

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

### 252.211–7006 [Amended]

- 11. Amend section 252.211–7006 by—
- a. Removing the clause date “(SEP 2011)” and adding “(JUN 2016)” in its place;
- b. In paragraph (b)(1)(ii) introductory text, removing “<http://www.acq.osd.mil/log/rfid/>” and adding “[http://www.acq.osd.mil/log/sci/RFID\\_ship-to-locations.html](http://www.acq.osd.mil/log/sci/RFID_ship-to-locations.html)” in its place;
- c. In paragraph (d)(2), removing “located at [http://www.acq.osd.mil/log/rfid/tag\\_data.htm](http://www.acq.osd.mil/log/rfid/tag_data.htm)” and adding “located in the DoD Suppliers’ Passive RFID Information Guide at <http://www.acq.osd.mil/log/sci/ait.html>” in its place.

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 392

[Docket No. FMCSA–2015–0396]

RIN 2126–AB87

### Driving of Commercial Motor Vehicles: Use of Seat Belts

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA revises the Federal Motor Carrier Safety Regulations (FMCSRs) by requiring passengers in property-carrying commercial motor vehicles (CMVs) to use the seat belt assembly whenever the vehicles are operated on public roads in interstate commerce. This rule holds motor carriers and drivers responsible for ensuring that passengers riding in the property-carrying CMV are using the seat belts required by the Federal Motor Vehicle Safety Standards (FMVSSs).

**DATES:** This rule is effective August 8, 2016.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than July 7, 2016.

#### FOR FURTHER INFORMATION CONTACT:

Charles A. Horan, Director; Carrier, Driver, and Vehicle Safety Standards, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001 or by telephone at (202) 366–5370.

If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9896.

#### SUPPLEMENTARY INFORMATION:

##### I. Executive Summary

##### A. Purpose and Summary of the Major Provisions

Section 393.93(b)(2)–(3) of the Federal Motor Carrier Safety Regulations (FMCSRs) (49 CFR 393.93) requires every truck and truck tractor manufactured on or after July 1, 1971, to comply with the National Highway Traffic Safety Administration’s (NHTSA) Federal Motor Vehicle Safety Standard (FMVSS) No. 208 (49 CFR 571.208), relating to the installation of seat belt assemblies. They must also comply with FMVSS No. 210 (49 CFR 571.210), dealing with the installation of seat belt assembly anchorages, and FMVSS No. 207 (49 CFR 571.207), addressing seating systems more generally. Under FMVSS No. 208, trucks and multipurpose passenger vehicles with a Gross Vehicle Weight Rating (GVWR) of more than 10,000 pounds manufactured on or after September 1, 1990, are allowed by S4.3.2.1 an option to comply by providing a “complete passenger protection system,” but nearly all CMV manufacturers choose the second compliance option (S4.3.2.2) and install a “belt system.” This second option requires a seat belt assembly “at each designated seating position.” In short, the FMVSS and FMCSRs require seat belts at every seating position in a property-carrying CMV.

In addition, 49 CFR 392.16 requires that a CMV that has a seat belt assembly installed at the driver’s seat shall not be driven unless the driver has properly restrained himself or herself with the seat belt assembly. In this final rule, FMCSA requires that motor carriers and drivers ensure that passengers riding in property-carrying CMVs use their seat belts when the vehicles are operated on public roads.

##### B. Benefits and Costs

As indicated above, NHTSA requires vehicle manufacturers to install driver and passenger seat belts in large trucks. FMCSA already requires drivers to use their seat belts. However, the FMCSRs were previously silent on the use of seat belts by passengers in trucks. This final rule requires that every passenger in a property-carrying CMV use a seat belt, if one is installed. The only quantifiable cost of the final rule is the value of the person’s time necessary to buckle the seat belt, which is negligible. The benefits of this rule are any fatalities or

injuries avoided or reduced in severity as a result of seat belt use; these benefits are discussed later.

## II. Rulemaking Documents

### A. Availability of Rulemaking Documents

For access to docket FMCSA–2015–0396 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

### B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## III. Legal Basis for the Rulemaking

This final rule is based on the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (1984 Act). The 1935 Act (49 U.S.C. 31502) authorizes FMCSA to prescribe requirements for the safety of operation and equipment standards of for-hire and private motor carriers. This final rule is directly related to safe motor carrier operations. The 1984 Act (49 U.S.C. 31136) requires FMCSA to adopt regulations to ensure, among other things, that “commercial motor vehicles are maintained, equipped, loaded, and operated safely” (sec. 31136(a)(1)). This rule will increase the safety, not only of passengers, but also of CMV drivers whose control of the vehicle could otherwise be affected by unsecured passengers potentially thrown about the cab as a result of emergency steering or braking maneuvers.

A 2012 amendment to the 1984 Act requires FMCSA to ensure that CMV drivers are not coerced to violate certain provisions of the FMCSRs (sec. 31136(a)(5)). Coercion is now prohibited by 49 CFR 390.6. Given the obvious value of this final rule and the ease of compliance, the Agency believes that no one will be coerced *not* to wear a seat belt. It should be noted that the 1984 Act also authorizes FMCSA to “perform other acts [the Agency] considers appropriate” (49 U.S.C. 31133(a)(10)).

#### IV. Background

This final rule responds to a petition submitted by the Commercial Vehicle Safety Alliance (CVSA) on October 29, 2013 (available in the docket to this rulemaking). CVSA requested that FMCSA require all occupants in a property-carrying CMV to restrain themselves when the vehicle is being driven. The petition referred to data available from the Agency's Large Truck Crash Causation Study (LTCCS) (available at <http://www.fmcsa.dot.gov/research-and-analysis/research/large-truck-crash-causation-study>). Specifically, the petition noted that the 2011 LTCCS data indicate that 34 percent of truck occupants killed in fatal crashes were not wearing seat belts.

Today's final rule follows a Notice of Proposed Rulemaking (NPRM) with the same title, published in the **Federal Register** on December 10, 2015 (80 FR 76649). Although responding to CVSA's petition, the NPRM slightly modified some of the petitioner's requests. FMCSA used the word "occupant" in addition to "passenger" to make clear that the regulation would apply to any person in the property-carrying CMV. "Occupants" would include instructors, evaluators, or any other personnel who might be seated in a property-carrying CMV, regardless of their status. FMCSA also proposed that this requirement be applicable only if there is a seat belt assembly installed in the property-carrying CMV.

#### V. Discussion of Comments and Responses

FMCSA received 17 unique comments to this rulemaking. Nine were from individuals and one was from a motor carrier, Werner Enterprises Inc. (Werner). The rest came from industry and safety organizations, including the American Trucking Associations (ATA), Advocates for Highway and Auto Safety (Advocates), NAFA Fleet Management Association (NAFA), National Rural Electric Cooperative Association (NRECA), National Safety Council (NSC), the National Transportation Safety Board (NTSB), and CVSA.

Twelve of the 17 commenters, including all 7 industry and safety organizations and the motor carrier, supported requiring passengers in property-carrying CMVs to use a seat belt, though 2 of the 12 objected to holding the motor carrier responsible for compliance. One commenter asked a question, but did not state whether he supported the rulemaking. Four of the nine individuals who submitted comments did not believe a rulemaking was necessary or did not support the

rulemaking because they did not believe drivers should be responsible for a passenger's seat belt use. The other four individuals supported the rulemaking. Three commenters believed the rulemaking should be more extensive.

##### A. Compliance Responsibilities

*Comments:* Three commenters opposed imposing a new responsibility on drivers to ensure passenger compliance with a seat belt regulation. An individual stated that neither the motor carrier nor the driver should be responsible for requiring passengers to use the seat belts, and mentioned that drivers deal with many other regulations already. Both ATA and Werner stated that a motor carrier could not and should not be responsible for the use of safety belts in CMVs, as they have no practicable way to monitor it.

Two commenters stated that requiring a driver to ensure that passengers were wearing their seat belts would be a distraction while driving. Another commenter stated that the driver would be required to police passengers. An individual thought that the Agency should enforce existing regulations and rules rather than develop new ones, and questioned whether this rule would actually save lives. One commenter believed the rulemaking would be applicable to drivers of passenger-carrying vehicles, which it is not.

ATA requested explicit clarification that the driver, not the motor carrier, would be responsible for passenger compliance with this regulation, stating that the NPRM correctly placed this burden on the driver. ATA said it would be impossible for a carrier to monitor actions of passengers and drivers in all of its vehicles. While acknowledging that a carrier may have some leverage with its drivers, ATA claimed it would have none over other occupants of a CMV. Werner echoed that position because a motor carrier would not have the ability to control a driver's or a passenger's use of seat belts. Werner stated, "Motor carriers should not be held liable for actions of an occupant of a CMV."

ATA also argued that the "proposed rule does not establish how carriers would be deemed to have 'permitted' drivers to violate the seat belt use requirement." ATA suggested that FMCSA seek a pattern of this type of violation or an investigation into a carrier's policies before taking action against a motor carrier over passengers not wearing seat belts.

NAFA and NRECA stated that many of their members have policies that require their passengers to use seat belt restraints. NRECA wrote that the

rulemaking is consistent with its culture of safety. Werner stated that it has a policy requiring seat belt use as well.

*FMCSA Response:* Many States already hold automobile drivers responsible for their passengers' seat-belt use. This rule extends that principle to all property-carrying CMVs. Commercial drivers are already required to satisfy themselves that the vehicle is in good working order (49 CFR 392.7); requiring them to ensure that occupants have fastened their seat belts is a minor additional requirement.

FMCSA disagrees with ATA's argument that motor carriers should not be held responsible for the activities of their employees and any authorized passengers (including employees and non-employees). Under 49 CFR 390.11, carriers have for decades been held responsible for their drivers' regulatory compliance—for example with the hours-of-service regulations and associated logbook requirements—even though the carrier is not able to physically supervise the driver's performance of these tasks. This rule adds a small burden (with significant potential safety benefits) to the obligations of the carrier and driver.

Furthermore, the contention that a carrier would have no control over non-drivers riding in a truck contradicts the requirements of 49 CFR 392.60, which prohibits the transportation of anyone without specific written authorization from the carrier. The motor carrier, therefore, has knowledge of each occupant of the property-carrying vehicle and can easily require that authorized passengers buckle up.

With regard to driver distraction, the rule does not require that drivers continuously monitor the passenger(s) while the vehicle is in operation. However, it is expected that the driver could observe whether the seat belts were in use before the vehicle is operated on a public road and remind the occupants seat belt usage is required if he or she notices that the passenger has unfastened the seat belt.

##### B. Enforcement

*Comments:* Both NSC and ATA stated that this rule would cause the States to adopt similar regulations shortly after a final rule, and supported this outcome. NSC believed it is time to establish a new, uniform national standard. It commented that such a standard for property-carrying CMV occupants may further help improve seat belt use, particularly among long-haul trucks that often travel through more than one State.

ATA wrote that CMV enforcement officers would have the authority to cite

large truck occupants for failing to wear a seat belt in all 50 States and attributed increased seat belt usage to widespread enforcement of existing seat belt laws. ATA stated their support for the adoption of primary seat belt laws for all motor vehicles by all States and the implementation of a variety of strategies to enhance the use of seat belts.

**FMCSA Response:** FMCSA agrees that enforcement has encouraged the growing use of seat belts, but existing State laws are not uniform with respect to seat belt use in trucks, especially where truck passengers are concerned. This rule creates that uniformity and removes any uncertainty about regulatory requirements that may exist among motor carriers or different States. FMCSA believes that this rulemaking will address those gaps in existing laws and inconsistent enforcement; and, as a result, compliance and safety will increase even further.

### C. Sleeper Berth Restraints

**Comments:** One individual mentioned that it would be difficult to require restraints for the second driver of a team operation who is resting in the sleeper berth. A different commenter believed that sleeper berth belt use would be a good idea for a new rulemaking.

The NTSB stated that all the reasons occupants should wear seat belts in the front of the CMV could be applied to the sleeper berth, and that restraints should be required there as well. Advocates, on the other hand, stated “*Other than co-drivers using a sleeper berth, all CMV occupants and passengers seated in designated seating positions should be properly belted.*” [Emphasis supplied.]

Werner stated that it has a policy requiring sleeper berth restraints to be utilized.

**FMCSA Response:** The robust sleeper berth restraints required by 49 CFR 393.76(h) are designed to keep occupants from being ejected from the CMV during a violent crash. That provision does not focus on the essential function of sleeper berths, *i.e.*, to allow drivers to sleep, even while the CMV is in motion, and thus to avoid the fatigue that contributes significantly to crash risk. Because FMCSA has no information on the effectiveness of current sleeper berth restraints in reconciling crash protection with fatigue prevention, and because standard seat belts are not required to perform that dual function, the Agency chose not to delay the benefits of the NPRM while attempting to analyze the implications of requiring the use of sleeper berth restraints. Commenters provided no information that would enable the

Agency to address that topic in this rulemaking.

### D. Buses

**Comments:** A commenter believed the proposal would include passenger-carrying vehicles, and stated that safety would be compromised if a driver were held responsible for passengers’ seat-belt use. This commenter thought that law enforcement should take the lead on compliance for passengers in a passenger-carrying CMV.

The NTSB stated that the logic for requiring non-passenger-carrying CMVs to use seat belts is consistent with the logic for requiring seat belt use in passenger-carrying CMVs, and requested additional action for buses. The NTSB submitted several reports of crashes to illustrate the need for an additional rulemaking focusing on passenger-carrying CMVs. The NTSB suggested that the FMCSA address seat belt use for all occupants of passenger-carrying CMVs that are equipped with seat belts and stated, “A rule to address all CMV passengers who have a restraint available would improve the use of the protective equipment already in place and save lives.”

**FMCSA Response:** The NPRM did not propose, nor does this final rule require, the use of seat belts in passenger-carrying CMVs. The Agency believes that, in the best interest of safety, this rulemaking should be completed as proposed without further delay. For these reasons, this final rule does not address seat belt use in passenger vehicles.

The Agency, however, is committed to passenger safety. FMCSA has developed and distributed extensive pre-trip safety briefing materials, available through its Web site.<sup>1</sup> NHTSA published a final rule requiring lap/shoulder belts for each passenger seat on newly manufactured over-the-road buses and other larger buses, with certain exclusions, effective November 28, 2016 (78 FR 70416, November 25, 2013). As a result of this rule, FMCSA is currently updating its outreach materials to encourage seat belt use when seat belts are available.

### E. Horses and Articulated Trailers

**Comments:** One individual asked if people caring for horses in trailers would be subject to this rulemaking.

**FMCSA Response:** Attendants who ride in horse trailers are not protected by all of the safety requirements applicable to passengers in the cab of a truck or truck tractor, or a bus. As such,

they are not subject to this final rule. Nonetheless, if there are designated seating positions for attendants in horse trailers, and seat belts are available, they should be used when the attendant is not moving about the trailer to care for the horses.

### F. Seat Belt Assembly Removed

**Comments:** Advocates stated “Owners and drivers of CMVs who have removed a seat belt assembly from the vehicle should not be able to evade this regulation.” Advocates voiced concern about seat belts being removed in order to avoid compliance.

**FMCSA Response:** The likelihood that an operator of a vehicle equipped with seat belts for all occupants would remove the belts provided for non-drivers in order to avoid compliance with this rule is very remote. The quantifiable burden of compliance is essentially nil, and there is no obvious reason why anyone would remove the seat belts—it would take more work to remove the seat belts than to instruct drivers and authorized passengers to wear them.

### G. Data

**Comments:** NSC believed the cost of the rule would be minimal, but stated that benefits could be much higher than FMCSA states in the proposal, and supported this conclusion with 2014 FARS data documenting that:

. . . of the 337 large truck non-driver occupants involved in fatal crashes who were wearing a lap and/or shoulder belt, 6 percent were killed. Of the 186 non-driver occupants who were not wearing a lap and/or shoulder belt, 20 percent were killed. About 32 percent of these fatally injured unrestrained occupants were ejected from the truck.

The FARS data cited by NSC are consistent with the 2013 FARS data upon which FMCSA relied in its consideration of the potential safety benefits of this rule. NSC commented that “seat belt use is the most effective countermeasure to prevent ejection. In one study of passenger vehicles, complete ejection was reduced by a factor of about 600, effectively eliminating complete ejections in those vehicles.”<sup>2</sup>

NSC also referred to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey, noting that while 83.7 percent of CMV drivers

<sup>1</sup> <https://www.fmcsa.dot.gov/safety/passenger-safety/pre-trip-safety-information-bus-passengers>.

<sup>2</sup> Funk JR, Cormier JM, Bain CE, Wirth JL, Bonugli EB, Watson RA. Factors Affecting Ejection Risk in Rollover Crashes. *Ann Adv Automot Med*. 2012 Oct; 56: 203–211.

utilize seat belts, only 72.9 percent of CMV passengers do.<sup>3</sup>

CVSA referred back to the data referenced in its original petition that 34 percent of truck occupants killed in fatal crashes were not wearing a seat belt (based on 2011 LTCCS data) and re-stated the importance of this rulemaking.

ATA supported the use of seat belts and pointed to data from the 2013 Seat Belt Usage by Commercial Motor Vehicle Drivers Survey<sup>4</sup> that show the use of seat belts is increasing

Advocates re-stated the 2013 NHTSA FARS data presented by FMCSA, both in this final rule and the NPRM, to emphasize the “grim” nature of the statistics involving fatal crashes, particularly with respect to the ejection risk of unrestrained passengers.

*FMCSA Response:* Although commenters reference various sources concerning seat belt use among truck occupants, FMCSA continues to rely upon 2013 NHTSA FARS data that document the increased risk of fatality and ejection involving unrestrained passengers to support the basis for issuing a final rule, and those numbers fall within the range presented by commenters. The data provided by commenters reinforces the societal and safety benefits of this rulemaking as a measure that will ensure increased seat belt use. Though the projected numbers of lives saved vary in the data, all of the calculations involve no cost and a very

small amount of time spent complying with this rule.

## VI. Today's Final Rule

This final rule makes no substantive changes to the 2015 NPRM. Under this final rule, 49 CFR 392.16 is revised to include requirements for seat belt usage by passengers in property-carrying CMVs.

## VII. Regulatory Analyses

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

Under E.O. 12866 (58 FR 51735, Oct. 4, 1993) and DOT policies and procedures, FMCSA must determine whether a regulatory action is “significant,” and therefore subject to OMB review and the requirements of the E.O. The Order defines “significant regulatory action” as one likely to result in a rule that may:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities.
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency.
- (3) Materially alter the budgetary impact of entitlements, grants, user fees,

or loan programs or the rights and obligations of recipients thereof.

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O.

FMCSA has determined that this action is not a significant regulatory action within the meaning of E.O. 12866, as supplemented by E.O. 13563, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulation will not result in an annual effect on the economy of \$100 million or more, lead to a major increase in costs or prices, or have significant adverse effects on the United States economy.

According to data from NHTSA's Fatality Analysis Reporting System, available in the docket for this rulemaking,<sup>5</sup> in 2013, 348 non-driver occupants were in the truck at the time the vehicle was involved in a fatal crash and were wearing a lap or shoulder belt. Seventeen of those non-driver occupants were killed. Also in 2013, 122 non-driver occupants of large trucks were involved in fatal crashes and were not wearing a lap and/or shoulder belt; of these, 30 were killed. Sixteen of the 30 were totally or partially ejected from the truck. The fatality rate was five times lower for passengers who wore seat belts versus those who did not. Table 1 below presents the data described above.

TABLE 1—OUTCOMES OF NON-DRIVER TRUCK OCCUPANTS IN FATAL CRASHES

[Source: 2013 NHTSA FARS]

	N	Fatalities	Fatality rate (percent)
Non-Driver Occupants .....	470	47	10.0
Wearing Seat Belts .....	348	17	4.9
Not Wearing Seat Belts .....	122	30	24.6

FMCSA believes that some of these fatalities involving occupants not wearing seat belts could have been prevented if this regulation had been in place. This conclusion is indirectly supported by a recent study,<sup>6</sup> published by the Kentucky Injury Prevention and Research Center (KIPRC), which analyzed crash data from years 2000 to 2010. The study finds that “in a moving semi-truck collision, the odds for an injury were increased by 2.25 times for

both semi-truck drivers and sleeper berth passengers who did not use occupant safety restraints” compared to those who did, with a 95 percent confidence interval ranging from an increased injury risk of 1.15 to 4.41 times to unrestrained occupants. This study provides empirical support to the safety benefits resulting from the use of occupant restraints by drivers and sleeper berth passengers—to whom the rule does not apply. FMCSA assumes

that the safety benefits to passengers in property-carrying CMVs would be of similar magnitude to those noted in the KIPRC study.

While all States but one have seat belt laws, failure to use a belt may be either a primary or secondary offense and may not apply to a truck passenger. Furthermore, there may be differences in the vehicle weight threshold at which the law applies. Therefore, adopting a Federal rule applicable to non-driver

<sup>3</sup> Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

<sup>4</sup> 2013 Commercial Motor Vehicle Safety Belt Facts, Figures 1 and 2, available at [https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety\\_Belt%20Factsheet\\_508.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety_Belt%20Factsheet_508.pdf)

[www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety\\_Belt%20Factsheet\\_508.pdf](https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/Safety_Belt%20Factsheet_508.pdf)

<sup>5</sup> See “Restraint Use and Ejection for Large Truck Passenger Fatalities in 2013,” Docket # FMCSA–2015–0396–0002.

<sup>6</sup> Bunn, Slavova, Robertson. “Motor Vehicle Injuries Among Semi Truck Drivers and Sleeper Berth Passengers,” *Journal of Safety Research* 44 (2013) 51–55; available at: <http://dx.doi.org/10.1016/j.jsr.2012.09.003>.

occupants of property-carrying CMVs, as defined in 49 CFR 390.5, will provide a uniform national standard. To maintain eligibility for Motor Carrier Safety Assistance Program grants, States would be required to adopt compatible seat belt rules for non-driver occupants of property-carrying CMVs within 3 years of the effective date of today's final rule.

FMCSA does not know how many trucks carry passengers or precisely how many of those passengers fail to use existing seat belts, though the Seat Belt Usage by CMV Drivers Survey indicates that, as of 2013, 73 percent of passengers in CMVs subject to this rule utilize existing seat belts, leaving a 27 percent share that do not.<sup>7</sup> However, given that the only quantifiable cost of the proposal is the negligible amount of time needed for occupants to buckle their seat belts,<sup>8</sup> the rule would benefit motor carrier employees and passengers. Seat belts have been proven to save lives. While an estimate of the number of CMV-related fatalities and injuries that could be avoided cannot be provided based on the available data, FMCSA believes motor carriers' and drivers' compliance with today's final rule requiring the use of seat belts by non-driver occupants will save lives.

In addition to the data provided in the docket during the NPRM stage of this rulemaking action, FMCSA received data from several commenters, with more extensive claims about lives saved by the use of seat belts.

FMCSA also became aware of another Federal survey on this topic, conducted by the National Institute for Occupational Safety and Health (NIOSH).<sup>9</sup> The NIOSH survey found that 86 percent of long-haul truck drivers self-reported regular use of seat belts, a result comparable to the FMCSA Seat Belt Usage by Commercial Motor Vehicle Drivers Survey that estimated this value to be 83.7 percent. While the NIOSH study does not speak to the frequency of passenger seat belt use, the similarity in the estimated rate of seat belt use among drivers between these surveys reinforces the Agency's

confidence in the FMCSA survey's estimates of passenger seat belt use. Additionally, this did not alter the Agency's initial conclusions about data, as the final rule's findings are consistent with the proposed rule's conclusions.

The Agency believes the potential economic impact of this action is positive, because it is likely that some lives will be saved at a cost that would not begin to approach the \$100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest, as there were relatively few comments to the proposed rule, and most were generally positive. This proposed rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

#### *B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term "small entities" comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), FMCSA does not expect the rule to have a significant economic impact on a substantial number of small entities. FMCSA believes the cost is minimal and poses no disproportionate burden to small entities.

Consequently, I certify that the proposed action will not have a significant economic impact on a substantial number of small entities.

#### *C. Unfunded Mandates Reform Act of 1995*

This rule will 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 State, local, and tribal governments, in the aggregate, or by the private sector, of \$155 million (which is the value of \$100 million in 1995 after adjusting for inflation to 2014) or more in any 1 year.

#### *D. Executive Order 12988 (Civil Justice Reform)*

This rule 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.

#### *E. Executive Order 13045 (Protection of Children)*

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

#### *F. Executive Order 12630 (Taking of Private Property)*

FMCSA reviewed rulemaking in accordance with Executive Order 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 taking implications.

#### *G. Executive Order 13132 (Federalism)*

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 has analyzed this rule under Executive Order 13132 and determined that it does not have Federalism implications.

#### *H. Executive Order 12372 (Intergovernmental Review)*

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

#### *I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

This rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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.

#### *J. Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or

<sup>7</sup> Seat Belt Usage by Commercial Motor Vehicle Drivers, 2013 Survey; Executive Summary p. V. (Available in docket for this rule)

<sup>8</sup> FMCSA acknowledges that there is a potential cost for the lost freedom of choice to not wear a seat belt, for CMV passengers in the states where no law currently requires them to use the installed seat belts. FMCSA is unable to quantify this cost, but believes that the safety benefits described herein weigh overwhelmingly in favor of requiring the use of seat belts in this case.

<sup>9</sup> NIOSH National Survey of Long-Haul Truck Drivers; Injury and Safety. Available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC4631642/pdf/nihms726279.pdf>. Accessed March 31, 2016.

require through regulations. No new information collection requirements are associated with this final rule.

*K. 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 determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(bb) of Appendix 2. The CE under paragraph 6(bb) addresses regulations concerning vehicle operation safety standards. A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov*.

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 it does not affect direct or indirect emissions of criteria pollutants.

*L. Executive Order 12898 (Environmental Justice)*

Under E.O. 12898, each Federal agency must identify and address, as appropriate, "disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations" in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

*M. Executive Order 13211 (Energy Effects)*

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a "significant energy action" under that executive order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, the rule does not require a Statement of Energy Effects under Executive Order 13211.

*N. E-Government Act of 2002*

The E-Government Act of 2002, Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. FMCSA has not completed an assessment of the handling of PII in connection with today's proposal because the final rule does not involve PII.

*O. National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not adopt its own technical standards, there is no need to submit a statement to OMB on this matter.

*P. 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 of a regulation that will affect the privacy of individuals. This rule will 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 that receives records contained in a system of records from a Federal agency for use in a matching program. This final rule will not result in a new or revised Privacy Act System of Records for FMCSA.

**List of Subjects for 49 CFR Part 392**

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

For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR part 392 as follows:

**PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES**

■ 1. The authority citation for part 392 continues 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); and 49 CFR 1.87.

■ 2. Revise § 392.16 to read as follows:

**§ 392.16 Use of seat belts.**

(a) *Drivers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has a seat belt assembly installed at the driver's seat unless the driver is properly restrained by the seat belt assembly.

(b) *Passengers.* No driver shall operate a property-carrying commercial motor vehicle, and a motor carrier shall not require or permit a driver to operate a property-carrying commercial motor vehicle, that has seat belt assemblies installed at the seats for other occupants of the vehicle unless all other occupants are properly restrained by such seat belt assemblies.

Issued under the authority of delegation in 49 CFR 1.87.

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

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