single unit of equipment from ''$16,000'' to ''$11,000''. (73 FR 61512).

As background, on September 6, 2007, FRA adjusted the ordinary maximum civil monetary penalty pursuant to the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990. (72 FR 51194). As part of this inflation adjustment to the ordinary maximum civil monetary penalty, FRA amended footnote 1 to appendix A in part 232 by increasing the ordinary maximum civil monetary penalty to ''$16,000''. As a result, footnote 1 read, in pertinent part, ''[g]enerally, when two or more violations of these regulations are discovered with respect to a single unit of equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $16,000 per day.'' (72 FR 51197).

The October 16, 2008 amendment was part of a broader change in part 232 that was not focused on changing the inflation adjustment to the ordinary maximum civil monetary penalty for violations within that part. The October 16, 2008 amendment instituted FRA's new regulations for electronically controlled pneumatic (ECP) brake systems. In the process of promulgating the new ECP brake systems rules, FRA unintentionally removed the correct numerical amount ''$16,000'' and re-inserted the superseded numerical amount ''$11,000'' in its place. (73 FR 61556–57).

FRA's December 30, 2008 adjustment of the ordinary maximum civil monetary penalty directed that the numerical amount ''$16,000'', which was no longer included in the text of footnote 1, be removed and replaced by the numerical amount ''$25,000''. The final rule published on December 30, 2008 should have instructed that the numerical amount ''$11,000'' be removed and the numerical amount ''$25,000'' be added in its place. FRA is correcting this minor error so that the final rule clearly conforms to FRA's intent.

List of Subjects in 49 CFR Part 232

Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Final Rule

■ In accordance with the foregoing, 49 CFR part 232, chapter II, subtitle B of title 49, Code of Federal Regulations is corrected by making the following correcting amendment:

PART 232—[AMENDED]

■ 1. The authority citation for part 232 continues to read as follows:

Authority: 49 U.S.C. 20102–20103, 20107, 20133, 20141, 20301–20303, 20306, 21301–21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.49.

Appendix A to Part 232—[AMENDED]

■ 2. Footnote 1 to appendix A of part 232 is amended by removing the numerical amount ''$11,000'' and adding in its place the numerical amount ''$25,000''.

Issued in Washington, DC, on March 19, 2009.

Jo Strang,

Acting Deputy Administrator, Federal Railroad Administration.

[FR Doc. E9–7566 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 373

[Docket No. FMCSA–1997–2290]

RIN 2126–AA25

General Jurisdiction Over Freight Forwarder Service

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) amends its regulations to require all surface freight forwarders to issue a receipt or bill of lading on each shipment for which they arrange transportation of freight by commercial motor vehicle in interstate commerce. This regulatory change implements amendments enacted in the ICC Termination Act of 1995 (ICCTA). While the current rule concerning receipts or bills of lading applies only to household goods freight forwarders, the new rule applies to both household goods and non-household goods freight forwarders.

DATES: Effective May 6, 2009.

FOR FURTHER INFORMATION CONTACT: Mr. David Miller, *Telephone*: (202) 366–5370, *E-mail address: FMCSAregs@dot.gov*.

Availability of Rulemaking Documents

For access to docket FMCSA–1997–2290 to read background documents and comments received, go to *http://www.regulations.gov* at any time or to U.S. Department of Transportation, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

This final rule is based on the authority of the ICCTA (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995). The ICCTA gave the Secretary of Transportation (Secretary) general jurisdiction over all freight forwarder service involving transportation in interstate commerce under 49 U.S.C. 13531. Under 49 U.S.C. 13301(a), the Secretary is authorized to issue regulations to carry out the provisions of the ICCTA applicable to motor carriers, brokers, and freight forwarders.

Under 49 U.S.C. 14706(a), motor carriers and freight forwarders providing transportation or service subject to the Secretary's jurisdiction must issue a receipt or bill of lading for property received for transportation. These entities are liable for loss of, or damage to, the property described in the receipt or bill of lading.

The statutory requirement to provide a receipt or bill of lading was implemented in order for claimant parties (shippers) to make a *prima facie* case against motor carriers and freight forwarders under the Carmack amendment.[1] A receipt or bill of lading provides evidence that goods were delivered to the carrier or freight forwarder. If goods are damaged, the receipt or bill of lading can specify the monetary value of the cargo, i.e., the loss resulting from damage.

Part 370 of title 49, Code of Federal Regulations (CFR) (formerly 49 CFR part 1005), sets forth the principles and practices for the investigation and voluntary disposition of claims for loss, damage, injury, or delay to cargo handled by motor carriers and freight forwarders. It implements the Carmack amendment, as does 49 CFR part 373 pertaining to the issuance of receipts and bills of lading by motor carriers and freight forwarders.

[1] The Carmack amendment to the Interstate Commerce Act was passed in 1906 as part of the Hepburn Act, ch. 5391, 34 Stat. 584. It established uniform liability procedures for goods transported in interstate commerce. Its terms are now found at 49 U.S.C. 14706.

This final rule harmonizes 49 CFR 373.201, entitled ''*Bills of lading for freight forwarders*,'' with the statutory requirements of the ICCTA. It revises 49 CFR 373.201 to include the general commodities segment of the freight forwarding industry within its scope. This revision is consistent with the receipt or bill of lading requirements imposed on all freight forwarders by 49 U.S.C. 14706(a).

A more recent legislative provision affecting the freight forwarding industry, section 4142 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), authorized the Secretary to continue registering general commodities freight forwarders if ''[t]he Secretary finds [(1)] that such registration is needed for the protection of shippers and [(2)] that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations.'' The Agency found that registration of general commodities freight forwarders is needed for the protection of shippers (see 71 FR 50115, Aug. 24, 2006). This finding reaffirmed the ICCTA mandate requiring FMCSA to register all freight forwarders. Thus, the FMCSA continues to register all general commodities freight forwarders subject to its jurisdiction and to require procedures necessary for the protection of shippers.

In addition, section 4303(c) of SAFETEA–LU directed FMCSA to eliminate the distinction between motor common or contract carriers in registration. Thus, FMCSA makes a technical correction to the existing rule to eliminate the word ''common'' from within its scope.

II. Background

In January 1997, the Federal Highway Administration (FHWA), the predecessor agency to FMCSA within the DOT, issued a notice of proposed rulemaking (NPRM) (62 FR 4096, Jan. 28, 1997) to amend 49 CFR 373.201, under the then existing heading ''Bills of Lading for Freight Forwarders.'' The NPRM proposed to require that all freight forwarders, not just household goods freight forwarders, issue a receipt or bill of lading for the transportation of each shipment they arrange for transportation in interstate commerce.

As proposed in the NPRM, this final rule amends 49 CFR 373.201, first by retitling it ''*Receipts and bills of lading for freight forwarders*,'' and then by including within its scope all segments of the freight forwarding industry. This regulation implements the statutory requirement for issuing a receipt or bill of lading imposed on all freight forwarders by 49 U.S.C. 14706(a).

The term freight forwarder is defined at 49 U.S.C. 13102(8) as follows:

> * * * a person holding itself out to the general public (other than as a pipeline, rail, motor, or water carrier) to provide transportation of property for compensation and in the ordinary course of its business—
>
> (A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
>
> (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and
>
> (C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle.
>
> The term does not include a person using transportation of an air carrier subject to part A of subtitle VII [of title 49, U.S.C.].

History

This rulemaking has a long history, which was explained in detail in the NPRM. The Surface Freight Forwarder Deregulation Act of 1986 (Pub. L. 99–521, 100 Stat 2993, Oct. 22, 1986) (the Deregulation Act), substantially deregulated the general commodities segment of the freight forwarding industry, but it retained the regulation of freight forwarders that service the transportation of household goods.

To implement pertinent provisions of the Deregulation Act, the former ICC made minor revisions in the CFR to exclude general commodities freight forwarders from the scope of most ICC rules applicable to freight forwarders. *See* Ex Parte No. MC–184, *Regulation of Household Goods Freight Forwarders Under the Surface Freight Forwarder Deregulation Act of 1986*, 3 I.C.C. 2d 162 (1986). In its 1986 rulemaking, the ICC did not revise the regulations for the issuance of bills of lading (former 49 CFR part 1081, now redesignated as 49 CFR part 373, subpart B) [2] to exclude general commodities freight forwarders from their scope because the ICC determined ''[t]he Carmack amendment requires all carriers and freight forwarders to issue bills of lading for property they receive (49 U.S.C. 11707(a)(1)) and is central to its liability provisions.'' *See* 3 I.C.C. 2d 162 at 166 (1986).

In 1990, the ICC issued a final rule (*Practice and Procedure—Misc. Amendments—Revisions*, 6 I.C.C. 2d 587 (1990)), which amended former 49 CFR 1081.1 to require only household goods freight forwarders to issue bills of lading. The ICC did not explain why it was making this change, in light of its recognition in the 1986 rulemaking proceeding that general commodities freight forwarders were still subject to Carmack amendment requirements. Whatever the reason for the regulatory change, the underlying statutory requirement that all freight forwarders issue receipts or bills of lading for property they receive or deliver for transportation in interstate commerce remains unchanged.

Then, in 1995, ICCTA, at 49 U.S.C. 13531, re-established the Secretary's jurisdiction over all segments of the freight forwarding industry. This jurisdiction included the requirement that general commodities freight forwarders must register to operate in interstate commerce.

III. Discussion of Comments to the NPRM

In response to the January 28, 1997, NPRM, FMCSA received 11 comments from freight forwarding entities, trucking companies, shippers and the Advocates for Highway and Auto Safety (Advocates).[3] The following commenters agree with the original proposal to amend part 373. The Health and Personal Care Distribution Conference, Inc., and National Small Shipments Traffic Conference, Inc., note that the change to 49 CFR 373.201 is necessary to ''remove an inconsistency in the regulation.'' Freight Forwarders Council, Transportation Intermediaries, and Advocates also offer qualified support for the rule change.

In contrast, Monheim, MRS, Unisource, and Tucker oppose the proposed amendment to part 373.

Comments About ICCTA Provisions Unrelated to Freight Forwarders

In the preamble to the NPRM, the Agency provided information about a number of new requirements of the ICCTA to help make the public aware of the statutory changes. Those discussions were informational only and were not intended to be the basis for this regulatory action. However, a

[2] Title 49 CFR part 1081 was redesignated as 49 CFR part 373, subpart B, on October 21, 1996 (61 FR 54706).

[3] The Agency received comments from Freight Forwarders Council of America, Inc. (Freight Forwarders Council); Health and Personal Care Distribution Conference, Inc.; MRS Freight Forwarding Services, Inc. (MRS); William J. Monheim, STB Practitioner (Monheim); National Small Shipments Traffic Conference, Inc.; Transportation Intermediaries Association (Transportation Intermediaries); William J. Tucker, CTB, president of Tucker Company (Tucker); Unisource Transportation Services, Inc. (Unisource); and the Advocates. The Health and Personal Care Distribution Conference, Inc. and National Small Shipments Traffic Conference, Inc. submitted joint comments through counsel. MRS and Unisource submitted nearly identical sets of comments.

substantial percentage of the comments to the docket focused on those informational discussions.

FMCSA acknowledges the concerns of the commenters, but their comments about the informational discussions do not have any bearing on the substance of the original proposal. Thus, the remainder of the discussion in the preamble to FMCSA's final rule will focus on the data, information, and comments related to the Agency's proposal concerning freight forwarder receipts and bills of lading.

Response to Comments

The objections are grouped into five categories: A) jurisdictional boundaries of the Agency over freight forwarders; B) flexible nature of freight forwarding operations and the extent to which this should be reflected in § 373.201; C) purpose, scope, and contents of the receipt or bill of lading; D) role of the bill of lading with respect to the liability provisions of the Carmack amendment (49 U.S.C. 14706); and E) other issues of interest. Comments are discussed under these categories below.

A. Jurisdictional Boundaries

Necessity for a Rule. MRS and Unisource set forth a number of arguments against bringing general commodities freight forwarders under the Secretary's jurisdiction. MRS and Unisource contend that because the freight forwarding industry neither abuses market power nor conducts its operations in ways contrary to the public interest, it should not be burdened with additional regulations and should be exempted under 49 U.S.C. 13541. Further, they state that the proposed change to § 373.201 is unnecessary because 49 CFR 1035.1 already requires all common carriers to issue bills of lading. They add that the requirement to issue bills of lading also is promulgated at 49 CFR 373.101, 373.103, and 373.105.

FMSCA Response. This rulemaking proceeding is not the proper forum for seeking an exemption under section 13541. A specific request for an exemption would have to be filed with the Agency in order to obtain such relief. In any event, under 49 U.S.C. 13541, FMCSA (pursuant to authority delegated by the Secretary) already concluded in August 2006 that continued registration of general freight forwarders is needed to protect shippers (71 FR 50115, Aug. 24, 2006).

The FMCSA disagrees with MRS and Unisource's contention that the proposed change to § 373.201 is unnecessary. Part 1035 applies to rail and water carriers only, i.e., it does not include motor carriers. While §§ 373.101, 373.103, and 373.105 apply to motor carriers, they do not apply to freight forwarders.

Consolidating Station in Terminal Area. MRS and Unisource state that, if a freight forwarder maintains a consolidating station in a terminal area, then 49 U.S.C. 13503(a)(1)(B)(iii) exempts the forwarder from the Agency's jurisdiction when conducting business at its consolidating station.

FMCSA Response. FMCSA agrees with MRS and Unisource that local transfer, collection, or delivery service provided by a freight forwarder in a terminal area continues to be exempt from the Secretary's jurisdiction under 49 U.S.C. 13503(a)(1)(B). However, this does not exempt the freight forwarder from providing a receipt or bill of lading for property it receives or delivers for regulated transportation, since this requirement applies to those services performed outside the terminal area. A receipt or bill of lading issued inside a terminal area has full validity for regulated transportation outside the terminal area and in commerce. The requirement to issue a receipt or bill of lading depends on whether the transportation of those goods is regulated, not on where the receipt or bill of lading is issued. A freight forwarder performing assembly or consolidating services, or any variation on such services, is required under 49 U.S.C. 14706(a) to issue a receipt or bill of lading or provide its consent to the carrier to do so.

Applicability of § 373.201. MRS and Unisource question whether § 373.201 would be applicable in certain cases, and they give examples. They state that there are instances when the motor carrier, and not the freight forwarder, consolidates the freight being transported. They assert that the applicability of § 373.201 depends on the circumstances involved.

FMCSA Response. FMCSA agrees there are instances when the motor carrier, and not the freight forwarder, consolidates the freight being transported. A motor carrier providing consolidating services on behalf of the freight forwarder may obtain the freight forwarder's consent to issue the receipt or bill of lading. If, with the consent of the freight forwarder, the motor carrier issues the required receipt or bill of lading on behalf of the freight forwarder or delivers property for a freight forwarder on the freight forwarder's bill of lading, the freight forwarder has complied with § 373.201.

B. The Flexible Nature of Freight Forwarding Operations, and the Extent To Which This Should Be Reflected in § 373.201

Applicability of the Definition of Freight Forwarder. Tucker criticizes the NPRM preamble for using the statutory definition for the term freight forwarder.

FMCSA Response. FMCSA does not have the discretion to alter the statutory definition for the term freight forwarder. Although we recognize it may not convey fully the diverse services provided by agents who choose to represent themselves as freight forwarders today, FMCSA is required to use the statutory definition for freight forwarders.

Flexibility. Freight Forwarders Council, MRS, Unisource, Monheim, Tucker, and Transportation Intermediaries each asserts that freight forwarding operations have become increasingly flexible and diversified in response to changing market conditions. Several of these commenters also object to portions of the NPRM preamble language that they believe ignore these operational realities.

FMCSA Response. This final rule does not contradict the principle of economic deregulation that was reaffirmed in the ICCTA, nor does this action undermine the fundamental diversity and nature of freight forwarder operations. Regardless of whether a freight forwarder actually performs a particular service or provides for that service to be performed by someone else, it must assume legal responsibility for the transportation from the place of receipt to the place of destination. Consequently, a freight forwarder is still required to issue a receipt or bill of lading pursuant to 49 U.S.C. 14706.

C. The Purpose, Scope, Form, and Contents of the Receipt or Bill of Lading

Format and Contents of the Bill of Lading. Five commenters offered suggestions on the content of bills of lading. Freight Forwarders Council suggested that FMCSA use a model bill of lading, while Advocates recommended stamping the bill of lading with reliable dates and with departure and arrival/delivery times. Transportation Intermediaries wanted to develop uniformly accepted transportation documentation.

FMCSA Response. There is a significant difference between the receipt and bill of lading requirements in § 373.101, which specify information that must be contained on the motor carrier's receipt or bill of lading, and those of § 373.201 that apply to freight forwarders. Section 373.201 only

requires that a freight forwarder issue a receipt or bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Section 373.201 does not specify what information must be contained on the receipt or bill of lading or prescribe the format of these documents. The Agency does not approve or recommend any particular model receipt or bill of lading for freight forwarders to use in their operations, and the form and content of these documents is beyond the scope of this final rule.

Practicality of Requiring a Receipt or Bill of Lading. MRS and Unisource believe that imposing a requirement for general commodities freight forwarders to issue a second receipt or bill of lading, in addition to one issued by the motor carrier that picks up the shipment, is impractical and creates confusion for the freight forwarding industry.

FMCSA Response. The issuance of a receipt or bill of lading is a long-standing practice observed by the entire freight forwarding industry and is required by statute. Consequently, FMCSA believes most parties to a freight forwarding transaction will not be confused or burdened by this requirement.

D. Role of the Bill of Lading With Respect to the Liability Provisions of the Carmack Amendment (49 U.S.C. 14706)

Bill of Lading Not Necessary. Three commenters assert that it is no longer necessary for freight forwarders to issue bills of lading. Tucker believes that this rule change will not benefit freight forwarders or customers because, in his view, the liability protections provided by the Carmack amendment flow from a prior contract of carriage and not the bill of lading. Transportation Intermediaries similarly asserts that, under section 14101(b), bills of lading are not necessary since freight forwarders and shippers may mutually ''waive any or all rights and remedies under this part for the transportation covered by contract.'' Monheim asserts that ICCTA abolished the distinction between common and contract carriers, allowing freight forwarders to exercise the contract authority provided under section 14101(b). Monheim comments that the provisions of the Bills of Lading Act no longer apply to freight forwarders.

FMCSA Response. The liability provisions of the Carmack amendment, codified at 49 U.S.C. 14706, apply to all transportation under the jurisdiction of the Secretary. Motor carriers and freight forwarders providing transportation or service are liable to the ''person entitled to recover [compensation for loss or damage to the property] under the receipt or bill of lading.'' Section 14706(a) makes it clear that failure to issue a receipt or bill of lading does not change the liability of the carrier. In addition, section 14706(a) does not require a prior contract of carriage to tie in the Carmack liability provisions. Whether the statute is recognized in the marketplace is immaterial because the section 14706 liability provisions apply to receipts and bills of lading. Although a contract of carriage would indeed take precedence in a court of law over a receipt or bill of lading containing no contractual terms, the receipt or bill of lading nonetheless carries legal force and effect under the general liability provisions of section 14706(a).

Finally, the assertion that a receipt or bill of lading is no longer required because of 49 U.S.C. 14101(b) is not correct. That provision enables carriers subject to chapter 135 of title 49 U.S.C. (including general commodities freight forwarders) to enter into contracts of carriage that could potentially waive any or all rights covered by the contract, with certain exceptions not pertinent to this rule. However, the option of waiving the receipt or bill of lading requirement is not reason enough to forego imposing it, since not everyone will choose to waive the requirement.

Rule Change is Impractical. Unisource contends that FMCSA's proposed amendment to § 373.201 will be impractical; cause confusion among shippers, motor carriers, dispatchers, and freight forwarders; and raise questions about liability. It asks, for example, if a freight forwarder would be liable for a shipment that was lost or damaged before it was received merely because its name is on the bill of lading.

FMCSA Response. The issue Unisource raises would be determined under contract law, other case law, and circumstantial evidence. If a forwarder has not physically accepted a shipment, the forwarder would not be liable—that is, would not be required to accept legal responsibility for the loss or damage—merely because its name is on the bill of lading, unless the contract of carriage specified otherwise.

E. Other Issues of Interest

The NPRM is Misleading. Monheim contends that the NPRM is misleading with regard to a State's role in regulating freight forwarders. Unless the carrier specifically requests that a State's regulations apply to the carrier, Monheim believes that the States are completely removed from any regulation of freight forwarders for rates, routes or services, including bills of lading.

FMCSA Response. The NPRM merely stated that, under 49 U.S.C. chapter 145, Federal preemption of general commodities freight forwarders was narrowed in several respects. Chapter 145 allows States to regulate freight forwarders' intrastate activities in these areas if compliance is no more burdensome than interstate compliance under Federal law.

Paragraphs (b) and (c) of 49 U.S.C. 14501 prohibit State regulation of intrastate rates, intrastate routes, and intrastate services of freight forwarders of property; but they make a partial exception for uniform cargo liability rules, uniform bills of lading or receipts, uniform cargo credit rules, and certain antitrust immunity. No other distinction was intended here.

Significance of this Final Rule. Tucker challenges the NPRM's estimate that the rule will have an annual effect on the general commodities segment of the freight forwarding industry of less than $100 million. He contends the Agency has no basis for assuming that the ratio of general commodities freight forwarders to household goods freight forwarders is essentially the same today as in 1986.

Unisource believes that the rule would place a significant unnecessary burden on shipments made via a general commodities freight forwarder, versus those placed on other modes of transportation.

FMCSA Response. The cost impact analysis in the NPRM assumed the same ratio of general commodities freight forwarders to household goods freight forwarders of 8.4 to 1 as in 1986, when the Deregulation Act was enacted. The ratio has decreased considerably since then. The analysis set forth below updates this information.

As of November 2007, the last complete year of available data, there were 1,402 active entities on file at FMCSA in the Licensing and Insurance (L&I) information system that identified themselves to FMCSA as freight forwarders.[4] Of these, 1,117 identified themselves as general commodities freight forwarders; and 285 identified themselves as household goods freight forwarders. This is a ratio of approximately 3.9 to 1 of general commodities freight forwarders to household goods freight forwarders. This considerable drop from the 1986 ratio of 8.4 to 1 may indicate that some

[4] All freight forwarders—general commodities and household goods—are required to register with FMCSA for their operating authority.

general commodities freight forwarders are choosing to represent themselves as brokers.

Regarding the economic impact of this rule, the issuance of receipts or bills of lading by freight forwarders—including general commodities freight forwarders—is a well-established business practice. In the words of the Freight Forwarders Council:

> All forwarders today issue bills of lading, so no change will be caused by the adoption of the proposed regulations. Not to issue a bill of lading violates [the] Federal statute [at] 49 U.S.C. 14706(a).
>
> [See docket item FMCSA–1997–2290–0005–0001]

Since forwarders have for many years been required to issue receipts or bills of lading, there should be no significant increase in cost by making 49 CFR 373.201 conform to the long-standing statutory requirement. Thus, a requirement for general commodities freight forwarders to issue a receipt or bill of lading will not, in the aggregate, generate an economic burden or create a major increase in costs or prices or have a significant adverse effect on any sector of the industry. FMCSA's issuance of this final rule merely reestablishes the consistency between statutory and regulatory requirements.

Regulatory Analyses and Notices

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or within the meaning of the U.S. Department of Transportation's regulatory policies and procedures. It is anticipated that the economic impact of this final rule will be minimal.

A receipt or bill of lading is a document that lies at the heart of every transportation transaction. It documents a bilateral agreement under which both sides make guarantees. The requirement for all freight forwarders to issue a receipt or bill of lading for property they transport has been in effect by statute since 1942 and by regulation until 1990, when the former ICC changed its regulations to limit the requirement to household goods freight forwarders. Based on comments from the Freight Forwarders Council and verification checks made for FMCSA (as discussed in footnote 5), it appears it is a usual and customary practice for most general commodities and household goods freight forwarders to issue such a document in the normal course of doing business.

This rule revises 49 CFR 373.201 to include general commodities freight forwarders within the scope of the FMCSA's receipt and bill of lading regulation, as required by 49 U.S.C. 14706. This action requires that all parties to a transportation transaction be given documentation of their shipping arrangement. The FMCSA has evaluated the economic impact of the proposed changes on the general commodities freight forwarding segment of the industry and determined that the rule change is within the statutory mandate, and is reasonable, appropriate, and does not impose significant costs to the general commodity segment of the freight forwarding industry.

This final rule removes any uncertainty with respect to which freight forwarders are required to issue a receipt or bill of lading for property they accept for transportation in interstate commerce. Given that most general commodities freight forwarders already issue a receipt or bill of lading, FMCSA anticipates none of these freight forwarders will expend any additional effort and resources to comply with amended § 373.201.[5]

Consequently, FMCSA does not believe this final rule will have an annual effect on the general commodities freight forwarder segment of the forwarding industry of $100 million or more, lead to a major increase in costs or prices, or have a significant adverse effect on any sector of the economy. Thus, requiring all freight forwarders to comply with this final rule to provide a receipt or bill of lading will not significantly impact the industry.

The Agency is not required to prepare a stand-alone Regulatory Analysis. However, because of the concern expressed by some commenters that there might be a large impact, the Agency has prepared one to fully explain the costs and benefits of this rulemaking action. A copy of the analysis is included in the docket (FMCSA–1997–2290).

[5] After reviewing the comments to the proposed rule and conducting a literature search on the issuance of bills of lading by freight forwarders, FMCSA concluded that as a usual and customary practice freight handed over to a carrier was accompanied by a receipt or bill of lading. To confirm this, FMCSA attempted to contact some firms in the industry and the trade associations who submitted comments to the proposed rule. Calls were made on August 9, 2006, to: Transportation Intermediaries; Powers Freight Express of Lynbrook, New York; York Services, Inc. of York, Pennsylvania; and Patron Services, Inc. of Baltimore, Maryland. Each indicated that they believed most freight forwarders issue receipts or bills of lading in the normal course of doing business.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities, which comprise well above 50 percent of the freight forwarding industry, and has determined that this final regulatory action will not have a significant impact on a substantial number of small entities.

One reason this action does not have a significant impact on general commodities freight forwarders is that they have been required by statute to issue receipts and bills of lading since 1942. In 1990, the ICC removed this requirement from its regulations, notwithstanding the statutory requirement. This rule reestablishes in 49 CFR 373.201 this long standing statutory requirement that all freight forwarders are required to issue receipts or bills of lading for the transportation they arrange in interstate commerce.

Based on all information available to the Agency, including comments from Freight Forwarders Council and FMCSA checks of industry practices, the Agency believes that most freight forwarders have, for many years, been aware of this statutory requirement. Issuing a receipt or bill of lading is a well established, usual and customary business practice of general commodities freight forwarders and the industry as a whole. Accordingly, the practical consequence of today's final rule for the vast majority of freight forwarders is negligible.

The small minority of general commodities freight forwarders not already providing a receipt or bill of lading as legal documentation will now be required by regulation, as well as statute, to issue such a document. To the limited extent that this rule may result in incremental increases in compliance with the receipt or bill of lading requirements, the public, freight forwarders, and their customers alike will benefit from this requirement. In particular, small entities that rely on general commodities freight forwarder service will benefit from the Agency requiring general commodities forwarders to provide a receipt or bill of lading establishing legal documentation for any loss, damage, or injury to the property that may be transported after the freight forwarder takes possession of the goods tendered.

Commenters have not presented any information to suggest or convince us that there will be a significant economic impact on the general commodities freight forwarder industry by promulgation of this final rule. This final rule merely mandates that they be

in compliance with the long-standing statutory requirement and perform what is already the industry's usual and customary business practice—namely, to issue a receipt or bill of lading for the property for which they arrange transportation in interstate commerce.

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. FMCSA has determined that this rulemaking will not have a substantial direct effect on States, nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation. FMCSA has therefore determined this rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. As noted above, the practice of issuing receipts or bills of lading for cargo transported is a well established, usual and customary business practice of all freight forwarders. Therefore, FMCSA believes the paperwork reduction exception for usual and customary business practice applies in this case. Thus, this action does not involve an information collection that is subject to the requirements of the PRA.

National Environmental Policy Act

The Agency analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004, in the **Federal Register** (69 FR 9680), that this action has a categorical exclusion (CE) under Appendix 2, paragraph 6.l. of the Order from further environmental documentation. That CE relates to establishing regulations, and actions taken pursuant to these regulations, concerning motor carrier's issuance and retention of bills of lading. In addition, the Agency believes that this action involves no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

The Agency has also analyzed this final rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking action. (See 40 CFR 93.153(c)(2)(iii).) It will not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that this final rule will not increase total commercial motor vehicle (CMV) mileage, nor will it change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. By this action, FMCSA merely updates its existing regulation at § 373.201 to require that all freight forwarders issue receipts or bills of lading consistent with statutory requirements.

Executive Order 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation.

Unfunded Mandates Reform Act of 1995

This rulemaking will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $136.1 million or more in any one year.

Executive Order 12630 (Taking of Private Property)

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

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

The FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a ''significant energy action'' under that Executive Order because it will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13084 (Consultation and Coordination With Indian Tribal Governments)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084. Because this rule does not significantly or uniquely affect the communities of the Indian tribal governments, the funding and consultation requirements of this Executive Order do not apply.

Executive Order 13045 (Protection of Children)

The FMCSA analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The FMCSA determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Privacy Impact Assessment

The FMCSA conducted a privacy impact assessment of this proposed rule as required by section 522(a)(5) of division H of the Fiscal Year (FY) 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (December 8, 2004) [set out as a note to 5 U.S.C. 552a]. The assessment determined there are no privacy information impacts.

List of Subjects in 49 CFR Part 373

Bills of lading, Highway safety, Highways and roads, Motor carriers.

■ For the reasons set forth above, FMCSA amends chapter III of title 49 CFR as follows:

PART 373—RECEIPTS AND BILLS

■ 1. Revise the authority citation for part 373 to read as follows:

Authority: 49 U.S.C. 13301, 13531 and 14706; and 49 CFR 1.73.

■ 2. Revise § 373.201 of subpart B to read as follows:

§ 373.201 Receipts and bills of lading for freight forwarders.

Each freight forwarder must issue the shipper a receipt or through bill of lading, covering transportation from origin to ultimate destination, on each shipment for which it arranges transportation in interstate commerce. Where a motor carrier receives freight at the origin and issues a receipt therefor on its form with a notation showing the freight forwarder's name, then the freight forwarder, upon receiving the shipment at the ''on line'' or consolidating station, must issue a receipt or through bill of lading on its form as of the date the carrier receives the shipment.

Issued on: March 30, 2009.

Rose A. McMurray,

Acting Deputy Administrator.

[FR Doc. E9–7639 Filed 4–3–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

[FWS–R9–MB–2008–0109; 91200–1231–9BPP]

RIN 1018–AW11

Migratory Bird Permits; Revision of Expiration Dates for Double-Crested Cormorant Depredation Orders

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule; availability of final environmental assessment.

SUMMARY: We, the U.S. Fish and Wildlife Service, extend the expiration dates for two existing depredation orders for double-crested cormorants (*Phalacrocorax auritus*) for 5 years so that we can continue to authorize take of double-crested cormorants without a permit under the terms and conditions of the depredation orders. This action will continue to allow take of depredating double-crested cormorants to protect aquaculture, fish hatcheries, fish resources, other birds, vegetation, and habitats.

DATES: This rule will be effective on April 30, 2009.

FOR FURTHER INFORMATION CONTACT: Terry Doyle, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1799.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service (Service) is the Federal agency delegated the primary responsibility for managing migratory birds. This delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). The MBTA authorizes the Secretary of the Interior, subject to the provisions of, and in order to carry out the purposes of, the applicable conventions, to determine when, if at all, and by what means it is compatible with the terms of the conventions to allow the killing of migratory birds.

The double-crested cormorant (*Phalacrocorax auritus*), a long-lived, colonial-nesting waterbird native to North America, is a migratory bird that is federally protected under the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Mammals, February 7, 1936, United States-Mexico, as amended, 50 Stat. 1311, T.S. No. 912 and is included on the list of species protected by the MBTA at 50 CFR 10.13. Therefore, take of double-crested cormorants is strictly prohibited except as authorized by regulations implementing the MBTA.

Increasing populations of the double-crested cormorant have caused biological and socioeconomic resource conflicts. The species' diet primarily consists of fish, and double-crested cormorant populations can decrease fish populations in open waters and in aquaculture facilities. In addition, their guano can kill trees, shrubs, and other vegetation. In November 2001, the Service completed a Draft Environmental Impact Statement (DEIS) on double-crested cormorant management. The DEIS examined six management alternatives for addressing conflicts with double-crested cormorants: (A) No Action, (B) Nonlethal Control, (C) Increased Local Damage Control, (D) Public Resource Depredation Order, (E) Regional Population Reduction, and (F) Regulated Hunting.

On March 17, 2003, we published a proposed rule in the **Federal Register** (68 FR 12653) to implement the DEIS proposed action; Alternative D, Public Resource Depredation Order. A depredation order is a regulation that allows the take of specific species of migratory birds, at specific locations and for specific purposes, without a depredation permit. The proposed rule proposed revising the existing aquaculture depredation order to allow winter roost control; establishing a new depredation order to protect public resources from cormorant damages; and revising the Fish and Wildlife Service Director's Order 27 to allow lethal take of double-crested cormorants at public fish hatcheries.

On August 11, 2003, we published a notice of availability for a Final Environmental Impact Statement (FEIS) (68 FR 47603). In the FEIS, we assessed the impacts of the proposed depredation orders and determined that they would not significantly affect the status of the species. The selected action in the FEIS was Alternative D, Public Resource Depredation Order. This alternative was intended to enhance the ability of resource agencies to deal with immediate, localized damages caused by depredating double-crested cormorants by giving these agencies more management flexibility. The FEIS is available by contacting us at the address in **FOR FURTHER INFORMATION CONTACT.** Finally, on October 10, 2003, we published a final rule (68 FR 58022) that set forth regulations for implementing the FEIS preferred alternative: Alternative D (establishment of a public resource depredation order and revision of the aquaculture depredation order).

These depredation orders reside in part 21 of title 50 of the Code of Federal Regulations (CFR), which covers migratory bird permits. Subpart D of part 21 deals specifically with the control of depredating birds and currently includes eight depredation orders. The depredation orders at 50 CFR 21.47 (''Depredation order for double-crested cormorants at aquaculture facilities'') and 21.48 (''Depredation order for double-crested cormorants to protect public resources'') allow for take of the species under the provisions of our 2003 EIS. When we issued the final rule in 2003 we recognized the need for more information about double-crested cormorants and their impacts on resources across a variety of ecological settings, so we established an expiration date for the depredation orders of April 30, 2009, and included requirements for annual reporting to the Service of actions taken under the orders.

The data we have gathered since the issuance of the final rule in 2003, taken in concert with data from the 2003 EIS suggest that the orders have not had any significant negative effect on double-crested cormorant populations; data suggest that cormorant populations are stable or increasing with the orders in effect. Extending the orders will not, in the judgment of Service biologists, pose a significant, detrimental effect on the long-term viability of double-crested cormorant populations and will serve to mitigate the damage that these populations can cause to certain resources.