

of the substance of the presentations and not merely a listing of the subjects discussed. It is generally required to have more than a one or two sentence description of the presented views and arguments. Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.

#### *B. Final Regulatory Flexibility Certification*

8. *Proposed Permanent Rule.* The Regulatory Flexibility Act of 1980, as amended (RFA), requires that a regulatory flexibility analysis be prepared for notice-and-comment rule making proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

9. An initial regulatory flexibility analysis (IRFA) was incorporated in the *Second Report and Order*. The Commission sought written public comment on the proposals in the *Second Report and Order*, including comment on the IRFA. No comments were received to the *Second Report and Order* or IRFA that specifically raised the issue of the impact of the proposed rules on small entities.

10. In this NPRM, we propose to adopt permanently the Commission's prior determination to grandfather those health care providers who were eligible under the Commission's definition of "rural" prior to the *Second Report and Order*. This has no effect on any parties that do not currently participate in the rural health care support program. It does not create any additional burden on small entities. We believe that this action imposes a minimal burden on the vast majority of entities, small and large, that are affected by this action.

11. Therefore, we certify that the requirements of the order will not have a significant economic impact on a substantial number of small entities.

12. In addition, the Notice of Proposed Rulemaking and this final certification will be sent to the Chief Counsel for Advocacy of the SBA, and

will be published in the **Federal Register**.

#### *C. Other Matters*

13. *Paperwork Reduction Act of 1995.* This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

#### **List of Subjects in 47 CFR Part 54**

Communications common carriers, Reporting and recordkeeping requirements, Telephone.

Federal Communications Commission.

**Marlene H. Dortch,**

*Secretary.*

#### **Proposed Rule**

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 54 to read as follows:

#### **PART 54—UNIVERSAL SERVICE**

1. The authority citation for part 54 continues to read as follows:

**Authority:** 47 U.S.C. 1, 4(i), 201, 205, 214, and 254 unless otherwise noted.

2. Amend § 54.601 by revising paragraph (a)(3)(i) to read as follows:

##### **§ 54.601 Eligibility.**

(a) \* \* \*

(3) \* \* \*

(i) Notwithstanding the definition of "rural area" in § 54.5, any health care provider that is located in a "rural area" under the definition used by the Commission prior to July 1, 2005, and received a funding commitment from the rural health care program prior to July 1, 2005, is eligible for support under this subpart.

\* \* \* \* \*

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## **DEPARTMENT OF TRANSPORTATION**

### **Federal Motor Carrier Safety Administration**

#### **49 CFR Part 393**

[Docket No. FMCSA-2010-0283]

#### **Parts and Accessories Necessary for Safe Operation; Application for Exemption From the Natural Gas Vehicles for America**

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

**ACTION:** Application for exemption; request for comment.

**SUMMARY:** The Federal Motor Carrier Safety Administration (FMCSA) requests public comment on an application for exemption submitted by National Gas Vehicles for America (NGV America) regarding the provision in the Federal Motor Carrier Safety Regulations (FMCSRs) prohibiting the location of any part of a fuel system on a bus manufactured on or after January 1, 1973, "within or above the passenger compartment." NGV America states that the National Highway Traffic Safety Administration (NHTSA) has adopted safety standards specific to natural gas vehicles that do not restrict the location of such fuel systems. NGV America plans to file a petition in the near future to request a modification to the FMCSRs and requests the exemption to allow buses equipped with roof-mounted natural gas tanks operating in interstate commerce—and therefore subject to the FMCSRs—to operate without penalty while the differences between the NHTSA and FMCSA regulations are resolved.

**DATES:** Comments must be received on or before July 27, 2011.

**ADDRESSES:** You may submit comments identified by DOT DMS Docket Number FMCSA-2010-0283 by any of the following methods:

- *Web site:* <http://www.regulations.gov>. Follow the instructions for submitting comments on the Federal electronic docket site.
- *Fax:* 1-202-493-2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

• *Hand Delivery:* Ground Floor, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the Agency name and docket

number for this notice. For detailed instructions on submitting comments and additional information on the exemption process, see the "Public Participation" heading below. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Please see the "Privacy Act" heading for further information.

**Docket:** For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140, DOT Building, New Jersey Avenue, SE., Washington, DC, 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 our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's Privacy Act System of Records Notice for the DOT Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316), or you may visit <http://edocket.access.gpo.gov/2008/pdf/E8-785.pdf>.

**Public participation:** The <http://www.regulations.gov> Web site is generally available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "Help" section of the <http://www.regulations.gov> Web site and also at the DOT's <http://docketsinfo.dot.gov> Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments online.

**FOR FURTHER INFORMATION CONTACT:** Mr. Luke W. Loy, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, MC-PSV, (202) 366-0676; Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

#### SUPPLEMENTARY INFORMATION:

##### Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21) [Pub. L. 105-178, June 9, 1998, 112 Stat. 107, 401] amended 49 U.S.C. 31315 and 31136(e) to provide authority to grant exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs). On August 20, 2004, FMCSA published a final rule implementing

section 4007 (69 FR 51589). Under this rule, FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public with an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and public comments and determines whether granting the exemption would likely achieve a level of safety equivalent to or greater than the level that would be achieved by complying with the regulation (49 CFR 381.305). The Agency decision must be published in the **Federal Register** (49 CFR 381.315(b)). If the Agency denies the request, it must state the reason for doing so. If the decision is to grant the exemption, the notice must specify the person or class of persons receiving the exemption and the regulatory provision or provisions from which an exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years) and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.315(c) and 49 CFR 381.300(b)).

##### NGV America's Application for Exemption

On April 9, 2010, NGV America applied for a 2-year exemption from 49 CFR 393.65(b)(6) to allow motor carriers to operate buses with rooftop-mounted natural gas storage systems in interstate commerce. NGV America requested that the "exemption be granted to all operators of natural gas transit buses that have been manufactured in accordance with and that satisfy regulations adopted by the National Highway Traffic Safety Administration (NHTSA)." A copy of the application is included in the docket referenced at the beginning of this notice.

Section 393.65 of the FMCSRs specifies the requirements for fuel systems for CMVs (49 CFR 393.65). These requirements apply to systems for containing and supplying fuel for the operation of motor vehicles or for the operation of auxiliary equipment installed on, or used in connection with, motor vehicles. Section 393.65(b)(6) prohibits any part of a fuel system of a bus manufactured on or after January 1, 1973, to be located "within or above the passenger compartment." This regulation applies generally to any fuel system on a bus, and is not specific to buses with natural gas fuel systems.

NHTSA's Federal Motor Vehicle Safety Standard (FMVSS) No. 303,

"Fuel system integrity of compressed natural gas vehicles," specifies requirements for the integrity of motor vehicle fuel systems using compressed natural gas, and applies to passenger cars, multipurpose passenger vehicles, trucks, and buses that have a gross vehicle weight rating (GVWR) of 10,000 pounds or less, and to all school buses regardless of weight that use compressed natural gas as a motor fuel. FMVSS No. 303 does not apply to transit buses with a GVWR over 10,000 pounds.

FMVSS No. 304, "Compressed natural gas fuel container integrity," specifies requirements for the integrity of compressed natural gas motor vehicle fuel containers, and applies to each passenger car, multipurpose passenger vehicle, truck, and bus that uses compressed natural gas as a motor fuel and to each container designed to store compressed natural gas as motor fuel onboard any motor vehicle. All compressed natural gas containers manufactured on or after March 26, 1995, must meet a pressure cycling test that evaluates the container's durability, a burst test to measure its strength, and a fire test to ensure adequate pressure relief characteristics. The rule also specifies labeling requirements.

In a final rule published in the **Federal Register** on August 15, 2005 (70 FR 48008), FMCSA created a new section in the FMCSRs to address requirements for compressed natural gas fuel containers. Section 393.68, "Compressed natural gas fuel containers," cross-references NHTSA's requirements for compressed natural gas containers in FMVSS No. 304.

Neither FMVSS No. 303 nor FMVSS No. 304 specifies or limits the location of compressed natural gas fuel systems on motor vehicles.

In its exemption application, NGV America notes that regulations promulgated by the Federal Transit Administration (FTA), another agency within the U.S. Department of Transportation, require applicants for Federal assistance to certify that any new bus they acquire has been tested in accordance with 49 CFR Part 665, "Bus Testing." NGV America states that, while 49 CFR 665.11 requires transit buses to "meet all applicable Federal Motor Vehicle Safety Standards, as defined by the National Highway Traffic Safety Administration in part 571 of this title," that section does not reference or require compliance with the FMCSRs.

In support of its application, NGV America states:

In the case of low-floor transit buses, which are the dominant type of transit bus

now in production, all natural gas fuel storage systems are in fact located on the roof-top above the passenger compartment and have been for many years. In the 1990's, the American Public Transportation Association (APTA) developed a model specification for low-floor natural gas transit buses. The APTA specification was published in 2000 and it indicates that compressed natural gas storage cylinders can be mounted on the roof-top.<sup>1</sup> In fact, placement of compressed natural gas storage cylinders on the roof top of buses is actually preferable. A key distinction in the consideration of the storage of natural gas on the roof of a vehicle is that, unlike gasoline and diesel fuel, natural gas is lighter than air and as such would not puddle or accumulate below the roof of the bus or in the passenger compartment of the bus but rather it would rise away from the vehicle. It is believed the intent of the existing regulation is to avoid the risk of fuel entering the enclosed passenger space of the vehicle. While we have not searched the history of Part 393.65, we believe that it, like other similar regulations, were adopted at a time when only liquid fuels were used as motor fuels and thus it is highly unlikely the drafters of the regulation contemplated the use of a compressed fuel like natural gas.

In addition, the petitioner states:

In support of our request, we also note that the National Fire Protection Association (NFPA) has developed safety standards for compressed natural gas vehicles. NFPA Code 52 (or NFPA 52) specifically addresses the safety of gaseous fueled systems used on motor vehicles. It is the nationally recognized standard for compressed natural gas fueling systems. NFPA 52:6.3.2 provides that "fuel supply containers on vehicles shall be

permitted to be located within, below, or above the driver or passenger compartment, provided all connections to the container(s) are external to, or sealed and vented from, these compartments." Thus, this standard, like NHTSA's, allows compressed natural gas storage cylinders to be located on the roof-top or above the passenger compartment of transit buses.

NGVAmerica states that most transit buses are operated within and near large urban areas, and therefore operate intrastate. However, some transit agencies are multi-jurisdictional entities and do operate bus routes that cross State lines. These operations are subject to FMCSA jurisdiction unless those transit agencies qualify under 49 CFR 390.3(f)(2), which exempts "transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States."

NGVAmerica also cites recent incidents in which transit buses have been ticketed when driven across State lines while being delivered from a manufacturing plant to the purchasing transit operator for introduction into intrastate operation. In each of these instances, the buses (1) complied with the requirements of FMVSS Nos. 303 and 304, and (2) did not have any passengers (except the driver) when they were stopped and cited for noncompliance with § 393.65(b)(6) of the FMCSRs.

Given these facts, NGVAmerica contends that enforcement of § 393.65(b)(6) as currently written could impede the interstate transport of natural gas transit buses and place in jeopardy the daily use of thousands of natural gas transit buses.

Therefore, NGVAmerica requests that motor carriers be permitted to operate buses with natural gas containers located above the passenger compartment. NGVAmerica states that, given the properties of natural gas and the fact that the buses in question comply with FMVSS Nos. 303 and/or 304 and NFPA Code 52, requiring such carriers' compliance with § 393.65(b)(6) is unwarranted. Based on the above, NGVAmerica believes that granting the exemption will maintain a level of safety that is equivalent to the level of safety achieved without the exemption.

#### Request for Comments

In accordance with 49 U.S.C. 31315 and 31136(e), FMCSA requests public comment from all interested persons on NGVAmerica's application for exemption from 49 CFR 393.65(b)(6). All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file in the public docket relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: June 21, 2011.

**Larry W. Minor,**

*Associate Administrator for Policy.*

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<sup>1</sup> APTA, *Standard Bus Procurement Guidelines: 40 ft. Low-Floor CNG Technical Specifications (2000)*; [http://www.apta.com/resources/reports\\_and\\_publications/Documents/lfeng.pdf](http://www.apta.com/resources/reports_and_publications/Documents/lfeng.pdf). This document states that "[i]n the case of a low floor transit bus, the placement of tanks shall be limited to the roof of the vehicle or in the compartment above the engine of the vehicle."