



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 390**

**[Docket No. FMCSA-2012-0103]**

**RIN 2126-AC04**

**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 by one year the compliance date of the regulations established in the final rule on lease and interchange of passenger-carrying commercial motor vehicles (CMVs) published on May 27, 2015, and effective on July 27, 2015. The new compliance date is January 1, 2019. The Agency received numerous petitions for reconsideration of the final rule and extended the original January 1, 2017, compliance date to January 1, 2018, to provide time to address the issues raised by the petitioners. As a result of a public meeting with representatives of the passenger carrier industry in October 2016 and further analysis of the petitions for reconsideration, the Agency is extending the compliance date by an additional twelve months to allow time to revise the regulations, while ensuring that carriers have ample time to adjust to the requirements of the revisions. This decision is explained in more detail in a notice of intent published elsewhere in this issue of the Federal Register.

**DATES:** *Effective date:* [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until January 1, 2019.

*Compliance date:* 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, 2019.

**FOR FURTHER INFORMATION CONTACT:** Ms. Loretta G. 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) , and effective on July 27, 2015. The American Bus Association (ABA) and the United Motorcoach Association (UMA) filed a joint request to extend the 30-day deadline to submit petitions for reconsideration. On July 1, 2015, the Agency published a document extending that deadline until August 25, 2015 (80 FR 37553). The Agency received 37 petitions for reconsideration, which are filed in the public docket referenced above. After the initial review of these submissions, FMCSA held a public meeting on October 28, 2015, with a cross section of the petitioners to discuss their concerns and to gather additional details about their specific operations. Attending were representatives of small and large bus companies and charter and regular-route operators from across the nation. Two insurance company representatives were also invited and attended because of liability concerns raised in the petitions for reconsideration. Based on these discussions, and after further analysis, FMCSA concluded that some aspects of the petitions for reconsideration have merit. The Agency, therefore, extended the compliance date to January 1, 2018, to allay stakeholder concerns that there would not be sufficient time to adjust passenger carrier

operations before compliance with the regulations was required (81 FR 13998; March 16, 2016). After further review of the petitions, the Agency announced on August 31, 2016, that it intended to consider changes to four aspects of the regulations, but it also denied requests to reconsider other issues raised by petitioners of the rule (81 FR 59951). The August 31 document announced that a public roundtable would be held to discuss the four issues that could be addressed by rulemaking. The roundtable was held on October 31, 2016. FMCSA has also published a document elsewhere in this issue of the *Federal Register* announcing its intent to revise the regulations established by the 2015 final rule. In order to allow time for completion of those revisions, while giving motor carriers sufficient time to comply with the revised requirements, the Agency is extending the compliance date by one year, to January 1, 2019. The temporary section added to subpart F of 49 CFR part 390 when the previous extension of the compliance date was issued, is being updated to include the new compliance date. The temporary section continues to be in effect only from **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** through January 1, 2019.

## **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 final rule issued in May, 2015, was non-significant; this postponement of the compliance date does not change that designation. This rule has not been reviewed formally by the Office of Management and Budget (OMB).

## **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, final rule 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 G. 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**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector, of \$156 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2015 levels) or more in any one 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. FMCSA will request extensions of those information collections as a result of this extension of the compliance date.

#### **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 final 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 as follows:

#### **PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS;**

##### **GENERAL**

1. The authority citation for part 390 is amended 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, 2019, revise § 390.300T 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, 2019.

Issued under the authority delegated in 49 CFR 1.87 on: May 17, 2017

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Daphne Y. Jefferson,  
*Deputy Administrator.*

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