



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386 and 390

[Docket No. FMCSA-2012-0377]

RIN 2126-AB57

Coercion of Commercial Motor Vehicle Drivers; Prohibition

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

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

SUMMARY: FMCSA proposes to adopt regulations that prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to operate commercial motor vehicles (CMVs) in violation of certain provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) – including drivers’ hours-of-service limits and the commercial driver’s license (CDL) regulations and associated drug and alcohol testing rules – or the Hazardous Materials Regulations (HMRs). In addition, the NPRM would prohibit anyone who operates a CMV in interstate commerce from coercing a driver to violate the commercial regulations. This NPRM includes procedures for drivers to report incidents of coercion to FMCSA, rules of practice the Agency would follow in response to allegations of coercion, and describes penalties that may be imposed on entities found to have coerced drivers. This proposed rulemaking is authorized by section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) and the Motor Carrier Safety Act of 1984 (MCSA), as amended.

DATES: You may submit comments by [INSERT DATE 90 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by the docket number FMCSA-2012-0377 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>.
- Fax: 1-202-493-2251.
- Mail: Docket Services, 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, 20590 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the “Public Participation and Request for Comments” portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Regulatory Affairs Division, Office of Chief Counsel, (202) 493-0349. FMCSA office hours are from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

FMCSA invites you to participate in this rulemaking by submitting comments and related materials.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2012-0377), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2012-0377” and click the search button. When the new screen appears, click on the blue “Comment Now!” button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket online, go to <http://www.regulations.gov> and in the search box insert the docket number “FMCSA-2012-0377” in the Keyword box and click “Search.” Next, click “Open Docket Folder” and you will find all documents and comments related to the proposed rulemaking. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

C. 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 the DOT Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on December 29, 2010 (75 FR 82132), or you may visit <http://www.gpo.gov/fdsys/pkg/FR-2010-12-29/pdf/2010-32876.pdf>.

II. Executive Summary

Purpose and Summary of the Major Provisions

Congress mandated that FMCSA ensure that any regulations adopted pursuant to the Motor Carrier Safety Act of 1984 (MCSA), as amended the Moving Ahead for Progress in the 21st Century Act (MAP-21), do not result in coercion of drivers by motor carriers, shippers, receivers, or transportation intermediaries. This MAP 21 provision authorizes FMCSA to prohibit these entities from coercing drivers to operate CMVs in

violation of certain provisions of the FMCSRs or the HMRs. That part of the proposed rulemaking is authorized by sec. 32911 of MAP-21. FMCSA proposes to utilize the broad authority of MCSA [49 U.S.C. 31136(A)(1)-(4)] and authorities transferred from the former Interstate Commerce Commission (ICC) under the ICC Termination Act [49 U.S.C. 13301(a)] to prohibit operators of CMVs from coercing drivers to violate certain provisions of the Agency's commercial regulations.

The major provisions of this NPRM include prohibitions of coercion, procedures for drivers to report incidents of coercion to FMCSA, and rules of practice the Agency would follow in response to allegations of coercion.

Benefits and Costs

The FMCSA believes that this rulemaking would not create an economically significant impact. The motor carriers, freight forwarders, brokers and transportation intermediaries that previously engaged in acts of coercion against truck or bus drivers will incur compliance cost to operate in accordance with regulations, and they would lose whatever economic benefit that the coercion had gained them. There would be safety benefits from that increased compliance with regulations and driver health benefits if hours of service violations decreased. By foregoing acts of coercion, the drivers would conduct their safety-sensitive work in a manner consistent with the applicable Federal regulations. During the four-year period from 2009 through 2012, there were 253 OSHA whistleblower complaints with merit and 20 Office of the Inspector General (OIG) investigations concerning acts of coercion by motor carriers. This is an average of 68.25 acts of coercion per year during the four-year period. The Agency estimates it would be

less than the \$100 million threshold required for economic significance under E.O. 12866.

III. Acronyms and Abbreviations

CDL	Commercial Driver's License
CMV	Commercial Motor Vehicle
DOT	Department of Transportation
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
HOS	Hours of Service
HMRs	Hazardous Materials Regulations
ICC	Interstate Commerce Commission
MAP-21	Moving Ahead for Progress in the 21 st Century
MCSA or 1984 Act	Motor Carrier Safety Act of 1984
NAICS	North American Industry Classification System
OIG	Office of Inspector General
OSHA	Occupational Safety and Health Administration
SBA	Small Business Administration
STAA	Surface Transportation Assistance Act of 1982

IV. Legal Basis for this Rulemaking

This proposed rule is based on the authority of the Motor Carrier Safety Act of 1984 (MCSA or 1984 Act) [49 U.S.C. 31136(a)], as amended by the Moving Ahead for Progress in the 21st Century Act (MAP-21) [Pub. L. 112-141, section 32911, 126 Stat. 405, 818, July 6, 2012] and on 49 U.S.C. 13301(a), as amended by the ICC Termination

Act of 1995 (ICCTA) [Pub. L. 104-88 (Dec. 29, 1995) [Pub. L. 104-88, 109 Stat. 803, December 29, 1995].

The 1984 Act confers on the Department of Transportation (DOT) authority to regulate drivers, motor carriers, and vehicle equipment.

At a minimum, the regulations shall ensure that — (1) commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely . . . ; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators [49 U.S.C. 31136(a)].

Section 32911 of MAP-21 enacted a fifth requirement, i.e., that the regulations ensure that “(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 or chapter 313 of this title” [49 U.S.C. 31136(a)(5)].

The 1984 Act also includes more general authority to “(10) perform other acts the Secretary considers appropriate” [49 U.S.C. 31133(a)(10)].

The NPRM includes two separate prohibitions. One would prohibit motor carriers, shippers, receivers, or transportation intermediaries from coercing drivers to violate regulations based on section 31136 (which is the authority for many parts of the FMCSRs), 49 U.S.C. chapter 313 (the authority for the commercial driver’s license (CDL) and drug and alcohol regulations), and 49 U.S.C. chapter 51 (the authority for the hazardous material regulations). This is required by 49 U.S.C. 31136(a)(5).

A second provision would prohibit entities that operate CMVs in interstate commerce from coercing drivers to violate the commercial regulations. As explained

more fully below, this provision is based on the broad general authority of 49 U.S.C. 31136(a)(1)-(4), especially paragraphs (a)(1) and (2). Banning coercion to violate the safety-related commercial regulations is well within the scope of section 31136(a)(1)-(4). Applying the same ban to commercial provisions that are not immediately related to safety is nonetheless consistent with the goals of section 31136 and will help to inhibit the growth of a culture of indifference to regulatory compliance, a culture known to contribute to unsafe CMV operations. Banning coercion to violate the commercial regulations is also within broad authority transferred from the former Interstate Commerce Commission to prescribe regulations to carry out Part B of Subtitle IV of Title 49, U.S.C. 13301(a). This prohibition would apply to operators of CMVs, which are mainly motor carriers, but not to shippers, receivers, or transportation intermediaries, since they are not subject to section 31136(a)(1)-(4) or section 13301.

Together, these two provisions would ensure against most kinds of coercion drivers might encounter.

This proposed rule would also adopt procedures for drivers to report coercion and rules of practice the Agency would follow.

FMCSA believes the reduction of regulatory violations caused by coercion will prove conducive to improved driver health and well-being, consistent with the objectives of section 31136(a)(2)-(4).

Before prescribing any regulations, FMCSA must consider their “costs and benefits” [49 U.S.C. 31136(c)(2)(A) and 31502(d)]. Those factors are discussed in this proposed rule.

V. Background

Section 32911 of MAP-21 is the most recent example of Congress' recognition of the important role the public plays in highway safety. In the 1980s, Congress implemented new financial responsibility requirements for motor carriers of property and passengers to encourage the insurance industry to exercise greater scrutiny over the operations of motor carriers as one method to improve safety oversight (section 30 of the Motor Carrier Act of 1980 (Pub. L. 96-296) and section 18 of the Bus Regulatory Reform Act of 1982 (Pub. L. 97-261)).

Section 32911 of MAP-21 represents a similar congressional decision to expand the reach of motor carrier safety regulations from the supply side (the drivers and carriers traditionally regulated by the Federal government) to the demand side—the shippers, receivers, brokers, freight forwarders, travel groups and others that hire motor carriers to provide transportation and whose actions have an impact on CMV safety.

Economic pressure in the motor carrier industry affects commercial drivers in ways that can affect safety adversely. For years, drivers have voiced concerns that other parties in the logistics chain are frequently indifferent to the operational limits imposed on them by the FMCSRs. Allegations of coercion were submitted in the docket for the 2010-2011 HOS rulemaking.¹ Also, drivers and others who testified at FMCSA listening sessions and before Congress said that some motor carriers, shippers, receivers, tour guides and brokers insist that a driver deliver a load on a schedule that would be impossible to meet without violating HOS or other regulations. Drivers may be pressured to operate vehicles with mechanical deficiencies, despite the restrictions imposed by the safety regulations. Drivers who object that they must comply with the FMCSRs are

¹ See 76 FR 81162

sometimes told to get the job done despite the restrictions imposed by the safety regulations. The consequences of their refusal to do so are either stated explicitly or implied in unmistakable terms: loss of a job, denial of subsequent loads, reduced payment, denied access to the best trips, etc.

Although sec. 32911 of MAP-21 amended 49 U.S.C. 31136(a), it did not amend the jurisdictional definitions in 49 U.S.C. 31132, which specify the reach of FMCSA's authority to regulate motor carriers, drivers, and CMVs. Thus, it appears that Congress did not intend to apply all of the FMCSRs to shippers, receivers, and transportation intermediaries not now subject to those requirements. [Motor carriers, of course, have always been subject to the FMCSRs.] Instead, sec. 32911 prohibited these entities from coercing drivers to violate most of the FMCSRs. This necessarily confers upon FMCSA the jurisdiction over shippers, receivers, and transportation intermediaries necessary to enforce that prohibition.

Although MAP-21 did not address coercion to violate the commercial regulations the Agency inherited in the ICC Termination Act of 1995, FMCSA proposes to adopt such a rule in order to ensure that there is no significant gap in the applicability of the coercion prohibition. As discussed above in the Legal Basis section, the Motor Carrier Safety Act of 1984 gives the Agency broad authority to ensure that CMVs are maintained, equipped, loaded, and operated safely, and that the responsibilities imposed on drivers do not impair their ability to operate CMVs safely [49 U.S.C. 31136(a)(1)-(2)]. Some of the commercial regulations have effects related to safety. Designation of a process agent under 49 CFR part 366 ensures that parties injured in a CMV crash can easily serve legal documents on the carrier operating the CMV, wherever the location of

its corporate offices. Registration as a for-hire motor carrier under 49 CFR part 365, or as a broker under 49 CFR part 371, ensures that an applicant has met the minimum standards for safe and responsible operations. Coercion of drivers to violate requirements such as these could have an effect on their ability to operate CMVs safely, e.g., requiring a driver to operate a vehicle in interstate commerce when the owner had neither obtained operating authority registration from FMCSA nor filed proof of insurance.

The minimum requirement to obtain FMCSA authority to operate as a for-hire motor carrier, freight forwarder, or broker under 49 U.S.C. 13902, 13903, or 13904, respectively, is willingness and ability to comply with “this part and the applicable regulations of the Secretary” Among those “applicable regulations” would be this NPRM’s ban on coercing drivers to violate the commercial regulations. For-hire motor carriers are subject to an even more explicit requirement to observe “any safety regulations imposed by the Secretary” [49 U.S.C. 13902(a)(1)(B)(i)], including proposed § 390.6(a)(2). Moreover, independent of MAP-21, FMCSA has statutory authority under 49 U.S.C. 13301(a), formerly vested in the Interstate Commerce Commission, to prescribe regulations to carry out chapter 139 and the rest of Part B of Subtitle IV of Title 49. The prohibition on coercing drivers to violate the commercial regulations is within the scope of this authority.

Because both of the coercion prohibitions described above are based on 49 U.S.C. 31136(a), codified in subchapter III of chapter 311, violations of those rules would be subject to the civil penalties in 49 U.S.C. 521(b)(2)(A), which provides that

any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act that is a violation of

the regulations issued by the Secretary under subchapter III of chapter 311 (except sections 31138 and 31139²) or section 31502 of this title shall be liable to the United States for a civil penalty in an amount not to exceed \$10,000 for each offense.

The proposed prohibitions on coercion would be issued under subchapter III of chapter 311—namely 49 U.S.C. 31136(a)—and the statutory penalty in sec. 521(b)(2)(A) would therefore be applicable. However, pursuant to the Debt Collection Improvement Act of 1996 [Pub. L. 104-134, title III, chapter 10, sec. 31001(s), 110 Stat. 1321-373], the inflation-adjusted civil penalty per offense would be \$11,000 49 CFR part 386, App. B, Paragraph (a)(3).

VI. FMCSA Proposal

The Agency’s proposal would add § 390.6(a)(1) to 49 CFR part 390. It would prohibit motor carriers, shippers, receivers, and transportation intermediaries from threatening drivers with loss of work or other economic opportunities for refusing to operate a CMV under circumstances that those entities knew, or should have known, would require the driver to violate 49 CFR parts 171-173, 177-180, 380-383, or 390-399, or §§ 385.105(b), 385.111(a), (c)(1), or (g), or 385.415, or 385.421. Section 390.6(a)(2) would prohibit motor carriers from using those threats to compel drivers to operate such vehicles in violation of 49 CFR parts 356, 360, or 365-379.

The standard “knew, or should have known” is essentially a restatement of the common law principle of “respondeat superior,” which holds the “master” (employer) liable for the acts of his “servant” (employee). In most cases, FMCSA holds motor carriers responsible for the actions of their drivers (see, § 390.11). Because a carrier is

² Sections 31138 and 31139 prescribe minimum financial responsibility standards for the transportation of passengers and property, respectively.

responsible for its drivers' compliance with the hours of service (HOS) regulations, it has an affirmative duty before assigning a trip to ensure that the driver has sufficient time left under the HOS rules to complete that run. When a shipper, receiver, or transportation intermediary directs a driver to complete a run within a certain time, it has assumed the role normally reserved to the driver's employer. As such, it may commit coercion if it fails to heed a driver's objection that the request would require him/her to break the rules. The shipper, receiver, or transportation intermediary will not be excused from liability for coercion because it did not inquire about the driver's time remaining or pretended not to hear the objection. When directing the driver's actions, these entities "should have known" whether the driver could complete the run without violating the FMCSRs.

An act of coercion by a carrier, shipper, receiver, or transportation intermediary does not absolve the driver of his responsibility to comply with safety regulations, including the HOS rules. Furthermore, FMCSA's definition of coercion prohibits threats by carriers, shippers, receivers, or transportation intermediaries to withhold future business from a driver for objecting to operate a vehicle in violation of the safety regulations. A threat would not constitute coercion unless the driver objects or attempts to object to the operation of the vehicle for reasons related to the HOS (or other) regulations. FMCSA invites comments on whether – and, if so, how – drivers may modify their interactions with shippers, receivers, and transportation intermediaries in response to this rule.

In cases of coercion, FMCSA could impose a civil penalty not to exceed \$11,000 per offense. In addition, FMCSA is authorized to suspend, amend, or revoke the operating authority registration of a for-hire motor carrier, broker, or freight forwarder for

“willful failure to comply with . . . an applicable regulation or order of the Secretary . . .” [49 U.S.C. 13905(d)]. One of the “applicable regulation[s]” that could trigger the suspension or revocation of operating authority is proposed 49 CFR 390.6. The proposed rule against coercion, of course, would apply as well to private motor carriers that do not need operating authority registration; the only available penalties in that case would be financial.

The Agency has announced plans to conduct a survey of drivers and carriers that addresses the issue of harassment and coercion through the use of electronic logging devices (ELDs) and related technologies (77 FR 74267, May 28, 2013). The Agency will consider the results of the survey as part of its efforts to ensure that the ELD rulemaking does not increase the likelihood of harassment or coercion of drivers, as required by sec. 32301(b) of MAP-21. Today’s rulemaking proposal deals with coercion in a context broader than electronic logging devices. It is important that comments specific to the supplemental NPRM on electronic logging devices, which was published March 28, 2014 (79 FR 17656), are directed to that rulemaking (docket # FMCSA-2010-0167).

The Agency specifically welcomes your comments on what types of coercion are likely to occur. FMCSA believes most allegations of coercion will involve the HOS regulations or vehicle maintenance, but welcomes comments on any kind of coercion that this rule may address.

Motor carriers that operate CMVs must be aware that they may not coerce drivers to violate the commercial regulations specified in § 390.6(a)(2).

There may be some overlap between the anti-coercion provisions of this proposed rule and the employee protection provision of the Surface Transportation Assistance Act

(STAA), administered by the Labor Department (see, 49 U.S.C. 31105, 29 CFR 1978.100, et seq.). STAA and the regulations prohibit, among other things, the discharge or discipline of, or discrimination against, a driver concerning pay or terms or privileges of employment when a driver refuses to operate a vehicle because it violates a U.S. CMV safety or health standard or because the driver has a reasonable apprehension of serious injury to him- or herself or the public as a result of the vehicle's unsafe condition [49 U.S.C. 31105(a)(1)]. If the Labor Department determines that a driver was fired or suffered any adverse action for thus refusing to compromise safety, it can order the employer to reinstate the driver, pay back pay and compensatory damages, pay punitive damages up to \$250,000 where warranted, and take other remedial actions.

The Labor Department's mandate under 49 U.S.C. 31105 is to protect drivers from discharge or other discrimination based on a driver's refusal to violate safety regulations, among other things, and it has broad authority to pursue that goal. FMCSA's mandate is safety. Under sec. 32911 and the broad provisions of the 1984 Act, as amended by MAP-21, FMCSA has a mandate to protect drivers by deterring coercion to violate the FMCSRs but the Agency has no authority to compensate drivers who experience coercion. The remedies available to FMCSA are civil penalties in all cases and the suspension or revocation of operating authority in some cases. A driver who files a complaint about discharge or other discrimination with OSHA may be able to file a complaint about coercion with FMCSA.

Drivers alleging illegal discrimination or discipline under 29 CFR 1978.100, et seq., or coercion under 49 CFR 390.6, bear a substantial burden of proof. Neither OSHA nor FMCSA can proceed without evidence and the driver will have to provide

much of that evidence. The proposed new complaint procedures in 49 CFR 386.12(e) and 390.6(b) allow drivers to present whatever evidence they have to substantiate an allegation of coercion.

Parties that violate the prohibition of coercion would be subject to a maximum civil penalty of \$11,000 per violation. Furthermore, a violation of section 390.6 by a motor carrier would be an acute violation under Appendix B, section VII of part 385, and thus could potentially affect the carrier's safety fitness rating.

In determining the amount of any civil penalty, Congress instructed FMCSA to consider a number of factors, including the nature, circumstances, extent, and gravity of the violation committed, as well as the degree of culpability, history of prior offenses, effect on the ability to continue to do business, and other such matters as justice and public safety may require. Congress instructed FMCSA to calculate each penalty to induce further compliance [49 U.S.C. 521(b)(2)(D)]. Congress, however, entrusted FMCSA with the responsibility to ensure motor carriers operate safely by imposing penalties designed to ensure prompt and sustained compliance with safety laws (section 222 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Pub. L. 106-159, 113 Stat. 1769, Dec. 9, 1999, 49 U.S.C. 521 note]).

VII. Section-by-Section Description

A. Part 385

The rule would make § 390.6(a)(1) and (2) "acute" regulations in section VII of Appendix B to 49 CFR part 385.

B. Part 386

Section 386.1, “Scope of the rules in this part,” would be amended by adding a new paragraph (c) referring to the filing and handling of coercion complaints under new § 386.12(e).

The title of § 386.12 would be changed to “Complaint of substantial violation,” which is the subject of that section. A new § 386.12(e), “Complaint of coercion,” would be added. The procedures to file and handle coercion complaints would be essentially the same as those for substantial violations, except that the complaint would be filed with the FMCSA Division Administrator of the State where the driver was when the alleged coercion occurred.

C. Part 390

Section 390.3(a) would be amended to include a reference to the coercion provisions in § 386.12(e) and § 390.6, and describe the applicability of those provisions.

Section 390.5 would be amended to add definitions of “Coerce or coercion,” “Receiver or consignee,” “Shipper,” and “Transportation intermediary.” The definitions of “Receiver or consignee,” “Shipper,” and “Transportation intermediary” would make these entities subject to the prohibition on coercion in § 390.6 only when shipping, receiving or arranging transportation of property (and in the case of “transportation intermediaries,” passengers) in interstate commerce. Although the term “transportation intermediary” is commonly associated with brokers and freight forwarders, it also includes travel agents and similar entities that arrange group tours or trips and contract with motorcoach operators for transportation services. Such intermediaries and their agents are subject to the prohibition on coercion. Because the hazardous materials regulations apply to transportation in intrastate commerce, the definitions make clear that

the prohibition on coercion applies to parties that ship, receive, or arrange transportation of hazardous materials in interstate or intrastate commerce.

Section 390.6(a)(1) would be added to prohibit motor carriers, shippers, receivers, or transportation intermediaries, or the agents, officers, or representatives of such entities, from coercing drivers to operate CMVs in violation of 49 CFR parts 171-173, 177-180, 380-383, or 390-399, or §§ 385.105(b), 385.111(a), (c)(1), or (g), 385.415, or 385.421. These parts correspond to the statutory language in 49 U.S.C. 31136(a)(5). Parts 171-173 and 177-180 are the hazardous materials regulations applicable to highway transportation that were promulgated under 49 U.S.C. chapter 51. Parts 382-383 are the commercial driver's license (CDL) and drug and alcohol testing regulations promulgated under 49 U.S.C. chapter 313. Parts 390-399 are those portions of the FMCSRs adopted under the authority (partial or complete) of 49 U.S.C. 31136(a). The other parts or sections listed are based on one or more of the statutes referenced in 49 U.S.C. 31136(a)(5).

Section 390.6(a)(2) would be added to prohibit operators of CMVs or their agents, officers, or representatives, from coercing drivers to violate 49 CFR parts 356, 360, or 365-379. This subsection is based on the authority of 49 U.S.C. 31136(a)(1)-(4) and 49 U.S.C. 13301(a).

Section 390.6(b) would describe the procedures for a driver to file a complaint of coercion with FMCSA.

VIII. Regulatory Analyses

E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined preliminarily that this proposed rule is a significant regulatory action under E. O. 12866 (58 FR 51735, October 4, 1993), as supplemented by

E. O. 13563 (76 FR 3821, January 21, 2011), and significant within the meaning of the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). The estimated economic costs of the proposed rule would not exceed the \$100 million annual threshold (as explained below). The Agency expects the proposed rule to have substantial congressional and public interest because it would potentially impose civil penalties on entities not previously subject to the Agency's jurisdiction (shippers, receivers, and transportation intermediaries).

This NPRM would prohibit motor carriers, shippers, receivers and transportation intermediaries from threatening drivers who refuse to operate a CMV under certain circumstances with loss of employment, future business, or other economic harm. Additionally, it would prohibit operators of CMVs from making the same threats to induce drivers to violate 49 CFR parts 356, 360, or 365-379. FMCSA is proposing to add to Appendix B in 49 CFR part 385 new paragraphs that would define § 390.6(a)(1) and (2) as acute regulations with respect to motor carriers.

Extent of Economic Impact

The 1982 Surface Transportation Assistance Act (STAA) includes whistleblower protections for motor carrier employees (49 U.S.C. 31105). OSHA, which administers the complaint process created by Section 31105, received 1,158 complaints between FY 2009 and FY 2012.³ OSHA found that 253 of them (22 percent) had merit.⁴ Between FY 2009 and FY 2012, the OIG hotline received 91 complaints alleging that motor carriers had coerced or retaliated against drivers. FMCSA determined that 20 of these

³U.S. Department of Labor, Occupational Safety & Health Administration (OSHA), Whistleblower Protection Program: Investigative Data Fact Sheets. Available at http://www.whistleblowers.gov/wb_data_FY05-12.pdf

⁴ Ibid., Footnote 3

complaints had merit.⁵ The average number of verified complaints for that 4-year period was therefore 68.25 per year [$253 + 20 / 4 = 68.25$].

Some unknown portion of the 253 complaints filed with OSHA during that period almost certainly dealt with coercion or similar actions. Even if all of them were coercion-related, this number – combined with the 20 substantiated complaints filed with the OIG – remains small compared to the total population of CMV drivers. Section 31105, however, applies only to employers (basically motor carriers) while this rule would also cover shippers, receivers, and transportation intermediaries. The Agency is unable to estimate the number of coercion allegations it may receive, whether triggered by actions of motor carriers or other entities made subject to this rule by MAP-21.

In view of the small number of coercion-related complaints filed with OSHA and DOT's OIG, the aggregate economic value to motor carriers of these coercion-related incidents is likely to be low. Therefore, the cost to carriers of eliminating those incidents – assuming the proposed rule has that effect – and incurring the higher costs of compliance, would also be low. We believe that the application of this rule to shippers, receivers, brokers, freight forwarders, and other transportation intermediaries will not significantly increase the number of coercion complaints, since drivers generally have more frequent and direct contacts with their employers than with these other parties. In addition, even though the rule applies to a larger population, FMCSA also notes that the rule should have a chilling effect on entities considering coercion.

⁵ U.S. Department of Transportation, Office of the Inspector General (OIG). This averaged 23 complaints per year, (with 44 in 2010), which the OIG referred to FMCSA. FMCSA substantiated 20 complaints (22 percent) of violations of acute and critical regulations due to driver allegations of unlawful discrimination or discipline (*See* 29 CFR 1978.100 *et seq.*). Available at <http://www.oig.dot.gov/Hotline>

The roughly 68 annual complaints estimated above is the only available estimate of coercion in the trucking industry now. This rule would be expected to reduce the amount of coercion that takes place, but there is no available measure of the effectiveness of the rule. The relatively low number of complaints suggests that the overall economic impact will be small, and less than the \$100 million threshold of economic significance under E.O. 12866.

Benefits

If coercion creates situations where CMVs are operated in an unsafe manner, then there are consequences of safety and driver health risks. By forcing drivers to operate mechanically unsafe CMVs or drive beyond their allowed hours, coercion increases the risk of crashes. Reduction of these behaviors because of this rule would generate a safety benefit. Additionally, the operation of CMVs beyond HOS limits has been shown to have negative consequences for driver health. A reduction of this practice would create an improvement in driver health.

Costs

This rule, as an enforcement measure, would impose compliance costs on carriers and other business entities in the trucking industry. If drivers now operate CMVs in violation of hours of service rules, or if coercion had caused drivers with mechanical defects, carriers would potentially have to reorganize their schedules or hire new drivers to operate in compliance. Maintenance and other costs might also increase as a result of this rule. Additionally, the entities that practice coercion would lose the economic benefit of that coercion. This economic benefit could be time-related (if drivers are coerced into

driving when they should stop and rest, stop and wait for CMV maintenance, or drive a vehicle they are not qualified to operate rather than wait for a qualified driver).

Drivers alleging coercion will have to provide a written statement describing the incident along with evidence to support their charges. This total paperwork burden is difficult to estimate but is not likely to be very large. Similarly the Agency believes that the investigation of those claims deemed to have merit will not have a large cost.

If, as a result of this rule, shippers, receivers, and transportation intermediaries begin to inquire about drivers' available hours under the HOS rules when they had not previously done so, there may be additional costs to those parties that FMCSA has not calculated and cannot estimate. The Agency invites comments and solicits information on this question.

Summary

The Agency does not believe that the benefits and costs of this rule would create a large economic impact. The safety benefits and compliance costs are likely to be very small due to the small number of expected cases each year. Therefore, the Agency believes that the proposed rule will not be economically significant. FMCSA welcomes the submission of any relevant comments, data, or other materials. This proposed rule has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of their regulatory actions on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned

and operated and are not dominant in their fields, as well as governmental jurisdictions with populations of less than 50,000.⁶ Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on a substantial number of small entities. As indicated above, OSHA found merit in only 253 complaints filed over a 4-year period, or about 63 per year. Even if all of the complaints were classified as coercion-related, that number would be very small when compared to the size of the driver population and motor carrier industry.

The Small Business Administration (SBA) classifies businesses according to the average annual receipts. The SBA defines a “small entity” in the motor carrier industry [i.e., general freight truck transportation, subsector 484 of the North American Industry Classification System (NAICS)] as having revenues of less than \$25.5 million⁷ per firm. Likewise, transportation intermediaries (i.e., subsector 488 of NAICS) which include brokers and freight forwarders, are classified as small if their annual revenue is under \$14 million⁸.

⁶ Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) see National Archives at <http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html>

⁷ U.S. Small Business Administration Table of Small Business Size Standards matched to North American Industry Classification System Codes (NAICS), effective January, 2012. See NAIC subsector 484 (Truck Transportation) and 488 Support Activities for Transportation).

⁸The Small Business Administration increased the annual revenue small business threshold for passenger carriers from \$7 million to \$14 million in a final rule titled, “Small Business Standards: Transportation and Warehousing (77 FR 10943, February 24, 2012).

Table 1 presents a breakdown of FMCSA’s revenue estimates for the populations in various categories. By SBA standards, the vast majority of all businesses in the motor carrier and related industries are “small entities.” Although general freight transportation arrangement firms fall under the \$14 million threshold, there is an exception for “non-vessel household goods forwarders.” This exception stipulates that the revenue threshold, for this sub-set of freight forwarders in the trucking industry is \$25.5 million. As indicated in the above, fewer than 70 coercion complaints per year have been filed with OSHA and FMCSA in the past few years. We have no reason to believe that number will increase significantly under the rule. In fact, the potential penalty for coercing a driver should have a deterrent effect. Even if the penalty assessed might have a “significant economic impact”, the limited number of recent coercion complaints suggests that the penalty would not affect “a substantial number of small entities” given that there are nearly 500,000 firms in the industry that qualify as small entities.

This rule does not affect industry productivity by requiring new documentation, affecting labor productivity or availability, or increased expenditures on maintenance or new equipment. The fines that are the only impact can be avoided by not coercing drivers into violating existing regulations. Furthermore, by regulation, the Agency’s fines are usually subject to a maximum financial penalty limit of 2 percent of a firm’s gross revenue. For the vast majority of small firms, a fine at this level would not be “significant” in the sense that it would jeopardize the viability of the firm.

The table below excludes shippers and receivers subject to the prohibition on coercion, a group which is a large portion of the entire U.S. population, because anyone who sends or receives a package would be considered a shipper or receiver. However,

compliance with its prohibition on coercion of drivers is not expected to have significant economic impact on many of them. Consequently, because they are not expected to be in a position to coerce a driver, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

Table 1. Total Number of Entities and Determination, 2012		
Type of Entity	Number	Determination
Motor carriers (property)	519,558 ⁹	99% below 25.5 million ¹⁰
Motor carriers (passenger)	27,666	99% below \$14 million ¹¹
Freight forwarders	21,809 ¹²	97% below \$25.5 million
Property brokers	21,565	99% below \$25.5 million

Source: Motor carrier property, passenger, and property broker numbers provided by FMCSA's, CMV facts sheet March 2013. Available at <http://www.fmcsa.dot.gov/documents/facts-research/CMV-Facts.pdf>. Freight Forwarder source in footnote below.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Charles Medalen, listed in the **For Further Information Contact** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who

⁹ Includes interstate motor carriers and intrastate hazardous materials motor carriers.

¹⁰ The results show that 99 percent of all carriers with recent activity have 148 PUs or fewer.

The SBA increased the annual revenue small business threshold for passenger carriers from \$7 million to \$14 million in a final rule titled, "Small Business Standards: Transportation and Warehousing. (77 FR 10943, February 24, 2012).

This based on a supposition that a passenger carrying CMV generates annual revenues of \$150,000. The analysis concluded that passenger carriers with 93 PUs or fewer ($\$14 \text{ million} / \$150,000 / \text{PU} = 93.3 \text{ PUs}$)

¹² U.S. Department of Commerce, U.S. Census Bureau: 2007 Economic Census – Transportation and Warehousing Available at <https://www.census.gov/econ/industry/hierarchy/i488510.htm> for NAICS code 4885

enforce or otherwise determine compliance with Federal regulations to the SBA's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, et seq.), that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$143.1 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rulemaking has implications for Federalism under section 1(a) of E.O. 13132 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 E.O. 13132. This proposed 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. FMCSA has determined that this proposal would not have substantial direct costs on or for States nor would it limit the policymaking discretion of States. Accordingly, this rulemaking does not have Federalism implications.

E.O. 12988 (Civil Justice Reform)

This proposed rule meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a Privacy Impact Assessment (PIA) of a regulation that

will affect the privacy of individuals. In accordance with this Act, a privacy impact analysis is warranted to address the collection of personally identifiable information contemplated in the proposed Coercion rulemaking. The Agency submitted a Privacy Threshold Assessment analyzing the proposed collection of personal information to the Department of Transportation, Office of the Secretary's Privacy Office.

For the purposes of both transparency and efficiency, the privacy analysis will take the form of the DOT standard Privacy Impact Assessment (PIA) and will be published on the DOT website at www.dot.gov/privacy concurrently with the publication of the NPRM. The PIA will address the rulemaking, associated business processes contemplated in the proposed rule and any information known about the systems or existing systems to be implemented in support of the final rulemaking. The PIA will be reviewed, and revised as appropriate, to reflect the Final Rule and will be published not later than the date on which the Department initiates any of the activities contemplated in the Final Rule determined to have an impact on individuals' privacy and not later than the date on which the system (if any) supporting implementation of the Final Rule is updated.

Per the Privacy Act, FMCSA will publish a system of records notice (SORN) in the Federal Register not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the OMB for each collection of information they conduct, sponsor, or require through regulations. There is no information collection requirement with this proposed rule.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.). FMCSA conducted an environmental assessment and determined that the rule has the potential for minor environmental impacts. Based on the limited data FMCSA has concerning the extent of the CMV driver population, these impacts would be very small and FMCSA does not expect any significant impacts to the environment from the proposals in this rule. The environmental assessment has been placed in the rulemaking docket. FMCSA requests comments on this assessment.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401 et seq.) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. The additional contributions to air emissions from any of the alternatives are expected to fall below the CAA de minimis thresholds as per 40 CFR 93.153 and are, therefore, not expected to be subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this proposed rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were “disproportionate” and “high and adverse impact” on minority or low-income populations. None of the alternatives analyzed in the Agency’s EA, discussed under National Environmental Policy Act, would result in high and adverse environmental impacts.

E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects

49 CFR Part 385

Administrative practices and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 386

Administrative practice and procedures, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, FMCSA proposes to amend parts 385, 386 and 390 in 49 CFR chapter III, subchapter B, as follows:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is amended to read as follows:

AUTHORITY: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901-13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88; Sec. 350, Pub. L. 107-87; and 49 CFR 1.81, 1.81a and 1.87.

2. Amend the list of acute and critical regulations in section VII of Appendix B to part 385 by adding two entries for § 390.6 in numerical order to read as follows:

APPENDIX B TO PART 385—EXPLANATION OF SAFETY RATING PROCESS

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 390.6(a)(1) Coercion of a driver by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of 49 CFR parts 171-173, 177-180, 380-383 or 390-399, or §§ 385.105(b), 385.111(a), (c)(1), or (g), 385.415, or 385.421 (acute).

§ 390.6(a)(2) Coercion of a driver by the operator of a commercial motor vehicle to operate that vehicle in violation of 49 CFR parts 356, 360, or 365-379 (acute).

* * * * *

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

3. The authority citation for part 386 continues to read as follows:

AUTHORITY: 49 U.S.C. 113, chapters 5, 51, 131-141, 145-149, 311, 313, and 315; Sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105-159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106-159, 113 Stat.1763; subtitle B, title IV of Pub. L. 109-59; and 49 CFR 1.81 and 1.87.

4. Revise the heading of part 386 as set forth above.

5. Amend § 386.1 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 386.1 Scope of the rules in this part.

(a) Except as indicated in paragraph (c) of this section, the rules in this part govern proceedings before the Assistant Administrator, who also acts as the Chief Safety Officer of the Federal Motor Carrier Safety Administration (FMCSA), under applicable provisions of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR parts 350-399), including the commercial regulations (49 CFR parts 360-379), and the Hazardous Materials Regulations (49 CFR parts 171-180).

* * * * *

(c) The rules in § 386.12(e) govern the filing by a driver and the handling by the appropriate Division Administrator of complaints of coercion in violation of § 390.6 of this subchapter.

6. Amend § 386.12 as follows:

- a. Revise the section heading;
- b. Add and reserve paragraph (d); and
- c. Add a new paragraph (e).

§ 386.12 Complaint of substantial violation.

* * * * *

(d) [Reserved]

(e) Complaint of coercion. (1) A driver alleging a violation of § 390.6(a)(1) or (2) of this subchapter must file a written complaint of coercion within 60 days after the event with the FMCSA Division Administrator for the State where the incident occurred or where the party alleged to have coerced the driver has its principal place of business. Allegations brought to the attention of other officials in the Agency through letter, e-mail, social media, phone call, or other means will be referred to the Division Administrator for

the principal place of business of the entity alleged to have coerced the driver. Delays involved in transferring the allegation to the appropriate Division Administrator do not stay the 60-day period for filing a written complaint. Each complaint must be signed by the driver and must contain:

(i) The driver's name, address, and telephone number;

(ii) The name and address of the person allegedly coercing the driver;

(iii) The specific provisions of the regulations that the driver alleges he or she was coerced to violate; and

(iv) A concise but complete statement of the facts relied upon to substantiate each allegation of coercion, including the date of each alleged violation.

(2) Action on complaint of coercion. Upon the filing of a complaint of coercion under paragraph (e)(1) of this section, the appropriate Division Administrator shall determine whether the complaint is non-frivolous and meets the requirements of paragraph (e)(1) of this section. If the Division Administrator determines that the complaint is non-frivolous and meets the requirements of paragraph (e)(1) of this section, he/she shall investigate the complaint. The complaining driver shall be timely notified of findings resulting from such investigation. The Division Administrator shall not be required to conduct separate investigations of duplicative complaints. If the Division Administrator determines the complaint is frivolous or does not meet the requirements of paragraph (e)(1) of this section, he/she shall dismiss the complaint and notify the driver in writing of the reasons for such dismissal. If after investigation the Division Administrator determines that a violation has occurred, the Division Administrator may issue a Notice of Violation under § 386.11(b) or a Notice of Claim under § 386.11(c).

(c) Because prosecution of coercion in violation of § 390.6 of this subchapter will require disclosure of the driver's identity, the Agency shall take every practical means within its authority to ensure that the driver is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;

GENERAL

7. Revise the authority citation for part 390 to read as follows:

AUTHORITY: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744), sec. 4136, Pub. L. 109-59, 119 Stat. 114, 1745; and 49 CFR 1.81, 1.81a and 1.87.

8. Revise § 390.3(a) to read as follows:

§ 390.3 General applicability.

(a)(1) The rules in subchapter B of this chapter are applicable to all employers, employees, and commercial motor vehicles, which transport property or passengers in interstate commerce.

(2) The rules in 49 CFR 386.12(e) and 390.6 prohibiting the coercion of drivers of commercial motor vehicles operating in interstate commerce:

(i) To violate certain safety regulations are applicable to all motor carriers, shippers, receivers, and transportation intermediaries; and

(ii) To violate certain commercial regulations are applicable to all operators of commercial motor vehicles.

* * * * *

9. Amend § 390.5 by adding definitions of “Coerce or Coercion,” “Receiver or cosignee,” “Shipper,” and “Transportation intermediary,” in alphabetical order, to read as follows:

§ 390.5 Definitions.

* * * * *

Coerce or Coercion means either—

(1) A threat by a motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers or representatives, to withhold, or the actual withholding of, current or future business, employment, or work opportunities from a driver for objecting to the operation of a commercial motor vehicle under circumstances which the motor carrier, shipper, receiver, or transportation intermediary, or their respective agents, officers, or representatives, knew, or should have known, would require the driver to violate 49 CFR parts 171-173, 177-180, 380-383, or 390-399, or §§ 385.105(b), 385.111(a), (c)(1), or (g), 385.415, or 385.421; or

(2) A threat by a motor carrier, or its agents, officers or representatives, to withhold, or the actual withholding of, current or future business, employment, or work opportunities from a driver for objecting to the operation of a commercial motor vehicle, or to taking other action or to the failure to act, under circumstances which the motor carrier, or its agents, officers or representatives knew, or should have known would require the driver to violate 49 CFR parts 356, 360, or 365-379.

* * * * *

Receiver or consignee means a person who takes delivery from a motor carrier or driver of a commercial motor vehicle of property transported in interstate commerce or hazardous materials transported in interstate or intrastate commerce.

* * * * *

Shipper means a person who tenders property to a motor carrier or driver of a commercial motor vehicle for transportation in interstate commerce, or who tenders hazardous materials to a motor carrier or driver of a commercial motor vehicle for transportation in interstate or intrastate commerce.

* * * * *

Transportation intermediary means a person who arranges the transportation of property or passengers by commercial motor vehicle in interstate commerce, or who arranges the transportation of hazardous materials by commercial motor vehicle in interstate or intrastate commerce, including but not limited to brokers and freight forwarders.

* * * * *

10. Add a new § 390.6 to read as follows:

§ 390.6 Coercion prohibited.

(a) Prohibition. (1) A motor carrier, shipper, receiver, or transportation intermediary, including their respective agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 171-173, 177-180, 380-383 or 390-399, or §§ 385.105(b), 385.111(a), (c)(1), or (g), 385.415, or 385.421;

(2) A motor carrier or its agents, officers, or representatives, may not coerce a driver of a commercial motor vehicle to operate such vehicle in violation of 49 CFR parts 356, 360, or 365-379.

(b) Complaint process. (1) A driver who believes he or she was coerced to violate a regulation described in paragraph (a)(1) or (2) of this section may file a written complaint under § 386.12(e) of this subchapter.

(2) A complaint under paragraph (b)(1) of this section shall describe the specific action that the driver claims constitutes coercion and identify the specific regulation the driver was coerced to violate.

(3) A complaint under paragraph (b)(1) of this section may include any supporting evidence that will assist the Division Administrator in determining the merits of the complaint.

Issued under the authority of delegation in 49 CFR 1.87: May 5, 2014.

Anne S. Ferro,
Administrator.

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