



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 392

[Docket No. FMCSA-2015-0396]

RIN 2126-AB87

Driving of Commercial Motor Vehicles: Use of Seat Belts

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

ACTION: Notice of Proposed Rulemaking (NPRM), request for comments.

SUMMARY: FMCSA proposes to revise the Federal Motor Carrier Safety Regulations (FMCSRs) by requiring that passengers in property-carrying commercial motor vehicles (CMVs) use the seat belt assembly whenever the vehicles are operated on public roads. This rule would hold motor carriers and drivers responsible for ensuring that passengers riding in the CMV are also using the seat belts required by the Federal Motor Vehicle Safety Standards (FMVSSs).

DATES: You may submit comments by **[INSERT DATE 45 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments to the rulemaking docket should refer to Docket ID Number FMCSA-2015-0396- or RIN 2126-AB87 and be submitted to the Administrator, Federal Motor Carrier Safety Administration using any of the following methods:

- **Federal eRulemaking Portal:** <http://www.regulations.gov>.
- **Fax:** 1-202-493-2251.
- **Mail:** Docket Management Facility (M-30), 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: Charles A. Horan, Director; Carrier, Driver, and Vehicle Safety Standards, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590-0001 or by telephone at (202) 366-5370. FMCSA office hours are from 9 a.m. to 5 p.m., e.t. Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

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.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA-2015-0396), 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 click on the “Submit a Comment” box, which will then become highlighted in blue. In the “Document Type” drop down menu, select “Rules,” insert “FMCSA-2015-0396” in the “Keyword” box, and click “Search.” When the new screen appears, click on “Submit a Comment” in the “Actions” column. 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.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to <http://www.regulations.gov> and click on the “Read Comments” box in the upper right hand side of the screen. Then, in the “Keyword” box insert “FMCSA-2015-0396” and click “Search.” Next, click the “Open Docket Folder” in the “Actions” column. Finally, in the “Title” column, click on the document you would like to review. If you do not have access to the Internet, you

may view the docket online by visiting the Docket Management Facility 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.

Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. EXECUTIVE SUMMARY

Purpose and Summary of the Major Provisions

Section 393.93(b)(2)-(3) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 393.93) requires every truck and truck tractor manufactured after the early 1970s to comply with the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) 208 (49 CFR 571.208), relating to the installation of seat belt assemblies, as well as FMVSS 210, dealing with the installation of seat belt assembly anchorages, and FMVSS 207, addressing seating systems more generally. Under FMVSS 208, trucks and multipurpose passenger vehicles with a GVWR of more than 10,000 pounds manufactured on or after September 1, 1990, are allowed by S4.3.2.1 an option to comply by providing a "complete passenger protection system," but nearly all CMV manufacturers choose the second compliance option (S4.3.2.2) and install a "belt system." This second option requires a seat belt assembly "at each designated seating position." In short, the FMVSS and FMCSRs require seat belts at every seating position in a CMV. In addition, 49 CFR 392.16 requires that a

property-carrying CMV which has a seat belt assembly installed at the driver's seat shall not be driven unless the driver has properly restrained himself or herself with the seat belt assembly. FMCSA proposes to require that passengers riding in property-carrying CMVs also use their seat belts when the vehicle is operated on public roads.

Benefits and Costs

As indicated above, NHTSA requires vehicle manufacturers to install driver and passenger seat belts in large trucks. FMCSA already requires drivers to use their seat belts. However, the FMCSRs are silent on the use of seat belts by passengers. This NPRM would require every passenger to use a seat belt, if one was installed. The cost would be the value of the person's time necessary to buckle the safety belt, which is negligible. The benefits of this rule would be any fatalities or injuries avoided as a result of seat belt use; these benefits are discussed later.

III. LEGAL BASIS FOR THE RULEMAKING

This NPRM is based on the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act (49 U.S.C. 31502), authorizes FMCSA to prescribe requirements for the safety of operation and equipment standards of for-hire and private motor carriers. This NPRM is directly related to safe motor carrier operations. The 1984 Act (49 U.S.C. 31136) required FMCSA to adopt regulations to ensure, among other things, that "commercial motor vehicles are maintained, equipped, loaded, and operated safely" (§ 31136(a)(1)). This proposal would increase the safety, not only of passengers, but also of CMV drivers whose control of the vehicle would not be affected by unsecured passengers potentially thrown about the cab as a result of emergency steering or braking maneuvers. A 2012 amendment to the 1984 Act requires FMCSA to ensure that CMV drivers are not coerced to violate certain provisions of

the FMCSRs (§ 31136(a)(5)). Given the obvious value of this proposal, and the ease of compliance, the Agency believes that no one will be coerced *not* to wear a seat belt. It should be noted that the 1985 Act also authorizes FMCSA to “perform any other acts [the Agency] considers appropriate” (49 U.S.C. 31133(a)(1)), which clearly covers this common sense NPRM.

IV. BACKGROUND

This rulemaking responds to a petition submitted by the Commercial Vehicle Safety Alliance (CVSA) on October 29, 2013 (available in the docket to this rulemaking). CVSA requested that FMCSA require all occupants in a property-carrying CMV to restrain themselves when it is being driven. The petition referred to data available from the Agency’s Report to Congress on the Large Truck Crash Causation Study (available at <http://www.fmcsa.dot.gov/research-and-analysis/research/large-truck-crash-causation-study>).

V. DISCUSSION OF THE PROPOSED RULE

Under this proposal the requirements of 49 CFR 392.16 would be revised to include requirements for seat belt usage by passengers in property-carrying CMVs. FMCSA proposes to revise the FMCSRs to prohibit the driving of a property-carrying CMV unless the driver and all other occupants have fastened their seat belts, if the vehicle is equipped with such belts.

Today’s proposal responds to CVSA’s petition, but has slightly modified some of the petitioner’s requests. FMCSA has used the word “occupant” in addition to “passenger” to make clear that the regulation would apply to any person in the property-carrying CMV. “Occupants” would include instructors, evaluators, or any other personnel who might be seated in a property-carrying CMV, regardless of their status. FMCSA also proposes this requirement be applicable only if there is a seat belt assembly installed in the property-carrying CMV.

FMCSA recognizes that section 392.60 prohibits the use of a CMV to transport

unauthorized passengers. Nevertheless, we believe today's rule fills an important safety gap by requiring the use of safety belts when the passenger seat is used by team drivers or other authorized individuals.

VI. REGULATORY ANALYSES

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

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is "significant," and therefore subject to OMB review and the requirements of the E.O. The Order defines "significant regulatory action" as one likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The proposals contained in this document would not result in

an annual effect on the economy of \$100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy.

According to data from NHTSA's Fatality Analysis Reporting System, available in the docket for this rulemaking, in 2013, 348 non-driver occupants were in the truck at the time the vehicle was involved in a fatal crash and were wearing a lap or shoulder belt. Seventeen of those non-driver occupants were killed in the crash. Also in 2013, 122 non-driver occupants of large trucks were involved in fatal crashes and were not wearing a lap and or shoulder belt; of these, 30 were killed. Sixteen of the 30 were totally or partially ejected from the truck. The fatality rate was thus far lower among passengers who wore seat belts. FMCSA believes that some of these fatalities could have been prevented if this regulation had been in place.

While all States but one have seat belt laws, failure to use a belt may be either a primary or secondary offense and may not apply to a truck passenger; furthermore, there may be differences in the weight threshold at which the law applies. Therefore, adopting a Federal rule applicable to non-driver occupants of CMVs, as defined in 49 CFR 390.5, will provide a uniform national standard. To maintain eligibility for Motor Carrier Safety Assistance Program grants, States would be required to adopt compatible seat belt rules for non-driver occupants within 3 years of FMCSA's publication of a final rule.

Admittedly, FMCSA does not know how many trucks carry passengers, or how many of those passengers fail to use existing seat belts. However, given that the only cost of the proposal is the negligible amount of time needed for occupants to buckle their seat belts, the rule would obviously benefit motor carrier employees and passengers. Seat belts have been proven to save lives, and while the specific number of CMV-related fatalities that could be avoided is unclear,

FMCSA believes motor carriers' and drivers' compliance with a final rule requiring the use of seat belts by non-driver occupants would save lives.

The Agency believes the potential economic of this NPRM impact is positive, because it is likely that some lives will be saved at a cost that would not begin to approach the \$100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest. This proposed rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) requires Federal agencies to consider the effects of the regulatory action 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 and governmental jurisdictions with populations of less than 50,000. 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 (Title II, Pub. L. 104-121, 110 Stat. 857, March 29, 1996), FMCSA does not expect the proposed rule to have a significant economic impact on a substantial number of small entities. FMCSA believes the cost is minimal and poses no disproportionate burden to small entities.

Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the

public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

Under 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 them 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 listed in the **For Further Information Contact** section of the proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration'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.

C. 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 would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$155 million (which is the value of \$100 million in 1995 after adjusting for inflation to 2014) or more in any 1 year.

D. Executive Order 12988 (Civil Justice Reform)

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

E. Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. The Agency determined that this proposed rule will not create an environmental risk to health or safety that may disproportionately affect children.

F. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this notice of proposed rulemaking in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not affect a taking of private property or otherwise have taking implications.

G. Executive Order 13132 (Federalism)

A rule has Federalism implications 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 the States. FMCSA has analyzed this proposed rule under Executive Order 13132 and determined that it does not have Federalism implications.

H. Executive Order 12372 (Intergovernmental Review)

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

I. Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

J. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. No new information collection requirements are associated with this NPRM.

K. 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.) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The CE under paragraph 6(b) addresses regulations concerning vehicle operation safety standards. A Categorical Exclusion Determination is available for inspection or copying in the [Regulations.gov](https://www.regulations.gov) Web site listed under ADDRESSES.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (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 does not affect direct or indirect emissions of criteria pollutants.

L. Executive Order 12898 (Environmental Justice)

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

M. Executive Order 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a “significant energy action” under that executive order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under Executive Order 13211.

N. E-Government Act of 2002

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. FMCSA has not completed an assessment of the handling of PII in connection with today’s proposal because the NPRM does not involve PII.

O. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt its own technical standards, there is no need to submit a separate statement to OMB on this matter.

P. 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 of a regulation that will affect the privacy of individuals. This rule would not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. This proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

List of Subjects

49 CFR Part 392

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

PART 392--DRIVING OF COMMERCIAL MOTOR VEHICLES

1. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103– 311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112–141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

2. Revise § 392.16 to read as follows:

§ 392.16 USE OF SEAT BELTS

(a) Drivers. No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, which has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly.

(b) Passengers. No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, which has seat belt assemblies installed at the seats for other occupants of the vehicle unless all other occupants are properly restrained by such seat belt assemblies.

Issued under the authority of delegation in 49 CFR 1.87 on: December 2, 2015.

T.F. Scott Darling, III,
Acting Administrator.

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