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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 365, 381, 383, 390, 391, 392, 393, 395, and 396

[Docket No. FMCSA-2016-0091]

RIN 2126-AB89

Amendments to Implement Certain Provisions of the Fixing America's Surface Transportation Act or "FAST Act"

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

ACTION: Final rule.

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) adopts, as final, certain regulations required by the Fixing America's Surface Transportation Act (FAST Act) enacted on December 4, 2015. The statutory changes went into effect on October 1, 2015, retroactively, and require that FMCSA make conforming changes to its regulations to ensure they are current and consistent with the statutory requirements. Adoption of these rules is a nondiscretionary, ministerial action that FMCSA may take without issuing a notice of proposed rulemaking and receiving public comment, in accordance with the good cause exception available to Federal agencies under the Administrative Procedure Act (APA).

DATES: This final rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Petitions for Reconsideration must be received by the Agency no later than [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Petitions for reconsideration must be submitted to: Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

FOR FURTHER INFORMATION CONTACT: Kathryn Sinniger, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue S.E., Washington, D.C. 20590; by telephone at (202) 493-0908, or by electronic mail at kathryn.sinniger@dot.gov. If you have questions regarding the docket, call Docket Services, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

I. EXECUTIVE SUMMARY

A. Purpose and Summary of the Major Provisions

This rule makes nondiscretionary, ministerial changes to FMCSA regulations that are required by the FAST Act (Pub. L. 114-94, 129 Stat. 1312, December 4, 2015). The FAST Act made several notable changes to the authorities implemented by requirements in the Code of Federal Regulations (CFR). For example, it exempts welding trucks used in the construction and maintenance of pipelines from FMCSA’s regulations. It excepts drivers of ready-mixed concrete trucks and hi-rail vehicles, as well as drivers of commercial motor vehicles (CMVs) transporting livestock and bees, from some of the hours of service (HOS) requirements in 49 CFR part 395. It also extends the length of the time (from 2 years to 5 years) that an exemption or renewal of an exemption may provide relief from the regulations.

A full explanation of all changes made in this rule is included below in section III. Fast Act Provisions Implemented by this Rulemaking. A copy of the FAST Act has been placed in the docket for this rulemaking for reference.

B. Benefits and Costs

The economic impact of this rule's provisions, considered both individually and in the aggregate, does not rise to the level of economic significance, and a cost-benefit analysis is therefore not required.

II. LEGAL BASIS FOR THE RULEMAKING

A. FAST Act

This rule is based on the FAST Act. Certain provisions of the FAST Act made mandatory, non-discretionary changes to FMCSA programs. The majority of these statutory changes went into effect on October 1, 2015, while others will go into effect on October 1, 2016.¹ This rule makes only those changes that went into effect on October 1, 2015, that can be implemented without prior notice and opportunity for comment as addressed in section II(B) below. Publication of today's rule triggers the 3-year period during which the States are required to adopt compatible provisions under FMCSA's Motor Carrier Safety Assistance Program (MCSAP). 49 CFR 350.331(d), 350.335(b), and part 355, appendix A.

At a later date, before October 1, 2016, the Agency will issue another final rule to implement additional ministerial requirements that will become effective on October 1, 2016.² The Agency also expects that there will be rulemakings required to address additional provisions of the FAST Act, where Congress either provided the Agency with

¹ See FAST Act section 1003 (establishing October 1, 2015, as the effective date for all provisions in Division A of the Act, covering Surface Transportation) (Pub. L. 114-94, 129 Stat. 1312, 1322, December 4, 2015) and section 5101 (establishing October 1, 2016 as the effective for the changes made in that section) (Pub. L. 114-94, 129 Stat. 1312, 1514, December 4, 2015).

² See FAST Act section 5101 (Pub. L. 114-94, 129 Stat. 1312, 1514, December 4, 2015), which includes the amendments that become effective on October 1, 2016.

some discretion regarding implementation, or specifically required that notice and comment rulemaking procedures be followed.

It is necessary to make conforming changes to ensure that FMCSA's regulations are current and consistent with the applicable statutes. The provisions implemented in this final rule are from the following sections of the FAST Act, which impacted Title 49, United States Code (U.S.C.):

1. Section 5206 Applications.
2. Section 5507 Electronic Logging Device Requirements.
3. Section 5518 Covered Farm Vehicles.
4. Section 5519 Operators of Hi-Rail Vehicles.
5. Section 5521 Ready Mix Concrete Delivery Vehicles.
6. Section 5522 Transportation of Construction Materials and Equipment.
7. Section 5524 Exemptions from Requirements for Certain Welding Trucks Used in Pipeline Industry.
8. Section 7208 Hazardous Materials Endorsement Exemption.

FMCSA is authorized to implement these statutory provisions by delegation from the Secretary of Transportation in 49 CFR 1.87.

B. Administrative Procedure Act

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA [5 U.S.C. 553(b) and (c)]. Section 553(b)(3)(B) allows an exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest.” FMCSA finds that prior notice and an opportunity for comment are unnecessary because the changes adopted in this final rule

are statutorily mandated, and the Agency is performing a nondiscretionary, ministerial act. For these same reasons, the rule will be effective upon publication, as these statutory changes went into effect on October 1, 2015 [5 U.S.C. 553(d)].

C. FAST Act Waiver of Advance Notice of Proposed Rulemaking/Negotiated Rulemaking

FMCSA is aware of the regulatory reform requirements imposed by section 5202 of the FAST Act concerning public participation in rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules, but because this final rule is not major, they are not applicable. In any event, the Agency finds that, for the reasons stated below, publication of an advance notice of proposed rulemaking under 49 U.S.C. 31136(g)(1)(A), or a negotiated rulemaking under 49 U.S.C. 31136(g)(1)(B), is unnecessary and contrary to the public interest in accordance with the waiver provision in 49 U.S.C. 31136(g)(3).

III. FAST ACT PROVISIONS IMPLEMENTED BY THIS RULEMAKING

This section describes those portions of the FAST Act that require FMCSA to make conforming changes to the regulations, which are also listed here. These regulatory changes are non-discretionary; in other words, the FAST Act provided all of the necessary content of the regulations. As noted in the executive summary, there are additional regulatory changes that will be required by the FAST Act, but those either have a later effective date, will require FMCSA to exercise some degree of discretion, or are required to be subject to notice and comment.

FMCSA has included here a table of affected CFR sections, which will cross-reference corresponding requirements of the FAST Act. This table will make it easier for

the reader to move back and forth between the revised regulations and the corresponding section(s) of the FAST Act.

TABLE OF CFR SECTIONS AFFECTED

CFR Section	FAST Act Section
365.101(j) (new)	5524 [129 Stat. 1312, 1560]
381.300(b)	5206(a)(3) [129 Stat. 1312, 1537]
381.317 (new)	5206(a)(3) [129 Stat. 1312, 1537]
383.3(i) (new)	7208 [129 Stat. 1312, 1593]
390.38 (new)	5524 [129 Stat. 1312, 1560]
390.39(b)(1)	5518 [129 Stat. 1312, 1558]
391.2(e) (new)	5524 [129 Stat. 1312, 1560]
392.1(b) (new)	5524 [129 Stat. 1312, 1560]
393.1(e) (new)	5524 [129 Stat. 1312, 1560]
395.1(e)	5521 [129 Stat. 1312, 1559]
395.1(t) (new)	5206(b)(1)(A) [129 Stat. 1312, 1537]
395.1(u) (new)	5206(b)(1)(B) [129 Stat. 1312, 1537]
395.1(v) (new)	5206(b)(1)(C) [129 Stat. 1312, 1537]
395.1(w) (new)	5519 [129 Stat. 1312, 1558]
395.1(x) (new)	5524 [129 Stat. 1312, 1560]
395.2	5206(b)(1)(A), 5206(b)(1)(C), 5519, 5522 [129 Stat. 1312, 1537, 1558, 1559]
395.8	5507 [129 Stat. 1312, 1553]
396.1(d) (new)	5524 [129 Stat. 1312, 1560]

Section 5206 Applications

Previously, 49 U.S.C. 31315(b) allowed an exemption from a regulation for no longer than 2 years from its approval date, and allowed an exemption to be renewed upon application to the Secretary for subsequent periods of no more than 2 years. Section 5206(a)(3) of the FAST Act amends section 31315(b) to allow an exemption to be granted for no longer than 5 years and to be renewed, upon request, for subsequent periods no longer than 5 years, if the Secretary finds that such an exemption would likely achieve an equivalent, or greater, level of safety. This rulemaking changes § 381.300(b) to allow exemptions for up to 5 years that may be renewed for subsequent periods of up to 5 years.

Section 5206(a)(3) of the FAST Act also added subsection (b)(3) to 49 U.S.C. 31315 to permit an applicant whose application for exemption has been denied to resubmit the application addressing the reason for denial. FMCSA adds a new § 381.317 describing this process.

Section 5206(b)(1) of the FAST Act made permanent three existing exemptions from the 30-minute rest break requirements in § 395.3(a)(3)(ii). The first was granted to the National Ready Mixed Concrete Association (80 FR 17819, April 2, 2015). In this rulemaking, FMCSA adds new § 395.1(t) allowing a driver of a ready-mixed concrete delivery vehicle to use time spent waiting with the vehicle at a job site or terminal to meet the requirement for a 30-minute rest break. The driver may not perform any other work during this time waiting. FMCSA also adds a definition of “ready mix concrete delivery vehicle” to § 395.2, to reflect the definition in related section 5521 of the FAST Act, Ready Mix Concrete Delivery Vehicles, which is discussed below.

The second exemption, also from the requirements in § 395.3(a)(3)(ii), was granted to the California Farm Bureau Federation (80 FR 35425, June 19, 2015). In this rule, FMCSA adds new § 395.1(u) that provides that the 30-minute rest break requirements do not apply to a driver transporting bees in interstate commerce if there are bees on the vehicle.

The third exemption from the 30-minute rest break was granted to the Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (80 FR 33584, June 12, 2015). In this rulemaking, FMCSA implements this requirement of the Act by adding new § 395.1(v) that provides that the 30-minute rest break requirements do not apply to a driver transporting livestock while the livestock are on the vehicle. FMCSA also adds a definition of livestock to § 395.2, to reflect the classification in the regulatory exemption developed in response to the AFTC petition.

Section 5507 Electronic Logging Device Requirements

Section 5507 of the FAST Act amends 49 U.S.C. 31137(b) to provide an exception for motor carriers transporting a motor home or recreation vehicle trailer in a driveaway-towaway operation, as defined in 49 CFR 390.5. Under this provision, a motor carrier could comply with the HOS requirements by using either a paper record of duty status form or an electronic logging device. FMCSA changes § 395.8(a)(1)(iii)(A) by adding this new exception.

Section 5518 Covered Farm Vehicles

Previously, section 32934(b)(1) of the Moving Ahead for Progress for the 21st Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405, 830, July 6, 2012; 49 U.S.C. 31136 note) provided that Federal transportation funding to a State could not be

terminated, limited, or interfered with because the State exempts a covered farm vehicle, including its operator, from “any State requirement relating to the operation of that vehicle.” The term “covered farm vehicle” is defined in section 32924(c) of MAP-21. Section 5518 of the FAST Act amends section 32934(b)(1) of MAP-21 to specify that the requirements are those in section 32934(a) or any other minimum standard provided by a State relating to the operation of that vehicle. The specific requirements outlined in section 32934(a) of MAP-21 exempt a covered farm vehicle and its driver from any requirement relating to (1) operating with a commercial driver’s license (CDL) or drug and alcohol testing established under 49 U.S.C. chapter 313; (2) medical certificates established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 313; and (3) HOS and vehicle inspection, repair, and maintenance established under 49 U.S.C. chapter 311, subchapter III, or 49 U.S.C. chapter 315. The Agency revises § 390.39(b)(1) to reflect these changes, which should clarify which exemptions found in State laws for covered farm vehicles may not be taken into consideration during Federal grants management.

Section 5519 Operators of Hi-Rail Vehicles

For the CMV driver of a hi-rail vehicle who is subject to the HOS regulations in 49 CFR part 395, section 5519 of the FAST Act provides that the maximum on-duty time under § 395.3 shall not include certain time in transportation to or from a duty assignment. Time in transportation, to or from a duty assignment, will not be included in the 14 hours on-duty time under § 395.3(a)(2) if (1) it does not exceed 2 hours per calendar day or a total of 30 hours per calendar month, and (2) the motor carrier fully and accurately accounts for this time in the records it maintains and makes such records

available to FMCSA or the Federal Railroad Administration upon request. Section 5519(b) defines “hi-rail vehicle” as “an internal rail flaw detection vehicle equipped with flange hi-rails.”

FMCSA adds a new paragraph (w) to § 395.1 to reflect this exception. In addition, FMCSA adds a definition of hi-rail vehicle to § 395.2.

Section 5521 Ready Mix Concrete Delivery Vehicles

Section 5521 of the FAST Act amends 49 U.S.C. 31502 by adding a new subsection (f) that exempts drivers of ready-mixed concrete delivery vehicles from keeping records of duty status under certain circumstances. The driver of the ready-mixed concrete delivery vehicle must (1) operate within a 100-mile radius of the normal work reporting location; (2) return to the work reporting location and be released from work within 14 consecutive hours; (3) have at least 10 hours off duty following each 14 hours on duty; and (4) not exceed 11 hours of driving time following 10 consecutive hours off duty. The motor carrier that employs the driver must keep accurate time records. This change essentially allows the driver of a ready-mixed concrete truck to use the short-haul exception in § 395.1(e)(1), but with a 14-hour on-duty period. Section 5521 also adds a definition of “driver of a ready mixed concrete delivery vehicle.”

FMCSA revises § 395.1(e)(1) to reflect new 49 U.S.C. 31502(f)(1). The Agency also adds a new definition of “ready-mixed concrete delivery vehicle” to § 395.2.

“Driver” is already defined in § 390.5.

Section 5522 Transportation of Construction Materials and Equipment

Section 5522 of the FAST Act amends section 229(e)(4) of the Motor Carrier Safety Improvement Act of 1999, as transferred and amended (49 U.S.C. 31136 note),

which is the definition of transportation of construction materials and equipment. That definition provided that, for a driver who transports construction materials and equipment within a 50 air mile radius of the normal work reporting location of the driver, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. The FAST Act increases this to a 75 air mile radius. The Act also allows a State to establish a different air mile radius limitation if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. FMCSA changes the definition of transportation of construction materials and equipment in § 395.2 to conform to this change.

Section 5524 Exemptions from Requirements for Certain Welding Trucks Used in Pipeline Industry

Section 5524 of the FAST Act defines a welding truck used in the pipeline industry as a pick-up style truck, owned by a welder, equipped with a welding rig that is used in the construction or maintenance of pipelines, and that has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less. Section 5524 exempts the operator of such a vehicle and the operator's employer from any requirement relating to: (1) Registration as a motor carrier, including obtaining and displaying a U.S. Department of Transportation (DOT) number (49 U.S.C. chapters 139 and 311); (2) driver qualifications (49 U.S.C. chapter 311); (3) driving a CMV (49 U.S.C. chapter 311); (4) parts and accessories and inspection, repair, and maintenance of CMVs (49 U.S.C. chapter 311); and HOS of drivers, including maximum driving and on duty time (49 U.S.C. chapter 315). To reflect this section of the FAST Act, FMCSA adds new § 390.38 that excepts welding trucks, equipped with a welding rig used in the construction and maintenance of pipelines, from the requirements in 49 CFR parts 365,

390, 391, 392, 393, 395, and 396. The new § 390.38 also defines “pipeline welding trucks” to conform to the FAST Act.

The Agency also adds specific exemptions in each of the parts listed in new § 390.38, to ensure that the exemption is clear. These new exemptions are found at: §§ 365.101(j) (exemption from requirement to apply for operating authority in part 365); 391.2 (e) (exemption from minimum qualifications for CMV drivers in part 391); 392.1 (b) (exemption from CMV operating rules in part 392); 393.1(e) (exemption from parts and accessories requirements in part 393); 395.1(x) (exemption from the HOS rules in part 395); and 396.1(d) (exemption from inspection, repair, and maintenance requirements in part 396).

Section 7208 Hazardous Materials Endorsement Exemption

Section 7208 of the FAST Act provides that the Secretary allow a State, at its discretion, to waive the requirement for a holder of a Class A CDL to obtain a hazardous materials endorsement to transport 1,000 gallons or less of diesel fuel. A State may waive the requirement if the license holder is (1) acting within the scope of the license holder’s employment as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and (2) is operating a service vehicle that is transporting diesel in a quantity of 3,785 liters (1,000 gallons) or less and that is clearly marked with a “flammable” or “combustible” placard, as appropriate. FMCSA adds a new paragraph (i) to § 383.3 to reflect this exemption. Note that if a State exercises this discretion, a driver may still be required to obtain a hazardous materials endorsement if they travel to a State that has not opted to waive the requirement.

IV. THIS FINAL RULE

This rule adopts as final certain regulations required by the FAST Act. These statutory changes went into effect retroactively on October 1, 2015. Because adoption of these rules is a nondiscretionary, ministerial action, FMCSA did not issue an NPRM or receive public comment.

V. SECTION-BY-SECTION ANALYSIS

A. Part 365

In § 365.101, paragraph (j) is added to exempt pipeline welding trucks from the rules of part 365.

B. Part 381

In § 381.300, paragraph (b) is revised, changing the timeframe from 2 years to 5 years.

Section 381.317 is added to allow an application for exemption to be resubmitted if it has been denied.

C. Part 383

In § 383.3, a new paragraph (i) is added to provide that a State may waive the requirement that a driver obtain a hazardous materials endorsement to transport diesel fuel under certain circumstances.

D. Part 390

FMCSA adds new § 390.38 to exempt pipeline welding trucks from certain requirements of the FMCSRs. Paragraph (a) describes those parts of the FMCSRs from which the pipeline welding truck is exempt. Paragraph (b) provides a definition of “pipeline welding truck.”

In § 390.39, paragraph (b)(1) is revised to reflect changes in the statutes concerning exemptions found in State laws for covered farm vehicles.

E. Part 391

In § 391.2, paragraph (e) is added to exempt drivers of pipeline welding trucks from the rules of part 391.

F. Part 392

In § 392.1, the existing text is designated as paragraph (a), and a paragraph (b) is added to exempt drivers of pipeline welding trucks from the rules of part 392.

G. Part 393

In § 393.1, paragraph (e) is added to exempt pipeline welding trucks from the rules of part 393.

H. Part 395

FMCSA makes a number of changes to § 395.1 to exempt certain operations from aspects of the hours of service rules. Paragraph (e)(1) is changed to provide that drivers of ready-mixed concrete delivery vehicles who are on duty for 14 consecutive hours may be exempt from the requirements of § 395.8.

Section 395.1(t) is added to allow the driver of a ready-mixed concrete delivery vehicle to use 30-minutes or more of time spent waiting with the vehicle to meet the requirement for the 30-minute rest break in § 395.3(a)(3)(ii). Paragraphs (u) and (v) are added to exempt drivers engaged in the interstate transportation of bees or livestock, respectively, from the requirement for a 30-minute rest break. FMCSA adds paragraph (w) to provide that on-duty time for the driver of a hi-rail vehicle does not include time in

transportation to or from a duty assignment under certain circumstances. Paragraph (x) exempts drivers of pipeline welding trucks from the rules of part 395.

The definitions in § 395.2 are changed to conform to the changes in the statutes. FMCSA adds definitions of “hi-rail vehicle,” “livestock,” and “ready-mixed concrete delivery vehicle.” FMCSA changes the definition of “transportation of construction material and equipment” to increase the air mile radius to the normal work reporting location. The definition is also changed to allow the States to establish a different air mile radius limitation upon notice to the Administrator.

Section 395.8(a) is changed to allow a motor carrier to require the driver transporting a motor home or recreation vehicle trailer, in a driveaway-towaway operation, to record his or her records of duty status manually.

I. Part 396

In § 396.1, paragraph (d) is added to exempt pipeline welding trucks from the rules of part 396.

VI. RULEMAKING ANALYSES

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). As explained above, this final rule is strictly ministerial in that it incorporates nondiscretionary statutory requirements. These statutory changes went into effect retroactively on October 1, 2015. The regulatory changes included in this rule are necessary to make FMCSA’s

regulations consistent with the FAST Act and their economic impact will not exceed the \$100 million annual threshold. Any costs associated with this action are attributable to the non-discretionary statutory provisions. This final rule is not expected to generate substantial congressional or public interest. Therefore, a full regulatory impact analysis has not been conducted nor has there been a review by the Office of Management and Budget (OMB).

Although a full regulatory evaluation is unnecessary because of the low economic impact of this rulemaking, FMCSA analyzed the cost impact of the FAST Act provisions implemented by this final rule. This rule's provisions generally provided exemptions to FMCSA regulations and should ease the economic burden on regulated entities. The impacts of these provisions should be small and affect a small number of individuals and businesses.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

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 and participate in the rulemaking

initiative. 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, Kathryn Sinniger, 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.

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 \$155 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2014 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520), nor does it revise any existing approved collections of information.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has “substantial direct effects 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.”

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement.

E.O. 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988 to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the

impacts on children is required. In any event, this regulatory action does not pose an environmental or safety risk that could disproportionately affect children.

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 will not effect a taking of private property or otherwise have takings implications.

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 rule does not require the collection of personally identifiable information (PII), therefore the Agency finds that there will be no impact on the privacy of individuals.

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.

E.O. 12372 (Intergovernmental Review)

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

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

FMCSA analyzed this action under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA determined that it

is not a “significant energy action” under that E.O. because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

E.O. 13175 (Indian Tribal Governments)

This final 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.

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 final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, et seq.) and FMCSA’s NEPA Implementing Procedures and Policy for Considering Environmental Impacts, Order 5610.1 (FMCSA

Order), March 1, 2004 (69 FR 9680). FMCSA's Order states that "[w]here FMCSA has no discretion to withhold or condition an action if the action is taken in accordance with specific statutory criteria and FMCSA lacks control and responsibility over the effects of an action, that action is not subject to this Order." *Id.* at chapter 1(D). Because Congress specifies the Agency's precise action here, thus leaving the Agency no discretion over such action, and since the Agency lacks jurisdiction and therefore control and responsibility over the effects of this action, this rulemaking falls under chapter 1(D). Therefore, no further analysis is considered.

In addition to the NEPA requirements to examine impacts on air quality, the Clean Air Act (CAA) as amended (42 U.S.C. 7401, *et seq.*) also requires FMCSA to analyze the potential impact of its actions on air quality and to ensure that FMCSA actions conform to State and local air quality implementation plans. This non-discretionary action is expected to fall within the CAA *de minimis* standards and is not subject to the Environmental Protection Agency's General Conformity Rule (40 CFR parts 51 and 93).

Additionally, FMCSA evaluated the effects of this final rule in accordance with Executive Order 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impacts resulting from its promulgation. Environmental justice issues would be raised if there were a "disproportionate" and "high and adverse impact" on minority or low-income populations. This final rule is exempt from analysis under the National Environmental Policy Act. This final rule simply makes ministerial, mandatory changes and would not result in high and adverse environmental impacts.

List of Subjects

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor Carriers, Moving of household goods.

49 CFR Part 381

Motor carriers.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 390

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

49 CFR Part 391

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

49 CFR Part 392

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

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

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

For the reasons stated in this preamble, FMCSA amends 49 CFR chapter III as set forth below:

PART 365 – RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

1. The authority citation for part 365 is revised to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901-13906, 14708, 31138, and 31144; sec. 5524 of Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

2. Amend § 365.101 by adding paragraph (j) to read as follows:

§ 365.101 Applications governed by these rules.

* * * * *

(j) The rules in this part do not apply to “pipeline welding trucks” as defined in 49 CFR 390.38(b).

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

3. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

4. Amend § 381.300 by revising paragraph (b) to read as follows:

§ 381.300 What is an exemption?

* * * * *

(b) An exemption provides the person or class of persons with relief from the regulations for up to 5 years, and may be renewed, upon request, for subsequent 5-year periods.

* * * * *

5. Add § 381.317 to read as follows:

§ 381.317 May I resubmit my application for exemption if it is denied?

If the Administrator denies your application for exemption and you can reasonably address the reasons for denial, you may resubmit your application following the procedures in § 381.310.

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

6. The authority citation for part 383 is revised to read as follows:

AUTHORITY. 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 272, 297; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 7208 of Pub. L. 114-94, 129 Stat. 1312, 1593; and 49 CFR 1.87.

7. Amend § 383.3 by adding paragraph (i) to read as follows:

§ 383.3 Applicability.

* * * * *

(i) Hazardous materials endorsement exemption for certain drivers transporting diesel. A State may waive the requirement for a holder of a Class A commercial driver's license to obtain a hazardous materials endorsement under this part, if the license holder is:

(1) Acting within the scope of the license holder's employment, and within the State of domicile (or another State with a hazardous materials endorsement exemption) as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, or livestock feeder; and

(2) Operating a service vehicle that is:

(i) Transporting diesel in a quantity of 3,785 liters (1,000 gallons) or less; and

(ii) Clearly marked with a "flammable" or "combustible" placard, as appropriate.

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

8. 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. 4114 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; sec. 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113-125, 128 Stat. 1388; sec. 5403(d), 5518, 5524, Pub. L. 114-94, 129 Stat. 1312, 1548, 1558, 1560; and 49 CFR 1.81, 1.81a and 1.87.

9. Add § 390.38 to read as follows:

§ 390.38 Exemptions for pipeline welding trucks.

(a) Federal requirements. A pipeline welding truck, as defined in paragraph (b) of this section, including the individuals operating such vehicle and the employer of such individual, is exempt from the following:

(1) Any requirement relating to registration as a motor carrier, including the requirement to obtain and display a Department of Transportation number, in 49 CFR part 365 or 390.

(2) Any requirement relating to driver qualifications in 49 CFR part 391.

(3) Any requirement relating to driving of commercial motor vehicles in 49 CFR part 392.

(4) Any requirement relating to parts and accessories and inspection, repair, and maintenance of commercial motor vehicles in 49 CFR parts 393 and 396.

(5) Any requirement relating to hours of service of drivers, including maximum driving and on duty time, found in 49 CFR part 395.

(b) Definition. “Pipeline welding truck” means a motor vehicle that is travelling in the State in which the vehicle is registered or another State, is owned by a welder, is a pick-up style truck, is equipped with a welding rig that is used in the construction or maintenance of pipelines, and has a gross vehicle weight and combination weight rating and weight of 15,000 pounds or less.

10. Amend § 390.39 by revising paragraph (b)(1) to read as follows:

§ 390.39 Exemptions for “covered farm vehicles.”

* * * * *

(b) State requirements—(1) In general. Federal transportation funding to a State may not be terminated, limited, or otherwise interfered with as a result of the State exempting a covered farm vehicle, including the individual operating that vehicle, from—

(i) A requirement described in paragraph (a) of this section; or

(ii) Any other minimum standard provided by a State relating to the operation of that vehicle.

* * * * *

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

11. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

12. Revise § 391.2 by adding paragraph (e) to read as follows:

§ 391.2 General exceptions.

* * * * *

(e) Pipeline welding trucks. The rules in this part do not apply to drivers of “pipeline welding trucks” as defined in 49 CFR 390.38(b).

PART 392 – DRIVING OF COMMERCIAL MOTOR VEHICLES

13. The authority citation for part 392 is revised 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); sec. 5524 of Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

14. Revise § 392.1 by designating the existing text as paragraph (a) and adding paragraph (b) to read as follows:

§ 392.1 Scope of the rules in this part.

* * * * *

(b) The rules in this part do not apply to drivers of “pipeline welding trucks” as defined in 49 CFR 390.38(b).

PART 393 – PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

15. The authority citation for part 393 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); sec. 5524 of Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

16. Revise § 393.1 by adding paragraph (e) to read as follows:

§ 393.1 Scope of the rules in this part.

* * * * *

(e) The rules in this part do not apply to “pipeline welding trucks” as defined in 49 CFR 390.38(b).

PART 395—HOURS OF SERVICE OF DRIVERS

17. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; 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. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; sec. 5206(b) of Pub. L. 114-94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

18. Amend § 395.1 by revising paragraph (e)(1) and adding paragraphs (t), (u), (v), (w), and (x), to read as follows:

§ 395.1 Scope of rules in this part.

* * * * *

(e) Short-haul operations—(1) 100 air-mile radius driver. A driver is exempt from the requirements of § 395.8 if:

(i) The driver operates within a 100 air-mile radius of the normal work reporting location;

(ii)(A) The driver, except a driver-salesperson or a driver of a ready-mixed concrete delivery vehicle, returns to the work reporting location and is released from work within 12 consecutive hours;

(B) The driver of a ready-mixed concrete delivery vehicle returns to the work reporting location and is released from work within 14 consecutive hours;

(iii)(A) A property-carrying commercial motor vehicle driver, except the driver of a ready-mixed concrete delivery vehicle, has at least 10 consecutive hours off duty separating each 12 hours on duty;

(B) A driver of a ready-mixed concrete delivery vehicle has at least 10 consecutive hours off duty separating each 14 hours on duty;

(C) A passenger-carrying commercial motor vehicle driver has at least 8 consecutive hours off duty separating each 12 hours on duty;

(iv)(A) A property-carrying commercial motor vehicle driver, except the driver of a ready-mixed concrete delivery vehicle, does not exceed the maximum driving time specified in § 395.3(a)(3) following 10 consecutive hours off duty; or

(B) A driver of a ready-mixed concrete delivery vehicle does not exceed 11 hours maximum driving time following 10 consecutive hours off duty; or

(C) A passenger-carrying commercial motor vehicle driver does not exceed 10 hours maximum driving time following 8 consecutive hours off duty; and

(v) The motor carrier that employs the driver maintains and retains for a period of 6 months accurate and true time records showing:

(A) The time the driver reports for duty each day;

(B) The total number of hours the driver is on duty each day;

(C) The time the driver is released from duty each day; and

(D) The total time for the preceding 7 days in accordance with § 395.8(j)(2) for drivers used for the first time or intermittently.

* * * * *

(t) Ready-mixed concrete delivery vehicle. A driver of a ready-mixed concrete delivery vehicle subject to the requirement for a 30-minute rest break in § 395.3(a)(3)(ii) may use 30-minutes or more of time spent while waiting with the commercial motor vehicle at a job site or terminal to meet the requirement for the 30-minute rest break, providing the driver performs no other work during the break.

(u) Transport of commercial bees. The provisions of § 395.3(a)(3)(ii), requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of bees by commercial motor vehicle as long as the bees are on the vehicle.

(v) Transport of livestock. The provisions of § 395.3(a)(3)(ii), requiring a 30-minute rest break, do not apply to a driver engaged in the interstate transportation of livestock by commercial motor vehicle while the livestock are on the vehicle.

(w) Hi-rail vehicles. For the driver of a hi-rail vehicle, the maximum on duty time under § 395.3 shall not include time in transportation to or from a duty assignment if such time in transportation—

(1) Does not exceed 2 hours per calendar day or a total of 30 hours per calendar month; and

(2) Is fully and accurately accounted for in records to be maintained by the motor carrier and such records are made available upon request of the Federal Motor Carrier Safety Administration or the Federal Railroad Administration.

(x) Pipeline welding trucks. The rules in this part do not apply to drivers of “pipeline welding trucks,” as defined in 49 CFR 390.38(b).

19. Amend § 395.2 by revising the first sentence in the definition of “Transportation of construction materials and equipment” and by adding definitions of “Hi-rail vehicle,” “Livestock,” and “Ready-mixed concrete delivery vehicle,” in alphabetical order, to read as follows:

§ 395.2 Definitions.

* * * * *

Hi-rail vehicle means an internal rail flaw detection vehicle equipped with flange hi-rails.

Livestock means cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals

designated by the Secretary of Agriculture that are part of a foundation herd (including dairy producing cattle) or offspring; or are purchased as part of a normal operation and not to obtain additional benefits under the Emergency Livestock Feed Assistance Act of 1988, as amended.

* * * * *

Ready-mixed concrete delivery vehicle means a vehicle designed to deliver ready-mixed concrete on a daily basis and equipped with a mechanism under which the vehicle's propulsion engine provides the power to operate a mixer drum to agitate and mix the product en route to the delivery site.

* * * * *

Transportation of construction material and equipment means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a 75 air mile radius of the normal work reporting location of the driver, except that a State, upon notice to the Administrator, may establish a different air mile radius limitation for purposes of this definition if such limitation is between 50 and 75 air miles and applies only to movements that take place entirely within the State. * * *

* * * * *

20. Amend § 395.8 by revising paragraph (a)(1)(iii)(A) to read as follows.

§ 395.8 Driver's record of duty status.

(a)(1)* * *

(iii)(A) A motor carrier may require a driver to record the driver's duty status manually in accordance with this section, rather than require the use of an ELD, if the driver is operating a commercial motor vehicle:

(1) In a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period;

(2) In a driveaway-towaway operation in which the vehicle being driven is part of the shipment being delivered;

(3) In a driveaway-towaway operation in which the vehicle being transported is a motor home or a recreation vehicle trailer; or

(4) That was manufactured before model year 2000.

* * * * *

PART 396 – INSPECTION, REPAIR, AND MAINTENANCE

21. The authority citation for part 396 is revised to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, 31151, and 31502; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114-94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

22. Revise § 396.1 by adding paragraph (d) to read as follows:

§ 396.1 Scope.

* * * * *

(d) The rules in this part do not apply to “pipeline welding trucks” as defined in 49 CFR 390.38(b).

Issued under the authority of delegation in 49 CFR 1.87: July 14, 2016.

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

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