

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 369****[FHWA Docket No. MC-96-37]****RIN 2125-AE02****Compensated Intercompany Hauling****AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to remove the regulation that delineates the scope and notice filing requirements of the statutory exemption for compensated intercompany hauling. Section 103 of the ICC Termination Act of 1995 removed the requirement that a notice be filed before initiation of compensated intercompany hauling operations. Removal of the regulation would reflect the statutory change and is consistent with the overall intent of the ICC Termination Act of 1995 to eliminate unnecessary regulation.

DATES: Written comments must be submitted on or before December 20, 1996.

ADDRESSES: Submit signed, written comments to FHWA Docket No. MC-96-37, FHWA, Office of the Chief Counsel, HCC-10, Room 4232, 400 Seventh Street SW., Washington, DC 20590. All comment received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Vining or Ms. Patricia A. Burke, Office of Motor Carrier Information Analysis, HIA-30, (202) 927-5520, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The former Interstate Commerce Act contained an exemption from ICC regulation at 49 U.S.C. 10524(b) for compensated transportation service by a member of a corporate family, for other members of the same family, if proper notice was given. To qualify for the exemption, the participants were required to be members of a corporate family in which the parent owned, either directly or indirectly, a 100 percent interest in the subsidiaries.

Corporate entities availing themselves of the exemption were also required to file a notice, which was published in the Federal Register, listing the participating subsidiaries and certifying 100 percent ownership by the corporate parent.

The ICC Termination Act of 1995 (ICCTA), Public Law 104-88, 109 Stat. 803, reenacted the substantive exemption for compensated intercompany hauling, but removed the requirement for filing of a notice of operations under the exemption, 49 U.S.C. 13505(b). Although the ICCTA does not prohibit imposition of a notice requirement by the FHWA, which has assumed responsibility for these regulations pursuant to the ICCTA, the continuing need for such a requirement, or for any regulations on this subject, is doubtful.

The provisions of 49 CFR Part 369 merely restate the scope of the exemption as set out in the statute. Sections 369.22 and 369.23 cover the form and content of the notice and when an updated notice must be filed. These regulations appear to serve little purpose. In particular, the information contained in the notice can be easily checked by the FHWA if it ever appears that a corporation is conducting operations which exceed the scope of the exemption. Because the ICCTA essentially limits licensing requirements to compliance with safety and insurance requirements, there also appears to be no incentive for a corporation to use the exemption as a cover for unlicensed transportation operations. The corporation could easily obtain operating authority for legitimate operations. Thus, the regulations at 49 CFR 369 no longer have any meaningful regulatory requirements and the FHWA proposes to remove them. The FHWA invites comments on this proposal.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The rulemaking merely proposes to eliminate a notice filing requirement which applies to a small number of transportation entities. Neither the individual nor cumulative impact of this action will be significant.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601-612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The filing requirement currently only involves the preparation of a relatively simple notice by less than twenty transportation entities annually. Its elimination, while beneficial, will not have a significant economic impact.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* It does eliminate a requirement that parties taking advantage of the exemption at 49 U.S.C. 13505(b) prepare and file a notice of their operations. This action is thus consistent with goals of the Paperwork Reduction Act.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR 369

Highways and roads.

Issued on: September 30, 1996.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing and under the authority of section 103 of the ICC Termination Act of 1995, Public Law 104-88, 109 Stat. 803, and 49 CFR 1.48, the FHWA proposes to amend title 49, CFR, chapter III, by removing Part 369.

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49 CFR Part 372

[FHWA Docket No. MC-96-38]

RIN 2125-AE03

Exemption of Notice Filing Requirements for Agricultural Cooperative Associations Which Conduct Compensated Transportation Operations for Nonmembers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to remove the regulation that specifies the notice filing requirements for agricultural cooperative associations which conduct compensated transportation operations for nonmembers. These operations are exempt from regulation if certain statutory limitations on their scope are observed. Section 103 of the ICC Termination Act of 1995 removed the requirement that a notice be filed before initiation of operations under the exemption. Removal of the regulation would reflect this statutory change and is consistent with the overall intent of

the ICC Termination Act of 1995 to eliminate unnecessary regulation.

DATES: Written comments must be submitted on or before December 20, 1996.

ADDRESSES: Submit signed, written comments to FHWA Docket No. MC-96-38, FHWA, Office of the Chief Counsel, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas T. Vining or Ms. Patricia A. Burke, Office of Motor Carrier Information Analysis, HIA-30, (202) 927-5520, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The former Interstate Commerce Act contained an exemption from ICC regulation at former 49 U.S.C. 10526(a)(5) (now 49 U.S.C. 13506(a)(5)) for transportation provided by an agricultural cooperative association for nonmembers. To qualify for the exemption, the transportation services for nonmembers were required to be incidental to the cooperative's primary transportation operations, could not exceed annually 25 percent of the cooperative's total transportation between any two involved points, and, as a whole, could not exceed the transportation provided for the cooperative association and its members. The cooperative was also required to file a notice with the ICC of its intent to provide transportation for nonmembers.

The ICC Termination Act of 1995 (ICCTA), Public Law 104-88, 109 Stat. 803, reenacted the substantive exemption for nonmember transportation services by agricultural cooperatives, but removed the notice filing requirement. 49 U.S.C. 13506(a)(5). Although the ICCTA does not prohibit imposition of a notice requirement by the FHWA, which has assumed responsibility for this regulation pursuant to the ICCTA, the continuing need for any notice is doubtful.

The Secretary is granted authority at 49 U.S.C. 13508 to require agricultural cooperatives to maintain records of transportation provided for members

and nonmembers. Section 13508 makes these records subject to inspection and imposes specific penalties for reporting and recordkeeping violations.

Regulations at 49 CFR 372.111 delineate the scope of the required records. The information contained in these records can be inspected by the FHWA if it ever appears that a cooperative is performing transportation services for nonmembers which exceed the scope of the exemption. Moreover, it is unlikely that a cooperative would have any incentive to conduct unlawful operations. Under the ICCTA, licensing requirements are now essentially limited to compliance with safety and insurance standards. A cooperative could easily obtain operating authority for legitimate operations.

In these circumstances, the notice requirement at 49 CFR 372.113 no longer appears to serve any legitimate purpose. Removal of this regulation, and the adoption of conforming amendments to 49 CFR 372.111, would eliminate unnecessary regulatory requirements. The FHWA invites public comments on these preliminary conclusions.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. The rulemaking merely proposes to eliminate a notice filing requirement which applies to a small number of transportation entities. Neither the