



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 390

[Docket No. FMCSA-2012-0103]

RIN 2126-AB90

Lease and Interchange of Vehicles; Motor Carriers of Passengers

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

ACTION: Final rule; extension of compliance date.

SUMMARY: FMCSA extends the compliance date by which motor carriers of passengers operating CMVs under a lease or interchange agreement are subject to the FMCSA final rule published May 27, 2015, for one year, to January 1, 2018. The Agency received numerous petitions for reconsideration of the final rule and based upon a review of the petitions, determined that the compliance date should be extended to provide sufficient time to address the issues raised by the petitioners. The Agency is adding a temporary section to its regulations to inform the public of this extension. There will no longer be a need for the section on the compliance date after January 1, 2018, thus the temporary section will be in effect only from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through January 1, 2018.

DATES: *Effective date:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until January 1, 2018. *Compliance date:* As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the compliance date for the requirements in subpart F to 49 CFR part 390 (§§ 390.301, 390.303, and 390.305) is extended until January 1, 2018.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta Bitner, (202) 366-2400, loretta.bitner@dot.gov, Office of Enforcement and Compliance. FMCSA office hours are from 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On May 27, 2015, FMCSA published a final rule entitled “Lease and Interchange of Vehicles; Motor Carriers of Passengers,” 80 FR 30164 (May 27, 2015). The American Bus Association (ABA) and United Motorcoach Association (UMA) filed a joint request for an extension of the June 26, 2015, deadline for the submission of petitions for reconsideration of the final rule. (80 FR 37553). On July 1, 2015, the Agency announced an extension of the deadline for petitions for reconsideration, until August 25, 2015. (80 FR 37553).

The Agency ultimately received 24 unique letters and 24 form letters with additional text as petitions for reconsideration, all of which were filed in the public docket referenced above. After the initial review of the petitions, FMCSA held a meeting on October 28, 2015, with a cross section of the petitioners. Attending were representatives from small and large bus companies, charter and regular-route operations and diverse areas of the nation. Additionally, two insurance company representatives were invited due to the concerns raised in the petitions about liability. The purpose of the meeting was to have an open discussion about petitioners’ concerns and to gather additional details about their specific operations.

Based on these communications, and after further analysis, FMCSA has concluded that some of the petitions for reconsideration may have merit. FMCSA mailed

a letter to each petitioner on September 9, 2015, acknowledging the Agency had received the petition and will process the petition in accordance with 49 CFR 389.35, “Petitions for Reconsideration.” After the Agency has reviewed all relevant information and a determination has been made, the petitioner will again be notified by letter. While the Agency is not yet in a position to grant or deny the petitions, it is mindful of the approaching compliance date of January 1, 2017, and it wishes to allay stakeholder concerns that there will not be sufficient time to adjust passenger carrier operations before compliance with the final rule is required. The Agency is therefore extending the compliance date to January 1, 2018. The Agency is adding a temporary section § 390.300T to subpart F of 49 CFR part 390 to inform the public of this extension. There will no longer be a need for the temporary section dealing with the compliance date after January 1, 2018, thus the temporary section will be in effect only from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through January 1, 2018.

II. Regulatory Analyses

A. Regulatory Planning and Review

FMCSA has determined that this action is a non-significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), and DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The Agency does not expect the rule to generate substantial congressional or public interest. This rule has not been reviewed formally by the Office of Management and Budget (OMB).

Please review the final rule’s Regulatory Evaluation in docket FMCSA-2012-0103 for a thorough discussion of the assumptions the Agency made, the public

comments the Agency considered, the options/alternatives considered in developing the final rule, the analysis conducted, and the petitions for reconsideration received to the May 27, 2015, final rule 80 FR 30164.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111-240, September 27, 2010), requires FMCSA to perform a detailed analysis of the potential impact of the final rule on small entities. Accordingly, DOT policy requires that agencies shall strive to lessen any adverse effects on these businesses and other entities. The Final Regulatory Flexibility Analysis conducted as part of the May 27, 2015, continues to be applicable to this final rule.

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 rule so that they can better evaluate its effects on themselves. If the 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, Loretta Bitner, listed in the FOR FURTHER INFORMATION CONTACT section of this rule.

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

C. Federalism (Executive Order 13132)

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 analyzed this rule under E.O. 13132 and has determined that it has no federalism implications.

D. Unfunded Mandates Reform Act of 1995

This final rule does 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 2014 after adjusting for inflation) or more in any 1 year.

E. Executive Order 12988 (Civil Justice Reform)

This final 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.

F. 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 has determined

that this rule does not create an environmental risk to health or safety that would disproportionately affect children.

G. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final rule in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it would not effect a taking of private property or otherwise have taking implications.

H. 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. This final rule does 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 which receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this final rule does not result in a new or revised Privacy Act System of Records for FMCSA.

I. 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.

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 the OMB for each collection of information they conduct, sponsor, or require through regulations. On August 5, 2015, OMB approved the May 27, 2015, final rule's two information collections titled "Commercial Motor Vehicle Marking Requirements," OMB No. 2126-0054, and "Lease and Interchange of Motor Vehicles," OMB No. 2126-0056. OMB has set the dates for both of these information collections to expire on August 31, 2018.

K. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this final rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.). The Agency has determined under its environmental procedures Order 5610.1, published March 1, 2004, in the Federal Register (69 FR 9680), that this action is categorically excluded from further environmental documentation under Appendix 2, Paragraphs y (2) and y (7) of the Order (69 FR 9702). These categorical exclusions relate to:

- y (2) Regulations implementing motor carrier identification and registration reports; and
- y (7) Regulations implementing prohibitions on motor carriers, agents, officers, representatives, and employees from making fraudulent or intentionally false statements on any application, certificate, report, or record required by FMCSA.

Thus, the final action will not require an environmental assessment or an environmental impact statement.

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 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 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 Executive Order because it is not economically significant and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 390

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

The Final Rule

For the reasons stated in the preamble, FMCSA amends 49 CFR part 390 in title 49, Code of Federal Regulations, chapter III, subchapter B, as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;

GENERAL

1. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; 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. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; sections 32101(d) and 32934,

Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; and 49 CFR 1.87.

2. Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until January 1, 2018, add § 390.300T to subpart F to read as follows:

§ 390.300T Compliance date.

Motor carriers of passengers operating CMVs under a lease or interchange agreement are subject to §§ 390.301, 390.303, and 390.305 of this subpart on January 1, 2018.

Issued under the authority delegated in 49 CFR 1.87 on: **March 10, 2016.**

Daphne Y. Jefferson,
Deputy Administrator.

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