of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have analyzed this rule under Commandant Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have concluded that there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2. of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation. A ''Categorical Exclusion Determination'' is available in the docket where indicated under **ADDRESSES**. Under figure 2–1, paragraph (34)(g), of the Instruction, an ''Environmental Analysis Check List'' and a ''Categorical Exclusion Determination'' are not required for this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

■ For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 is revised to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701; 50 U.S.C. 191, 195; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; Pub. L. 107–295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

■ 2. From July 23, 2003, through August 31, 2003, add § 165.T07–079 to read as follows:

§ 165.T07–079 Security Zones; Tampa Bay, Florida.

(a) *Location.* The following areas, denoted by coordinates fixed using the North American Datum of 1983 (World Geodetic System 1984), are security zones:

(1) *Big Bend, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, adjacent to the Big Bend Power Facility, and within an area bounded by a line connecting the following points: 27°47.85′ N, 082°25.02′ W then east and south along the shore and pile to 27°47.63′ N, 082°24.70′ W then north along the shore to 27°48.02′ N, 082°24.70′ W then north and west along a straight line to 27°48.12′ N, 082°24.88′ W then south along the shore and pile to 27°47.85′ N, 082°25.02′ W, closing off entrance to the Big Bend Power Facility.

(2) *Weedon Island, Tampa Bay, Florida.* All waters of Tampa Bay, from surface to bottom, extending 50 yards from the shore, seawall and piers around the Power Facility at Weedon Island encompassed by a line connecting the following points: 27°51.52′ N, 082°35.82′ W then north and east along the shore to 27°51.54′ N, 082°35.78′ W then north to 27°51.68′ N, 082°35.78′ W then north to 27°51.75′ N, 082°35.78′ W closing off entrance to the canal then north to 27°51.89′ N, 082°35.82′ W then west along the shore to 27°51.89′ N, 082°36.10′ W then west to 27°51.89′ N, 082°36.14′ W closing off entrance to the canal.

(b) *Regulations.* (1) In accordance with the general regulation in 33 CFR 165.33, entry into or remaining within these zones is prohibited unless authorized by the Coast Guard Captain of the Port, Tampa, Florida or their designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 813–228–2189/91 or on VHF channel 16 to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or their designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: July 23, 2003.

James M. Farley,

Captain, U.S. Coast Guard, Captain of the Port, Tampa, Florida.

[FR Doc. 03–20467 Filed 8–11–03; 8:45 am]

BILLING CODE 4910–15–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 01–185, FCC No. 03–162]

Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document is a summary of the Order on Reconsideration adopted by the Commission in this proceeding. The Commission reconsidered in part, its decision in this proceeding in which it allowed flexibility in the delivery of communications by Mobile Satellite Service (MSS) providers. On reconsideration, the Commission permitted authorized MSS systems to integrate ancillary terrestrial components (ATCs) into their MSS networks in three sets of ratio frequency bands. The Commission also clarified certain issues. The Commission took this action to address concerns raised by the wireless carriers.

DATES: Effective September 11, 2003.

FOR FURTHER INFORMATION: Breck Blalock, or James Ball, Policy Division, International Bureau, (202) 418–1460.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order on Reconsideration* in IB Docket No. 01–185, FCC No. 03–162, adopted July 3, 2003 and released on July 3, 2003. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The document is also available for download over the Internet at *http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-0-162A1.pdf.* The complete text may also be purchased from the Commission's copy contractor, Qualex International, in person at 445 12th Street, SW., Room CY–B402, Washington, DC 20554, via telephone at (202) 863–2893, via facsimile at (202) 863–2898, or via e-mail at *qualexint@aol.com.*

Summary of Order

On January 29, 2003, the Commission adopted a Report and Order, 68 FR 33640 (June 5, 2003), to permit flexibility in the delivery of communications by MSS providers that operate in three sets of radio frequency bands: the 2GHz MSS band, the L-band and the Big LEO bands. In the Report and Order, the Commission permitted MSS licensees to integrate ATCs into their MSS networks for the purpose of enhancing their ability to offer high-quality, affordable mobile services on land, in the air and over the oceans without using any additional spectrum resources beyond spectrum already allocated and authorized by the Commission for MSS in these bands.

Following release of the Report and Order, several wireless carriers made *ex parte* presentations stating that certain portions of the item required clarification. To resolve the concerns of the wireless carriers, the Commission on its own motion reconsidered the Report and Order in this proceeding.

In the Reconsideration Order, the Commission amended § 25.149 to clarify that the rule does not preclude an MSS operator from filing an ATC application prior to actually meeting all of the gating requirements. However, the Commission will not grant an ATC authorization prior to an MSS operator's demonstrating that it has, in fact, met the gating criteria. This rule change will serve the public interest by granting ATC applications only after the Commission is satisfied that each of the gating criteria has in fact been met, or will be met at the same time the application is granted.

The Commission adopted a new rule section that requires an MSS operator that is granted ATC authority to notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a certification that the MCC ATC service is consistent with its ATC authority.

In the event that an MSS operator anticipates that its proposal will present complex or controversial issues that may warrant a longer deliberative process, the MSS operator may seek an initial finding from the Commission that its proposed service offerings are ''integrated'' as required by the Commission's Report and Order.

The Commission revised § 25.143 to eliminate the language that required MSS operators have a conditioned ATC authorization before engaging in preoperational construction and testing. Rather, the Commission will permit such construction and testing, at the operator's risk, at any time after an MSS provider has initiated physical construction on the MSS system satellites and notified us concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. The MSS operator must notify the Commission in the form of a letter formally filed with the Commission in the appropriate MSS license docket. The letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. Upon the filing of such a notification letter, the Commission will issue an informational public notice stating that such a notification letter has been filed. The Commission requires pre-operational construction and testing operations be in compliance with all appropriate technical rules including § 25.255 relating to procedures for resolving possible harmful interference. Also, MSS licensees engaging in pre-operational build-out and testing are required to comply with §§ 5.83, 5.85(c), 5.111 and 5.117.

Finally, the Commission modified § 25.117(f) to require that any initial application for the modification of a space station license to add an ancillary terrestrial component be placed on notice for public comment.

Procedural Matters

Supplemental Final Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that ''the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' (The RFA, 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996).) The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act. *See* 5 U.S.C. 601(3) (incorporating by reference the definition of ''small-business concern'' in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' A ''small business concern'' is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the U.S. Small Business Administration (SBA). *See* 15 U.S.C. 632. The SBA has developed a small business size standard for Satellite Telecommunications, which consists of all such companies having $12.5 million or less in annual revenue. *See* 13 CFR 121.201, NAICS code 517410.

Pursuant to the RFA, the Commission incorporated a Final Regulatory Flexibility Certification into the Report and Order. For the reasons described below, we now incorporate this supplemental final certification into the Order on Reconsideration and certify that the policies and rules adopted in the Order on Reconsideration will not have a significant economic impact on a substantial number of small entities.

The Order on Reconsideration will allow MSS operators to file applications prior to meeting the gating requirements. MSS operators that have been granted authorization will be required to notify the Commission within thirty days once the MSS operator begins providing ATC service. Finally, the rules will permit an MSS provider to construct and test, at the operator's risk, at any time after an MSS provider has initiated physical construction on the MSS system satellites and notified the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. The rule changes adopted in the Order on Reconsideration will have no significant economic impact on small entities because the MSS operators will not be required to make use of the additional capability. Under the rules adopted in the Order on Reconsideration, the Commission has permitted additional flexibility that will enhance the ability of MSS operators to offer American consumers high quality, affordable mobile services on land, in the air, and over the oceans without using spectrum resources beyond the spectrum already allocated and authorized for MSS use in these bands.

The Commission also finds that this Order on Reconsideration—which brings additional flexibility to existing MSS licensees—will not affect a substantial number of small entities. There are currently five 2 GHz MSS licensees, two Big LEO MSS licensees and three L-band MSS licensees authorized to provide service in the United States. Although at least one of the 2 GHz MSS system licensees and one of the Big LEO licensees are small businesses, small businesses often do not have the financial ability to become MSS system operators because of the high implementation costs associated with satellite systems and services. We expect that, by the time of MSS ATC system implementation, these current small businesses will no longer be considered small due to the capital requirements for launching and operating a proposed system.

Ordering Clauses

Pursuant to sections 4(i), 7, 302, 303(c), 303(e), 303(f) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. sections 154(i), 157, 302, 303(c), 303(e), 303(f) and 303(r), this Order on Reconsideration *is adopted* and that part 25 of the rules *is amended,* as specified in the rule changes, effective September 11, 2003.

List of Subjects in 47 CFR Part 25

Radio, Satellites, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Rule Changes

PART 25—SATELLITE COMMUNICATIONS

■ 1. The authority citation for part 25 continues to read as follows:

Authority: 47 U.S.C. 701–744. Interprets or applies Sections 4, 301, 302, 303, 307, 309 and 322 of the Communications Act, as amended, 47 U.S.C. 154, 301, 302, 303, 307, 309 and 332, unless otherwise noted.

■ 2. Section 25.117 is amended by revising paragraph (f) to read as follows:

§ 25.117 Modification of station license.

* * * * *

(f) An application for modification of a space station license to add an ancillary terrestrial component to an eligible satellite network will be treated as a request for a minor modification if the particulars of operations provided by the applicant comply with the criteria specified in § 25.149. Notwithstanding the treatment of such an application as a minor modification, the Commission shall place any initial application for the modification of a space station license to add an ancillary terrestrial component on notice for public comment. Except as provided for in § 25.149(f), no application for authority to add an ancillary terrestrial component to an eligible satellite network shall be granted until the applicant has demonstrated actual compliance with the criteria specified in § 25.149(b).

■ 3. Section 25.136 is amended by revising paragraphs (f), (g), and (h) to read as follows:

§ 25.136 Licensing provisions for the L-Band mobile-satellite service.

* * * * *

(f) *Incorporation of ancillary terrestrial component base station into an L-band mobile-satellite service system.* Any licensee authorized to construct and launch an L-band mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(g) *Pre-operational build-out and testing.* An MSS licensee may, without further authority from the Commission and at its own risk engage in pre-operational build-out and, conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, ATC operation requirements, the rules and regulations in this Part and the applicable engineering standards. Prior to engaging in such pre-operational build-out and testing, an MSS licensee must notify the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket. Such letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. MSS licensees engaging in pre-operational build-out and testing must also comply with §§ 5.83, 5.85(c), 5.111, and 5.117 of this chapter relating to experimental operations. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.147 and must have been granted ATC authority.

(h) *Aircraft.* All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held) having operating capabilities in the 1626.5–1660.5 MHz and 1525–1559 MHz bands shall bear the following statement in a conspicuous location on the device: ''This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.''

■ 4. Section 25.143 is amended by revising paragraphs (i), (j), and (k) to read as follows:

§ 25.143 Licensing provisions for the 1.6/2.4 GHz mobile-satellite service and the 2 GHz mobile-satellite service.

* * * * *

(i) *Incorporation of ancillary terrestrial component base stations into a 1.6/2.4 GHz mobile-satellite service network or a 2 GHz mobile-satellite service network.* Any licensee authorized to construct and launch a 1.6/2.4 GHz or a 2 GHz mobile-satellite system may construct ancillary terrestrial component (ATC) base stations as defined in § 25.201 at its own risk and subject to the conditions specified in this subpart any time after commencing construction of the mobile-satellite service system.

(j) *Pre-operational build-out and testing.* An MSS licensee may, without further authority from the Commission and at its own risk, engage in pre-operational build-out and conduct equipment tests for the purpose of making such adjustments and measurements as may be necessary to assure compliance with the terms of the technical provisions of its MSS license, ATC operation requirements, the rules and regulations in this Part and the applicable engineering standards. Prior to engaging in such pre-operational build-out and testing, an MSS licensee must notify the Commission concerning the initiation of MSS system satellite construction and the MSS operator's intent to construct and test ATC facilities. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket. Such letter shall specify the frequencies on which the MSS licensee proposes to engage in pre-operational testing and shall specify the name, address, telephone number and other such information as may be necessary to contact a MSS licensee representative for the reporting and mitigation of any interference that may occur as a result of such pre-operational testing and build-out. MSS licensees engaging in pre-operational build-out and testing must also comply with §§ 5.83, 5.85(c), 5.111, and 5.117 of this chapter relating to experimental operations. An MSS licensee may not offer ATC service to the public for compensation during pre-operational testing. In order to operate any ATC base stations, such a licensee must meet all the requirements set forth in § 25.149 and must have been granted ATC authority.

(k) *Aircraft.* ATC mobile terminals must be operated in accordance with 25.136(a). All portable or hand-held transceiver units (including transceiver units installed in other devices that are themselves portable or hand-held)

having operating capabilities in the 2000–2020/2180–2200 MHz or 1610–1626.5 MHz/2483.5–2500 MHz bands shall bear the following statement in a conspicuous location on the device: ''This device may not be operated while on board aircraft. It must be turned off at all times while on board aircraft.''

* * * * *

■ 5. Section 25.149 is revised to read as follows:

§ 25.149 Application requirements for ancillary terrestrial components in the mobile-satellite service networks operating in the 1.5./1.6 GHz, 1.6/2.4 GHz and 2 GHz mobile-satellite service.

(a) Applicants for ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the following through certification or explanatory technical exhibit, as appropriate:

(1) ATC shall be deployed in the forward-band mode of operation whereby the ATC mobile terminals transmit in the MSS uplink bands and the ATC base stations transmit in the MSS downlink bands in portions of the 2000–2020 MHz/2180–2200 MHz bands (2 GHz band), the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), and the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band).

(2) ATC operations shall be limited to certain frequencies:

(i) In the 2000–2020 MHz/2180–2200 MHz bands (2 GHz MSS band), ATC operations are limited to the selected assignment of the 2 GHz MSS licensee that seeks ATC authority.

(ii) In the 1626.5–1660.5 MHz/1525–1559 MHz bands (L-band), ATC operations are limited to the frequency assignments authorized and internationally coordinated for the MSS system of the MSS licensee that seeks ATC authority.

(iii) In the 1610–1626.5 MHz/2483.5–2500 MHz bands (Big LEO band), ATC operations are limited to the 1610–1615.5 MHz, 1621.35–1626.5 MHz, and 2492.5–2498.0 MHz bands and to the specific frequencies authorized for use by the MSS licensee that seeks ATC authority.

(3) ATC operations shall not exceed the geographical coverage area of the mobile satellite service network of the applicant for ATC authority.

(4) ATC base stations shall comply with all applicable antenna and structural clearance requirements established in part 17 of this chapter.

(5) ATC base stations and mobile terminals shall comply with part 1 of this chapter, Subpart I—Procedures Implementing the National Environmental Policy Act of 1969, including the guidelines for human exposure to radio frequency electromagnetic fields as defined in §§ 1.1307(b) and 1.1310 of this chapter for PCS networks.

(6) ATC base station operations shall use less than all available MSS frequencies when using all available frequencies for ATC base station operations would exclude otherwise available signals from MSS space-stations.

(b) Applicants for an ancillary terrestrial component shall demonstrate that the applicant does or will comply with the following criteria through certification:

(1) *Geographic and temporal coverage.* (i) For the 2 GHz MSS band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, consistent with the coverage requirements for 2 GHz MSS GSO operators.

(ii) For the L-band, an applicant must demonstrate that it can provide space-segment service covering all 50 states, Puerto Rico, and the U.S. Virgin Islands one-hundred percent of the time, unless it is not technically possible for the MSS operator to meet the coverage criteria from its orbital position.

(iii) For the Big LEO band, an applicant must demonstrate that it can provide space-segment service to all locations as far north as 70° North latitude and as far south as 55° South latitude for at least seventy-five percent of every 24-hour period, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° for at least 18 hours each day, and on a continuous basis throughout the fifty states, Puerto Rico and the U.S. Virgin Islands, *i.e.*, that at least one satellite will be visible above the horizon at an elevation angle of at least 5° at all times.

(2) *Replacement satellites.* (i) Operational NGSO MSS ATC systems shall maintain an in-orbit spare satellite.

(ii) Operational GSO MSS ATC systems shall maintain a spare satellite on the ground within one year of commencing operations and launch it into orbit during the next commercially reasonable launch window following a satellite failure.

(iii) All MSS ATC licensees must report any satellite failures, malfunctions or outages that may require satellite replacement within ten days of their occurrence.

(3) *Commercial availability.* Mobile-satellite service must be commercially available (*viz.*, offering services for a fee) in accordance with the coverage requirements that pertain to each band as a prerequisite to an MSS licensee's offering ATC service.

(4) *Integrated services.* MSS ATC licensees shall offer an integrated service of MSS and MSS ATC. Applicants for MSS ATC may establish an integrated service offering by affirmatively demonstrating that:

(i) The MSS ATC operator will use a dual-mode handset that can communicate with both the MSS network and the MSS ATC component to provide the proposed ATC service; or

(ii) Other evidence establishing that the MSS ATC operator will provide an integrated service offering to the public.

(5) *In-band operation.* (i) In the 2 GHz MSS band, MSS ATC is limited to an MSS licensee's selected assignment. MSS ATC operations on frequencies beyond the MSS licensee's selected assignment are prohibited.

(ii) In the Big LEO band, MSS ATC is limited to no more than 5.5 MHz of spectrum in each direction of operation. Licensees in these bands may implement ATC only on those channels on which MSS is authorized, consistent with the Big LEO band-sharing arrangement.

(iii) In the L-band, MSS ATC is limited to those frequency assignments available for MSS use in accordance with the Mexico City Memorandum of Understanding, its successor agreements or the result of other organized efforts of international coordination.

(c) *Equipment certification.* (1) Each ATC MET utilized for operation under this part and each transmitter marketed, as set forth in § 2.803 of this chapter, must be of a type that has been authorized by the Commission under its certification procedure for use under this part.

(2) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(3) Licensees and manufacturers are subject to the radiofrequency radiation exposure requirements specified in §§ 1.1307(b), 2.1091 and 2.1093 of this chapter, as appropriate. MSS ATC base stations must comply with the requirements specified in § 1.1307(b) of this chapter for PCS base stations. MSS ATC mobile terminals must comply with the requirements specified for mobile and portable PCS transmitting devices in § 1.1307(b) of this chapter. MSS ATC mobile terminals must also

comply with the requirements in §§ 2.1091 and 2.1093 of this chapter for Satellite Communications Services devices. Applications for equipment authorization of mobile or portable devices operating under this section must contain a statement confirming compliance with these requirements for both fundamental emissions and unwanted emissions. Technical information showing the basis for this statement must be submitted to the Commission upon request.

(d) Applicants for an ancillary terrestrial component authority shall demonstrate that the applicant does or will comply with the provisions of §§ 1.924 and 25.203(e) through 25.203(g) and with §§ 25.252, 25.253, or 25.254, as appropriate, through certification or explanatory technical exhibit.

(e) Except as provided for in paragraph (f) of this section, no application for an ancillary terrestrial component shall be granted until the applicant has demonstrated actual compliance with the provisions of paragraph (b) of this section. Upon receipt of ATC authority, all ATC licensees must ensure continued compliance with this section and §§ 25.252, 25.253, or 25.254, as appropriate.

(f) Special provision for operational MSS systems. Applicants for MSS ATC authority with operational MSS systems that are in actual compliance with the requirements prescribed in paragraphs (b)(1), (b)(2), and (b)(3) of this section at the time of application may elect to satisfy the requirements of paragraphs (b)(4) and (b)(5) of this section prospectively by providing a substantial showing in its certification regarding how the applicant will comply with the requirements of paragraphs (b)(4) and (b)(5) of this section. Notwithstanding § 25.117(f) and paragraph (e) of this section, the Commission may grant an application for ATC authority based on such a prospective substantial showing if the Commission finds that operations consistent with the substantial showing will result in actual compliance with the requirements prescribed in paragraphs (b)(4) and (b)(5) of this section. An MSS ATC applicant that receives a grant of ATC authority pursuant to this paragraph (f) shall notify the Commission within 30 days once it begins providing ATC service. This notification must take the form of a letter formally filed with the Commission in the appropriate MSS license docket and shall contain a certification that the MSS ATC service is consistent with its ATC authority.

[FR Doc. 03–20325 Filed 8–11–03; 8:45 am]
BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 398

[Docket No. FMCSA–2000–7017]

RIN 2126–AA52

Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used In Interstate Commerce

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

ACTION: Final rule.

SUMMARY: FMCSA amends the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, must comply with the applicable safety regulations when they are directly compensated for such services and the vehicle is operated beyond a 75 air mile radius (86.3 statute miles or 138.9 kilometers) from the driver's normal work-reporting location. The agency has revised its proposed distance threshold to focus on the distance that the driver operates the vehicle, as opposed to the distance that the passengers are transported. These motor carriers, drivers, and vehicles are now, through this rule, subject to the same safety requirements as motor coach operators, except for the commercial driver's license, and controlled substances and alcohol testing regulations. This rule implements section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA).

DATES: This final rule is effective on September 11, 2003. *Compliance Date.* Affected motor carriers must be in compliance with this rule no later than November 10, 2003.

ADDRESSES:

Assistance for Small Entities: The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) requires the FMCSA to comply with small entity requests for information or advice about compliance with statutes and regulations within FMCSA's jurisdiction. Thus, if any small entity, organization, or governmental jurisdiction has a question regarding this document, please contact an FMCSA Division office in your State or an FMCSA Service Center for a given geographic area. For phone numbers and addresses, go to *http://www.fmcsa.dot.gov/aboutus/fieldoffs,* or call 1–800–832–5660, or Fax (202) 366–8842, FMCSA, Attn: Commercial Passenger Carrier Safety Division (MC–PSB), Washington, DC 20590.

Docket: For access to the docket to read background documents or comments received, 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 am and 5 pm, Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Larry W. Minor, (202) 366–4009, Chief, Vehicle and Roadside Operations Division (MC–PSV); or Mr. Philip J. Hanley, (202) 366–9131, Commercial Passenger Carrier Safety Division (MC–PSB), Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Congressional Mandate to Regulate Small Passenger-Carrying Commercial Motor Vehicles (CMVs)

Section 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), (Pub. L. 106–159, 113 Stat. 1748, December 9, 1999), requires that the FMCSA make its safety regulations applicable to: (1) Commercial vans referred to as ''camionetas,'' and (2) those commercial vans operating in interstate commerce outside of commercial zones that have been determined to pose serious safety risks.

Prior to enactment of the MCSIA, section 4008(a)(2) of the Transportation Equity Act for the 21st Century (TEA–21) Public Law 105–178, 112 Stat. 107, June 9, 1998) amended the passenger-vehicle component of the commercial motor vehicle (CMV) definition in 49 U.S.C. 31132(1). CMV is now defined statutorily to mean a self-propelled or towed vehicle used on the highways in interstate commerce to transport passengers or property, if the vehicle—

(A) has a gross vehicle weight rating or gross vehicle weight of at least 10,001 pounds, whichever is greater;

(B) is designed or used to transport more than 8 passengers (including the driver) for compensation;