



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: Proposal in response to petitions for reconsideration; request for public comments.

SUMMARY: In response to petitions for reconsideration of 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, FMCSA intends to revise the regulations to address “chartering” (subcontracting) and the 48-hour delay in preparing a lease. FMCSA is requesting public comment on the proposed responses to the petitions discussed below. In a final rule published elsewhere in this issue of the Federal Register, FMCSA extends the compliance date for the 2015 final rule from January 1, 2018, to January 1, 2019.

DATES: Comments on this document must be received on or before **[INSERT DATE**

45 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2012-0103 using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Fax: 1-202-493-2251.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE, Washington, DC, between 9:00 a.m. and 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods.

FOR FURTHER INFORMATION CONTACT: Ms. Loretta G. Bitner, (202) 385-2428, loretta.bitner@dot.gov, Office of Enforcement and Compliance. FMCSA office hours are from 9 a.m. to 5 p.m. ET, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA-2012-0103), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov>, put the docket number, FMCSA-2012-0103, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the

text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2012-0103, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. If you do not have access to the Internet, you may view the docket by visiting the Docket Management Facility in Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE, Washington DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Privacy Act

The Department of Transportation (DOT) solicits comments from the public to better inform its decision-making processes. DOT posts these comments, without edit, including any personal information the commenter provides, to www.regulations.gov, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

Background

During certain investigations and driver/vehicle inspections, FMCSA encounters passenger-carrying vehicles and drivers that are rented, loaned, leased, interchanged, assigned, or reassigned with few records and little formality, thus obscuring the identity of the party responsible for operational safety of these vehicles. To improve the safety of the travelling public, FMCSA published a final rule on May 27, 2015, concerning the lease and interchange of passenger-carrying CMVs (80 FR 30164). The purpose of the rule is to identify the motor carrier operating a passenger-carrying CMV that is responsible for compliance with the Federal Motor Carrier Safety Regulations (FMCSRs) and ensure that a lessor surrenders control of the CMV for the full term of the lease or temporary exchange of CMV(s) and driver(s). The Agency received 37 petitions for reconsideration which have been filed in the public docket (Docket No. FMCSA-2012-0103). Upon review of these requests, FMCSA concluded that some have merit. FMCSA, therefore, extended the compliance date of the final rule from January 1, 2017, to January 1, 2018 (82 FR 13998; March 16, 2016) to allow the Agency time to complete its analysis and amend the rule where necessary. After further review of the petitions, the Agency announced on August 31, 2016, that it intended to consider changes to four aspects of the final rule and denied requests to reconsider other features of the rule (81 FR 59951). The August 31 notice announced that a public roundtable would be held to discuss the four issues to be addressed by rulemaking. The roundtable was held on October 31, 2016.

The petitions for reconsideration generally argued that FMCSA had taken a regulatory scheme from the trucking industry and applied it to the bus industry, which

has an entirely different operating structure and liability regime. Moreover, the petitioners contend that application of these trucking regulations to the bus industry offers no additional protection to the public from illegal or unsafe bus operators. Instead, petitioners contend that the final rule simply adds administrative costs and reduces operational flexibility for bus operators.

The most significant objection raised at the roundtable and by petitioners was that the 2015 final rule treated “chartering” (subcontracting) as equivalent to leasing. Petitioners contend that passenger carriers with FMCSA-issued active passenger carrier “operating authority” registration (as defined in 49 CFR 390.5) [hereafter abbreviated simply as “operating authority”] have long subcontracted work to other carriers with operating authority to handle demand surges, emergencies, or events that require more than their own available capacity. Petitioners indicated that subcontractors with their own operating authority have traditionally assumed responsibility for their own vehicles and drivers. Under the 2015 rule, however, a passenger carrier that subcontracted work to a second carrier would be responsible for the second carrier’s regulatory compliance. Petitioners claimed that making a carrier responsible for the subcontractor’s vehicles, drivers, and liability would make most short-term subcontracts impossible.

FMCSA believes that less burdensome regulatory requirements should be considered. Subjecting passenger carriers with operating authority to the full requirements of the leasing rule is not necessary. The Agency, therefore, intends to revise subpart F of 49 CFR part 390 to exclude “chartering” from the leasing requirements of that rule.

The revisions would also extend the emergency 48-hour delay in preparing a lease authorized by 49 CFR 390.303(a)(2) and remove the requirement that passengers actually be on board a bus when the exemption occurs.

FMCSA believes the changes mentioned above would enable the Agency to enhance its safety oversight of passenger carrier operations while implementing a less costly regulatory approach. The changes would be consistent with the intent of the 2015 final rule.

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

Daphne Y. Jefferson,
Deputy Administrator.

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