

**DEPARTMENT OF TRANSPORTATION****Federal Railroad Administration****49 CFR Part 265**

[Docket No. FRA-2008-0117, Notice No. 1]

RIN 2130-AB98

**Nondiscrimination in Federally Assisted Railroad Programs; Removal**

**AGENCY:** Federal Railroad Administration (FRA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** FRA is removing 49 CFR part 265 because the relevant statutory authority for the regulation found in the Railroad Revitalization and Regulatory Reform Act of 1976 has expired. FRA expects that removal of part 265 will reduce the administrative burden to government and industry, reduce government printing costs, and provide a more concise and useful Title 49, Code of Federal Regulations.

**DATES:** The rule becomes effective August 13, 2009.

**FOR FURTHER INFORMATION CONTACT:**

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**SUPPLEMENTARY INFORMATION:****I. Background**

49 CFR part 265 effectuated sections 905 and 906 of the Railroad Revitalization and Regulatory Reform Act of 1976 ("Act"), Public Law 94-210, 90 Stat. 31, 148-150 (February 5, 1976), which set forth the nondiscrimination and minority business enterprise provisions of that Act. However, Congress repealed sections 905 and 906 in the re-enactment of the Department of Transportation Act, Public Law 97-449, Sec. 7(b), 96 Stat. 2443 (January 12, 1983). Since Congress has not acted to renew or extend a minority business enterprise program at FRA and since the authorizing sections have been repealed, FRA has determined that Part 265 can and should be removed from Title 49.

DOT's current nondiscrimination provisions that recipients of FRA funding are still subject to are at 49 CFR parts 21 and 27 and 49 U.S.C. 306, which prohibit discrimination in several railroad financial assistance programs implemented by the FRA.

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. FRA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the actions taken in this final rule represent technical corrections to the regulations and do not involve substantive Agency action.

**II. Regulatory Impact and Notices***Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures*

FRA has determined that this rulemaking action is not significant within the meaning of Executive Order 12866 or the U.S. Department of Transportation's regulatory policies and procedures. It simply repeals an outdated regulation that does not have a statutory foundation.

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980, Public Law 96-354, 5 U.S.C. 601-612, requires a review of rules to assess their impact on small entities. FRA certifies that the repeal of 49 CFR part 265 will not have a significant impact on a substantial number of small entities.

*Paperwork Reduction Act*

This rulemaking contains no reporting requirements that are subject to OMB approval under 5 CFR part 1320, pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

*Federalism Implications*

FRA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132, issued on August 4, 1999, which directs Federal agencies to exercise great care in establishing policies that have federalism implications. See 64 FR 43255. This rule mandating the removal of 49 CFR part 265 will not have a substantial effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among various levels of government. This rule will not have federalism implications that impose any direct compliance costs on State and local governments. In fact, this rule removes a regulation based a long ago repealed statute, which may have had,

but no longer has federalism implications because of its repeal.

*Environmental Impact*

FRA has evaluated this regulation in accordance with its "Procedures for Considering Environmental Impacts" (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that the removal of this regulation is not a major FRA action, and it will have no environmental impact.

*Unfunded Mandates Reform Act of 1995*

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4, 2 U.S.C. 1531), each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." This final rule would not result in the expenditure of any funds, thus preparation of such a statement is not required.

**List of Subjects in 49 CFR part 265**

Civil rights, Railroads, Sex discrimination.

**III. The Final Rule**

■ Under the Department of Transportation Act, Public Law 97-449, Sec. 7(b), 96 Stat. 2443 (January 12, 1983), and as discussed in the preamble, amend 49 CFR, subtitle B, chapter II by removing part 265.

Issued in Washington, DC, on July 8, 2009.

**Joseph C. Szabo,**

*Administrator.*

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 679**

[Docket No. 09100091344-9056-02]

RIN 0648-XQ25

**Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Western Regulatory Area of the Gulf of Alaska**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and