This action does not impose any new information collection burden under the Paperwork Reduction Act. *See* 44 U.S.C 3501. The Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulation at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249.[4] This action does not impose a new information burden under the Paperwork Reduction Act because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 4, 2022.

David Cash,

Regional Administrator, EPA Region 1.

Part 55 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

■ 2. Section 55.14 is amended by revising paragraph (e)(11)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(11) * * *

(i) * * *

(A) Commonwealth of Massachusetts Requirements Applicable to OCS Sources, March 5, 2021.

* * * * *

■ 3. Appendix A to part 55 is amended by revising paragraph (a)(1) under the heading ''Massachusetts'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

Massachusetts

(a) * * *

(1) The following Commonwealth of Massachusetts requirements are applicable to OCS Sources, March 5, 2021, Commonwealth of Massachusetts—Department of Environmental Protection.

The following sections of 310 CMR 4.00, 310 CMR 6.00, 310 CMR 7.00 and 310 CMR 8.00:

310 CMR 4.00: Timely Action Schedule and Fee Provisions

Section 4.01: Purpose, Authority and General Provisions (Effective 5/1/2020)
Section 4.02: Definitions (Effective 5/1/2020)
Section 4.03: Annual Compliance Assurance Fee (Effective 5/1/2020)
Section 4.04: Permit Application Schedules and Fee (Effective 5/1/2020)
Section 4.10: Appendix: Schedules for Timely Action and Permit Application Fees (Effective 5/1/2020)
310 CMR 6.00: Ambient Air Quality Standards for the Commonwealth of Massachusetts
Section 6.01: Definitions (Effective 6/14/2019)
Section 6.02: Scope (Effective 6/14/2019)
Section 6.03: Reference Conditions (Effective 6/14/2019)
Section 6.04: Standards (Effective 6/14/2019)

310 CMR 7.00: Air Pollution Control

Section 7.00: Statutory Authority; Legend; Preamble; Definitions (Effective 3/5/2021)
Section 7.01: General Regulations to Prevent Air Pollution (Effective 3/5/2021)
Section 7.02: U Plan Approval and Emission Limitations (Effective 3/5/2021)
Section 7.03: U Plan Approval Exemptions: Construction Requirements (Effective 3/5/2021)
Section 7.04: U Fossil Fuel Utilization Facilities (Effective 3/5/2021)
Section 7.05: U Fuels All Districts (Effective 3/5/2021)
Section 7.06: U Visible Emissions (Effective 3/5/2021)
Section 7.07: U Open Burning (Effective 3/5/2021)
Section 7.08: U Incinerators (Effective 3/5/2021)
Section 7.09: U Dust, Odor, Construction and Demolition (Effective 3/5/2021)
Section 7.11: U Transportation Media (Effective 3/5/2021)
Section 7.12: U Source Registration (Effective 3/5/2021)
Section 7.13: U Stack Testing (Effective 3/5/2021)
Section 7.14: U Monitoring Devices and Reports (Effective 3/5/2021)
Section 7.18: U Volatile and Halogenated Organic Compounds (Effective 3/5/2021)
Section 7.19: U Reasonably Available Control Technology (RACT) for Sources of Oxides of Nitrogen (NO_X) (Effective 3/5/2021)
Section 7.24: U Organic Material Storage and Distribution (Effective 3/5/2021)
Section 7.25: U Best Available Controls for Consumer and Commercial Products (Effective 3/5/2021)
Section 7.26: Industry Performance Standards (Effective 3/5/2021)
Section 7.60: U Severability (Effective 3/5/2021)
7.70: Massachusetts CO Budget Trading Program (Effective 3/5/2021)
7.71: Reporting of Greenhouse Gas Emissions (Effective 3/5/2021)
7.72: Reducing Sulfur Hexafluoride Emissions from Gas-insulated Switchgear (Effective 3/5/2021)
Section 7.00: Appendix A (Effective 3/5/2021)
Section 7.00: Appendix B (Effective 3/5/2021)
Section 7.00: Appendix C (Effective 3/5/2021)

310 CMR 8.00: The Prevention and/or Abatement of Air Pollution Episode and Air Pollution Incident Emergencies

Section 8.01: Introduction (Effective 3/9/2018)
Section 8.02: Definitions (Effective 3/9/2018)
Section 8.03: Air Pollution Episode Criteria (Effective 3/9/2018)
Section 8.04: Air Pollution Episode Potential Advisories (Effective 3/9/2018)
Section 8.05: Declaration of Air Pollution Episodes and Incidents (Effective 3/9/2018)
Section 8.06: Termination of Air Pollution Episodes and Incident Emergencies (Effective 3/9/2018)
Section 8.07: Emission Reductions Strategies (Effective 3/9/2018)
Section 8.08: Emission Reduction Plans (Effective 3/9/2018)
Section 8.15: Air Pollution Incident Emergency (Effective 3/9/2018)
Section 8.30: Severability (Effective 3/9/2018)

* * * * *

[FR Doc. 2022–24661 Filed 11–14–22; 8:45 am]

BILLING CODE 6560–50–P

[4] OMB's approval of the information collection requirement (ICR) can be viewed at *www.reginfo.gov.*

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 387 and 390

[Docket No. FMCSA–2020–0188]

Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

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

ACTION: Interpretive rule.

SUMMARY: This interpretive rule adds appendices to the Federal Motor Carrier Safety Regulations (FMCSRs) to explain existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial

responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce. Under certain conditions, motor carriers performing intrastate movements of passengers may still be operating in interstate commerce and, unless otherwise exempt, are subject to applicable FMCSA statutory and regulatory requirements. FMCSA wants motor carriers of passengers and the public to be aware of the applicable regulations and requirements.

DATES: This interpretive rule is effective November 15, 2022. Comments on this interpretive rule must be received on or before January 17, 2023.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2016–0352 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *https://www.regulations.gov/docket/FMCSA-2016-0352/document.* Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, 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:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.
- *Fax:* (202) 493–2251.

FOR FURTHER INFORMATION CONTACT: Mr. Peter Chandler, Team Leader, Passenger Carrier Safety Division, (202) 366–5763, *peter.chandler@dot.gov.* FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents

FMCSA organizes this interpretive rule as follows:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this interpretive rule (FMCSA–2020–0188), indicate the specific section of this document to which your 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 *https://www.regulations.gov/docket/FMCSA-2020-0188/document,* click on this interpretive rule, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments 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 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.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 United States Code (U.S.C.) 552), CBI is exempt from public disclosure. If your comments responsive to the interpretive rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the interpretive rule, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as ''PROPIN'' to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the interpretive rule. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2020-0188/document* and choose the document to review. To view comments, click this interpretive rule, then click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy

In accordance with 49 U.S.C. 31315(b), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14 –FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

II. Abbreviations

APA Administrative Procedure Act
CDL Commercial Driver's License
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
DOT Department of Transportation
E.O. Executive Order
FHWA Federal Highway Administration
FMCSA Federal Motor Carrier Safety Administration
FR Federal Register
FMCSRs Federal Motor Carrier Safety Regulations

GVW Gross Vehicle Weight
GVWR Gross Vehicle Weight Rating
ICC Interstate Commerce Commission
ICCTA ICC Termination Act of 1995
IRS Internal Revenue Service
MCSA Motor Carrier Safety Act of 1984
MCSIA Motor Carrier Safety Improvement Act of 1999
OMB Office of Management and Budget
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code

III. Background

FMCSA employs this interpretive rule to explain the statutes and regulations the Agency administers and provide guidance on how they apply to specific sets of facts. An interpretive rule does not alter the meaning of a regulation.

Under section 5203(a)(2)(A) and (d) of the Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, 1535, Dec. 4, 2015), documents that provide an interpretation of a regulation must be published on a publicly accessible internet website of the Department on the date of issuance. Accordingly, FMCSA will post this interpretive rule to the FMCSA Guidance Portal at *https://www.fmcsa.dot.gov/guidance* and to the Agency's website. It will be reviewed by the Agency no later than 5 years after it is posted. (See sections 5203(a)(3) and (c)). The Agency will consider at that time whether the guidance should be withdrawn, reissued for another period up to 5 years, or incorporated into the FMCSRs.

IV. Legal Basis

This interpretive rule explains certain provisions of 49 CFR parts 365, 387, and 390. The statutory basis for those parts is listed in the authority citation at the end of the table of contents of each part. The Agency's statutory authority was also discussed in each separate rule codified in those parts and will not be repeated in detail here. Under the Administrative Procedure Act (APA), proposed rules generally must be published in the **Federal Register** for notice and comment, and final rules may be made effective not less than 30 days after publication (5 U.S.C. 553(b) and (d)). Neither of those requirements, however, applies to interpretive rules (5 U.S.C. 553(b)(A) and (d)(2)). Although this interpretive rule is effective upon publication, FMCSA will accept public comments on the issues addressed herein and, where appropriate, adjust the guidance in response to comments.

In general, FMCSA's authority is based on the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), as amended (the 1935 Act) (codified in 49 U.S.C. 31502); the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), as amended (MCSA) (codified in 49 U.S.C. chapter 311); the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), as amended (CMVSA) (codified in 49 U.S.C. chapter 313); and the ICC Termination Act of 1995, (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995) (ICCTA) (codified in 49 U.S.C. chapters 131–149).

With the 1935 Act, the Federal government began to regulate the operational safety of for-hire carriers of property and passengers and private carriers of property but not of passengers. The 1935 Act, as amended, provides that, the Secretary of Transportation may prescribe requirements for the qualifications and maximum hours of service of *motor carriers* and *motor private carriers* and for the safety of operation and standards of equipment of such carriers (49 U.S.C. 31502(b)). Under the 1935 Act, as amended, a *motor carrier* is someone ''providing motor vehicle transportation for compensation'' (49 U.S.C. 13102(14)) and a *motor private carrier* is someone other than a *motor carrier* transporting property by motor vehicle under the conditions spelled out in 49 U.S.C. 13102(15). Under those conditions, the transportation must be in interstate commerce; the transporter must be the owner, lessee, or bailee of the property being transported; and the property must be transported for sale, lease, rent, or bailment or to further a commercial enterprise.

The MCSA restated Federal safety jurisdiction in terms of *commercial motor vehicles* (CMVs) operating in interstate commerce but did not repeal the 1935 Act. The MCSA, as amended, defines a *commercial motor vehicle* in 49 U.S.C. 31132(1) as a self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property, if the vehicle meets one or more of the following 4 criteria, *i.e.,* (1) has a gross vehicle weight rating (GVWR) or gross vehicle weight (GVW) of at least 10,001 pounds, whichever is greater; (2) is designed or used to transport more than 8 passengers (including the driver) for compensation; (3) is designed or used to transport more than 15 passengers (including the driver) but is not used to transport passengers for compensation; or (4) is used in transporting material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103 and transported in a quantity requiring placarding under the placarding regulations prescribed under section 5103. This definition expanded Federal jurisdiction for the first time to include private motor carriers of passengers.

The MCSA defines *interstate commerce* in 49 U.S.C. 31132(4) as ''trade, traffic, or transportation'' in the United States between one State (1) and a place outside that State (or outside the United States); or (2) and a different place in the same State when the transportation passed through another State (or a place outside the United States). Therefore, an entity operating a CMV in interstate commerce, unless otherwise exempt, is subject to FMCSA's safety regulations and oversight.

The CMVSA created the commercial driver's license (CDL) program. However, the definition of the term *commercial motor vehicle* in the CMVSA is significantly different from the definition of *commercial motor vehicle* in the MCSA. The CMVSA's extensive definition of *commercial motor vehicle* in 49 U.S.C. 31301(4) is a motor vehicle used in commerce to transport passengers or property if the vehicle meets one or more of the following 3 criteria, *i.e.,* (1) has a GVWR or GVW of at least 26,001 pounds, whichever is greater; [1] (2) is designed to transport at least 16 passengers (including the driver); or (3) is used to transport material found by the Secretary of Transportation to be hazardous under 49 U.S.C. 5103. However, a vehicle transporting material found to be hazardous may not be classified as a *commercial motor vehicle* if it meets all of the following criteria: (A) the vehicle's weight is less than the 26,001-pound GVW/GVWR jurisdictional threshold; (B) the vehicle is transporting material listed as hazardous under 42 U.S.C. 9656(a) and is not otherwise regulated by the Secretary or is transporting a consumer commodity or limited quantity of hazardous material, as defined in 49 CFR 171.8; and (C) the Secretary does not deny the application of this exception to the vehicle or class of motor vehicles in the interest of safety.

In addition to the higher weight threshold (26,001 pounds compared to the MCSA's 10,001 pounds), the CMVSA applies to such vehicles operated in commerce, not just in interstate commerce. It defines *commerce* more expansively in 49 U.S.C. 31301(2) as ''trade, traffic, and transportation'' (1) in the jurisdiction of the United States between a place in a State and a place outside that State (or

[1] The Secretary of Transportation is authorized to lower the jurisdictional threshold of a *commercial motor vehicle* to 10,001 pounds by regulation, but has not done so.

outside the United States), *i.e.,* interstate commerce, or (2) in the United States that affects trade, traffic, and transportation in interstate commerce, *i.e.,* intrastate commerce. FMCSA's CDL regulations, which were issued under the authority in the CMVSA, and the associated drug and alcohol testing regulations, therefore, apply to drivers operating CMVs in intrastate as well as interstate commerce.

The ICCTA transferred much of the authority over the commercial aspects of motor carrier operations from the former Interstate Commerce Commission (ICC) to FMCSA. The ICCTA includes a provision, codified at 49 U.S.C. 13902(a)(1), that allows the Secretary of Transportation to register a person to provide transportation in interstate commerce as a *motor carrier,* using self-propelled vehicles that it owns, rents, or leases, only if the Secretary determines that the person is willing and able to comply with the requirements of 49 U.S.C. 13902(a)(1)(A The term *motor carrier* means a person providing ''motor vehicle transportation for compensation'' (49 U.S.C. 13102(14). The ICCTA also included various exemptions from the Secretary's jurisdiction, which have been minimally modified by subsequent legislation, now codified in 49 U.S.C. 13506. FMCSA uses the term *operating authority registration* to refer to the commercial registration in section 13902, replacing the ICC's term *operating authority*.

FMCSA has been delegated the authority to carry out the functions and exercise the authority vested in the Secretary of Transportation by the 1935 Act (49 CFR 1.87(i)), the MCSA (49 CFR1.87(f)), the CMVSA (49 CFR 1.87(e)(1)), and the ICCTA (49 CFR 1.87(a)).

V. Discussion

The FMCSRs comprise parts 350 through 399 of title 49, Code of Federal Regulations (CFR). These regulations set minimum safety standards for motor carriers, vehicles, and drivers operating in interstate commerce (and, in certain cases, in intrastate commerce). The areas covered include motor carrier registration, financial responsibility requirements, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection, and maintenance. The Agency's authority to set minimum safety standards is based on several different sections of 49 U.S.C. Congress has enacted statutory exemptions for certain categories of vehicles or operations, and FMCSA has promulgated a number of regulatory exceptions.

The Agency's primary safety jurisdiction is dependent on operation of a CMV in interstate commerce. The operative definition of CMV in the MCSA, is codified at 49 U.S.C. 31132(1) and adopted into regulation at §§ 390.5T and 390.5. A second CMV definition, based on the CMVSA and codified at 49 U.S.C. 31301(4) and 49 CFR 383.5, governs the CDL program and the corresponding drug and alcohol testing requirements (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. Finally, those portions of the FMCSRs based on Part B of Subtitle IV of Title 49, U.S.C., *i.e.,* 49 U.S.C. chapters 131–149, and frequently referred to as the ''commercial regulations,'' are applicable to (among others) for-hire interstate transportation of passengers in any vehicle, no matter the weight, weight rating, or passenger capacity (49 U.S.C. 13102(14), 13902, and 49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport, but certain financial responsibility filing requirements are dependent on whether the carrier is subject to the Agency's jurisdiction conferred in 49 U.S.C. 13501 (49 CFR part 387, subpart B).

Most exemptions from FMCSA's commercial authority are codified in 49 U.S.C. 13506. The exemptions and exceptions involving FMCSA's safety regulations are codified primarily in 49 CFR 390.3 and 390.3T. FMCSA adds a new appendix A to part 365, a new appendix A to part 387, and a new appendix A to part 390 to assist motor carriers and employers in better understanding which regulations apply to their specific operations.[2] FMCSA will conduct outreach to motor carriers and their associations that are affected by this interpretive rule to confirm clear communication about applicable FMCSA requirements. FMCSA will also provide an information resource about applicable FMCSA requirements. FMCSA will publish this interpretive rule in FMCSA's regulatory guidance portal at *www.fmcsa.dot.gov/guidance*.

[2] Appendix A to part 365 and appendix A to part 390 refer to an August 21, 2001 letter from FMCSA's Acting Deputy Administrator to the Department of Labor. That letter is included in the docket for this rulemaking.

VI. Section-by-Section Analysis

A. Appendix A to Part 365—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 365 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix provides a reference to appendix A to part 390.

B. Appendix A to Part 387—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 387 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix provides a reference to appendix A to part 390.

C. Appendix A to Part 390—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

FMCSA adds new appendix A to part 390 titled ''Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers.'' This appendix explains existing statutes and regulations FMCSA administers related to: the applicability of the FMCSRs, including the financial responsibility regulations, to motor carriers of passengers operating in interstate commerce, including limitations on such applicability based on characteristics of the vehicle operated or the scope of operations conducted; and the applicability of commercial operating authority registration based on the Agency's jurisdiction over motor carriers of passengers, regardless of vehicle characteristics, when operating for-hire in interstate commerce.

VII. Regulatory Analyses

A. Regulatory Flexibility Act (Small Entities)

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis section, this action is not subject to notice and public comment under section 553(b) of the APA.

B. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub.

L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this interpretive rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the interpretive rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

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 (Office of the National Ombudsman, see *https://www.sba.gov/about-sba/oversight-advocacy/office-national-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). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

C. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. The Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of $178 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2021 levels) or more in any 1 year. Though this interpretive rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this interpretive rule elsewhere in this preamble.

D. Paperwork Reduction Act

This interpretive rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E. 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 interpretive rule will not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this interpretive rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

F. Privacy

The Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Because this interpretive rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this interpretive rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

G. E.O. 13175 (Indian Tribal Governments)

This interpretive rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does 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.

H. National Environmental Policy Act of 1969

FMCSA analyzed this interpretive rule pursuant to 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), Appendix 2, paragraph 6u. The content in this rule is covered by the categorical exclusions in paragraph 6.u.(1) (A motor carrier, property broker, freight forwarder, or its agents, employees, or any other person subject to the jurisdiction of the FMCSA, has failed to comply with the provisions or requirements of applicable statutes and the corresponding regulations) and in paragraph 6.u.(2) (To issue an appropriate order to compel compliance with the statute or regulation, assess a civil penalty, or both if such violations are found). In addition, this rule does not have any effect on the quality of the environment.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Accordingly, FMCSA amends 49 CFR chapter 3, parts 365, 387, and 390 as follows:

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31133, 31138, and 31144; 49 CFR 1.87.

■ 2. Add appendix A to part 365 to read as follows:

Appendix A to Part 365—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

For additional guidance on the application of financial responsibility regulations to motor carriers of passengers, refer to appendix A to part 390 of this subchapter.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 3. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 4. Add appendix A to part 387 to read as follows:

Appendix A to Part 387—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

For additional guidance on the application of financial responsibility regulations to motor carriers of passengers, refer to appendix A to part 390 of this subchapter.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

■ 5. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 6. Add appendix A to part 390 to read as follows:

Appendix A to Part 390—Applicability of the Registration, Financial Responsibility, and Safety Regulations to Motor Carriers of Passengers

I. FMCSA's Jurisdiction

The Federal Motor Carrier Safety Regulations (FMCSRs) comprise parts 350 through 399 of title 49, Code of Federal Regulations (CFR). These regulations set minimum safety standards for motor carriers, vehicles, and drivers operating in interstate commerce. The areas covered include motor carrier registration, financial responsibility requirements, driver qualifications, licensing, hours of driving and on duty time, vehicle safety equipment, operating condition, inspection, and maintenance. In some areas, Congress has enacted exemptions for certain categories of vehicles or operations. Accordingly, the Agency does not exercise regulatory authority over some operators who meet the definition of a *motor carrier, vehicle,* or *driver* operating in interstate commerce.

The jurisdictional thresholds of the statutes FMCSA administers and the corresponding regulations are not uniform. First, for most of the FMCSRs, the Agency's jurisdiction is based upon the definition of *commercial motor vehicle* (CMV) in the Motor Carrier Safety Act of 1984 (MCSA), codified at 49 U.S.C. 31132(1) and §§ 390.5T and 390.5. Under that definition, a passenger vehicle is a *commercial motor vehicle* if it is designed or used to transport 9 or more passengers for compensation or 16 or more passengers regardless of compensation status. Larger passenger vehicles also qualify as CMVs irrespective of their passenger capacity if they have a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) (whichever is greater) of 10,001 pounds or more. The Agency's safety jurisdiction, however, does not include passenger-carrying vehicles that meet all of the following criteria: (1) designed and used to transport 8 or fewer passengers, (2) have a GVWR and GVW of 10,000 pounds or less, and (3) are not transporting hazardous materials in a quantity that requires placarding. If a passenger-carrying vehicle exceeds even one of these three thresholds, however, FMCSA has safety jurisdiction over the vehicle.

A second CMV definition, based on the statutory definition in the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) codified at 49 U.S.C. 31301(4), governs the commercial driver's license (CDL) program and the corresponding drug and alcohol testing requirements (49 CFR parts 383 and 382, respectively), which apply to CMV operations both in interstate and intrastate commerce. For the purposes of determining which passenger carrier operations require a CDL, the jurisdiction conferring *commercial motor vehicle* definition in parts 383 and 382 includes any motor vehicle that has a GVWR or GVW of 26,001 pounds or more and is used to transport passengers, regardless of the number of passengers that the vehicle is designed to or actually does transport. This *commercial motor vehicle* definition also includes any vehicle designed or used to transport 16 or more passengers, including the driver, and any vehicle used to transport certain hazardous materials.

Third, with some exceptions, those portions of the FMCSRs based on Title 49, Subtitle IV, Part B, and frequently referred to as the ''commercial regulations,'' are applicable (among others) to for-hire interstate transportation of passengers in any vehicle, no matter the GVW, GVWR, or passenger capacity (49 U.S.C. 13102(14), 13902 and 49 CFR part 365). The level of insurance required to operate as a for-hire passenger carrier is governed by the number of passengers the vehicle is designed to transport (49 CFR part 387, subpart B). The required level of insurance is $1.5 million if the carrier's largest vehicle has a seating capacity of 15 or fewer passengers or $5 million if the largest vehicle has a seating capacity of 16 passengers or more. (49 CFR 387.33T). These are also the levels of insurance for which evidence is required to be maintained on file with FMCSA for a passenger carrier to obtain and retain for-hire operating authority registration under 49 U.S.C. 13902. There is an exception to some Federal insurance/financial responsibility requirements for passenger carriers that receive certain grants from the Federal Transit Administration. (49 U.S.C. 31138(e)(4)).

To determine the extent to which specific FMCSRs apply to an operation, it is first necessary to evaluate whether the operations are within the scope of any of the definitions outlined above. If the operations are within FMCSA's jurisdiction, then it is necessary to determine whether any specific regulatory or statutory exemptions apply to the operation.

II. Jurisdictional Limitations and Exemptions

There are specific statutory exemptions and regulatory exceptions applicable to part or all of FMCSA's jurisdiction. Most exemptions from FMCSA's commercial authority are codified in 49 U.S.C. 13506. Some of these exemptions applicable to passenger carrier operations are discussed in detail in below. The exemptions or exceptions from FMCSA's safety regulations are codified primarily in 49 CFR 390.3 and 390.3T. Specific examples of applicability questions FMCSA frequently receives are presented in question and answer format. The Agency's analytical framework is straightforward: (1) does the operation generally fall within FMCSA's jurisdiction, and, (2) if so, does any statutory or regulatory exemption or exception limit the applicability of the FMCSRs?

Transportation of Passengers to and From Airports and Other Points of Interstate Departure/Arrival

In 1938, Congress amended section 203(b) of the Motor Carrier Act of 1935 (1935 Act) to exempt from the requirement to obtain operating authority registration ''the transportation of persons or property by motor vehicle when incidental to transportation by aircraft'' (Civil Aeronautics Act of 1938, Sec. 1107(j), Chap. 601, 52 Stat. 973, 1029, June 23, 1938). Section 203(b)(7a) of the 1935 Act is now codified at 49 U.S.C. 13506(a)(8)(A) and implemented by 49 CFR 372.117(a).

In 1964, the Interstate Commerce Commission (ICC) reaffirmed its longstanding position that the exemption for incidental-to-air transportation did not require passengers to hold a through ticket when it addressed the following question:

. . . whether the transportation of airline passengers by motor vehicle which is incidental to transportation by air must be confined to situations in which the air and motor movements are provided pursuant to some common arrangement for through passage, that is, on a through ticket or at the request and at the expense of the air carrier. In dealing with the transportation of property . . . we have found that a bona fide terminal area pickup and delivery service must entail through air-motor billing. A similar condition has never been considered essential where the transportation of passengers is concerned, and our reexamination of this aspect of the overall problem convinces us that no change is warranted in this regard. . . . Nor do we think that a requirement applicable to the

transportation of freight must necessarily be appropriate to the transportation of passengers (95 M.C.C. at 535).

FMCSA agrees with the Commission's position that through-ticketing is not required for the exemption from commercial operating authority registration for transportation incidental to air travel in 49 U.S.C. 13506(a)(8)(A) to apply. However, prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service, and by the motor carrier to provide the service immediately prior or subsequent to aircraft transportation across State lines, is part of a continuous movement in interstate commerce. This understanding is the most consistent means for determining the passenger's fixed and persisting intent to continue in interstate transportation to a final destination absent a through ticket, or bill of lading one would have when shipping property. Motor carriers performing intrastate movements of interstate air passengers thus do not need operating authority registration if they operate only within the radius specified as ''incidental to transportation by aircraft'' in § 372.117(a), but they are nevertheless operating in interstate commerce and are subject to the FMCSRs unless they are otherwise exempt.

The parties who commented on the ICC's passenger rulemaking in the 1960s reported that ''in virtually no case is it the practice of the airlines to issue . . . through tickets'' (95 M.C.C. 532). That has not changed. Package deals combining ground and air transportation may be offered by travel agents or online ticketing services, but airlines themselves only rarely offer such arrangements. FMCSA sees no reason to change the ICC's common-sense conclusion that motor carriers offering transportation of passengers to or from an airport are eligible for the exemption in current 49 U.S.C. 13506(a)(8)(A) even though the passengers are not traveling on a single ticket that includes both ground and aircraft transportation.

As discussed below, however, 49 U.S.C. 13506(a)(8)(A) does not confer an exemption from applicable safety regulations. Prearranged motor vehicle transportation, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, immediately prior or subsequent to aircraft transportation across State lines is part of a continuous movement in interstate commerce, as demonstrated by the passenger's fixed and persisting intent. Motor carriers performing intrastate movements of interstate air passengers by CMV thus do not need operating authority registration if they operate only within the radius specified as ''incidental to transportation by aircraft'' in § 372.117(a), but if the transportation is prearranged, they are nevertheless operating in interstate commerce and are subject to the Federal safety regulations unless they are otherwise exempt.

Prearrangement of Passenger Transportation

The Federal courts have long held that ''[t]he characterization of transportation between two points within a single state as interstate or intrastate depends on the essential character of the shipment involved . . .'' The crucial factor in determining the essential character of a shipment is 'the shipper's fixed and persisting intent at the time of shipment.' '' *Central Freight Lines* v. *Interstate Commerce Commission,* 899 F.2d 413, 419 (5th Cir. 1990) (citing, among other cases, *Baltimore & O.S.W.R. Co.* v. *Settle,* 260 U.S. 166, 170–71 (1922)); see also *Southerland* v. *St. Croix Taxicab Ass'n,* 315 F.2d 364 (3rd Cir. 1963) (holding that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce). The key inquiry is whether, before or at the time the trip begins, the shipper has manifested his/her intent to ship something in interstate commerce. In the case of passenger transportation, the ''shipper'' is the passenger, and the fixed intent to travel in interstate commerce is best demonstrated by pre-arranging the interstate air (or water or rail) transportation and the intrastate ground transportation by CMV at more or less the same time, and substantially before the interstate trip begins.

For example, reserving a seat via the internet, with an advanced guarantee obligating the passenger to take the service and the motor carrier to provide the service, in a limousine for transportation to or from an airport about the same time of booking an interstate flight that will occur multiple weeks in the future would demonstrate a fixed and persisting intent to travel in interstate commerce, placing the limousine segment of the trip in the stream of interstate commerce. On the other hand, deciding on the day of a trip to take a taxicab to or from the airport before or after the flight would not involve prearrangement and would not amount to interstate commerce. In any case, evidence of a traveler's intent is normally based on documentation, not assumptions.

The same kind of analysis applies to passengers boarding or disembarking from a cruise ship. Prior arrangement of CMV ground transportation—for example via tour bus from a port of call to some inland destination—made in conjunction with cruise-ship reservations would demonstrate the fixed intent of the passenger to travel by motor vehicle as part of an interstate or international trip. In some cases, cruise lines may even sell through-tickets that cover both maritime and land transportation which clearly demonstrate both prearrangement and the fixed intent of the travelers to use multiple modes of transportation on an interstate or international trip.

In 1963, the Third Circuit held that intrastate transportation of passengers in the Virgin Islands pursuant to prearranged packages covering both lodging and travel was interstate commerce (*Southerland* v. *St. Croix Taxicab Ass'n,* 315 F.2d 364 (3rd Cir. 1963)). Federal court decisions have increasingly expanded this line of analysis and found ground transportation to be in the stream of interstate commerce where, even in the absence of packaged travel arrangements, the traveler separately booked the air and ground portions of a trip. See *Abel* v. *Southern Shuttle Services, Inc.,* 631 F.3d 1210 (11th Cir. 2011); *Executive Town & Country Services* v. *City of Atlanta,* 789 F.2d 1523 (11th Cir. 1986); *Charter Limousine, Inc.* v. *Dade County Board of County Commissioners,* 678 F.2d 586 (5th Cir. 1982); *East West Resort Transportation, LLC,* v. *Binz,* 494 F.Supp.2d 1197 (D. Col. 2007).

FMCSA has been asked if its commercial and safety jurisdiction over a motor carrier of passengers requires some threshold ratio of interstate to intrastate trips. Many motor carriers have a mixture of interstate and intrastate passenger transportation operations. To answer this question, we look back to a case interpreting the Fair Labor Standards Act of 1938. In this case, only 3 to 4 percent of a carrier's trips were interstate in nature, and the Supreme Court held that, under the 1935 Act, the ICC had authority to impose its hours of service rules on all of the company's drivers because they were randomly assigned to handle interstate trips, even though 2 out of about 40 drivers had not made a single interstate trip during the 21 months at issue in that case (*Morris* v. *McComb,* 332 U.S. 422 (1947)). The Court said ''[w]e hold that the Commission has the *power* to establish qualifications and maximum hours of service, pursuant to the provisions of § 204 of the Motor Carrier Act [of 1935], for the entire classification of petitioner's drivers and 'mechanics' and it is the existence of that power (rather than the precise terms of the requirements actually established by the Commission in the exercise of that power) that Congress has made the test as to whether or not [the overtime requirement of] § 7 of the Fair Labor Standards Act is applicable to these employees.'' Ibid. at 434.

FMCSA's authority over interstate operations under the MCSA is in most ways even broader than the ICC's authority under the 1935 Act because it includes fewer statutory exemptions and is equally or more focused on highway safety. The Agency may, therefore, require compliance with the FMCSRs by passenger carriers with interstate operations no more extensive than those previously described in *Morris* v. *McComb,* providing those operations are undertaken with CMVs, as defined in §§ 390.5T and 390.5.

A related question is whether relatively infrequent operations in interstate commerce make a motor carrier permanently subject to FMCSA jurisdiction. For an answer, we again look at the 1935 Act and to Federal Highway Administration (FHWA) precedent. The FHWA, FMCSA's predecessor agency, said in a 1981 notice of interpretation that ''[e]vidence of driving in interstate commerce or being subject to being used in interstate commerce should be accepted as proof that the driver is subject to [the hours-of-service requirements in 49 U.S.C. 31502(b)] for a 4-month period from the date of the proof'' 46 FR 37902, 37903 (July 23, 1981).

FHWA replaced the 4-month rule with a 14/15-day ''rule'' in 1999. (More information about this matter can be found in Question 24 under regulatory guidance for § 390.3 on the FMCSA website, *https://www.fmcsa.dot.gov/regulations/49-cfr-ss-3903t-general-applicability-question-24.*) However, the Agency's Acting Deputy

Administrator explained in a letter of August 21, 2001, to the Department of Labor that ''[t]he 14/15-day rule is a prudential limitation on the use of FMCSA authority, not an interpretation of FMCSA jurisdiction.'' The letter also noted that ''[b]ecause most of the case law interpreting the provisions of the [1935 Act] has been generated by Fair Labor Standards Act litigation, the courts have dealt only with agency authority to enforce the hours of service limits. The [1935 Act], however, authorizes regulations addressing a wider variety of safety problems, and we believe that the jurisdictional principles set forth by the courts would apply to them as well, *e.g.,* to the medical qualifications of drivers.''

FMCSA takes this occasion to reaffirm the view expressed in the Acting Deputy Administrator's 2001 letter that the Agency has jurisdiction over motor carriers, vehicles, and drivers for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Later in this interpretive rule, FMCSA explains the applicability of existing statutes and regulations in a question and answer format to clarify the conditions under which highway transportation of passengers by CMV within a single State would constitute interstate commerce if the passengers are beginning a trip to, or completing a trip from, a point outside the State by another mode of transportation (*e.g.,* aircraft, railroad, or vessel). It is FMCSA's legal position for purposes of enforcement jurisdiction and motor carrier registration requirements, that, if a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States and has prearranged the CMV portion of the trip, as demonstrated by an advance guarantee for the service, all transportation during the trip is in interstate commerce, because the passenger prearranged the transportation with persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation and upon arriving at an airport, port, or railway station, makes arrangements for transportation, that later-arranged transportation is not a continuation of the trip and is not in interstate commerce. Prearrangement in multimodal transportation of a passenger is an important consideration in determining interstate commerce because it can establish the passenger's intent about travel and provide a clear linkage of continual transportation segments. When one such segment is interstate in nature, all linked transportation segments are in the stream of interstate commerce.

''*For Compensation*'' *and* ''*For-Hire*''

FMCSA's safety jurisdiction, except in the CDL regulations, is circumscribed by the definition of *commercial motor vehicle* in 49 U.S.C. 31132(1). Under section 31132(1), a *commercial motor vehicle* is defined, in part, as a vehicle used to transport passengers or property in interstate commerce that when transporting passengers has either been designed or is actually used to transport more than 8 passengers and payment is received. The statute also includes in the commercial motor vehicle definition any passenger carrying vehicle designed or actually used to transport more than 15 passengers regardless of whether compensation is received. In each definition, the total number of passengers always includes the driver. (49 U.S.C. 31132(1)(B)–(C)). Furthermore, a motor carrier registering for commercial operating authority under 49 U.S.C. 13902 is governed by the definition of *motor carrier* in 49 U.S.C. 13102(14), *i.e.,* a person providing motor vehicle transportation for compensation.

The FMCSRs incorporate ''compensation'' into the definition of *for-hire motor carrier,* which the rules treat as ''a person engaged in the transportation of goods or passengers for compensation'' (§§ 390.5T and 390.5). In a notice of interpretation published on May 7, 1993, FHWA provided an expansive interpretation of ''compensation,'' stating that compensation includes both direct and indirect payment. In addition, FHWA said certain nonbusiness organizations, including churches and charities, operate as for-hire passenger carriers when they engage in chartered operations, charging a fee (58 FR 27328, 27329). The notice clarified that certain businesses, including hotels and car rental agencies operating shuttle bus services, and outdoor recreation operations such as whitewater rafting outfits and scuba diving schools transporting patrons to or from a recreation site, constitute for-hire motor carriage of passengers. ''Compensation'' as used in the context of a business enterprise includes both direct and indirect payment for the transportation service provided. It need not mean ''for profit.''

This policy was repeated in slightly different form in regulatory guidance published on November 17, 1993 (58 FR 60734, 60745) and April 4, 1997 (62 FR 16370, 16407). (More information about this matter can be found in Question 10 under regulatory guidance for § 390.5 on the FMCSA website, *https://www.fmcsa.dot.gov/regulations/does-fmcsa-define-hire-transportation-passengers-same-former-icc-did-0.*) This position was also reiterated in a final rule on private motor carriers of passengers (59 FR 8748, Feb. 23, 1994), which adopted certain exceptions for ''private motor carriers of passengers (business)'' (now codified at 49 CFR 391.69) and ''private motor carriers of passengers (nonbusiness)'' (49 CFR 391.68).

''Compensation,'' as used in the definition of *for-hire motor carrier* in §§ 390.5T and 390.5, includes both direct and indirect payments. Companies providing intercity motorcoach service are directly compensated, while hotels, car rental companies, parking facilities, and other businesses that offer shuttle bus service are indirectly compensated because they add the cost of that service to their room rates, car rental rates, etc. By statute, most taxicab service is not subject to the requirement to obtain commercial operating authority registration (49 U.S.C. 13506(a)(2)) or to maintain minimum levels of financial responsibility (49 U.S.C. 31138(e)(2), § 387.27(b)(2)). In addition, most taxis are not subject to the FMCSRs because their designed passenger capacity is below nine and their GVW is too low to make them CMVs under §§ 390.5T and 390.5.

Passenger transportation is either for-hire or private. Unless exempted by statute or regulation, for-hire motor carriers must obtain operating authority registration under 49 U.S.C. 13902 before engaging in interstate transportation. While a passenger carrier may provide both for-hire and private transportation, a specific trip is either for-hire or private depending upon the presence or absence of direct or indirect compensation. Though private passenger transportation is not available to the public at large, for-hire transportation service may or may not be available to the general public. Compensation is the primary factor that determines for-hire transportation. An entity that is nonbusiness, nonprofit, or not-for-profit, is nevertheless engaged in for-hire passenger transportation when it receives compensation for such transportation. Compensation may come in many forms including donations, gifts, gas money, offerings, etc. received for transportation. The question of whether an operation is for-hire should not be conflated, however, with the distinction required to determine whether a private passenger carrier's operation is business or non-business. In those cases, the Agency has already determined that the operation is not for-hire.

Vanpools

In an interim final rule published on September 3, 1999 (64 FR 48510), FHWA qualified its previous expansive interpretation of ''compensation'' as applied to vanpools. In short, FHWA took the position that Congress never intended for commuter vanpools arranged and operated by groups of people trying to get to work, not attempting to start a commuter transportation side business, to be subject to federal regulation. Accordingly, FHWA affirmatively stated that the Agency had no intention to regulate vanpools created for the convenience of the passengers, not for financial gain in running a commuter transportation business. Because FHWA considered the term ''for compensation'' to be equivalent to ''for hire'', the Agency recognized that payments passengers made into a vanpool to cover vehicle expenses could be considered compensation subjecting the vanpool operator to government regulation. FHWA ultimately decided that as long as funds contributed to the vanpool were not used as a source of income or to grow a commuter transportation business, then the operation should not be regulated as a for-hire motor carrier of passengers. (*See* 64 FR 48514).

A few months later, Sec. 212 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748,1766, Dec. 9, 1999) established FMCSA and directed the Agency to decide whether all motor carriers operating, smaller vehicles designed or used for 9 to 15 passengers, receiving payment for transportation should

be covered by all of the FMCSRs. But the statute added another provision specifically directing FMCSA *not* to exempt all motor carrier operations in smaller vehicles, those designed or used for 9 to 15 passengers, for hire when making its decision about the scope of FMCSR applicability. (113 Stat. 1766). In the preamble of the notice of proposed rulemaking (NPRM) to implement that mandate, published on January 11, 2001 (66 FR 2767), FMCSA proposed to focus on small passenger carriers operating for direct compensation, stating that these operators were ''identified as having significant deficiencies in their safety management controls for their drivers and vehicles'' and pose ''a serious safety risk to the motoring public'' (66 FR 2768). The final rule reaffirmed this position and adopted the regulatory changes from the NPRM largely as proposed. (68 FR 47860, Aug. 12, 2003).

In view of the varied and sometimes inconsistent [3] regulatory guidance on ''compensation'' issued in the past, FMCSA takes this opportunity to clarify and explain its implementation of the statutory and regulatory requirements applicable to operations conducted in vehicles designed or used to transport between 9 and 15 passengers. Pursuant to 49 U.S.C. 31132(1)(B) and (C), a vehicle designed or used to transport between 9 and 15 passengers (counting the driver as a passenger) may not be a CMV for purposes of the FMCSRs unless it is used to transport passengers ''for compensation'' or has a GVW or GVWR of 10,001 pounds or greater. Similarly, under 49 U.S.C. 31132(1)(C), a vehicle designed or used to transport more than 15 passengers (including the driver) is a CMV even if it is ''not used to transport passengers for compensation.'' The term ''compensation'' is, therefore, jurisdictional. If a vehicle is designed and used to transport more than 8, but fewer than 16 passengers, and has a GVW and GVWR of less than 10,001 pounds, without ''compensation,'' it is not a CMV, and FMCSA has no safety jurisdiction over it.

This issue is particularly critical for vanpools. Although payment is compensation, FMCSA decided that the intent of Congress is not to recognize the money collected in a vanpool as compensation unless the revenue amount is required to be reported to the Internal Revenue Service (IRS), pursuant to 26 U.S.C. 1402(b) and 132(f). It is also important to recognize that although previously characterized as an exemption in policy and preamble statements, Congress never promulgated, and the Agency never adopted, a regulatory exemption for vanpool operations.

Consistent with prior statements regarding the applicability of the FMCSRs, and to remain consistent with congressional intent, the Agency is not changing its position. Therefore, FMCSA will not pursue enforcement against commuter vanpool operations when all the following conditions are met: (1) the motor vehicle is operated by individuals traveling to and from work transporting other individuals as part of a daily commute to and from work in an interstate, single daily round trip; (2) the motor vehicle is designed and used to carry no more than 15 individuals (including the driver); (3) the GVW and GVWR is less than 10,001 pounds; and (4) the money received by the vanpool operator for transportation is not reported to the IRS, pursuant to 26 U.S.C. 1402(b) and 132(f), or is not deemed reportable by an IRS investigation under the same provisions.

FMCSA recognizes that this guidance has compliance implications for motor carriers that previously considered themselves not subject to certain Agency requirements because such carriers mistakenly believed their passenger transportation operations were in intrastate commerce only, not for-hire, and/or otherwise exempt. It should be emphasized, however, that while for-hire motor carriers operating in interstate commerce must obtain both commercial operating authority registration (no matter how small or light the vehicle(s) used, unless exempted), and safety registration under 49 U.S.C. 31134,[4] the safety regulations apply only to motor carriers (private and for-hire) operating in interstate commerce that use vehicles that qualify as *commercial motor vehicles,* as defined in 49 U.S.C. 31132(1) and §§ 390.5T and 390.5.

The following examples show the real-world implications and interactions of ''interstate commerce,'' ''CMV,'' ''compensation,'' ''for-hire,'' and ''private'' carriage, and a variety of regulatory exemptions and exceptions. These examples are arranged in topical categories. The first provides guidance on the meaning of ''interstate commerce.'' All subsequent examples provide guidance in three regulatory applicability contexts, specifically (1) operating authority registration, (2) minimum level of financial responsibility, and (3) general safety regulatory jurisdiction.

III. Specific Example Scenarios

In determining the scope of FMCSA's jurisdiction for each of the following specific scenarios the analytical framework described early in this notice is employed. Specifically, for each scenario, the Agency considered whether the operation falls within FMCSA's jurisdiction based on the various statutory definitions, and, if so, whether any statutory or regulatory exemption limits the applicability of the FMCSRs. Again, should new scenarios arise in the future, the same analytical framework would be employed to determine whether a specific operation is subject to FMCSA's oversight.

In this section, FMCSA demonstrates the applicability of the FMCSRs to motor carriers of passengers operating in interstate commerce by providing example scenarios grouped into six categories below. Some of the analysis provided in response to these example scenarios cites to regulatory sections that FMCSA designated as temporary sections in a final rule published on January 17, 2017 (82 FR 5292). FMCSA notes that, to the extent the language between the suspended section and the temporary section is substantively the same, this guidance would also apply to the corresponding language in the suspended section once the suspension is lifted and the temporary section is eliminated, just as the pre-existing guidance for the now-suspended sections was applied to the corresponding language of the temporary sections that were substantively the same.

Passengers Using Multiple Transportation Modes

Scenario 1: A couple plans an interstate trip, for vacation. They hire a limousine to transport them from their residence to an airport, with a final destination out of state. This highway transportation is within a single State. The aircraft transports the couple to another State. After landing and obtaining checked baggage, the couple boards a mini-bus, which they reserved while planning the trip from their home, that transports them within the second State to a waterway port. The couple boards a cruise ship that transports them to foreign island countries.

Guidance: This scenario describes for-hire transportation by motor vehicle as a part of continuous interstate movement. Because the transportation was prearranged, both the limousine operator and the mini-bus operator may be required to comply with some if not all of the FMCSRs. Assuming prearrangement, both operators would require operating authority registration under 49 CFR part 365, subpart A, unless the ''incident to air travel'' exemption at 49 U.S.C. 13506(a)(8)(A) and § 372.117(a) applied. (See Scenario 3 below.) If the vehicles are CMVs under either the MCSA or the CMVSA, then the respective safety regulations, including the registration and applicable safety requirements in 49 CFR parts 390 through 399, and/or the CDL and drug and alcohol testing regulations in parts 382 and 383, would apply to the operations.

If a passenger plans a trip involving more than one mode of transportation that begins and ends in different States or a place outside the United States, and has prearranged the CMV portion of the trip, secured by an advance guarantee demonstrating an obligation by the passenger to take the service and the motor carrier to provide the service, all transportation during the trip is in interstate commerce because the passenger prearranged the transportation with fixed and persistent intent of continuous interstate movement throughout the trip. Additional prearranged side trips or excursions made before the trip begins or while traveling in interstate commerce are included as part of the flow of interstate commerce. However, if the passenger has made no arrangement for transportation upon arriving at an airport, waterway port, or railway station, and then makes arrangements for transportation, that transportation is not a continuation of the trip and is not in interstate commerce.

Scenario 2: A company offering sightseeing tours operates buses designed to transport

[3] Cf. 66 FR 2756, 2761 (final rule revising § 390.3(f)(6), among other changes) and 66 FR 2767, 2768 (NPRM proposing revisions to § 390.3(f)(6), among other changes), both Jan. 11, 2001 (providing different interpretations of how direct and indirect compensation apply to the exception in § 390.3(f)(6)).

[4] All initial registrations by new applicants must use the Unified Registration System online registration application. See *https://portal.fmcsa.dot.gov/UrsRegistrationWizard/.*

more than 15 passengers including the driver. It picks up cruise ship passengers at a port of call, takes them to nearby attractions, and returns them to the ship. The bus tour does not cross State lines, but all cruises originate in another State or foreign country. The cruise passengers book and pay for the bus tour before starting, or during, the cruise. The passenger transportation is not confined to a commercial zone.

Guidance: This scenario describes for-hire transportation by a commercial motor vehicle as a part of continuous interstate movement. FMCSA's position is that the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must have registered by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the company is operating a CMV, as defined in § 383.5, designed to transport 16 or more passengers. The bus driver must therefore hold a valid CDL with the applicable endorsement(s) and must comply with the drug and alcohol testing regulations in part 382.

In this instance, it is clear that the passengers prearranged the sightseeing tour and intended to continue in interstate transportation. Because the company is operating a commercial motor vehicle, a for-hire passenger vehicle with a seating capacity of at least 16 in interstate commerce, the company is required under §§ 387.33T and 387.33 to obtain and maintain $5 million of financial responsibility and to file evidence of the same with FMCSA.

Prearranged intrastate highway transportation occurring during an interstate trip is in the stream of interstate commerce, exactly like prearranged highway transportation immediately before or after an interstate trip. The fixed and persistent intent of the cruise ship passengers to travel by bus as part of the interstate cruise was demonstrated by their advance booking of the bus tour.

Scenario 3: While planning a trip, a person goes online, books an airline flight to a city in another State, and reserves a rental car in that city. The car rental company is located near the airport, and it offers shuttle bus service between the terminal and the facility where its customers can pick up and drop off cars. The shuttle does not require a reservation. The car rental company always has at least one shuttle vehicle circulating between the airport and its parking lot during business hours. All shuttle vehicles have a GVWR of 10,001 pounds or more and are designed to transport 16 or more passengers (including the driver). All shuttle operations are (1) conducted on roads and highways that are open to public travel, and (2) confined to a zone encompassed by a 25-mile radius of the boundary of the airport.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though limited exemptions apply. The company operates CMVs, as defined in §§ 390.5T and 390.5, for hire in interstate commerce, and the company is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399, and it must register by following the procedures in 49 CFR part 390 subpart E. In addition, the company is operating a passenger-carrying CMV designed to transport 16 or more passengers, as defined in § 383.5. The bus driver must hold a valid CDL with the applicable endorsement(s) and comply with the drug and alcohol testing regulations in 49 CFR part 382.

Nonetheless, the company is not required to obtain operating authority registration. The shuttle service qualifies for the exemption from operating authority in 49 U.S.C. 13506(a)(8)(A) and § 372.117(a) for the transportation of passengers by motor vehicle that is (1) incidental to the transportation by aircraft, (2) limited to the transportation of passengers who have had or will have an immediately prior or subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport. Although the shuttle service, unlike the airline or rental car reservation, is not explicitly prearranged, it is in the stream of interstate commerce because customers expect and intend to utilize the service wherever a rental facility is not within walking distance of the airport terminal.

Though operating authority registration is not required, the company is operating passenger vehicles with a seating capacity of at least 16 for hire in interstate commerce and, accordingly, is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Hotel Related Passenger Transportation

Scenario 1: A hotel in Cincinnati, OH offers a courtesy van to take its guests to and from the Cincinnati/Northern Kentucky International Airport in KY. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds. All passenger transportation occurs within a zone encompassed by a 25-mile radius of the boundary of the airport.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the safety regulations apply to transportation in a CMV within a single State if the transportation is a continuation of interstate transportation, the hotel's van operation is eligible for the limited exception to safety regulation applicability in §§ 390.3T(f)(6) and 390.3(f)(6) based on the size of the vehicle and how compensation is received. The hotel's van is designed and used to transport 9 to 15 passengers (including the driver), and payment for transportation is not received directly. If the hotel complies with the applicable provisions listed in §§ 390.3T(f)(6) and 390.3(f)(6), then this passenger transportation is compliant with the safety regulations contained in 49 CFR parts 350 through 399. Because the vehicle is a CMV under § 390.5 and the limited exception does not exempt the hotel from USDOT registration requirements, the hotel must register by following the procedures in 49 CFR part 390 subpart E. The hotel's 15-passenger van is not a CMV under § 383.5, therefore drivers of these vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

Operating authority registration under 49 CFR part 365, subpart A, however, is not required. The hotel is providing service subject to the exemption in 49 U.S.C. 13506(a)(8)(A) and § 372.117(a). The hotel's shuttle transportation of passengers is (1) incidental to transportation by aircraft, (2) limited to the transportation of passengers who have had an immediately prior or will have an immediately subsequent movement by air, and (3) confined to a zone encompassed by a 25-mile radius of the boundary of the airport at which the passengers arrive or depart. The hotel does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the ''local station of a carrier.'' The definition of carrier within this exemption means motor carrier, water carrier and freight forwarder but does not include air carrier. 49 U.S.C. 13102(3). However, the hotel only needs to meet the requirements of one exemption to not be subject to operating authority registration.

The hotel is providing indirectly compensated, for-hire transportation of passengers in interstate commerce in a vehicle with a seating capacity of 15 and is required under §§ 387.33T and 387.33 to maintain $1.5 million of financial responsibility.

Scenario 2: A hotel in Winchester, VA, located 12 miles outside of the zone encompassed by a 25-mile radius of the boundary of Washington Dulles International Airport, offers a courtesy van to take its guests to and from the airport in Dulles, VA. The van is designed to transport 15 passengers, including the driver, and has a GVW and GVWR of less than 10,000 pounds.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. Though the hotel is providing interstate transportation in a CMV, a 9 to 15 passenger vehicle operated for compensation, the hotel's van operation is eligible for the limited exception to regulatory applicability in §§ 390.3T(f)(6) and 390.3(f)(6).

This exemption does not relieve the hotel of the requirements in 49 CFR part 365 for operating authority registration. The hotel is providing interstate for-hire transportation (the costs for operating the shuttle van are included in the cost of the room, as an amenity) outside the zone that would qualify it for the incidental to air travel exemption within 49 U.S.C. 13506(a)(8)(A) and § 372.117(a). Also, the hotel's transportation does not meet the exemption requirements of 49 U.S.C. 13506(a)(3) for a motor vehicle owned or operated by or for a hotel and only transporting hotel patrons between the hotel and the local station of a carrier. The definition of carrier applicable to this exemption, at 49 U.S.C. 13102(3), does not include air carrier. The hotel must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The hotel is also required under §§ 387.33T and 387.33 to obtain, file, and maintain $1.5 million of financial responsibility.

The hotel's 15-passenger van is not a CMV under § 383.5. Therefore, drivers of these

vehicles are not required to have CDLs and are not subject to the drug and alcohol testing regulations in 49 CFR part 382.

Employer Related Passenger Transportation

Scenario 1: A commercial building cleaning company owns and operates 15-passenger vans to transport its employees to client locations to perform cleaning services. The employer is located close to a State boundary, and employees are transported into a neighboring State. When employees are transported outside a specified distance from the company's single office location, the employer provides the transportation free of charge. However, when employees are transported wholly within the specified distance, the employer charges each employee a transportation fee and deducts that amount from the employee's pay. Most of this employee transportation is outside the commercial zone of the municipality where the company's office is located and where passenger transportation originates. All of the company's drivers and vehicles are at some point involved in interstate passenger transportation outside the commercial zone.

Guidance: This scenario describes for-hire transportation by a CMV as a part of continuous interstate movement, though some exemptions apply. The company is operating 15-passenger vans for compensation in interstate commerce, satisfying the definition of a *CMV* under § 390.5. Accordingly, the company must comply with the applicable regulations in 49 CFR parts 350 through 399. Because the employer charges each employee a transportation fee and deducts that amount from the employee's pay, the compensation is direct, and the company therefore does not qualify for the limited exception in §§ 390.3T(f)(6) and 390.3(f)(6) for 9 to 15 passenger-carrying CMVs operated not for direct compensation.

There are no exemptions to the commercial regulatory requirements for this interstate, for-hire motor vehicle operation. The company must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. The company is also required to obtain, maintain, and file financial responsibility of $1.5 million, as required under §§ 387.33T and 387.33.

The drivers of these 15-passenger vans, however, are not required to have CDLs and are not subject to employer conducted controlled substances and alcohol testing because the vehicles are not *CMVs* as defined in § 383.5. Although the drivers are not required to hold a valid CDL, they are subject to the general driver qualification regulations in part 391, including the requirements to be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45.

Scenario 2: A construction company owns and operates a bus designed to transport more than 15 passengers including the driver. The bus transports employees to work sites and does not charge a fee for the transportation. At the request of its employees, the company uses the bus on a Saturday during the summer to provide round-trip transportation for interested employees to an amusement park in a neighboring State. This trip is open only to employees and people the employees invite. The company collects money from each passenger. The transportation is not confined within a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV as defined in §§ 390.5T and 390.5. The transportation is subject to all the applicable regulations in 49 CFR parts 350 through 399. The company must register for operating authority registration and USDOT number registration by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E. In addition, the bus is also a *CMV* as defined in 49 CFR 383.5, and the driver must hold a valid CDL with a Passenger endorsement and must comply with the drug and alcohol testing regulations in 49 CFR part 382.

If the company operates its CMV in interstate commerce only on rare occasions, FMCSA has jurisdiction over the company, such vehicle, and the driver of such vehicle for a 4-month period after a trip in interstate commerce. However, records must be retained for whatever period is required by the FMCSRs, even if that period exceeds 4 months.

Operating authority registration is required in this scenario only because the construction company provided a trip for compensation to the amusement park in another State. Operating authority registration would not be necessary if the company limited its transportation to the free transportation provided for employees to travel to work sites.

Finally, because the company operates passenger vehicles with a seating capacity of at least 16 in interstate commerce, it must maintain financial responsibility of at least $5 million, as required under §§ 387.33T and 387.33. As long as the company is engaged in for-hire operations, evidence of financial responsibility must be maintained on file with FMCSA.

Education-Related Passenger Transportation

Scenario 1: A non-profit organization conducts educational tours with 15-passenger vans. All tours can be booked as part of a classroom course, or as a stand-alone tour. Each tour crosses either a State or international border, beyond a commercial zone. Passengers pay a single, inclusive of transportation fee whether they book a tour or a tour combined with a classroom lecture. The 15-passenger vans have a GVWR and actual GVW under 10,000 pounds.

Guidance: This scenario describes for-hire transportation by a CMV as defined in §§ 390.5T and 390.5, as a part of continuous interstate movement. The vans used by this organization are CMVs under §§ 390.5T and 390.5 because they have a passenger capacity of more than eight and are used to transport passengers for compensation in interstate commerce. However, the organization is eligible for the limited exception to regulatory applicability in §§ 390.3T(f)(6) and 390.3(f)(6) because (1) the vans are designed or used to transport between 9 and 15 passengers, (2) the organization does not receive direct compensation, and (3) the vans meet none of the alternative definitions of a CMV such as a GVW or GVWR of 10,001 pounds or more. The drivers of these vans do not need CDLs because the vehicles are not CMVs under § 383.5; both their passenger capacity and weight are below the applicable thresholds. For the same reasons, the drivers of these vans are not subject to the drug and alcohol testing regulations in 49 CFR part 382. The organization must register by following the procedures in 49 CFR part 365 subpart A and part 390 subpart E because the operations clearly included interstate transportation for compensation in a motor vehicle and no exemptions from FMCSA's commercial regulatory authority apply.

The organization transports passengers across State lines and includes the cost of transportation in a flat rate fee. Its non-profit status is irrelevant. A carrier that receives compensation, even indirect compensation, is providing for-hire service, and, because the carrier operates beyond a commercial zone, it must obtain operating authority registration from FMCSA. This organization is not a youth or family camp, and the statutory exemption from operating authority registration for such camps that provide recreational or educational activities therefore does not apply. Further, the organization is engaged only in educational activities. Therefore, the exemption for providers of recreational activities does not apply.

Because the organization operates passenger vehicles with a seating capacity of 15 or fewer for hire in interstate commerce, the organization is required under §§ 387.33T and 387.33 to obtain, maintain, and file evidence of, $1.5 million of financial responsibility.

Scenario 2: A school bus contractor is hired by a school district to transport high school athletes, faculty, and volunteers to and from an athletic competition in another State on a single day. During the following week, the same school bus contractor is hired by the same school district to transport elementary school students and faculty to and from a historic site in another State for an educational tour. The school bus used by the contractor is designed to transport more than 15 passengers including the driver.

Guidance: This scenario describes for-hire interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. The contractor is not eligible for the exception for ''school bus operations'' in §§ 390.3T(f)(1) and 390.3(f)(1) because the operations are defined in §§ 390.5T and 390.5 as the transportation of school children and/or personnel ''from home to school and from school to home.'' In this scenario, the students and faculty gather at the school and are transported, not from and to home, but from the school premises to out-of-State venues and then back to the school premises. The school bus contractor must obtain safety registration and a USDOT number under 49 U.S.C. 31134. The contractor must register by following the procedures in 49 CFR part 390 subpart E. In addition, the contractor is operating a school bus with a passenger capacity of at least 16, which also meets the definition of *CMV* under § 383.5. The drivers of the school buses must therefore hold CDLs with the applicable endorsements, and the employer

of such drivers must administer a drug and alcohol testing program in compliance with part 382.

Although both examples of the school bus contractor's passenger transportation are for-hire in interstate commerce, the contractor is not required to obtain operating authority registration. In this scenario the contractor is engaged in transportation to or from school, and the transportation is organized, sponsored, and paid for by the school district. The regulatory exception in § 372.103 and the statutory exemption in 49 U.S.C. 13506(a)(1) both apply to each type of passenger transportation conducted by the school bus contractor in this scenario.

Likewise, the school bus contractor qualifies for the exception in § 387.27(b)(4) because it is a motor carrier operating under contract providing transportation of preprimary, primary, and secondary students for extra-curricular trips organized, sponsored, and paid for by a school district. Accordingly, the contractor is not required to comply with Federal financial responsibility requirements.

Scenario 3: A private university transports only student athletes and university employees to games, sometimes in other States, in university-owned buses, which are designed to transport more than 15 passengers including the driver. The passenger transportation is financed by an allotment in the university athletic department's budget.

Guidance: This scenario describes interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. The private university is a private motor carrier of passengers (business) operating *CMVs,* as defined in §§ 390.5T and 390.5, in interstate commerce. The private university fits within this definition because the financing of passenger transportation comes from a university budget source, not from payments or charges for transportation either directly or embedded in other tuition and fees. The transportation is only available to students and university employees, not the public at large. Private universities typically operate as commercial enterprises, as the passenger transportation to sporting events is in furtherance of the university's business and are an element of the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

Except as noted in the next paragraph, the transportation is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The university must register by following the procedures in 49 CFR part 390 subpart E. In addition, the private university's bus is a CMV as defined in § 383.5, and the driver must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

Because the private university is operating as a private motor carrier of passengers (business) it is not required to have operating authority registration. The operation is not for-hire because the private university does not receive payment for transportation services. Though in this scenario the transportation is not for-hire, it is important to reiterate that an entity's tax-exempt or non-profit status does not determine whether its passenger transportation is for-hire or private. Currently, Federal financial responsibility requirements do not apply to operations by private motor carriers of passengers (business).

Scenario 4: A private high school owns and operates buses to transport students, baseball team members, and faculty to games in another State. One vehicle is a school bus with a capacity of 48 passengers. Two other vehicles are mini-buses designed to transport 26 passengers including the driver, and one other vehicle is a van designed to transport 15 passengers including the driver. The school does not transport students from home to school or vice versa. The passenger transportation is financed by an allotment in the school's athletic department budget.

Guidance: This scenario describes some interstate transportation by a CMV as defined in §§ 390.5T and 390.5, however, some exemptions may apply. This scenario also describes some transportation outside the scope of FMCSA jurisdiction. The private high school is a private motor carrier of passengers (business) operating *CMVs,* as defined in §§ 390.5T and 390.5, in interstate commerce. The private high school fits within this definition because the financing of passenger transportation is from a general high school budget source, so there is no compensation for the transportation. The transportation is only available to students and school employees, not the public at large. Private schools typically operate as commercial enterprises as the passenger transportation to sporting events is in furtherance of the school's business, including its athletic activities which are an element of the institution's operations. Thus, transportation of students and faculty is in furtherance of its commercial purpose. The possible absence of ticket sales to sporting event spectators does not affect the commercial nature of the enterprise.

The transportation in larger vehicles is subject to the requirements of 49 CFR parts 350 through 399 relevant to passenger carrier operations. The school must register by following the procedures in 49 CFR part 390 subpart E. Because the private high school is a private motor carrier of passengers (business), not providing interstate transportation for compensation, it is not required to have operating authority registration under 49 CFR part 365. Whether the private high school is tax-exempt or has a non-profit status does not determine whether its passenger transportation is for-hire or private. The school is not required to comply with Federal financial responsibility requirements.

In addition, other than the van, the private high school's vehicles are *CMVs* as defined in 49 CFR 383.5, and the drivers of these vehicles must have CDLs with Passenger endorsements and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

The van is not a CMV because it is designed to transport 15 passengers including the driver and it is not transporting passengers for compensation. A vehicle is considered a CMV only if it is used to transport 16 or more passengers in interstate commerce, regardless of the nature of compensation; or if is used to transport 9 to 15 passengers including the driver for compensation in interstate commerce.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

Faith-Based Organizations and Passenger Transportation

FMCSA frequently receives questions from religious and secular organizations regarding passenger-carrying vehicles the organizations own and use to transport their members and guests. The scenarios presented below are illustrative examples; the same principles apply to secular groups with similar operations.

Scenario 1: To raise funds, a faith-based organization organizes a one-time trip to an amusement park in a neighboring State. The organization advertises the trip on its website and in various public places such as grocery stores, libraries, etc., making the trip open to the public. A per-person fee will cover admission to the amusement park and round-trip transportation. The faith-based organization will use its own bus, which is designed to transport more than 15 passengers including the driver. A group member is the volunteer bus driver. The passenger transportation is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating for-hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization must register by following the procedures in 49 CFR part 365

subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration, because it is receiving compensation for transportation in interstate commerce. No exemptions apply to this operation.

The faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce and is therefore required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 2: A faith-based organization owns a bus which it uses to transport some of its members to an associated organization in another State. It suggests participating members contribute money to help cover the fuel expense. The bus is designed to transport more than 15 passengers including the driver. The transportation of the faith-based organization members is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the organization's bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The money provided from the organization's members for the trip constitutes direct compensation. Any type of compensation for providing a passenger transportation service makes the faith-based organization a for-hire motor carrier of passengers. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

The faith-based organization is using a bus with a seating capacity of 16 or more to transport passengers for hire in interstate commerce and is thus required under §§ 387.33T and 387.33 to maintain financial responsibility of at least $5 million. The monetary contribution requested of each passenger constitutes compensation, making the faith-based organization a for-hire motor carrier.

Scenario 3: A faith-based organization sponsors a trip for its members to an amusement park in a neighboring State. The trip is announced in the organization's newsletters, but not advertised to the general public. Group members may invite friends and family, including non-members, to join. An event fee paid by all trip participants covers transportation, lodging, food, and admission to the amusement park. The organization's bus that will be used for the trip is designed to transport more than 15 passengers, including the driver. The trip will extend beyond the commercial zone of the city where the organization is located.

Guidance: This scenario describes for-hire, interstate transportation by a CMV. The faith-based organization's bus is a CMV, as defined in §§ 390.5T and 390.5, operating in interstate commerce, and the faith-based organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the bus must therefore hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

The organization is providing interstate motor vehicle transportation for compensation indirectly through the event fee, thus it must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration. The organization is a for-hire motor carrier even though the trip is not available to the public at large.

The organization is an interstate for-hire motor carrier of passengers compensated indirectly through the event fee. Because there is no applicable exception, it must maintain the $5 million of financial responsibility required to operate a vehicle with a seating capacity of at least 16 passengers (§§ 387.33T and 387.33).

Scenario 4: A high school cheerleading team wants to travel to a neighboring State to participate in a cheerleading competition. A parent of one cheerleader is a member of a faith-based organization that owns a bus designed to transport more than 15 passengers including the driver. The parent persuades the faith-based organization to take the team to the competition. The cheerleaders and their parents give the faith-based organization money for use of the bus, and the faith-based organization pays one of its members to drive it. The trip is not confined to a commercial zone.

Guidance: This scenario describes for-hire interstate transportation of passengers by a CMV. The faith-based organization's bus is a CMV, as defined in § 390.5, operating for hire in interstate commerce, and the organization is a motor carrier subject to all applicable FMCSRs, including parts 350 through 399. In addition, the faith-based organization is operating a passenger-carrying CMV, as defined in § 383.5 because it is designed to transport 16 or more passengers; the driver of the faith-based organization's bus must hold a valid CDL with a Passenger endorsement and comply with the drug and alcohol testing regulations in part 382.

This is for hire interstate transportation of passengers by motor vehicle because the families pay the organization to use the bus and no exemptions apply to the operation. Thus, operating authority registration is required. The organization must register by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Likewise, because the faith-based organization is operating a passenger vehicle with a seating capacity of at least 16, for-hire in interstate commerce, it is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 5: A faith-based organization with many charitable operations provides transportation to a variety of passengers—both members of the organization and nonmembers—for a variety of events. For example, paid and volunteer collectors are sent to donation sites, the faith-based organization's employees are taken to and from the location of coat and food drives, donors are transported to fundraising events, children in daycare are taken on trips, and various individuals are provided transportation for job training programs. The faith-based organization's daycare center charges a fee for its services which include interstate passenger transportation. The faith-based organization uses different types of vehicles to transport its passengers. Some have a seating capacity of 16 or more passengers, and others have a seating capacity of 15 or fewer passengers. All passenger-carrying vehicles are used throughout the faith-based organization's various transportation operations. In addition, all of the faith-based organization's drivers operate a vehicle with a seating capacity of 16 or more passengers to transport the daycare children on interstate trips on at least an occasional basis. All of the various passengers are transported into another State.

Guidance: The daycare center-related transportation is for-hire interstate transportation of passengers by CMV. The organization operates CMVs, as defined in §§ 390.5T and 390.5, in interstate commerce as a for-hire motor carrier of passengers and is subject to the applicable FMCSRs in parts 350 through 399. The faith-based organization receives compensation through the collection of fees for services, including transportation, paid for the daycare, and all drivers and vehicles provide at least some transportation for the daycare. While some of the transportation operations are not for-hire, because all of the drivers and vehicles are used in all of the operations, the Agency considers the organization to be engaged in for-hire, interstate passenger transportation as well as private, interstate passenger transportation. While there is a limited exception from the safety regulations in parts 390 through 399 for smaller vehicles in §§ 390.3T(f)(6) and 390.3(f)(6), it does not apply to the organization because some of the organization's passenger-carrying vehicles are designed or used to transport 16 or more passengers in interstate commerce. In addition, because some of the vehicles are designed to transport 16 or more passengers, and all of the drivers operate all of the different vehicles on occasion, all the drivers must have CDLs with Passenger endorsements, and the faith-based organization must comply with the drug and alcohol testing regulations in part 382.

Because the faith-based organization receives indirect compensation through the fees charged for the daycare center, it is operating as an interstate, for-hire motor carrier of passengers. No exemption from operating authority registration requirements applies. The organization must register, therefore, by following the procedures in 49 CFR part 365 subpart A regarding operating authority registration and part 390 subpart E regarding USDOT number registration.

Because the faith-based organization operates some passenger vehicles with a

seating capacity of at least 16, for-hire in interstate commerce, it is required under §§ 387.33T and 387.33 to maintain $5 million of financial responsibility.

Scenario 6: A religiously-affiliated group of singers and musicians travels to various locations to perform at events and ceremonies. The group owns and operates multiple vehicles to transport its members and their equipment. Each vehicle has a GVWR and GVW of 10,001 to 26,000 pounds and is designed to transport more than 15 passengers including the driver. All the vehicles are driven between multiple States for performances. The hosting organizations ask event participants for donations which are provided to the musical group. Sometimes the musical group sells T-shirts, souvenirs, or other merchandise at the events.

Guidance: This scenario describes interstate transportation by CMV, but some exemptions may apply. The musical group is a private motor carrier of passengers (business) and is operating CMVs, as defined in §§ 390.5T and 390.5, in interstate commerce. The transportation is thus subject to 49 CFR parts 350 through 399 relevant to passenger carrier operations. The group is considered a private motor carrier of passengers (business) because the passenger transportation is not available to the public at large; but the receipt of money for a musical performance constitutes a business transaction, and a part of the furtherance of the musical group's commercial enterprise. Thus, the transportation of members and equipment has a commercial purpose. The possible absence of merchandise sales does not affect the commercial nature of the enterprise, as the primary purpose is promotion of the group's music, for which the group receives compensation. Whether a musical group is tax-exempt or has a non-profit status does not determine whether it is a business or nonbusiness. Finally, the transportation of passengers and equipment is an essential element of the group's operations, and such transportation is in furtherance of its commercial enterprise. All of the donations received may be used to cover the cost of fuel, maintenance, depreciation and insurance on the vehicle, but the transportation nevertheless furthers a commercial purpose.

Accordingly, the musical group must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration. In addition, because the musical group's vehicles are designed to transport more than 15 passengers including the driver, the drivers of these vehicles must have CDLs with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

There is a regulatory exception in § 391.69, however, from certain driver qualification requirements relating to applications for employment, investigations and inquiries, and road tests for single-employer drivers employed by a private motor carrier of passengers (business). Additionally, private motor carriers of passengers (business) may also continue to operate older buses manufactured before Federal fuel system requirements were adopted, provided the fuel system is maintained to the original manufacturer's standards (§ 393.67(a)(6)).

The musical group's interstate transportation of its members is in furtherance of a commercial enterprise, but the group is not receiving compensation for providing transportation. The compensation received is for their musical performance. The members of the group likewise do not pay a fee for their transportation. The musical group is thus a private motor carrier of passengers (business), and such carriers are not required to obtain operating authority registration.

The musical group is a private motor carrier of passengers (business), therefore, currently the group is not required to maintain evidence of financial responsibility on file with FMCSA.

Private motor carriers of passengers are not required to obtain operating authority registration and are not subject to the financial responsibility requirements.

Miscellaneous Passenger Transportation

Scenario 1: An assisted living apartment community is a commercial business that owns and operates a bus designed to transport more than 15 passengers, including the driver. The drivers are employees of the apartment community. The bus is used to transport residents to medical appointments, shopping centers, theaters, etc. Routine local transportation within the State is financed by general fees paid by all community residents. The community office assesses a special charge for entertainment-related transportation. The general public is not allowed to use the bus service. Some trips to shopping centers and theaters go into a neighboring State, but all transportation remains in the commercial zone of the community.

Guidance: This scenario describes for-hire interstate transportation by commercial motor vehicle, but some exemptions apply. The community is operating a CMV, as defined in §§ 390.5T and 390.5, in interstate commerce. The fact that all passenger transportation is entirely within a commercial zone is irrelevant for purposes of the ''interstate commerce'' component of the definition of *CMV* under §§ 390.5T and 390.5. The transportation is subject to all of the provisions in 49 CFR parts 350 through 399 relevant to passenger carrier operations. In addition, the 16-passenger van is also a CMV as defined in § 383.5, and the driver therefore must hold a valid CDL with a Passenger endorsement and be enrolled in a drug and alcohol testing program consistent with 49 CFR part 382.

Although the community is an interstate for-hire motor carrier of passengers assessing special charges for entertainment trips to a neighboring State, operating authority registration is not required because the transportation is wholly within the commercial zone where the community is located (49 U.S.C. 13506(b)(1)). However, the community must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration because the community operates a CMV, as defined in §§ 390.5T and 390.5, in interstate commerce.

Under §§ 387.33T and 387.33, the community must obtain and maintain $5 million of financial responsibility because it is a for-hire motor carrier of passengers operating in interstate commerce and at least one of its vehicles has seating for 16 or more passengers. The general fees paid by the community residents cover a multitude of services including local transportation. This indirect compensation arrangement for transportation is service for-hire. The special charge for entertainment-related transportation is direct compensation and is also a for-hire service.

Scenario 2: A youth camp transports campers in 15-passenger vans from an airport to the camp site and back, from the camp site to parks and other locations in neighboring States, and to facilities for medical care, etc. Trips to and from the airport extend beyond a 25-mile radius from the boundary of the airport and the commercial zone of the municipality that falls within the 25-mile radius of the airport. Other trips also extend beyond a commercial zone. Campers and camp employees are the only transported passengers. The vans have a GVW and GVWR below 10,001 pounds. The camp collects payment for the participating youth with a total package fee.

Guidance: If a single fee covers all services provided by the camp including transportation, most of the safety regulations would not apply to the camp. Although the camp operates CMVs as defined in §§ 390.5T and 390.5 in interstate commerce (more than 8 passengers, for compensation), it would qualify for the exception in §§ 390.3T(f)(6) and 390.3(f)(6) for CMVs designed or used to transport between 9 and 15 passengers not for direct compensation, and its vans meet none of the alternative definitions of a CMV (such as a GVW or GVWR of 10,001 pounds or more). The organization would therefore be required to comply only with those requirements specified in §§ 390.3T(f)(6) and 390.3(f)(6). Furthermore, the camp must register by following the procedures in 49 CFR part 390 subpart E regarding USDOT number registration.

However, if the camp collects a specific fee for passenger transportation, it is then receiving direct compensation and does not qualify for the limited exception in §§ 390.3T(f)(6) and 390.3(f)(6). If direct compensation occurs, the camp must comply with the applicable regulations in 49 CFR parts 350 through 399 including motor carrier registration in accordance with § 390.201. In the case of direct compensation, the drivers of these 15-passenger vans with a GVW and GVWR below 10,001 pounds are not required to hold a CDL and are not subject to employer conducted controlled substances and alcohol testing because such vehicles are not CMVs as defined in § 383.5. Although the drivers are not required to hold a CDL, they must be medically examined and certified in accordance with §§ 391.41, 391.43, and 391.45, and they are subject to the general driver qualification regulations in part 391 because such vehicles are CMVs as defined in §§ 390.5T and 390.5.

Though the camp is engaged in for-hire interstate transportation of passengers by motor vehicle, there is an exemption from

operating authority registration requirements in 49 U.S.C. 13506(a)(16). This camp falls within the exemption, which limits the Agency's jurisdiction over the transportation of passengers by 9- to 15-passenger motor vehicles operated by youth or family camps that provide recreational or educational activities.

Nonetheless, because the camp is an interstate for-hire motor carrier of passengers compensated indirectly through camp fees, it must maintain $1.5 million of financial responsibility (§§ 387.33T and 387.33). The camp is not required to maintain evidence of financial responsibility on file with FMCSA.

Issued under the authority delegated in 49 CFR 1.87.

Robin Hutcheson,

Administrator.

[FR Doc. 2022–24089 Filed 11–14–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–HQ–ES–2022–0111; FF09E22000 FXES11130900000 201]

RIN 1018–BG87

Endangered and Threatened Updating Entries for Two Species on and Removing Johnson's Seagrass From the Lists of Endangered and Threatened Wildlife and Plants Wildlife and Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), in accordance with the Endangered Species Act of 1973 (Act), as amended, are amending the List of Endangered and Threatened Plants by removing Johnson's seagrass (*Halophila johnsonii*). We are also amending the List of Endangered and Threatened Wildlife by updating the entries for the Arctic subspecies of the ringed seal (*Pusa hispida hispida*) and the Beringia distinct population segment (DPS) of the Pacific bearded seal subspecies (*Erignathus barbatus nauticus*) to reflect the final designation of critical habitat for this subspecies and DPS, respectively. These amendments are based on previously published determinations by the National Marine Fisheries Service (NMFS) of the National Oceanic and Atmospheric Administration, Department of Commerce, which has jurisdiction for these species.

DATES: This rule is effective November 15, 2022. *Applicability date:* The Johnson's seagrass delisting was effective May 16, 2022. The Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal critical habitat designations were both effective May 2, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel London, Acting Chief, Branch of Delisting and Foreign Species, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2491; or Caitlin Snyder, Chief, Branch of Domestic Listing, U.S. Fish and Wildlife Service, MS: ES, 5275 Leesburg Pike, Falls Church, VA 22041–3803; 703–358–2171. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the Act (16 U.S.C. 1531 *et seq.*) and Reorganization Plan No. 4 of 1970 (35 FR 15627; October 6, 1970), NMFS has jurisdiction over the marine taxa specified in this rule. Under section 4(a)(2) of the Act, NMFS must decide whether a species under its jurisdiction should be classified as an endangered or a threatened species. Under section 4(a)(2)(B) of the Act, if NMFS determines that a species should be removed from the Lists of Endangered and Threatened Wildlife and Plants (delisted), or that a species' status should be changed from an endangered to a threatened species, then NMFS is required to recommend the status change to the Service. NMFS makes these determinations via its rulemaking process. If the Service concurs with the recommended status change, then the Service will implement the status change by publishing a final rule to amend the Lists of Endangered and Threatened Wildlife and Plants (List or Lists) in title 50 of the Code of Federal Regulations (CFR) at 50 CFR 17.11(h) and 17.12(h).

On December 23, 2021, NMFS published a proposed rule (86 FR 72908) to remove Johnson's seagrass from the Federal List of Endangered and Threatened Plants. NMFS solicited public comments on the proposed rule through February 22, 2022. On April 14, 2022, NMFS published a final rule (87 FR 22137) to remove Johnson's seagrass from the Federal List of Endangered and Threatened Plants.

The delisting of Johnson's seagrass was effective May 16, 2022. In the April 14, 2022, final rule (87 FR 22137), NMFS addressed all public comments received in response to the proposed rule. In a June 10, 2022, letter (Letter from Gary Frazer to Kimberly Damon-Randall, June 10, 2022), per section 4(a)(2)(B), we concurred with NMFS's recommendation that the Johnson's seagrass should be removed from the List of Endangered and Threatened Plants. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.12(h).

We are also updating the entries on the List of Endangered and Threatened Wildlife for the Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal to reflect the final designation of critical habitat for this subspecies and DPS, respectively. On January 8, 2021, NMFS published a revised proposed rule (86 FR 1452) to designate critical habitat for the Arctic subspecies of the ringed seal, published a proposed rule (86 FR 1433) to designate critical habitat for the Beringia DPS of the bearded seal, and solicited public comments on both proposed rules through March 9, 2021 (86 FR 1452, January 8, 2021; 86 FR 1433, January 8, 2021). NMFS also solicited public comments at three public hearings for both proposed rules (see 86 FR 7686; February 1, 2021). In response to requests, NMFS extended the public comment period for both proposed rules through April 8, 2021 (see 86 FR 13517, March 9, 2021; 86 FR 13518, March 9, 2021). NMFS addressed all public comments received in response to both proposed rules, and on April 1, 2022, published a final rule (87 FR 19232) designating critical habitat for the Arctic subspecies of the ringed seal and a final rule (87 FR 19180) designating critical habitat for the Beringia DPS of the bearded seal. The Arctic subspecies of the ringed seal and the Beringia DPS of the bearded seal critical habitat designations were both effective May 2, 2022. By publishing this final rule, we are simply taking the necessary administrative step to codify these changes in the List at 50 CFR 17.11(h).

Administrative Procedure Act

Because NMFS provided an opportunity for public comment on the proposed rule to delist Johnson's seagrass, and we concurred with the NMFS action, we find good cause that the notice and public comment procedures of 5 U.S.C. 553(b) are unnecessary for this action. Because