7:15 a.m. to 4:15 p.m., e.t., Monday through Friday to access the same current information that is on the Web site.

FMCSA is currently developing training materials and incorporating the requirements for operating authority into existing courses to help the roadside officer or inspector identify when operating authority is required. This training will also address which operating authority violations discovered result in placing the vehicle out of service. To ensure proper enforcement, FMCSA will continually review policies and procedures to identify the training needs necessary to fully implement and enforce this rule.

FMCSA and the States currently identify out-of-service violations through the FMCSRs and the CVSA's North American Standard Out-of-Service Criteria (CVSA Criteria). The FMCSRs require compliance with all applicable requirements at all times. The FMCSRs are the real out-of-service criteria. The CVSA Criteria represent enforcement tolerances and ensure that the decision by Federal and State personnel to place a vehicle out of service is not an arbitrary action based solely on the discretion of the inspector. The use of the CVSA Criteria by State officials is covered through either a documented policy or State laws and regulations. This process will continue. To date, all States have adopted and are enforcing the provisions of the rule.

Out-of-Service Orders

Some commenters argued that FMCSA has inappropriately determined that out-of-service orders be mandatory for any registration violation, even administrative violations that are not based on safety concerns. Ken Carr stated, "I question the proposition that failure to register or operating beyond the scope of registration rises to that level." Given their limited resources, States are concerned that the time enforcement personnel spend on placing these vehicles out of service could be better spent on getting hazardous vehicles off the road. As Georgia pointed out, "* * * the time spent by enforcement personnel to run down the information takes officers away from time that could be spent doing more safety inspections."

Commenters, including Oregon, H&PCLC, ABA, Missouri, and New York, also stated that operating authority violations are not an imminent hazard and CMVs should not be placed out of service during a roadside inspection. They recommend that these violations be noted on the inspection report and forwarded to the local

FMCSA office. The local FMCSA office would make contact with the company and place the entire fleet out of service if the investigation confirmed the violation. Once the carrier's operation has been placed out of service, any of the carrier's vehicles discovered to be operating could be placed out of service by the roadside officer or inspector.

FMCSA Response: Section 205 of MCSIA amended 49 U.S.C. 13902 by creating section (e), which requires the Agency to assess penalties for failure to comply with the motor carrier registration requirements under that statute. Specifically, if a motor carrier operates without the required authority or operates beyond the scope of its authority, the carrier would be subject to certain enforcement penalties. On August 28, 2002, FMCSA amended its regulations to require that a motor carrier subject to the registration requirements in 49 U.S.C. 13902 may not operate a CMV in interstate commerce unless it has registered with the Agency and been granted the required authority.

In order to restrict commercial highway transportation to those entities having the appropriate operating authority and possessing adequate insurance, FMCSA specifically mandated placing out of service any driver and vehicle discovered to be operating without the required authority or beyond the scope of the carrier's authority. Prior to this requirement, unauthorized or improperly authorized drivers and vehicles could travel our Nation's highways unchecked. FMCSA believes this action—the placing of a vehicle out of service during a roadside inspection when the carrier operating that vehicle is operating without authority or beyond the scope of its authority—is necessary in light of the current heightened security environment. FMCSA further believes that this action ensures that all carriers are apprised of and compliant with the applicable FMCSRs, operate only within the scope of their authority, and operate safe vehicles within the United States. Given FMCSA's mission of ensuring safe transportation, it is incumbent upon the Agency to close this potential loophole. As further discussed under Rulemaking Analyses and Notices later in this rule, experience has taught FMCSA that carrier noncompliance with the operating authority requirements correlates with carrier noncompliance with the safety regulations.

In response to the suggestion that FMCSA put the carrier's entire fleet out of service, 49 U.S.C. 13902(e)(1) states that if, upon inspection or investigation,

the Secretary determines that a motor vehicle is found to be providing transportation without the required registration or beyond the scope of the carrier's registration, the Secretary may order the vehicle out of service. The statutory requirement at the roadside is vehicle-specific and it does not authorize FMCSA to place the carrier's entire fleet out of service.

Exemptions From 49 U.S.C. 13902

Certain categories of CMV operations are exempted by 49 U.S.C. 13506 from the operating authority (registration) requirement of 49 U.S.C. 13902. NSTA requested clarification concerning the exemption at 49 U.S.C. 13506(a)(1) for "a motor vehicle transporting only school children and teachers to or from school." NSTA noted that during the period from 1976 through 1984, the former Interstate Commerce Commission (ICC) issued "rulings that established an interpretation of the exemption to include interstate transportation of students in school buses on trips that are directly connected with school-related activities and are sponsored and supervised by school authorities." It requested FMCSA to support this interpretation and clarify that the exemption includes for-hire motor carriers transporting students to school-related activities across State lines.

The PA Farm Bureau, while not requesting that agricultural-related commercial vehicle operations be exempted from section 13902, commented on the disproportionate burden an out-of-service order could place on certain agricultural operations, such as livestock hauling, transportation of perishable commodities, and agricultural-operation owners driving their own farm vehicles. The PA Farm Bureau requested that trucks licensed as farm vehicles under State law not be automatically placed out of service when found in violation of the registration requirement.

FMCSA Response: In response to NSTA's request for clarification, FMCSA has not issued any interpretations contradicting those of the former ICC. FMCSA recodified, at 49 CFR 372.103, the former ICC rule implementing the exemption for motor vehicles employed solely in transporting school children and teachers to or from school. FMCSA does not require contractors providing interstate transportation of school children and teachers to or from school to obtain operating authority from the Agency.

With regard to the PA Farm Bureau's comment, 49 CFR part 372, subpart A—

Exemptions contains several provisions implementing 49 U.S.C. 13506. 49 CFR 372.115 includes a list of commodities that are not exempt under 49 U.S.C. 13506(a)(6). Under this statute, motor vehicles used in carrying ordinary livestock, fish, and manufactured agricultural commodities are exempt from the section 13902 operating authority requirements.

Rulemaking Analyses and Notices

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

FMCSA has determined that this action is a non-significant regulatory action within the meaning of Executive Order 12866 and DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). FMCSA's full Final Rule Regulatory Evaluation, explaining in detail the estimated cost impacts of the rulemaking, is in the docket. This Final Rule results in no changes to the Regulatory Evaluation of the IFR.

Regulatory Flexibility Act

The Regulatory Flexibility Act (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 to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating, and enforcing regulations. FMCSA has prepared a Final Regulatory Flexibility Analysis (FRFA) of this rule and has determined that this rule will not impose a significant economic impact on a substantial number of small entities.

Using the Small Business Administration's criteria, FMCSA estimates that 75 to 80 percent of motor carriers are small. Thus, this rule could theoretically affect a large number of motor carriers. However, the rule does not impose any new requirement on these motor carriers. It merely increases the penalty for carriers operating without the required operating authority or beyond the scope of their authority.

More details on our evaluation can be found in the FRFA in the docket.

Executive Order 13132 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). FMCSA has determined that this action does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship

between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government.

As we stated in the IFR (67 FR 55163), FMCSA administers a grant-in-aid program, MCSAP, as an incentive for State enforcement of motor carrier safety regulations. As a condition of participating in this program, States are required to adopt and enforce safety regulations compatible with the FMCSRs and the hazardous materials regulations. Section 207 of MCSIA required States, as a condition of receiving MCSAP funds, to cooperate in the enforcement of FMCSA's authority and financial responsibility requirements. In revising the agency's MCSAP regulations in March 2000 (65 FR 15102), FMCSA required the States to enforce the authority and financial responsibility requirements [49 CFR 350.201(t)]. The IFR clarified how the States are to implement their enforcement responsibilities by specifying that vehicles shall be placed out of service if discovered to be operated in violation of the authority requirements. The final rule makes no substantive changes to this requirement.

The basic nature of MCSAP and the level of total funding for the program are not affected by these changes. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient Federalism implications to warrant consultation with State and local elected officials or their representative national organizations early in the process of developing this proposed regulation, or in the preparation of a federalism summary impact statement.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. The act requires that any agency promulgating a final rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the act. FMCSA uses a threshold value of \$120.7 million, which is the value of 100 million 1995 dollars inflated to 2003 dollars. FMCSA has determined that this rulemaking will not have an impact of \$120.7 million or more in 2003 dollars in any one year.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that this regulation does not constitute an information collection within the scope or meaning of the PRA.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) [42 U.S.C. 4321 *et seq.*] and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under paragraphs 6.e, 6.f, and 6.g of the Order from further environmental documentation. These CEs relate to establishing regulations and actions taken pursuant to these regulations concerning the application for operating authority and certificates of registration, enforcement activities, and procedures that promote adoption and enforcement of State laws that are compatible with the FMCSRs. In addition, 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.

We have also analyzed this proposed rule under the Clean Air Act (CAA), as amended section 176(c) [42 U.S.C. 7401 *et seq.*], and implementing regulations promulgated by the Environmental Protection Agency. As stipulated in 40 CFR 93.153(c)(2), approval of this action is exempt from the CAA's General conformity requirement since it involves rulemaking activities. This action 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, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This action merely clarifies terms and actions involved with the enforcement of operating authority.

Executive Order 13045 (Protection of Children)

This rule is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children. The Agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045. First, this rule is not economically significant under Executive Order 12866 because FMCSA has determined that the changes in this rulemaking would not have an impact of \$100 million or more in any one year. Second, the Agency has no reason to believe that the rule would result in an environmental health risk or safety risk that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12372 (Intergovernmental Review)

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

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and will not have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

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

List of Subjects*49 CFR Part 350*

Grant programs—transportation, highway safety, motor carriers.

49 CFR Part 390

Highway safety, motor carriers.

49 CFR Part 392

Highway safety, motor carriers.

■ Accordingly, FMCSA amends 49 CFR parts 350, 390, and 392 as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

■ 1. The authority citation for 49 CFR part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502, and 49 CFR 1.73.

■ 2. Amend 49 CFR 350.105 by adding a definition for *operating authority* in alphabetical order to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

* * * * *

■ 3. Amend 49 CFR 350.201 to revise paragraph (t) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

* * * * *

(t)(1) Enforce operating authority requirements under 49 U.S.C. 13902, 49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a by placing out of service a vehicle operated by a motor carrier without operating authority or beyond the scope of its operating authority.

(2) Enforce financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 4. The authority citation for 49 CFR part 390 continues to read as follows:

Authority: 49 U.S.C. 508, 13301, 13902, 31133, 31136, 31502, 31504, and sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

■ 5. Add the definition of *operating authority* in alphabetical order and revise the definition of *out-of-service order* in 49 CFR 390.5 to read as follows:

§ 390.5 Definitions.

Unless specifically defined elsewhere in this subchapter:

* * * * *

Operating authority means the registration required by 49 U.S.C. 13902,

49 CFR part 365, 49 CFR part 368, and 49 CFR 392.9a.

* * * * *

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

* * * * *

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

■ 6. The authority citation for 49 CFR part 392 continues to read as follows:

Authority: 49 U.S.C. 13902, 31136, 31502, and 49 CFR 1.73.

■ 7. Revise 49 CFR 392.9a to read as follows:

§ 392.9a Operating authority.

(a) *Operating authority required.* A motor vehicle providing transportation requiring operating authority must not be operated—

(1) Without the required operating authority or

(2) Beyond the scope of the operating authority granted.

(b) *Penalties.* Every motor vehicle providing transportation requiring operating authority shall be ordered out of service if it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this

section. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) *Administrative Review.* Upon issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with 5 U.S.C. 554 not later than 10 days after issuance of such order.

Issued on: August 21, 2006.

David H. Hugel,

Deputy Administrator.

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