York, NY 10007–1866 (telephone: (212) 637–4308). Such deliveries are only accepted during the Record Center's normal hours of operation (Monday to Friday from 9 a.m. to 5 p.m.). Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID no. EPA–HQ–SFUND–1999–0013: EPA's policy is that all comments received will be included in the Docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or via email. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comments. If you send comments to EPA via email, your email address will be included as part of the comment that is placed in the Docket and made available on the Web site. If you submit electronic comments, EPA recommends that you include your name and other contact information in the body of your comments and with any disks or CD-ROMs that you submit. If EPA cannot read your comments due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comments. Electronic files should avoid the use of special characters and any form of encryption and should be free of any defects or viruses.

Docket: All documents in the Docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available Docket materials can be viewed electronically at *http://www.regulations.gov* or obtained in hard copy at:

U.S. Environmental Protection Agency, Region 2, Superfund Records Center, 290 Broadway, 18th Floor, New York, NY 10007–1866, *Phone:* (212) 637–4308, *Hours:* Monday to Friday from 9 a.m. to 5 p.m. and

West Winfield Library, Bisby Hall, 179 South Street, West Winfield, NY 13491, *Phone:* (315) 822–6394, *Hours:* Monday, Tuesday, Thursday, and Friday from 12:30–5:30 p.m., Wednesday from 10 a.m.–12 p.m. and 6–8 p.m., and Saturdays from 10 a.m.–12 p.m. (Sept.–May).

FOR FURTHER INFORMATION CONTACT: Thomas Mongelli, Remedial Project Manager, by mail at Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region 2, 290 Broadway, 20th floor, New York, NY 10007–1866; telephone at (212) 637–4256; fax at (212) 637–3966; or email at *mongelli.thomas@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' Section of today's **Federal Register**, EPA is publishing a direct final Notice of Deletion of the Site without prior Notice of Intent to Delete because EPA views this as a noncontroversial revision and anticipate no adverse comment. EPA has explained its reasons for this deletion in the preamble to the direct final Notice of Deletion. If EPA receives no adverse comment(s) on this Notice of Intent to Delete or the direct final Notice of Deletion, EPA will proceed with the deletion without further notice on this Notice of Intent to Delete. If EPA receives adverse comment(s), EPA will withdraw the direct final Notice of Deletion and it will not take effect. EPA will, as appropriate, address all public comments in a subsequent final Notice of Deletion based on this Notice of Intent to Delete. EPA will not institute a second comment period on this Notice of Intent to Delete. Any parties interested in commenting must do so at this time.

For additional information, see the direct final Notice of Deletion, which is located in the ''Rules'' section of this **Federal Register**.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: November 22, 2011.

Judith A. Enck,

Regional Administrator, EPA, Region 2.

[FR Doc. 2011–31914 Filed 12–12–11; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 386

[Docket No. FMCSA–2011–0259]

RIN 2126–AB38

Amendment to Agency Rules of Practice

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its Rules of Practice for Motor Carrier, Intermodal Equipment Provider, Broker, Freight Forwarder, and Hazardous Materials Proceedings in three respects. First, the Agency proposes to clarify that paying the full proposed civil penalty in an enforcement proceeding, either in response to a Notice of Claim (NOC) or later in the proceeding, would not allow respondents to unilaterally avoid an admission of liability for the violations charged. Second, FMCSA proposes to establish procedures for issuing out-of-service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders it determines are reincarnations of other entities with a history of failing to comply with statutory or regulatory requirements. These procedures would provide for administrative review before the out-of-service order takes effect. Finally, the Agency proposes procedures for consolidating Agency records of reincarnated companies with their predecessor entities.

DATES: Comments must be received on or before January 12, 2012.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2011–0259 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section

below for instructions on submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Sabrina Redd, Office of Chief Counsel, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–6424 or via email at *Sabrina.redd@dot.gov.* Office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2011–0259), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop-down menu, select ''Proposed Rules,'' insert ''FMCSA 2011–0259'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comment by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit your comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change the proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble, available in the docket, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right-hand side of the screen. Then in the ''Keyword'' box, insert ''FMCSA–2011–0259'' and click ''Search.'' Next, click the ''open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. 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 the Department of Transportation's (DOT's) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit *http://edocket.access.gpo.gov/2008/pdf/E8–785.pdf.*

II. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931 (1966)). Section 6(e)(6)(C) of the DOT Act transferred to DOT the authority of the Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of motor carrier employees, the safety of operations, and the equipment of motor carriers in interstate commerce. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of DOT delegated oversight of these provisions to the Federal Highway Administration (FHWA), the predecessor agency to FMCSA.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Federal Motor Carrier Commercial Regulations (FMCCRs) and provide both civil and criminal penalties for violations. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990 (Pub. L. 101–615, 104 Stat. 3244), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803), codified at 49 U.S.C. chapters 135–149. In practice, when circumstances dictate that an enforcement action be instituted, FMCSA typically seeks civil penalties. The Rules of Practice apply to the administrative adjudication of civil penalties assessed for violations of the FMCSRs, the HMRs, and the FMCCRs.

III. Background

A. Section 386.18

On May 18, 2005, FMCSA published a comprehensive revision of its Rules of Practice, which are contained in 49 CFR part 386 (70 FR 28467). The revision was intended to increase the efficiency of Agency administrative enforcement procedures, enhance due process, improve public understanding of the Agency's procedures, and accommodate recent programmatic changes.

Under § 386.11(c) of the Rules of Practice, civil penalty enforcement proceedings are initiated through

service of an NOC, which is usually issued by the FMCSA Division Administrator for the State in which the respondent maintains its principal place of business. The NOC, which is usually based on a compliance review or other type of investigation or enforcement intervention, sets forth the provisions of law allegedly violated by the respondent and underlying facts pertinent to the alleged violations; proposes a civil penalty; and provides information regarding the time, form, and manner whereby the respondent may pay, contest, or otherwise seek resolution of the claim. Prior to 2005, the Rules of Practice were silent on whether payment of the proposed civil penalty in response to the NOC or at a subsequent stage of the proceeding constituted an admission of the violations alleged in the NOC.

The 2005 revision of the Rules of Practice added a new § 386.18 titled ''Payment of the claim.'' This section provides:

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

(b) If respondent elects to pay the full amount as its response to the Notice of Claim, payment must be served upon the Field Administrator at the Service Center designated in the Notice of Claim within 30 days following service of the Notice of Claim. No written reply is necessary if respondent elects the payment option during the 30-day reply period. Failure to serve full payment within 30 days of service of the Notice of Claim when this option has been chosen may constitute a default and may result in the Notice of Claim, including the civil penalty assessed by the Notice of Claim, becoming the Final Agency Order in the proceeding pursuant to § 386.14(c).

(c) Unless objected to in writing, submitted at the time of payment, payment of the full amount in response to the Notice of Claim constitutes an admission by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim, and will result in the Notice of Claim becoming the Final Agency Order.

In a number of enforcement proceedings, respondents have paid the full amount of the claim with written objection, either in their reply to the NOC or at a later stage of the proceeding. In such cases, the respondents argued that payment with written objection terminates the proceeding without an admission of liability. The FMCSA Field Administrators, who are responsible for prosecuting enforcement proceedings before the Agency, contended that respondents could not unilaterally terminate an enforcement proceeding without an admission of liability by making full payment.

In a case decided on November 3, 2010, *In the Matter of Homax Oil Sales, Inc.,* Docket No. FMCSA–2006–26000, Order Denying Petition for Reconsideration (*Homax*), FMCSA's Assistant Administrator reasoned that allowing respondents to unilaterally terminate proceedings by paying the proposed penalty in full and lodging an objection under § 386.18(c) would be contrary to the Agency's enforcement policy and section 222 of the Motor Carrier Safety Improvement Act, which requires that the Agency assess the maximum statutory penalty for each violation of law by any person ''who is found to have committed a pattern of violations of critical or acute regulations issued to carry out such a law or to have previously committed the same or related violation of critical or acute regulations issued to carry out such a law.'' The Assistant Administrator concluded that if a carrier is allowed to unilaterally terminate an enforcement proceeding without an admission, the case cannot count as prior history for future civil penalty calculations under 49 U.S.C. 521(b)(2)(D), which requires the Agency to consider a respondent's history of prior offenses in addition to several other factors, as well as under section 222 of MCSIA. Allowing unilateral termination of a proceeding by a respondent without an admission would permit carriers with abundant financial resources to repeatedly violate the Agency's regulations without running the risk of facing escalating civil penalties despite a history of noncompliance with the regulations. The Assistant Administrator acknowledged that the regulatory text of § 386.18(c) is less than clear regarding the consequences of full payment with written objection and recommended that the meaning of this paragraph be clarified through rulemaking.

As was noted in *Homax,* in an April 1996 Notice of Proposed Rulemaking (NPRM), FHWA proposed the following language with respect to the full payment issue:

363.105(c): Unless otherwise provided in writing by mutual consent of the parties, payment and/or compliance with the order constitutes an admission of all facts alleged in the notice of violation [called a notice of claim under the current Rules of Practice] and a waiver of the respondent's opportunity to contest the claim, and results in the notice of violation becoming the final agency order. (61 FR 18865, Apr. 29, 1996)

FHWA's reasoning for this language was that ''future agency enforcement actions may be based on, and certain consequences may flow from, prior and continued violations of the safety regulations.'' (61 FR 18875–76, Apr. 29, 1996).

FMCSA revised this proposal, renumbered as § 386.18(c), in an October 2004 Supplemental Notice of Proposed Rulemaking (SNPRM) (69 FR 61628, Oct. 20, 2004) to read as follows:

(c) Unless objected to in writing, payment of the full amount in its reply constitutes an admission by the respondent of all facts alleged in the notice of claim. Payment waives respondent's opportunity to further contest the claim, and will result in the notice of claim becoming the final agency order.

This proposed change was intended to make ''it clear that, unless the parties otherwise agree in writing, respondent's payment of the full claim amount as its reply to the notice of claim constitutes an admission.'' (69 FR 61622).

The final rule published on May 18, 2005 (70 FR 28467), adopted this provision with little change. In the 2010 *Homax* Order, the Assistant Administrator concluded that, notwithstanding the removal of the language requiring mutual consent of the parties from the regulatory text, the Agency intended to adopt the mutual consent requirement originally proposed in 1996.

In a subsequent case, *In the Matter of Associated Pipe Contractors, Inc.,* Docket No. FMCSA–2008–0159, Order Terminating Proceeding and Closing Docket, January 10, 2011, the Agency addressed the implications of full payment of the proposed civil penalty at any time before issuance of a Final Agency Order, in accordance with § 386.18(a). In *Associated Pipe Contractors,* the carrier paid the full penalty with written objection several months after contesting the NOC and requesting administrative adjudication. Section 386.18(a), which applies to this situation rather than Section 386.18(c), is silent regarding whether a carrier can unilaterally terminate an enforcement proceeding without an admission of liability under these circumstances. The Agency concluded that the same concerns expressed in the *Homax* decision apply to such a payment and that § 386.18(a) should be clarified to be consistent with that decision.

B. Section 386.73

FMCSA has determined that a number of motor carriers have submitted new applications for registration, often under a new name, in order to continue operating after having been placed out of service for safety-related reasons; to avoid paying civil penalties; to

circumvent denial of operating authority based on a determination that they are not fit, willing, or able to comply with the applicable statutes or regulations; or to otherwise avoid a negative compliance history. Other motor carriers attempt to avoid enforcement or negative compliance history by creating or using an affiliated company under common operational control. They then shift customers, vehicles, drivers, and other operational activities to that affiliated company when FMCSA places one of the commonly controlled companies out-of-service. The practice of ''reincarnating'' as a new carrier or operating affiliated companies to circumvent Agency enforcement actions and avoid a negative compliance history or enforcement action creates an unacceptable risk of harm to the public because it results in the continued operation of at-risk carriers and thwarts FMCSA's ability to carry out its safety mission.

The danger posed by ''reincarnation'' became evident following a fatal bus crash in Sherman, Texas in 2008. Investigation revealed that the carrier involved did not have operating authority from FMCSA, but had an application for authority pending with the Agency. FMCSA determined that the carrier was a reincarnation of another bus company that had recently been placed out of service. Following the Sherman, Texas bus crash, FMCSA began a vetting process that involves a comprehensive review of applications for passenger-carrier operating authority to determine whether the applicants are reincarnations or affiliates of other motor carriers with negative compliance histories or are otherwise not fit, willing, and able to comply with the applicable regulations. Although the vetting program is a significant improvement to the operating authority review process, it is not a complete solution to the reincarnation problem. Accordingly, FMCSA proposes new procedures to prohibit reincarnated or affiliated carriers from successfully evading accountability for their compliance history.

FMCSA is empowered to suspend, amend, or revoke a motor carrier's registration for willful failure to comply with applicable safety regulations, an FMCSA order, or a condition of its registration pursuant to 49 U.S.C. 13905. Motor carriers that obtain registration by creating a new company or an affiliate company with a new registration for the purpose of avoiding FMCSA orders, regulations, or enforcement action procure the registration by fraud—by knowingly misrepresenting and/or withholding material information. FMCSA has authority to sanction these motor carriers, which have already demonstrated an unwillingness or inability to comply with applicable safety regulations, by suspending, amending, or revoking their registration and/or by imposing applicable civil penalties.

While the FMCSA has existing authority to address the practice of reincarnation or affiliation to avoid compliance, the FMCSRs do not include an efficient procedure to sanction and deter the conduct. The FMCSRs also do not contain a procedure by which FMCSA can consolidate motor carrier compliance records once FMCSA determines that a motor carrier has reincarnated or is operating affiliated companies for the purpose of avoiding enforcement action or a negative compliance history. Further, the FMCSRs do not include a procedure by which motor carriers can expeditiously contest FMCSA's determination that a motor carrier is a reincarnation or affiliate of another motor carrier.

IV. Discussion of Proposed Rule

A. Section 386.18

FMCSA proposes to amend 49 CFR 386.18(a) and (c) to clarify that payment of the full amount of the proposed civil penalty constitutes an admission of all facts alleged in the NOC, unless otherwise agreed by both the respondent and FMCSA. The mutual consent provision will give FMCSA Field Administrators the discretion to permit payment without an admission of liability in appropriate cases, such as first-time inadvertent minor violations where the respondent demonstrates a sincere intent to comply in the future. Payment without written objection will continue to be considered as an admission of liability. If payment is tendered with a written objection, it will still be treated as an admission of liability unless the Field Administrator responsible for prosecuting the case agrees in writing that payment will not be treated as an admission. Respondents, therefore, should contact the appropriate FMCSA Service Center to seek the necessary written consent if they are considering paying the penalty with written objection.

B. Section 386.73

FMCSA proposes to revise its Rules of Practice to address operational reincarnation or affiliation by adding a new § 386.73. This new section would establish flexible, efficient procedures to address entities that attempt to reincarnate or operate affiliated entities for the purpose of evading FMCSA Orders, avoiding statutory and regulatory compliance, or concealing a history of non-compliance. The proposed procedures would more fully implement the Agency's current authority to prohibit unsafe entities from operating while, at the same time, providing due process for companies that seek to challenge a finding that they are a reincarnated or affiliated company.

The purpose of this proposed new section is to provide a mechanism to prevent motor carriers, intermodal equipment providers, brokers, and freight forwarders, from creating new or multiple business identities to avoid statutory or regulatory requirements, FMCSA Orders and enforcement actions, or a negative compliance history. The rule would authorize FMCSA to issue out-of-service orders to motor carriers, intermodal equipment providers, brokers, and freight forwarders determined to be reincarnated or operating as affiliates to avoid enforcement action or negative compliance and it would provide a mechanism for administrative review of such orders. The rule would also establish procedures to consolidate the compliance records of motor carriers, intermodal equipment providers, brokers, and freight forwarders determined to be reincarnated or affiliated entities.

V. Regulatory Analyses

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

FMCSA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures. The estimated cost of the proposed rule is not expected to exceed the $100 million annual threshold for economic significance, therefore, any costs associated with the rule are expected to be minimal. Moreover, the Agency does not expect the proposed rule to generate substantial Congressional or public interest. The proposed rule would not impose new requirements upon carriers and thus should result in minimal to no economic burdens. The revisions clarify existing rules and implement procedures that would not require a change in the business practices of already compliant carriers.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) requires Federal

agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small business and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000.[1] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. Payment of claims and admissions of liability reflect current FMCSA policy, as discussed in the background section, and therefore this rule would not disproportionately impact small entities. Even before the current policy was enunciated through administrative adjudication, this portion of the rule did not have a significant impact. From 2008 through 2011, the Agency adjudicated only six cases in which the respondent motor carrier paid a civil penalty with written objection, which indicates the minimal impact the rule would have.

FMCSA estimates that fewer than 50 carriers annually would be affected by the proposed rule as it pertains to reincarnated or affiliated carriers. Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Sabrina Redd, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule. FMCSA will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Agency.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1 (888) 734–3247).

Unfunded Mandates Reform Act

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $141.3 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA has determined that this proposal would not have substantial direct effects on States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation.

Indian Tribal Governments

This proposed rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA has determined that there is no new information collection requirement associated with this proposed rule.

National Environmental Policy Act

FMCSA analyzed this NPRM for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraphs (6)(u)(1), (6)(u)(2), and (6)(y)(7). The Categorical Exclusion (CE) in paragraph (6)(u)(1) addresses rules concerning compliance with regulations; the CE in paragraph (6)(u)(2) addresses regulations assessing civil penalties; and the CE in paragraph (6)(y)(7) addresses rules for record keeping. The various proposals in this rule are covered by one or a combination of these three CEs. Therefore, this proposed action does not have any effect on the quality of the environment. The Categorical Exclusion determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' under E.O. 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously,

[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, we do not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt Government technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. This rule does not propose to adopt any technical standards.

Privacy Impact Assessment

FMCSA conducted a privacy impact assessment of this rule as required by section 522(a)(5) of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment considers any impacts of the rule on the privacy of information in an identifiable form and related matters. FMCSA has determined this rule would have no privacy impacts.

List of Subjects in 49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety penalties.

In consideration of the forgoing, FMCSA is proposed to amend 49 CFR part 386 as follows:

PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

1. The authority citation for part 386 will continue to read as follows:

Authority: 49 U.S.C. 113, chapters 5, 51, 59, 131–141, 145–149, 311, 313, and 315; Sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105–159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106–159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.45 and 1.73.

2. Amend § 386.18 by revising paragraphs (a) and (c) to read as follows:

§ 386.18 Payment of the claim.

(a) Payment of the full amount claimed may be made at any time before issuance of a Final Agency Order and will constitute an admission of liability by the respondent of all facts alleged in the Notice of Claim, unless the parties agree in writing that payment shall not be treated as an admission. After the issuance of a Final Agency Order, claims are subject to interest, penalties, and administrative charges, in accordance with 31 U.S.C. 3717; 49 CFR part 89; and 31 CFR 901.9.

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(c) Unless otherwise agreed in writing by the parties, payment of the full amount in response to the Notice of Claim constitutes an admission of liability by the respondent of all facts alleged in the Notice of Claim. Payment waives respondent's opportunity to further contest the claim and will result in the Notice of Claim becoming the Final Agency Order.

3. Add § 386.73 to read as follows:

§ 386.73 Operations Out-of-Service and Record Consolidation Proceedings (Reincarnated Carriers).

(a) *Out of Service Order.* An FMCSA Field Administrator or the Director of FMCSA's Office of Enforcement and Compliance (Director) may issue an out-of-service order to prohibit a motor carrier, intermodal equipment provider, broker, or freight forwarder from conducting operations subject to FMCSA jurisdiction upon a determination by the Field Administrator or Director that the motor carrier, intermodal equipment provider, broker, or freight forwarder or an officer, employee, agent, or authorized representative of such an entity, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

(1) Avoid complying with an FMCSA Order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

(b) *Record Consolidation Order.* In addition to, or in lieu of, an out-of-service order issued under this section, the Field Administrator or Director may issue an order consolidating the records maintained by FMCSA concerning the current motor carrier, intermodal equipment provider, broker, and freight forwarder, or an affiliated motor carrier, intermodal equipment provider, broker, or freight forwarder and its previous incarnation, for all purposes, upon a determination that the motor carrier, intermodal equipment provider, broker, and freight forwarder or officer, employee, agent, or authorized representative of the same, operated or attempted to operate a motor carrier, intermodal equipment provider, broker, or freight forwarder under a new identity or as an affiliated entity to:

(1) Avoid complying with an FMCSA Order;

(2) Avoid complying with a statutory or regulatory requirement;

(3) Avoid paying a civil penalty;

(4) Avoid responding to an enforcement action; or

(5) Avoid being linked with a negative compliance history.

(c) *Standard.* The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is reincarnated if there is substantial continuity between the entities such that one is merely a continuation of the other. The Field Administrator or Director may determine that a motor carrier, intermodal equipment provider, broker, or freight forwarder is an affiliate if the business operations are under common ownership and/or common control. In making this determination, the Field Administrator or Director may consider, among other things, the following factors:

(1) Whether the new or affiliated entity was created for the purpose of evading statutory or regulatory requirements, an FMCSA order, enforcement action, or negative compliance history; in weighing this factor, the Field Administrator or Director may consider the stated business purpose for the creation of the new or affiliated entity.

(2) Consideration exchanged for assets purchased or transferred;

(3) Dates of company creation and dissolution or cessation of operations;

(4) Commonality of ownership between the current and former company or between current companies;

(5) Commonality of officers and management personnel;

(6) Identity of physical or mailing addresses, telephone, fax numbers, or email addresses;

(7) Identity of motor vehicle equipment;

(8) Continuity of liability insurance policies or commonality of coverage under such policies;

(9) Commonality of drivers and other employees;

(10) Continuation of carrier facilities and other physical assets;

(11) Continuity or commonality of nature and scope of operations, including customers for whom transportation is provided;

(12) Advertising, corporate name, or other acts through which the company holds itself out to the public; and

(13) History of safety violations and pending orders or enforcement actions of the Secretary.

(d) Evaluating Factors. The Field Administrator or Director may examine, among other things, the company management structures, financial records, corporate filing records, asset purchase or transfer and title history, employee records, insurance records, and any information related to the general operations of the entities involved.

(e) *Effective Dates.* An order issued under this section becomes the Final Agency Order and is effective on the 21st day after it is served unless a request for administrative review is served and filed as set forth in paragraph (f) of this section. Any motor carrier, intermodal equipment provider, broker, or freight forwarder that fails to comply with any prohibition or requirement set forth in an order issued under this section is subject to the applicable penalty provisions for each instance of noncompliance.

(f) *Commencement of Proceedings.* The Field Administrator or Director may commence proceedings under this section by issuing an order that:

(1) Provides notice of the factual and legal basis of the order;

(2) In the case of an out-of-service order, identifies the operations prohibited by the order;

(3) In the case of an order that consolidates records maintained by FMCSA, identifies the previous entity and current or affiliated motor carriers, intermodal equipment providers, brokers, or freight forwarders whose records will be consolidated;

(4) Provides notice that the order is effective upon the 21st day after service;

(5) Provides notice of the right to petition for administrative review of the order and that a timely petition will stay the effective date of the order unless the Assistant Administrator orders otherwise for good cause; and

(6) Provides notice that failure to timely request administrative review of the order constitutes waiver of the right to contest the order and will result in the order becoming a Final Agency Order 21 days after it is served.

(g) *Administrative Review.* A motor carrier, intermodal equipment provider, broker, or freight forwarder issued an order under this section may petition for administrative review of the order. A petition for administrative review is limited to contesting factual or procedural errors in the issuance of the order under review and may not be submitted to demonstrate corrective action. A petition for administrative review that does not identify factual or procedural errors in the issuance of the order under review will be dismissed. Petitioners seeking to demonstrate corrective action may do so by submitting a Petition for Rescission under paragraph (h) of this section.

(1) A petition for administrative review must be in writing and served on the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudications Counsel or by electronic mail to *FMCSA.Adjudication@dot.gov.* A copy of the petition for administrative review must also be served on the Field Administrator or Director who issued the order at the physical address or electronic mail account identified in the order.

(2) A petition for administrative review must be served within 15 days of the date the Field Administrator or Director served the order issued under this section. Failure to timely request administrative review waives the right to administrative review and constitutes an admission to the facts alleged in the order.

(3) A petition for administrative review must include:

(i) A copy of the order in dispute; and

(ii) A statement of all factual and procedural issues in dispute.

(4) If a petition for administrative review is timely served and filed, the petitioner may supplement the petition by serving documentary evidence and/or written argument that supports its position regarding the procedural or factual issues in dispute no later than 30 days from the date the disputed order was served. The supplementary documentary evidence or written argument may not expand the issues on review and need not address every issue identified in the petition. Failure to timely serve supplementary documentary evidence and/or written argument constitutes a waiver of the right to do so.

(5) The Field Administrator or Director must serve written argument and supporting documentary evidence, if any, in defense of the disputed order no later than 15 days following the service of the petition for administrative review.

(6) The Assistant Administrator may ask the parties to submit additional information or attend a conference to facilitate administrative review.

(7) The Assistant Administrator will issue a written decision on the request for administrative review within 30 days of the close of the time period for the Field Administrator or the Director to serve written argument and supporting documentary evidence in defense of the order, or the actual filing of such written argument and documentary evidence, whichever is earlier.

(8) If a petition for administrative review is timely served and filed in accordance with this section, the disputed order is stayed pending the Assistant Administrator's review, unless the Assistant Administrator orders otherwise for good cause shown.

(9) The Assistant Administrator's decision on a petition for administrative review of an order issued under this section constitutes the Final Agency Order.

(h) *Petition for Rescission.* A motor carrier, intermodal equipment provider, broker, or freight forwarder may petition to rescind an order issued under this section if action has been taken to correct the deficiencies that resulted in the order.

(1) A petition for rescission must be made in writing to the Field Administrator or Director who issued the order.

(2) A petition for rescission must include a copy of the order requested to be rescinded, a factual statement identifying all corrective action taken, and copies of supporting documentation.

(3) Upon request and for good cause shown, the Field Administrator or Director may grant the petitioner additional time, not to exceed 45 days, to complete corrective action initiated at the time the petition for rescission was filed.

(4) The Field Administrator or Director will issue a written decision on the petition for rescission within 60

days of service of the petition. The written decision will include the factual and legal basis for the determination.

(5) If the Field Administrator or Director grants the request for rescission, the written decision is the Final Agency Order.

(6) If the Field Administrator or Director denies the request for rescission, the petitioner may file a petition for administrative review of the denial with the Assistant Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, Attention: Adjudication Counsel or by electronic mail to *FMCSA.Adjudication@dot.gov*. The petition for administrative review of the denial must be served and filed within 15 days of the service of the decision denying the request for recession. The petition for administrative review must identify the disputed factual or procedural issues with respect to the denial of the petition for rescission. The petition may not, however, challenge the underlying basis of the order for which rescission was sought.

(7) The Assistant Administrator will issue a written decision on the petition for administrative review of the denial of the petition for rescission within 60 days. The Assistant Administrator's decision constitutes the Final Agency Order.

(i) *Other Orders Unaffected.* If a motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section is or becomes subject to any other order, prohibition, or requirement of the FMCSA, an order issued under this section is in addition to, and does not amend or supersede such other order, prohibition, or requirement. A motor carrier, intermodal equipment provider, broker, or freight forwarder subject to an order issued under this section remains subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of regulations governing their operations.

(j) *Inapplicability of Subparts.* Subparts B, C, D, and E, except § 386.67, do not apply to this section.

4. Amend Appendix A to 49 CFR part 386, section IV, by redesignating existing paragraph (h) as paragraph (i) and adding a new paragraph (h) to read as follows:

Appendix A to Part 386—Penalty Schedule; Violations of Notices and Orders

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IV. * * *

h. Violation—Operating in violation of an order issued under § 386.73.

Penalty—Up to $16,000 per day the operation continues after the effective date and time of the out-of-service order.

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Issued on: December 7, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–31858 Filed 12–12–11; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 101126591–1705–02]

RIN 0648–XZ58

Endangered and Threatened Species; Proposed Threatened Status for Distinct Population Segments of the Bearded Seal

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

ACTION: Proposed rule; 6-month extension of the deadline for a final listing determination.

SUMMARY: We, NMFS, announce a 6-month extension of the deadline for a final determination regarding the December 10, 2010, proposed rule to list two distinct population segments (DPS) of the bearded seal (*Erignathus barbatus*) as threatened species under the Endangered Species Act of 1973, as amended (ESA). We are taking this action because there is substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the proposed listing rule. An additional 6 months will allow us to solicit additional data, evaluate and assess special independent peer review of those aspects of the status review report over which there is substantial disagreement, and better inform our final determination on the proposed listing rule.

DATES: We intend to reopen the public comment period to accept comment on the special independent peer review report when it becomes available. We will soon announce the dates of the new public comment period in the **Federal Register.** A final determination on this proposed listing action will be made no later than June 10, 2012.

ADDRESSES: The proposed rule, status review report, and other materials relating to this proposal can be found on the Alaska Region Web site at: *http://alaskafisheries.noaa.gov/.*

FOR FURTHER INFORMATION CONTACT: Tamara Olson, NMFS Alaska Region, (907) 271–5006; Kaja Brix, NMFS Alaska Region, (907) 586–7235; or Marta Nammack, Office of Protected Resources, Silver Spring, MD (301) 427–8469.

SUPPLEMENTARY INFORMATION:

Background

On March 28, 2008, we initiated status reviews of bearded, ringed (*Phoca hispida*), and spotted seals (*Phoca largha*) under the ESA (73 FR 16617). On May 28, 2008, we received a petition from the Center for Biological Diversity to list these three species of seals as threatened or endangered under the ESA, primarily due to concerns about threats to their habitat from climate warming and loss of sea ice. The Petitioner also requested that critical habitat be designated for these species concurrent with listing under the ESA. In response to the petition, we published a 90-day finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (73 FR 51615; September 4, 2008). Accordingly, we proceeded with the status reviews of bearded, ringed, and spotted seals and solicited information pertaining to them.

Following completion of a status review report and 12-month finding for spotted seals in October 2009 (74 FR 53683, October 20, 2009; see also, 75 FR 65239; October 22, 2010), we established Biological Review Teams (BRT) to prepare status review reports for bearded and ringed seals. The status review report of the bearded seal is a peer-reviewed compilation of the best scientific and commercial data available concerning the status of the species, including the past, present, and future threats to this species. After the status review report was completed by the BRT (Cameron *et al.,* 2010), on December 10, 2010, we made a 12-month finding and proposed to list the Beringia DPS and the Okhotsk DPS of the *Erignathus barbatus nauticus* subspecies of bearded seals as threatened (75 FR 77496). No listing action was proposed for the *Erignathus barbatus barbatus* subspecies. We published our 12-month finding for ringed seals as a separate notification concurrently with this finding (75 FR 77476; December 10, 2010).

The proposed rule to list the Beringia and Okhotsk DPSs of bearded seals announced a 60-day comment period to close on February 8, 2011. On February 8, 2011, we extended the comment period 45 days to March 25, 2011 (76 FR 6755). Three public hearings were held