



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 395

[Docket no. FMCSA-2004-19608]

RIN 2126-AB65

Hours of Service of Drivers; Amendment of the 30-Minute Rest Break Requirement

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

ACTION: Final Rule.

SUMMARY: The FMCSA amends its December 27, 2011, final rule entitled “Hours of Service of Drivers” to provide an exception from the 30-minute rest break requirement for short-haul drivers who are not required to prepare records of duty status (RODS).

The Agency also removes regulatory text made obsolete by the passing of the July 1, 2013, compliance date for the final rule. This action responds to a decision of the United States Court of Appeals for the District of Columbia Circuit (the Court).

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

ADDRESSES: For access to the docket to read background documents, including those referenced in this document, go to:

- Regulations.gov, <http://www.regulations.gov>, at any time and insert FMCSA-2004-19608 in the “Keyword” box, and then click “Search.”
- Docket Management Facility, Room W12-140, DOT Building, 1200 New Jersey Avenue, SE, Washington, DC 20590. You may view the docket online by visiting the facility between 9 a.m. and 5 p.m. e.t., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4325.

SUPPLEMENTARY INFORMATION

I. Legal Basis for Rulemaking

The legal basis for the December 27, 2011, final rule (76 FR 81134, at 81140) is fully addressed there; it is also applicable to this rule. This final rule is necessary because of the Court's vacatur of 49 CFR 395.3(a)(3)(ii) as it applies to short-haul drivers operating under 49 CFR 395.1(e)(1)-(2).

While the Administrative Procedure Act (APA) normally requires issuance of a notice of proposed rulemaking (NPRM) and an opportunity for public comment prior to publication of a final rule, the APA provides an exception when an agency "for good cause finds ... that notice and public procedure ... are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). Because this final rule makes only the changes necessary to conform the hours-of-service (HOS) regulations to the Court's decision, FMCSA finds that notice and comment are both unnecessary and contrary to the public interest. For the same reason, the Agency finds good cause pursuant to 49 U.S.C. 553(d)(3) to make this rule effective upon publication.

II. Background Information

On December 27, 2011, FMCSA published a final rule amending its HOS regulations for drivers of property-carrying commercial motor vehicles (CMVs). The final rule included a new provision requiring drivers to take a rest break during the work

day under certain circumstances. Drivers may drive a CMV only if a period of 8 hours or less has passed since the end of their last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the 30-minute break but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. Drivers who already take shorter breaks during the work day could comply with the rule by taking one of the shorter breaks and extending it to 30 minutes. The new requirement took effect on July 1, 2013.

On August 2, 2013, the U.S. Court of Appeals for the District of Columbia Circuit issued its opinion on petitions for review of the 2011 HOS rule filed by the American Trucking Associations, Public Citizen, and others [American Trucking Associations, Inc., v. Federal Motor Carrier Safety Administration, No. 12-1092 (D.C. Cir. Aug. 2, 2013)]. The Court upheld the 2011 HOS regulations in all respects except for the 30-minute break provision as it applies to short haul drivers. While the Court's mandate would not have issued until 52 days after entry of judgment (unless a party files a petition for rehearing, either by the panel or en banc, or moves to stay the mandate pending the filing of a petition for certiorari in the Supreme Court), the Agency ceased enforcement of the 30-minute rest break provision against short-haul operations effective August 5, 2013.

The Agency also requested that its State enforcement partners cease enforcement of the State versions of this provision beginning August 5, 2013, with the understanding that they would not be found in violation of the Motor Carrier Safety Assistance Program (MCSAP) regulations (49 CFR Part 350) for doing so.

III. Impact of Court's Decision

The Court vacated the rest-break requirement of 49 CFR 395.3(a)(3)(ii) with respect to any driver qualified to operate under either of the “short haul” exceptions outlined in 49 CFR 395.1(e)(1) or (2). An introductory clause excluding those drivers has been added to 49 CFR 395.3(a)(3)(ii). Specifically, the following drivers are no longer subject to the 30- minute break requirement:

- All drivers (whether they hold a commercial driver’s license (CDL) or not) who operate within 100 air-miles of their normal work reporting location and satisfy the time limitations and recordkeeping requirements of § 395.1(e)(1).
- All non-CDL drivers who operate within a 150 air-mile radius of the location where the driver reports for duty and satisfy the time limitations and recordkeeping requirements of § 395.1(e)(2).

IV. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA has determined that this action does not meet the criteria for a “significant regulatory action” as specified in Executive Order 12866, as supplemented by Executive Order 13563, or within the meaning of the Department of Transportation regulatory policies and procedures (44 FR 11034, Feb. 26, 1979). While the December 27, 2011, final rule was an economically significant regulatory action, this final rule, as explained above, is necessary to implement the Court’s opinion vacating part of the December 2011 rule. The rule simply codifies the effect of the Court’s decision.

Regulatory Flexibility Act

FMCSA is not required to prepare a final regulatory flexibility analysis for this final rule under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 601, et seq., because the Agency has not issued an NPRM prior to this action. This final rule also complies with the President's memorandum of January 18, 2011, entitled Regulatory Flexibility, Small Business, and Job Creation (76 FR 3827). As explained above, promulgation of this final rule is required by the Court's decision. Additionally, § 395.3(a)(3)(ii), as it applies to short-haul drivers, was vacated approximately one month after it took effect so very little of the costs and benefits of the break requirement for these drivers were ever realized.

Unfunded Mandates Reform Act of 1995

FMCSA is not required to prepare an assessment under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531, et seq., evaluating a discretionary regulatory action because the Agency has not issued an NPRM prior to this action. Further, as addressed above, promulgation of this final rule is required as a result of the Court's decision.

Paperwork Reduction Act

This rule includes no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). It neither increases nor decreases the hours for FMCSA's information collection burden for 49 CFR Part 395, as approved by OMB under Control Number 2126-0001.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined under our environmental procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that the results of this

analysis, and the supporting 2011 hours-of-service environmental assessment, show that this final rule will have no impact on the environment and associated areas FMCSA analyzes within NEPA documents. Thus, FMCSA finds no significant impact to the environment from this action and will not conduct an environmental impact statement.

FMCSA also analyzed this action under section 176(c) of the Clean Air Act (CAA), as amended (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 would result in either no emissions increase, or an increase in emissions that is clearly de minimis.

Executive Order 12372 (Intergovernmental Review of Federal Programs)

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

Executive Order 12630 (Constitutionally Protected Property Rights)

This final rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630.

Executive Order 12898 (Environmental Justice)

This final rule raises no environmental justice issues nor is there any collective environmental impact resulting from its promulgation.

Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

This final rule does not pose an environmental risk to health or safety that may disproportionately affect children.

Executive Order 13132 (Federalism)

A rulemaking has implications for Federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with Executive Order 13132. This final rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications.

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

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

List of Subjects in 49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 395 – HOURS OF SERVICE OF DRIVERS

1. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.73.

2. Revise § 395.3(a)(3)(ii), (c), and (d) to read as follows:

§ 395.3 Maximum driving time for property-carrying vehicles.

(a) * * *

(3) * * *

(ii) Rest breaks. Except for drivers who qualify for either of the short-haul exceptions in § 395.1(e)(1) or (2), driving is not permitted if more than 8 hours have passed since the end of the driver’s last off-duty or sleeper-berth period of at least 30 minutes.

* * * * *

(c)(1) Any period of 7 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1:00 a.m. to 5:00 a.m.

(2) Any period of 8 consecutive days may end with the beginning of an off-duty period of 34 or more consecutive hours that includes two periods from 1:00 a.m. to 5:00 a.m.

(d) A driver may not take an off-duty period allowed by paragraph (c) of this section to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days until 168 or more consecutive hours have passed since the beginning

of the last such off-duty period. When a driver takes more than one off-duty period of 34 or more consecutive hours within a period of 168 consecutive hours, he or she must indicate in the Remarks section of the record of duty status which such off-duty period is being used to restart the calculation of 60 hours in 7 consecutive days or 70 hours in 8 consecutive days.

Issued in Washington, DC on October 22, 2013,
under authority delegated in 49 CFR 1.87.

Anne S. Ferro,
Administrator.

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