



**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Part 390**

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

**RIN 2126-AC22**

**Lease and Interchange of Vehicles; Motor Carriers of Passengers; Extension of Compliance Date**

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

**ACTION:** Final rule; extension of compliance date.

**SUMMARY:** FMCSA extends the compliance date of the May 27, 2015, final rule titled “*Lease and Interchange of Vehicles; Motor Carriers of Passengers*,” from January 1, 2019, to January 1, 2021. The final rule received 37 petitions for reconsideration. To address the concerns in the petitions, FMCSA initiated a new notice of proposed rulemaking (NPRM) that also included a proposal to extend the compliance date of the 2015 final rule from January 1, 2019, to January 1, 2021. This extension of the compliance date is necessary to provide time to consider all the issues raised in comments to the NPRM and to publish a final rule, while giving motor carriers sufficient time to comply with the revised requirements.

**DATES:** *Effective date:* **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]** until January 1, 2021.

*Compliance date:* As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, the compliance date for the requirements in subpart F of 49 CFR part 390 (§§ 390.300T, 390.301, 390.303, and 390.305) is extended until January 1, 2021.

**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**

**A. History**

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

The Agency received 37 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 geographic areas of the nation. Additionally, two insurance company representatives were invited due to litigation and financial liability concerns. The purpose of the meeting was to have an open discussion and to gather additional details about petitioners’ specific operations and concerns.

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 2015 final rule, but it also denied requests to reconsider other issues raised by petitioners (81 FR 59951). The August 31 document announced that a public roundtable would be held to discuss the four issues. The roundtable was held on October 31, 2016.

On June 16, 2017, FMCSA published a final rule (2017 final rule) and a proposal in the *Federal Register* (82 FR 27766, and 27768). The 2017 final rule extended the compliance date of the 2015 final rule from January 1, 2018, to January 1, 2019. The proposal provided information about FMCSA's planned revisions to the 2015 final rule and requested public comment on those revisions.

## **B. Related Activity**

To address the concerns in the petitions, FMCSA published an NPRM on September 20, 2018 (83 FR 47764). This NPRM (RIN 2126-AC07) proposed to extend the compliance date of the 2015 final rule from January 1, 2019, to January 1, 2021. It also included proposed revisions to the 2015 final rule and requested public comment by November 19, 2018.

In October 2018, several passenger carriers petitioned FMCSA to extend the compliance date immediately in accordance with the Agency's prior commitments and provide sufficient time to finalize the NPRM, to avoid an uncertain operating environment, confusion, and disruption in industry operations. ABA wrote that the outcome of an uncertain business environment is entirely avoidable. The Agency should take the same action it has taken on two prior occasions, and simply publish a final rule to extend the compliance date of the current rule. ABA argued that extending the compliance date would not affect safety, as the current rule has never been in force; nor would an extension interfere with the rulemaking process to finalize revisions to the current rule. Further, the Agency has committed to extending the compliance date on several occasions for the stated purpose of allowing sufficient time to complete revisions to the current rule.

### **C. Comments Received**

FMCSA received 15 comments supporting the extension of the compliance date of the 2015 final rule to January 1, 2021. The extension is necessary to provide time to consider all the issues and to publish a final rule, while giving motor carriers sufficient time to comply with the revised requirements. FMCSA therefore extends the 2019 compliance date until January 1, 2021.

### **D. Extending the Compliance Date**

The Agency is extending the compliance date by 2 years, to January 1, 2021. The temporary section added to subpart F of 49 CFR part 390 when a 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, 2021.

## **II. REGULATORY ANALYSES**

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

FMCSA performed an analysis of the impacts of this final rule and determined it is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, October 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), Improving Regulation and Regulatory Review. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034 (February 26, 1979)). This final rule provides regulatory relief from January 1, 2019, through December 31, 2020, from all compliance costs associated with the 2015 final rule. The Agency's estimates of the cost of the 2015 final rule are thoroughly explained in that rule's

Regulatory Evaluation (available in docket FMCSA-2012-0103) and were updated to reflect more recently available data for the NPRM. The analysis of today’s final rule utilizes the same data and methodology as the NPRM.

To estimate the costs that will result from the final rule, the Agency calculated the total compliance costs from 2019 through 2028, albeit with no costs incurred in years 2019 and 2020. These costs are compared to a baseline in which the compliance costs of the 2015 final rule are incurred beginning in 2019, as shown in Table 1.

**Table 1: Total Cost of the Final Rule (in thousands of 2016\$)**

Year	3% Discount Rate			7% Discount Rate		
	Non Baseline Costs	Rule Costs	Rule Costs relative to No-Action baseline Costs	Non Baseline Costs	Rule Costs	Rule Costs relative to No-Action baseline Costs
2019	\$33,773	\$0	(\$33,773)	\$32,510	\$0	(\$32,510)
2020	\$6,083	\$0	(\$6,083)	\$5,636	\$0	(\$5,636)
2021	\$5,956	\$32,376	\$26,421	\$5,312	\$28,879	\$23,567
2022	\$5,831	\$5,831	\$0	\$5,007	\$5,007	\$0
2023	\$5,709	\$5,709	\$0	\$4,719	\$4,719	\$0
2024	\$5,590	\$5,590	\$0	\$4,448	\$4,448	\$0
2025	\$5,473	\$5,473	\$0	\$4,192	\$4,192	\$0
2026	\$5,359	\$5,359	\$0	\$3,951	\$3,951	\$0
2027	\$5,247	\$5,247	\$0	\$3,724	\$3,724	\$0
2028	\$5,137	\$5,137	\$0	\$3,510	\$3,510	\$0
<b>Year Total</b>	<b>\$84,158</b>	<b>\$70,723</b>	<b>(\$13,435)</b>	<b>\$73,009</b>	<b>\$58,429</b>	<b>(\$14,580)</b>
<b>Annualized</b>	<b>\$9,866</b>	<b>\$8,291</b>	<b>(\$1,575)</b>	<b>\$10,395</b>	<b>\$8,319</b>	<b>(\$2,076)</b>

The Agency estimates that the final rule will result in a cost savings of \$13.4 million discounted at 3 percent and \$14.6 million discounted at 7 percent over the 10-year analysis period. Expressed on an annualized basis, this equates to a cost savings of \$1.6 million at a 3 percent discount rate and \$2.1 million at a 7 percent discount rate. All values are in 2016 dollars.

**B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)**

This rule is an E.O. 13771 deregulatory action.<sup>1</sup> The present value of the cost savings of this rule, measured on an infinite horizon at a 7 percent discount rate, is approximately \$11.9 million. Expressed on an annualized basis, the cost savings are \$0.8 million. These values are expressed in 2016 dollars.

**C. 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, rule continues to be applicable to this final rule.

**D. 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.

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<sup>1</sup> Executive Office of the President. Executive Order 13771 of January 30, 2017. “Reducing Regulation and Controlling Regulatory Costs.” 82 FR 9339-9341. February 3, 2017.

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.

**E. Federalism (E. O. 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.

**F. 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 \$161 million (which is the value of \$100 million in 2017 after adjusting for inflation) or more in any 1 year.

**G. E. O. 12988 (Civil Justice Reform)**

This final 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.

**H. E. O. 13045 (Protection of Children)**

FMCSA analyzed this action under E. O. 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.

**I. E. O. 12630 (Taking of Private Property)**

FMCSA reviewed this final rule in accordance with E. O. 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.

**J. 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.

**K. 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.

## **L. 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 renewed these collections of information in October 2018, and they will both expire on October 31, 2021.

## **M. Environment (NEPA)**

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 6.y(2) and 6.y(7) of the Order (69 FR 9702). These categorical exclusions relate to:

- 6.y(2) Regulations implementing motor carrier identification and registration reports; and
- 6.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, this final action does not require an environmental assessment or an environmental impact statement.

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

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.

**O. E.O. 13175 (Indian Tribal Governments)**

This 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.

**P. 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 rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

## 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 continues to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as added and transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743; sec. 4136, Pub. L. 109-59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115-105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

2. Effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**

until January 1, 2021, 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, 2021.

Issued under the authority delegated in 49 CFR 1.87 on: November 23, 2018

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**Raymond P. Martinez,**

*Administrator.*

[FR Doc. 2018-26249 Filed: 12/3/2018 8:45 am; Publication Date: 12/4/2018]