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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Part 391

Docket No. FMCSA–2010-0096

RIN 2126–AB29

Drivers of CMVs: Restricting the Use of Cellular Phones; Technical Amendment.

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

ACTION: Final rule; technical amendment.

SUMMARY: The FMCSA amends its December 3, 2011, final rule that restricted the use of hand-held mobile telephones by drivers of commercial motor vehicles. That rule was jointly issued by FMCSA and Pipeline and Hazardous Materials Safety Administration (PHMSA), but this technical amendment only affects an FMCSA regulation. The purpose of this rule is to correct a clerical error.

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Public Access to the Docket: You may view, print, and download this final rule and all related documents and background material on-line at <http://www.regulations.gov>, using the Docket ID Number **FMCSA-2010-0096**. These documents can also be examined at the U.S. Department of Transportation, Docket Operations, West Building-Ground Floor, Room W12-140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on today's final rule, please contact: Mr. Brian Routhier, Vehicle and Roadside Operation Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590; telephone (202) 366-4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The legal basis of the 2011 final rule is also applicable to this rule. See 76 FR 75472-75474, December 2, 2011.

Background

The December 3, 2011, Drivers of CMVs: Restricting the Use of Cellular Phones final rule (76 FR 75470) had a clerical error in § 391.15(f)(1) that stated “paragraph (g)(2)” instead of “paragraph (f)(2)”. Today's final rule corrects this clerical error.

Agency's Assessment And Decision

The Agency decided to issue this amendment because the change is necessary to correct a clerical error that may confuse the public.

Rulemaking Analyses and Notices

Administrative Procedure Act

If an Agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called “good cause” finding), it may publish the rule without providing such notice and opportunity for comment. (See 5 U.S.C. 553(b).) The amendment made by this final rule makes a change to correct an

inadvertent clerical error. For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(d)(3) to make the amendments effective upon publication.

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

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 21, 2011), or within the meaning of the Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. The Agency expects the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. The rule corrects a clerical error; therefore, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rulemaking 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 will result in the expenditure by a State, local, or tribal government, 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.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

This rulemaking does not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

The FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. Although the 2011 final rule had possible Federalism implications, FMCSA determined that it did not create a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This rulemaking does not change that determination in any way.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that FMCSA consider the impact of paperwork and other information collection burdens imposed on the public. The Agency has determined that no new information collection requirements are associated with the technical amendments to this final rule.

National Environmental Policy Act

The FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined under our environmental procedures Order 5610.1, published March 1, 2004 (69 FR 9680), that this action does not have any significant impact on the environment. In addition, the actions in this final rule are categorically excluded from further analysis and documentation as per paragraph 6.b of Appendix 2 of FMCSA's Order 5610.1. The FMCSA also analyzed this 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 the action results in no increase in emissions.

Executive Order 13211 (Energy Effects)

The FMCSA analyzed this action 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 an adverse effect on the supply, distribution, or use of energy.

List of Subjects in 49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation

In consideration of the foregoing, FMCSA amends Part 391 of Title 49, Code of Federal Regulations, as follows:

PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b), Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106-159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

§ 391.15 [Amended]

2. Amend § 391.15, in paragraph (f)(1), by removing the removing “(g)(2)” and adding “(f)(2)” in its place.

Issued on: January 5, 2012

Larry Minor
Associate Administrator for Policy,
Federal Motor Carrier Safety Administration

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