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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 379, 381, 385, 390, and 395

[Docket No. FMCSA-1998-3706]

RIN 2126-AA76

Hours of Service of Drivers; Supporting Documents SNPRM; Withdrawal

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

ACTION: Supplemental notice of proposed rulemaking (SNPRM); withdrawal.

SUMMARY: FMCSA withdraws its November 3, 2004, SNPRM that proposed requirements for the collection and use of documents to verify the accuracy of driver records of duty status. The FMCSA intends to publish a new notice of proposed rulemaking (NPRM) at a later date.

DATES: The SNPRM published on November 3, 2004 (69 FR 63997), is withdrawn as of October 25, 2007.

FOR FURTHER INFORMATION CONTACT:

David Mancl, Team Leader, Office of Enforcement and Compliance, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, Telephone: (202) 493-0442. Office hours are from 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:**Background**

The FMCSA regulates the number of hours that a driver of a commercial motor vehicle may drive and be on duty, the minimum length of rest periods between tours of duty, and weekly limits. Drivers must keep a log, called the "record of duty status" (RODS), that indicates their status (driving, on duty, not driving, off duty, or in a sleeper berth) for every day. These RODS are submitted to the motor carrier, which must retain them for six months.

On November 28, 1982 (47 FR 53383), the Federal Highway Administration (FHWA) (predecessor to FMCSA) promulgated a final rule that required a motor carrier to verify the accuracy of the hours of service (HOS) RODS of each driver and to ensure that drivers record their duty status in a specified format. The rule is codified in § 395.8 of Title 49 of the Code of Federal Regulations. Congress directed FHWA to revise the rule to improve both driver and carrier compliance and the effectiveness and efficiency of HOS enforcement, at a cost reasonable to the motor carrier industry (section 113(a) of the Hazardous Materials Transportation Authorization Act of 1994 (HMTAA) Public Law 103-311, August 26, 1994, 108 Stat. 1673 at 1676). Section 113(b) directs the Agency to specify the number, type, and frequency of "supporting documents", that is documents used to verify the accuracy of driver RODS, that must be maintained as well as the identification items that must be a part of the documents.

In response to section 113(a), FHWA published an NPRM on supporting documents in 1998 (63 FR 19457, April 20, 1998). The FMCSA included further proposals on supporting documents in its proposed rule on hours of service in 2000 (65 FR 25540, May 2, 2000). On November 3, 2004, FMCSA published an SNPRM proposing language to clarify the duties of motor carriers and drivers with respect to supporting documents, and requesting further comments on the issue (69 FR 63997).

The SNPRM addressed self-monitoring systems, RODS, supporting documents for use in monitoring and

enforcing the HOS, and definitions for "supporting documents" and "employee." The FMCSA proposed requiring a motor carrier to maintain HOS supporting documents in a way that let the carrier or a Federal or State investigator readily connect the supporting documents to the RODS that they support. The FMCSA expected the proposed language would clarify a motor carrier's duties under current regulations and increase motor carrier compliance with this requirement. A carrier's "self-monitoring system" would be the primary method a motor carrier would use to ensure drivers' compliance with the HOS regulations. The SNPRM listed documents that could serve as supporting documents.

Discussion of Comments

The FMCSA received 197 comments in response to the SNPRM. Comments were received from for-hire and private motor carriers, trade associations, a State enforcement agency, safety advocacy groups, an insurance group, a driving school, wireless equipment businesses, and individuals. Commenters expressed concerns about varying aspects of the proposed rule. The following is a summary of the main comments.

Documentation

Some commenters seemed to have misconstrued the list of supporting documents examples, and they were concerned about the number and quality of supporting documents proposed in the SNPRM. Some commenters believed FMCSA expected motor carriers to have access to or generate all or most of the documents listed. They also stated that many of the examples on the list did not provide data that could be used to verify RODS. Some commenters noted that short-haul operators did not have access to or generate many of the documents listed in the SNPRM. Several commenters noted that small motor carriers could have been at a disadvantage during an audit because they do not maintain a large number of documents with which to reconcile RODS. One association stated that the proposed rule violated drivers' privacy rights. Other commenters were concerned that failure to maintain all documents that supported drivers' RODS would constitute a violation of the proposed rule.

Self-Monitoring System

Commenters were concerned about the lack of specificity in defining the concept of a "self-monitoring system." Some commenters suggested that the use of statistically valid methods of

sampling RODS and their supporting documents should indicate an adequate system. Some commenters objected to the use of a 10-percent failure rate in assessing a self-monitoring system because there was no rationale for that percentage.

Burden

Many commenters contended that the requirement to verify, inspect, and maintain all records generated by a driver was unrealistic and burdensome, particularly for small motor carriers. Some commenters stated that FMCSA's assertion that the proposed rule imposed minimal burdens on compliant motor carriers was incorrect and vastly underestimated the actual paperwork burden. Commenters believed the proposed rule was vague and would require them to retain records they did not keep and to devote inordinate amounts of staff time to linking supporting documents to RODS. Drivers, particularly owner-operators operating under leases, complained that they would have to make copies of documents that they need for other purposes so that they could submit the documents to a motor carrier. Motor carriers would also have had to retain multiple copies of some documents because they are needed for other purposes. Some commenters stated that if the records were retained electronically, a requirement to link electronic records to a driver's RODS would entail considerable reprogramming of existing systems. Some commenters indicated that the proposed rule would unfairly burden smaller motor carriers who did not need an electronic tracking system. Cost estimates submitted by a few commenters far exceeded those presented by FMCSA.

Other Issues

Some commenters recommended the use of electronic on-board recorders (EOBRs) in place of supporting documents. Other commenters objected to the use of EOBRs. A substantial number of commenters objected to the definition of supporting documents as being too broad. Some commenters were concerned that FMCSA would require both paper and electronic records. A number of commenters stated the proposed rule did not meet the statutory criteria for supporting documents as defined in the HMTAA.

Other commenters were concerned that applications for exemptions would overwhelm FMCSA resources. Some commenters were worried that the exemptions would be routinely granted, thereby undermining the usefulness of

the rule. Commenters raised issues related to the application of the rule and its enforcement; they questioned whether it was fair to cite a motor carrier for a driver's RODS violations when the carrier had identified and disciplined the driver for those violations. A number of commenters raised concerns about copies of records and documents, location of records, and the retention period, reflecting confusion and uncertainty about the proposed document collection and retention requirements. Commenters also made suggestions about the definitions of "employee" and "falsification."

FMCSA Decision

The FMCSA has decided to withdraw this rulemaking action. There are issues with the Paperwork Reduction Action of 1995 (PRA) (44 U.S.C. 3501–3520) analysis supporting this action. In response to comments that the Agency's estimated information collection burden

associated with the proposed rule significantly underestimated the actual burden the industry would confront, FMCSA reevaluated its analysis of the rule as required by the PRA. The Agency discovered that the PRA analysis proposed for this rule did not account for the supporting document collection and retention burdens associated with the existing driver RODS information collection requirements. This oversight initially occurred in the 1998 NPRM when the Agency relied upon the burden assessment conducted for the 1982 Drivers Log Rule, which captured the paperwork burden for maintaining driver logs but did not capture the burden of collecting and maintaining supporting documents. Accordingly, the Agency withdraws this rulemaking action in order to conduct a comprehensive analysis of the information collection burden associated with the existing supporting

documents requirements of the Federal Motor Carrier Safety Regulations.

After the paperwork analysis that accurately identifies the information collection burden associated with the existing supporting documents requirements is complete, the Agency intends to initiate a new rulemaking action to comply with the requirements of Section 113 of the HMTAA. This will ensure that the new rulemaking proposal is based on an accurate and comprehensive understanding of the existing information collection inventory for supporting documents. It will further allow the opportunity for notice and comment on the rulemaking proposal without confusion associated with previous stages of this rulemaking action.

Issued on: October 18, 2007.

John H. Hill,

Administrator.

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