response is received to evaluate the response and reach a decision. The National Coordinator may, if necessary, request additional information from the ONC–AA during this time period.

(ii) If the National Coordinator determines that no violation occurred or that the violation has been sufficiently corrected, the National Coordinator will issue a memo to the ONC–AA confirming this determination. Otherwise, the National Coordinator may propose to remove the ONC–AA in accordance with paragraph (c) of this section.

(c) *Proposed removal.* (1) The National Coordinator may propose to remove the ONC–AA if the National Coordinator has reliable evidence that the ONC–AA has committed a conduct violation; or

(2) The National Coordinator may propose to remove the ONC–AA if, after the ONC–AA has been notified of an alleged performance violation, the ONC–AA fails to:

(i) Rebut the alleged violation with sufficient evidence showing that the violation did not occur or that the violation has been corrected; or

(ii) Submit to the National Coordinator a written response to the noncompliance notification within the specified timeframe under paragraph (b)(2) of this section.

(d) *Opportunity to respond to a proposed removal notice.* (1) The ONC–AA may respond to a proposed removal notice, but must do so within 20 days of receiving the proposed removal notice and include appropriate documentation explaining in writing why it should not be removed as the ONC–AA.

(2) Upon receipt of the ONC–AA's response to a proposed removal notice, the National Coordinator is permitted up to 60 days to review the information submitted by the ONC–AA and reach a decision.

(e) *Retention of ONC–AA status.* If the National Coordinator determines that the ONC–AA should not be removed, the National Coordinator will notify the ONC–AA in writing of this determination.

(f) *Removal.* (1) The National Coordinator may remove the ONC–AA if:

(i) A determination is made that removal is appropriate after considering the information provided by the ONC–AA in response to the proposed removal notice; or

(ii) The ONC–AA does not respond to a proposed removal notice within the specified timeframe in paragraph (d)(1) of this section.

(2) A decision to remove the ONC–AA is final and not subject to further review unless the National Coordinator chooses to reconsider the removal.

(g) *Extent and duration of removal.* (1) The removal of the ONC–AA is effective upon the date specified in the removal notice provided to the ONC–AA.

(2) An accreditation organization that is removed as the ONC–AA must cease all activities under the permanent certification program, including accepting new requests for accreditation under the permanent certification program.

(3) An accreditation organization that is removed as the ONC–AA is prohibited from being considered for ONC–AA status for a period of 1 year from the effective date of its removal as the ONC–AA.

Dated: May 24, 2011.

Kathleen Sebelius,

Secretary.

[FR Doc. 2011–13372 Filed 5–27–11; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 390

[Docket No. FMCSA–2011–0146]

Regulatory Guidance: Applicability of the Federal Motor Carrier Safety Regulations to Operators of Certain Farm Vehicles and Off-Road Agricultural Equipment

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

ACTION: Notice; request for public comment.

SUMMARY: FMCSA requests public comment on: (1) Previously published regulatory guidance on the distinction between interstate and intrastate commerce in deciding whether operations of commercial motor vehicles within the boundaries of a single State are subject to the Federal Motor Carrier Safety Regulations (FMCSRs); (2) the factors the States are using in deciding whether farm vehicle drivers transporting agricultural commodities, farm supplies and equipment as part of a crop share agreement are subject to the commercial driver's license regulations; and (3) proposed guidance to determine whether off-road farm equipment or implements of husbandry operated on public roads for limited distances are considered commercial motor vehicles. The guidance would be used to help ensure uniform application of the safety regulations by enforcement personnel, motor carriers and commercial motor vehicle drivers.

DATES: Comments must be received on or before June 30, 2011.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2011–0146 by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, (M–30), U.S. Department of Transportation (DOT), 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room 12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. All submissions must include the Agency name and docket number for this notice. See the ''Public Participation'' heading below for instructions on submitting comments and additional information.

Note that all comments received, including any personal information provided, will be posted without change to *http://www.regulations.gov.* Please see the ''Privacy Act'' heading below.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to Room W12–140 on the ground floor of the DOT Headquarters Building at 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., ET, 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. Comments received after the comment closing date will be included in the docket, and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Thomas L. Yager, Chief, Driver and Carrier Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

E-mail: *MCPSD@dot.gov.* Phone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, August 9, 1935) (1935 Act) provides that the Secretary of Transportation may prescribe requirements for (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation (49 U.S.C. 31502(b)).

The Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, October 30, 1984) (1984 Act) provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations that ensure that: (1) Commercial motor vehicles (CMVs) are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of CMVs is adequate to enable them to operate the vehicles safely; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators (49 U.S.C. 31136(a)). Section 211 of the 1984 Act also grants the Secretary broad power in carrying out motor carrier safety statutes and regulations to ''prescribe recordkeeping and reporting requirements'' and to ''perform other acts the Secretary considers appropriate'' (49 U.S.C. 31133(a)(8) and (10), respectively).

The Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, October 27, 1986) (1986 Act) directs the Secretary of Transportation to prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The States must use those standards in issuing commercial driver's licenses (CDLs).

The FMCSA Administrator has been delegated authority under 49 CFR 1.73(L), (g), and (e)(1) to carry out the functions vested in the Secretary of Transportation by the 1935 Act, the 1984 Act, and the 1986 Act, respectively.

Background

The Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350–399) include several exceptions for agricultural operations. The FMCSA recently received inquiries about the applicability of these exceptions. As a result, the Agency has identified three issues that could benefit from clarification. First, how does one distinguish between intra- and interstate commerce when a CMV is operated within the boundaries of a single State? Second, should the Agency distinguish between indirect and direct compensation in deciding whether a farm vehicle driver is eligible for the exception to the CDL requirements in 49 CFR 383.3(d)(1)? Third, should implements of husbandry and other farm equipment be considered CMVs?

Distinguishing Between Intra- and Interstate Commerce

Most of the Agency's safety regulations, such as those in 49 CFR parts 390 through 399, are only applicable to the operation of CMVs, as defined in 49 CFR 390.5, in interstate commerce. The Federal courts have generated a large body of case law on the distinction between intra- and interstate commerce. The FMCSA's regulatory guidance on this issue is largely controlled by those decisions. The most recent guidance on this question involves 49 CFR 390.3, General applicability.[1]

Question 6: How does one distinguish between intra- and interstate commerce for the purpose of applicability of the FMCSRs?

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

While this guidance remains correct, FHWA's 1975 interpretations offered more detailed agricultural scenarios that can be helpful in understanding the distinction between intra- and interstate commerce.

For example, in one of the scenarios, grain is transported from farms to an elevator in the same State. Although no truckload or shipment is earmarked for any particular out-of-State purchaser, all of the grain is intended to be shipped to points outside the State. The grain is graded, tested, and blended at the elevator and then shipped to out-of-State points during the year following harvest. Under this scenario, the movement of the grain to the elevators is considered interstate commerce (40 FR 50671, 50674; October 31, 1975; copy in docket). Here, the intent of the farmers (whether or not explicitly articulated) was to have their grain shipped out of the State of origin in order to obtain the best price. The grain therefore remained in the stream of interstate commerce until it reached its destination.

Another example from the 1975 interpretations discusses transit arrangements. When it is the intent that shipments originating in a State move to a point in that State for a transit service, and then move to points outside the State, or the reverse, the intra-State portion to or from the transit point is considered interstate commerce. Many of the 1975 interpretations are based on Motor Carrier Cases of the Interstate Commerce Commission (ICC). The Federal courts have largely ratified the positions taken by the ICC. A copy of the relevant Motor Carrier Cases referenced in the 1975 notice is included in the docket. When the motor carrier safety functions of the ICC were transferred to the U.S. Department of Transportation's FHWA in the late 1960s, FHWA relied upon the ICC's Motor Carrier Cases to ensure effective implementation of the motor carrier safety program at the U.S. Department of Transportation.

The FMCSA believes the 1975 and 1997 **Federal Register** notices provide helpful information for enforcement officials and motor carriers. The Agency requests public comment on whether additional guidance or information is needed to clarify the distinction between intra- and interstate commerce in the agricultural industry. If you believe it is needed, please describe scenarios that would benefit from further discussion.

[1] Like most of the guidance posted on the Agency's Web site, this guidance was published by the Federal Highway Administration's Office of Motor Carriers, the predecessor to FMCSA, on April 4, 1997 (62 FR 16369, 16404).

Applicability of the Commercial Driver's License (CDL) Rules to Farm Vehicle Drivers Operating Under a Crop Share Farm Lease Agreement

Under the Agency's CDL regulations, persons who operate a CMV, as defined in 49 CFR 383.5, in interstate or intrastate commerce are required to have a CDL. However, a limited exception is provided for drivers of farm vehicles (49 CFR 383.3(d)(1)). A State may, at its discretion, exempt drivers of farm vehicles that are:

(1) Controlled and operated by a farmer, including operation by employees or family members;

(2) Used to transport agricultural products, farm machinery or farm supplies to or from a farm;

(3) Not used in the operations of a common or contract motor carrier; and

(4) Used within 241 kilometers (150 miles) of the farmer's farm.

The exception is limited to the driver's home State unless there is a reciprocity agreement with adjoining States.

It has come to FMCSA's attention that States may be taking varied approaches in interpreting the meaning of ''common or contract motor carrier'' as it relates to farm vehicle drivers operating under a crop share agreement and, as a result, may be applying the CDL exception inconsistently.

As background, it is the Agency's understanding that in a crop share arrangement, land owners generally rent out or lease their farm land to a tenant. The tenant agrees to pay the landlord a share of the crops grown on the leased lands as rent. This rent, *i.e.,* a portion of the crops, may be paid in a series of installment payments. The parties agree that each will provide certain items of equipment, materials, and labor, and pay a share of the expenses to run the farming operations. The tenant agrees to use the land for agricultural purposes only, and to farm the land in accordance with proper farming practices. The parties will share in the decision making and management of the farming operations to the extent set out in the lease. The landlord has a lien on the crops as security for the rent payable under the lease. In most cases, it appears that the share cropper transports the landlord's portion of the crops to market in his or her own CMV and is indirectly and implicitly compensated for this service in the form of a reduction in the landlord's share in the crops produced.

The FMCSA believes that the reference to ''operations of a common or contract carrier'' in the CDL exception (49 CFR 383.3(d)(1)(iii)) is clear. Given the information FMCSA has received about the varied interpretations of this phrase as it relates to crop share arrangements, however, it acknowledges that there may be uncertainty about how the phrase applies in the context of a crop share arrangement.

As a result, FMCSA requests public comment on this issue. Specifically, FMCSA seeks information on the following questions:

- How many States have exercised the discretion provided by 49 CFR 383.3(d)(1) to include in their State CDL regulations an exception for farm vehicle drivers?
- For States that have opted to include the farm vehicle exception in their State CDL laws and regulations, how are States interpreting the CDL regulations as they relate to farm vehicle drivers working in a crop share agreement?
- Do these States construe these regulations to make farm vehicle drivers working in a crop share agreement contract carriers?
- If so, what evidence are States reviewing to make the determination that a farm vehicle driver working in a crop share agreement is or is not operating as a contract carrier?
- Is the Agency's understanding of the crop share agreement accurate?
- What types of compensation arrangements exist between farm vehicle operators providing transportation services as part of a crop share agreement and their landlords?

Implements of Husbandry

This third issue arises from the fact that while a number of States exempt ''implements of husbandry'' from their vehicle safety regulations, there is no single, uniform definition of the term.

For example, one State defines an implement of husbandry as farm equipment that is equipped with pneumatic tires, infrequently operated or moved on highways and used for the benefit of the farmer's agricultural operations to perform agricultural production or harvest activities or transport agricultural products or agricultural supplies. Implements of husbandry can also be earthmoving equipment used in farming operations. Farm tractors and combines are typical examples of what would be considered to be implements of husbandry.

Another State's regulations explain that implements of husbandry include farm implements, machinery and tools, as used in tilling the soil, including self-propelled machinery specifically designed or adapted for applying plant food materials or agricultural chemicals but not ''designed or adapted for the sole purpose of transporting the materials or chemicals.'' The State provides a list of examples: Subsoilers, dozers (provided they are for farm use), cultivators, farm tractors, reapers, binders, combines, cotton module builders, planters, and discs. In this example, the State's rules explain that implements of husbandry do not include automobiles, trucks, or items used on the farm such as irrigation systems, silos, barns, *etc.*

The FMCSA believes the experience of State agencies in dealing with implements of husbandry suggests that FMCSA should consider new regulatory guidance to emphasize a practical approach for applying the safety requirements under 49 CFR parts 390–399 to agriculture, rather than one derived from strict, literal readings of the definitions of ''commercial motor vehicle'' and ''motor vehicle'' under 49 CFR 390.5. Based on those definitions, almost any type of self-propelled or towed motor vehicle used on a highway in interstate commerce is subject to the FMCSRs if the threshold for weight, passenger-carrying capacity, or amount of hazardous materials is reached. This is especially the case when the definition of ''motor vehicle'' is considered, which includes ''any vehicle, machine, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used upon the highways. * * *'' (See 49 CFR 390.5) A narrowly literal reading would mean applying the rules in circumstances where they would be impractical and produce no discernible safety benefits.

The FMCSA provides an example of a practical alternative approach in the existing regulatory guidance concerning off-road construction equipment. Questions 6 and 7 from 49 CFR 383.3 and Questions 7 and 8 for 49 CFR 390.5 from the 1997 **Federal Register** notice (62 FR 16369, 16406) are reprinted below.

§ 383.3 Question 6 and § 390.5 Question 7: Does off-road motorized construction equipment meet the definitions of ''motor vehicle'' and ''commercial motor vehicle'' as used in §§ 383.5 and 390.5?

Guidance: No. Off-road motorized construction equipment is outside the scope of these definitions: (1) When operated at construction sites; and (2) when operated on a public road open to unrestricted public travel, provided the equipment is not used in furtherance of a transportation purpose. Occasionally driving such equipment on a public road to reach or leave a construction site does not amount to furtherance of a transportation purpose. Since construction equipment is not designed

to operate in traffic, it should be accompanied by escort vehicles or in some other way separated from the public traffic. This equipment may also be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

§ 383.3 Question 7 and § 390.5 Question 8: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road motorized construction equipment is to be narrowly construed and limited to equipment which, by its design and function is obviously not intended for use, nor is it used on a public road in furtherance of a transportation purpose. Examples of such equipment include motor scrapers, backhoes, motor graders, compactors, tractors, trenchers, bulldozers and railroad track maintenance cranes.

The FMCSA proposes to issue new regulatory guidance to address implements of husbandry, consistent with the approach used for off-road motorized construction equipment. The Agency requests public comment on this issue and the following proposal. Specifically, the Agency requests comments on whether there are specific examples of implements of husbandry that should be included in the guidance to assist the enforcement community and the industry in achieving a common understanding of how to apply the safety regulations.

Proposed Regulatory Guidance: Applicability of the FMCSRs to Implements of Husbandry

§ 383.5 Question 13 and § 390.5 Question 33

Question: Do implements of husbandry meet the definitions of ''commercial motor vehicle'' as used in 49 CFR 383.5 and 390.5?

Guidance: No. Implements of husbandry are outside the scope of these definitions when operated: (1) At a farm; or (2) on a public road open to unrestricted public travel, provided the equipment is not designed or used to travel at normal highway speeds in the stream of traffic. This equipment, however, must be operated in accordance with State and local safety laws and regulations as required by 49 CFR 392.2 and may be subject to State or local permit requirements with regard to escort vehicles, special markings, time of day, day of the week, and/or the specific route.

Question: What types of equipment are included in the category of implements of husbandry?

Guidance: The term implements of husbandry should be narrowly construed and limited to equipment which, by its design and function is obviously not designed or used to travel at normal highway speeds in the stream of traffic. Examples of such equipment include, but are not limited to, farm tractors, subsoilers, cultivators, reapers, binders, combines, cotton module builders, planters, and discs.

Request for Comments

FMCSA requests public comment on: (1) The distinction between interstate and intrastate commerce in making the determination whether certain transportation by CMVs, within the boundaries of a single State, is subject to the FMCSRs; (2) the relevance of the distinction between direct and indirect compensation in deciding whether certain farm vehicle drivers working under a crop share arrangement are subject to the Agency's CDL regulations; and, (3) the determination whether certain off-road farm equipment and implements of husbandry operated on public roads for limited distances should be considered CMVs and subject to the Agency's vehicle safety equipment regulations.

The Agency will consider all comments received by close of business on June 30, 2011. Comments will be available for examination in the docket at the location listed under the ''Addresses'' section of this notice. The Agency will consider to the extent practicable comments received in the public docket after the closing date of the comment period.

Issued on: May 20, 2011.

Anne S. Ferro,

Administrator.

[FR Doc. 2011–13035 Filed 5–27–11; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R4–ES–2010–0026; MO 92210–0–0008]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List Puerto Rican Harlequin Butterfly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Puerto Rican harlequin butterfly (*Atlantea tulita*) as endangered and to designate critical habitat under the Endangered Species Act of 1973, as amended. After reviewing all available scientific and commercial information, we find that the listing of the Puerto Rican harlequin butterfly is warranted. Currently, however, listing the Puerto Rican harlequin butterfly is precluded by higher priority actions to amend the Lists of Endangered and Threatened Wildlife and Plants. Upon publication of this 12-month petition finding, we will add the Puerto Rican harlequin butterfly to our candidate species list. If an emergency situation develops with this species that warrants an emergency listing, we will act immediately to provide additional protection. We will develop a proposed rule to list the Puerto Rican harlequin butterfly as our priorities allow. We will make any determination on critical habitat during development of the proposed listing rule. During any interim period, we will address the status of the candidate taxon through our annual Candidate Notice of Review (CNOR).

DATES: The finding announced in this document was made on May 31, 2011.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number FWS–R4–ES–2010–0026. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Caribbean Ecological Services Field Office, Road 301, Km. 5.1, Boquerón, PR 00622. Please submit any new information, materials, comments, or questions concerning this finding to the above street address.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera, Assistant Field Supervisor, Caribbean Ecological Services Field Office, P.O. Box 491, Boquerón, PR 00622; by telephone at (787) 851–7297; or by facsimile at (787) 851–7440. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*), requires that for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information indicating that listing the species may