

**TIME AND DATE:** February 11, 2010, 12 noon to 3 p.m., Eastern Standard Time.

**PLACE:** This meeting will take place telephonically. Any interested person may call Mr. Avelino Gutierrez at (505) 827-4565 to receive the toll free number and pass code needed to participate in these meetings by telephone.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

**FOR FURTHER INFORMATION CONTACT:** Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Issued on: January 12, 2010.

**Larry W. Minor,**

*Associate Administrator for Policy and Program Development.*

[FR Doc. 2010-1770 Filed 1-25-10; 4:15 pm]

**BILLING CODE 4910-EX-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

[Docket No. FMCSA-2009-0106]

#### Petition for Declaratory Order by Fullington Trailways, LLC

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

**ACTION:** Declaratory order.

**SUMMARY:** In accordance with an order from the Pennsylvania Public Utilities Commission (PPUC), Fullington Trailways, LLC (Fullington) filed a petition for a declaratory order (Petition) seeking a determination from FMCSA on the following three issues with respect to its State College/Harrisburg and Lewistown/Harrisburg passenger bus routes: (1) Whether Fullington's operations are within the scope of its Federal operating authority; (2) whether PPUC regulation as to rates and schedules is preempted; and (3) whether its operations qualify as a "special operation" under 49 U.S.C. 13902 or "intrastate commuter bus operation" under 49 U.S.C. 14501. The Agency grants Fullington's petition, finding that the passenger bus service in question is within the scope of Fullington's Federal operating authority, that PPUC regulation as to rates and schedules is preempted and that Fullington's operations do not qualify as a "special

operation" or an "intrastate commuter bus operation."

**FOR FURTHER INFORMATION CONTACT:** Genevieve D. Sapir, Office of the Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-7056.

#### SUPPLEMENTARY INFORMATION:

##### Background

Fullington currently provides passenger bus service along various routes in Pennsylvania. Along two such routes, Lewistown to Harrisburg and State College to Harrisburg, Fullington held intrastate authority from the Pennsylvania Public Utilities Commission (PPUC). Fullington obtained Federal authority to provide service along the Lewistown—Harrisburg route in 1983 and subsequently obtained Federal authority for the State College—Lewistown—Harrisburg route in December 2006. In January 2007, Fullington announced plans to discontinue early morning service on the State College/Harrisburg route and raise rates for early morning service on the Lewistown—Harrisburg route. Two regular passengers on Fullington's routes filed complaints with the PPUC opposing these changes. The PPUC entered an emergency order on January 31, 2007, requiring Fullington to continue to provide service on the early morning State College—Harrisburg run. In order to comply with this order, and in response to low passenger demand for this service, Fullington consolidated its routes to a single State College—Lewistown—Harrisburg route with multiple morning and afternoon runs.

An initial order of an administrative law judge, subsequently adopted by the PPUC on June 24, 2008, concluded that, to the extent the State College—Harrisburg and Lewistown—Harrisburg routes were properly characterized as operations in interstate commerce under federal law, it did not have jurisdiction over the complaint. However, the PPUC further concluded that it lacked jurisdiction to determine whether the operations were properly characterized as in interstate commerce and that FMCSA had primary jurisdiction to make the determination whether Fullington's operations were within the scope of the carrier's Federal operating authority. The PPUC instructed Fullington to seek a determination from FMCSA on the following three issues with respect to its State College—Harrisburg and Lewistown—Harrisburg routes: (1) Whether Fullington's operations are within the scope of its

Federal operating authority; (2) whether PPUC regulation over rates and schedules is preempted; and (3) whether the operations in question qualify as a "special operation" or "intrastate commuter bus operation" under 49 U.S.C. 13902.

On September 17, 2008, Fullington submitted the Petition for Declaratory Order to FMCSA seeking a determination on these issues. Before making its determination on the matters raised in the Petition, the Agency invited the public to submit initial and reply comments. [74 FR 26917] We address those comments below.

#### Analysis and Conclusions

Agencies have the discretion to issue declaratory orders to terminate controversies or resolve uncertainties. 5 U.S.C. 554(e). Prior to its termination, the Interstate Commerce Commission (ICC) regularly exercised this discretionary authority to resolve disputes. However, in transferring several ICC functions to the Department of Transportation (DOT) (first to the Federal Highway Administration (FHWA) and then to FMCSA), Congress envisioned that DOT would generally not become involved in resolving disputes between private parties. To effectuate this congressional intent, FHWA stated that although it reserved the right to issue declaratory orders to resolve controversies between third parties in appropriate circumstances, it would do so only in cases having industry-wide significance that raise issues not adequately addressed by existing legal precedent. *Petition for Declaratory Order Regarding Application of Federal Motor Carrier Truth In-Leasing Regulations*, 63 FR 31827 (Jun. 10, 1998).

In general, FMCSA does not consider the question of whether a carrier is operating in interstate commerce to be the type of controversy rising to the level of industry-wide significance or for which there is not existing legal precedent. However, in its petition, Fullington raises an issue—whether the service in question constitutes a commuter service or special operations—for which there is little recent legal precedent and of which resolution may have industry-wide significance.

#### Jurisdiction

The PPUC, in its order directing Fullington to petition FMCSA for a declaratory order, correctly concluded that it lacked jurisdiction to determine whether Fullington's operations were within the scope of its interstate operating authority. *Goertz v. Fullington*

*Trailways, LLC*, Opinion and Order, PPUC Case No. P-00072246 (Jun. 24, 2008), p. 10. By order dated December 12, 2006, FMCSA granted Fullington authority to engage in transportation as an interstate common carrier of passengers over certain regular routes. FMCSA has primary jurisdiction to interpret the scope of operations that may lawfully be conducted under this authority. See *Funbus Systems, Inc. v. C.P.U.C.*, 801 F.2d 1120, 1129 (9th Cir.1986) (interpreting authority of FMCSA's predecessor). Conversely, State regulatory authorities may not assume power to interpret the boundaries of federally-issued certificates or to impose sanctions based upon operations that are alleged to be authorized by a Federal certificate. See *Service Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 177-79 (1959) (interpreting authority of FMCSA's predecessor).

#### *Fullington's Interstate Operations*

No party disputes that Fullington holds the necessary authorizations under 49 U.S.C. 3902(a) to provide interstate service along the State College—Lewistown—Harrisburg route. The first inquiry, therefore, is whether the intrastate service described in the PPUC proceeding is sufficiently related to interstate transportation provided over this route to come within the scope of Fullington's Federal operating authority for the purposes of 49 U.S.C. 13902(b)(3). That provision permits carriers to provide intrastate passenger service over interstate routes as follows:

Intrastate transportation by interstate carriers.—A motor carrier of passengers that is registered by the Secretary under subsection (a) is authorized to provide regular-route transportation entirely in one State as a motor carrier of passengers if such intrastate transportation is to be provided on a route over which the carrier provides interstate transportation of passengers.

To determine whether Fullington's intrastate services meet the requirements of § 13902(b)(3), the appropriate standard to apply is that set forth in *Funbus Systems, Inc.-Intrastate Operations-Petition For Declaratory Order*, No. MC-C-10917, 1988 WL 225255 (ICC Aug. 11, 1988) (*Funbus*). See *East West Resort Transportation, Inc. v. Binz*, 494 F. Supp. 2d 1197, 1200 (D. Colo. 2007) (*East West*); *Airporter of Colo., Inc. v. ICC*, 866 F.2d 1238, 1240-41 (10th Cir. 1989); see also ICC Termination Act (ICCTA), Pub. L. 104-88, § 204 (1995) (all ICC orders and determinations remain in effect until modified or revoked). In *Funbus*, the ICC concluded that "it is not enough for the carrier merely to offer interstate

transportation on the route over which it conducts intrastate service" and established a five-part test to determine whether the intrastate service in question is sufficiently related to interstate transportation. That test requires us to consider the following factors: (1) The interstate service must be active; (2) the intrastate service may not operate independently of the interstate service, but instead must be conducted as a part of existing interstate services; (3) the required interstate transportation must be an actual, regularly scheduled service; (4) the interstate transportation must be *bona fide* and involve service in more than one State; and (5) the interstate transportation must be substantial. *Funbus* at \*2.

Applying the *Funbus* test to Fullington's passenger bus operations on the State College—Lewistown—Harrisburg route, we conclude that Fullington's intrastate traffic falls within the scope of its federally-authorized interstate operations for the purposes of 49 U.S.C. 13902(b)(3). First, it is undisputed that Fullington's interstate service is active on the State College—Lewistown—Harrisburg route. Based on the PPUC's findings as well as comments submitted by both the complainants and other commuters, all agree that Fullington offers bus service on this route to through-ticketed passengers with interstate origins or destinations. Fullington meets the first prong of the *Funbus* test.

Second, Fullington's interstate service does not operate independently of its intrastate service. Based on evidence Fullington presented in the PPUC proceeding, as well as comments commuters made in this docket, it is undisputed that after Fullington obtained Federal authority in late 2006, any passenger, whether traveling intrastate or to an interstate destination or origin, could purchase tickets and board any bus traveling on the State College—Lewistown—Harrisburg route. Although the evidence presented indicates that certain runs on this route are more heavily used by commuters, nothing presented in either forum suggests that Fullington operates these runs as a separate operation. To the contrary, all evidence and comments point to the opposite conclusion: that all runs on the route are part of the same integrated operations regardless of whether made during peak or off-peak commuting times.

Third, Fullington's interstate transportation is part of an actual, regularly-scheduled service. Based on evidence presented to the PPUC and comments submitted to this docket, it is

undisputed that Fullington offers five regularly-scheduled runs on the State College—Lewistown—Harrisburg route each day. Fullington's transportation on these runs is part of an integrated operation that serves both interstate and intrastate passengers.

To satisfy the fourth step, that the interstate transportation must be *bona fide* and involve service in more than one State, we look at whether the intrastate operations have a nexus to interstate operations. See *East West* at 1201-1204. In this case, that nexus clearly exists.

Through-ticketing for interstate destinations is one indicia of interstate service. *Funbus* at 2, note 1. Fullington offers through-ticketing services that allow passengers to buy tickets on the State College—Lewistown—Harrisburg route connecting in Harrisburg with other carriers, such as Greyhound or Amtrak for passenger transportation out of State. *Goertz v. Fullington Trailways, LLC*, Opinion and Order, PPUC Case No. P-00072246, Initial Decision (Mar. 10, 2008) ("PPUC Initial Decision"), ¶¶ 19-21. No party or commenter disputes that Fullington offers this service or that through-ticketed passengers use Fullington's services on the State College—Lewistown—Harrisburg route for interstate travel.

The nexus between intrastate and interstate transportation also exists where the intrastate transportation is an integral part of an interstate journey. See *Brown's Crew Car of Wyo. LLC v. Nevada Transp. Auth.*, 2009 WL 1240458, at 12 (D. Nev. May 1, 2009). Fullington introduced evidence at the PPUC demonstrating that the State College—Lewistown—Harrisburg route was an integral part of an interstate journey for a significant number of passengers on that route. A traffic study conducted between July and December 2006 showed that approximately 40% of Fullington's passengers on the routes in question were actually engaged in interstate travel. PPUC Initial Decision, ¶ 22.

As a result, based on evidence of through-ticketing presented to the PPUC and actual movements reflected in the traffic study, we conclude that there is a sufficient nexus between the intrastate and interstate transportation to satisfy the fourth prong of the *Funbus* test.

Finally, Fullington argues that due to changes in the Surface Transportation and Uniform Relocation Assistance Act, Public Law 100-17, § 340 (1987), the fifth *Funbus* factor, which requires that the interstate transportation be substantial, is no longer relevant. Petition at 6, note 3. This is consistent with the ICC's position in *Funbus*. See

*Funbus* at \*4. However, as Fullington noted, a number of courts have continued to apply the substantiality requirement regardless of the statutory change. Petition at 6, note 3; *see e.g., East West*, 494 F.Supp. 2d at 1200. Because we conclude that Fullington's interstate transportation is substantial, we do not address this apparent conflict in precedent.

Courts have interpreted the substantiality requirement to mean that the interstate traffic is substantial in relation to the intrastate traffic in the same operation. *East West* at 1200, citing *Airporter of Colo., Inc.*, 866 F.2d at 1240–41 (10th Cir. 1989).

Fullington's Federal authority is not limited to particular runs, but rather applies to the entire State College—Lewistown—Harrisburg route. *See* 49 U.S.C. (b)(3). In evaluating whether it is substantial, we look at the proportion of interstate traffic on those routes for which Fullington holds Federal operating authority and do not limit our analysis to individual runs. There is little question that Fullington's interstate traffic is substantial in relation to its intrastate traffic on the routes in question. The traffic study conducted in 2006 shows that approximately 40% of passengers on the State College to Harrisburg route were traveling interstate. Although there is no bright line test to determine what proportion of interstate travel constitutes "substantial," 40% falls within the generally accepted range. *See East West*, 494 F.Supp. 2d. at 1205 (observing that the ICC had found that substantial means at least 24–28% of the traffic be interstate).

In sum, we conclude that Fullington's operations on the State College—Lewistown—Harrisburg route meet the *Funbus* criteria and fall squarely within the scope of its Federal operating authority.

#### Special Operations

In accordance with the PPUC's order, Fullington requested that we specifically address whether the State College—Lewistown—Harrisburg route constitutes a "special operation" for the purposes of 49 U.S.C. 13902(b)(6). In its petition, Fullington also raised a number of issues related to the application of § 13902(b)(2) to the preemption analysis. *See* Petition at 10. Because we conclude that Fullington's State College—Lewistown—Harrisburg operations do not constitute special operations, we need not address these issues.

Section § 13902(b)(6) provides:

Special operations.—This subsection shall not apply to any regular-route transportation

of passengers provided entirely in one State which is in the nature of a special operation.

Neither FMCSA nor the Federal courts have had the opportunity to interpret "special operations" for the purposes of 49 U.S.C. 13902(b)(6). As a result, we look to the interpretations of our predecessor agency, the ICC. *See* ICCTA, § 204.

The term "special operations" has historically been interpreted to be a catch-all classification for those operations that are neither regular-route transportation of passengers nor charter operations. *Asbury Park-New York Transit Corporation v. Bingler Vacation Tours, Inc.*, 62 M.C.C. 731, 739 (1954) (*Asbury Park*). The most common types of special operations are sightseeing or pleasure tours. *Id.*; *Fordam Bus Corp. Common Carrier Application*, 29 M.C.C. 293, 297 (1941) (*Fordham*). Characteristics may include an all-expense-included sightseeing or pleasure tour; additional services such as a guide or meals; or weekend, holiday or special occasion-only service organized by the carrier. *Michaud Bus Lines, Inc., Extension Tours*, 100 M.C.C. 432, 443 (1966); *Asbury Park*, 62 M.C.C. at 739; *Fordam*, 29 M.C.C. at 297. Special operations may also include a variety of different services such as door-to-door service, day trips to race tracks, casinos, sporting events, or other excursions. *Hudson Transit Lines, Inc. v. ICC*, 765 F.3d 329, 342 (2d Cir. 1985). Whether a particular service constitutes special operations depends on the individual characteristics of the service (*id.*) and FMCSA's predecessor agency expressly declined to issue regulations defining them with specificity. *See Passenger Transportation in Special Operations*, 112 M.C.C. 160, 174 (1970).

Nothing in the record suggests that Fullington's State College—Lewistown—Harrisburg operations are anything other than regular-route transportation of passengers. Fullington's service does not have any of the above-mentioned characteristics that would distinguish it from traditional regular-route passenger service and necessitate application of the "catch-all" classification of special operations. Accordingly, we find that Fullington's State College—Lewistown—Harrisburg route is not a special operation for the purposes of 49 U.S.C. 13902(b)(6).

#### Commuter Service

In accordance with the PPUC's order, Fullington has also requested that we determine whether the State College—Lewistown—Harrisburg route constitutes a "commuter bus operation" for the purposes of 49 U.S.C.

14501(a)(1). We conclude that Fullington's State College—Lewistown—Harrisburg route is not a commuter service.

Section 14501(a)(1) provides:

(a) Motor carriers of passengers.—

(1) Limitation on State law.—No State or political subdivision thereof and no interstate agency or other political agency of 2 or more States shall enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law relating to—

(A) scheduling of interstate or intrastate transportation (including discontinuance or reduction in the level of service) provided by a motor carrier of passengers subject to jurisdiction under subchapter I of chapter 135 of this title on an interstate route;

(B) the implementation of any change in the rates for such transportation or for any charter transportation except to the extent that notice, not in excess of 30 days, of changes in schedules may be required; or

(C) the authority to provide intrastate or interstate charter bus transportation.

This paragraph shall not apply to intrastate commuter bus operations, or to intrastate bus transportation of any nature in the State of Hawaii.

Title 49, United States Code, subtitle IV, part B (which contains § 14501(a)(1)) does not define "commuter bus operations." In the absence of a statutory definition, we consider the plain meaning of "commuter service" and DOT regulations for guidance. *See Greyhound Lines, Inc. v. The City of New Orleans*, 29 F. Supp.2d 399 (E.D. La. 1998) (*Greyhound v. New Orleans*). In *Greyhound v. New Orleans*, the court found that "an ordinary reading of 'commuter' suggests regular travel to and from work." FMCSA's regulations provide the following definition of commuter service:

Commuter service—means passenger transportation wholly between points not more than 100 airline miles apart and not involving through-bus, connecting, or interline services to or from points beyond 100 airline miles. The usual characteristics of commuter service include reduced fare, multiple-ride, and commutation tickets, and peak morning and evening operations.

49 CFR 374.303(g). DOT's Americans with Disabilities Act (ADA) regulations define commuter bus service as follows:

*Commuter bus service* means fixed route bus service, characterized by service predominantly in one direction during peak periods, limited stops, use of multi-ride tickets, and routes of extended length, usually between the central business district and outlying suburbs. Commuter bus service may also include other service, characterized by a limited route structure, limited stops, and a coordinated relationship to another mode of transportation.

49 CFR 37.3.

Fullington's State College—Lewistown—Harrisburg operation does not constitute a commuter service under either of these definitions. The route provides interline service to through-ticketed passengers. More importantly, operations on this route are not limited to peak morning and afternoon hours and the route is used by passengers traveling at off-peak hours. We must also take into account that the route accommodates university students, many of whom are engaged in interstate travel, at off-peak and holiday hours. Whether Fullington previously operated the State College—Harrisburg and Lewistown—Harrisburg routes as a commuter service under PPUC authority is not relevant to our inquiry. Our review is limited to Fullington's operations since it obtained Federal operating authority. Since then, the record shows that Fullington has not operated these routes as a commuter service.

#### Conclusion

Section 14501(a)(1) preempts State or local government entities from regulating the rates or scheduling of carriers that provide intrastate or interstate transportation subject to Federal jurisdiction. Because we find that Fullington is operating its State College—Lewistown—Harrisburg route within its Federal operating authority, we conclude that the PPUC's jurisdiction over rates and schedules is preempted.

#### Response to Comments

The Agency received eleven initial comments of which five commuters (including complainants in the PPUC action) opposed Federal jurisdiction and three bus companies (including Fullington), an industry association, three county commissioners and four members of Congress supported Federal jurisdiction. The Agency received eleven reply comments of which ten commuters (including complainants in the PPUC action) opposed Federal jurisdiction. One industry association supported Federal jurisdiction. Many of the comments we received repeated information or arguments presented at the PPUC or raised issues well beyond the scope of the **Federal Register** notice. We address the relevant comments below, organized by issue.

#### *Whether Fullington's Operations Are Within the Scope of Its Federal Operating Authority and Whether PPUC Regulation as to Rates and Schedules Is Preempted*

##### Comments

The five commuters who opposed Federal jurisdiction over Fullington's State College—Lewistown—Harrisburg route made three primary arguments: (1) That Fullington's operations on this route do not meet the substantiality test as set forth in *Funbus*; (2) that Fullington's operations on this route do not cross State lines; and (3) that Fullington's current operations should not be the focus of FMCSA's analysis.

##### Response

As explained above, we acknowledge that there is some conflict between the ICC's *Funbus* decision and subsequent court decisions. Although *Funbus* does not require that we consider substantiality, we nonetheless erred on the side of caution to be consistent with more recent court decisions and included it in our analysis. Traffic studies show that approximately 40% of the traffic on this route originates or terminates out of State. Existing precedent supports our conclusion that this is substantial.

Although Fullington's State College—Lewistown—Harrisburg route does not cross State lines, Federal law provides that passengers along this route may be engaged in interstate transportation if their origin or destination is out of State. We conclude that Fullington has provided ample evidence of through-ticketing and actual interstate movements to conclude that it conducts interstate transportation on this route.

Finally, a number of comments were focused on Fullington's operations when it was operating pursuant to its PPUC authority, prior to when it began operating under its Federal authority. However, those comments relate to operations outside the scope of Fullington's Federal authority. We only consider those services Fullington provided in accordance with its Federal authority and render no opinion on any services provided prior to that date.

##### Comments

The commenters who supported Federal jurisdiction made four basic arguments: (1) Fullington meets the *Funbus* criteria, including the substantiality requirement; (2) a contrary finding would lead to excessive regulation and put intercity bus operators at a competitive disadvantage; (3) the authority to certificate carriers and the preemption of State laws apply

to routes, not to specific line runs; and (4) Fullington's operations, even if only 24% of traffic on the route in question is interstate, are substantial for purposes of the *Funbus* test.

##### Response

As explained above, we agree that Fullington has met the *Funbus* criteria, including the substantiality requirement. We also agree that the appropriate analysis is whether Fullington's entire State College—Lewistown—Harrisburg route is within the scope of its Federal operating authority and not whether particular runs individually meet the *Funbus* test. As we have already concluded that Fullington's operations along this route are within the scope of its Federal operating authority and that State regulation over rates and schedules is preempted, we do not address the policy implications of reaching the opposite conclusion. Similarly, because we conclude that approximately 40% of Fullington's traffic along this route is interstate, we do not need to make a determination as to whether any other percentage would be considered substantial.

#### *Whether Fullington's Operations Qualify as a "Special Operation" or "Intrastate Commuter Bus Operation" Under 49 U.S.C. 13902*

##### *Special Operation*

##### Comment

FMCSA received one comment noting that special operations can include regular route transportation of passengers.

##### Response

FMCSA agrees that special operations can include operations over regular routes; however, such operations are distinguished from regular route transportation because they entail and are distinguished by additional service features as noted in the analysis above. The Agency believes that the other individual characteristics of Fullington's State College—Lewistown—Harrisburg route are not consistent with the distinguishing service features that characterize special operations.

#### *Intrastate Commuter Bus Operation*

A number of commenters argued that the characteristics of State College—Lewistown—Harrisburg route were those of a commuter operation, following a common sense definition. These characteristics include: That the early morning and late afternoon runs are used primarily by commuters; that

the buses do not run on holidays or weekends; that the schedule reflects passengers' commuting schedule; that the bus stops at multiple work places in Harrisburg; that the route is 90 miles; and daily passengers can buy a 20-ride or monthly ticket at reduced prices.

#### Response

FMCSA acknowledges that all of these characteristics could be associated with an intrastate commuter bus operation. Although such factors, either individually or collectively, could speak to the frequency or regularity of use of a passenger transportation service, they are not dispositive of commuter service. In fact, Fullington's route has other characteristics that support our conclusion that it is not a commuter bus operation. For example, Fullington offers through-ticketing and has demonstrated through traffic studies that passengers actually use the route in interstate transportation. Furthermore, Fullington operates this route several times a day at times other than peak commuting times. Many of the commenters who support a finding of commuter bus operations acknowledge that these non-peak runs exist and that they serve interstate passengers, including Pennsylvania State University students.

#### Comments

Commenters supporting a finding that Fullington's State College—Lewiston—Harrisburg route is not a commuter bus operation noted that even though the route is used by commuters, it terminates at the Harrisburg Transportation Center, a multi-modal center where passengers can transfer to other bus and rail operators. They further state that the fact that commuters use the early morning and afternoon runs does not make the entire federally-authorized route a commuter bus operation.

#### Response

FMCSA agrees that these characteristics support its conclusion that Fullington is not operating the route in question as an intrastate commuter bus operation.

#### Preemption

#### Comment

One commenter argued that Fullington was obligated to have "closed out" its State operating authority prior to obtaining Federal operating authority.

#### Response

We disagree with this comment. The Agency is unaware of any provision of law requiring a carrier to surrender or

"close out" its State operating authority prior to obtaining and using Federal operating authority.

Dated: January 19, 2010.

**Anne S. Ferro,**  
Administrator.

[FR Doc. 2010-1645 Filed 1-26-10; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

[U.S. DOT Docket Number NHTSA-2010-0010]

#### Reports, Forms, and Recordkeeping Requirements

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

**ACTION:** Request for public comment on extension of a currently approved collection of information.

**SUMMARY:** Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections. This document describes an existing collection of information for Federal Motor Vehicle Safety Standard (FMVSS) No. 106, for which NHTSA intends to seek renewed OMB approval.

**DATES:** Comments must be received on or before March 29, 2010.

**ADDRESSES:** Comments must refer to the docket number cited at the beginning of this notice, and may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, M-30, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. Eastern Time, Monday through Friday, except Federal holidays. Telephone: 1-800-647-2251.

*Instructions:* All submissions must include the docket number for this document. Please identify the collection of information for which a comment is

provided by referencing the OMB Control Number, 2127-0052. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the Privacy Act heading below.

*Privacy Act:* Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78) or you may visit <http://DocketsInfo.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeff Woods, NHTSA, 1200 New Jersey Avenue, SE., Room W43-467, NVS-122, Washington, DC 20590. Mr. Woods' telephone number is (202) 366-6206.

**SUPPLEMENTARY INFORMATION:** Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must first publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulation (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- (3) How to enhance the quality, utility, and clarity of the information to be collected;
- (4) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks for public comments on the following collection of information:

*Title:* Brake Hose Manufacturers Identification, Federal Motor Vehicle Safety Standard (FMVSS) No. 106.