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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA-1997-2364]

RIN 2126-AB08

Parts and Accessories Necessary for Safe Operation; Fire Extinguisher Exception for Driveaway-Towaway Operations

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

ACTION: Final rule.

SUMMARY: FMCSA amends part 393 of the Federal motor carrier safety regulations concerning parts and accessories necessary for safe operation in response to a petition for rulemaking filed by JHT Holdings, Inc. The petitioner requested that the previous provision excepting driveaway-towaway operations from supplying each power unit with a fire extinguisher be reinstated. This amendment is intended to correct that inadvertent omission in the final rule issued on August 15, 2005.

DATES: This rule is effective September 6, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. Jeffrey J. Van Ness, phone (202) 366-8802, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

The Motor Carrier Act of 1935 authorized the Interstate Commerce Commission (ICC) to regulate truck safety; that authority was transferred to the newly established Department of Transportation (DOT) in 1966 (see section 6(e)(6) of the DOT Act, 80 Stat. 939-940).

The ICC issued the Federal Motor Carrier Safety Regulations (FMCSRs) in the late 1930s and promulgated major revisions on May 15, 1952 (17 FR 4422). The amended regulations required fire extinguishers in most vehicles, but included an exception for driveaway-towaway operations (17 FR at 4445).

This rulemaking simply restores the driveaway-towaway exception, which was inadvertently deleted in the final rule FMCSA published on August 15,

2005 (70 FR 48008). Because the ICC fully explained the legal basis of the 1952 rulemaking (see 54 M.C.C. 337, at 338), and because all subsequent amendments to the driveaway-towaway exception—whether by the ICC or DOT—were ministerial in nature, no further discussion of the legal basis of this action is required.

Background

On August 15, 2005, FMCSA amended 49 CFR part 393, Parts and Accessories Necessary for Safe Operation. The amendments removed obsolete and redundant regulations; responded to several petitions for rulemaking; provided improved definitions of vehicle types, systems, and components; resolved inconsistencies between 49 CFR part 393 and the National Highway Traffic Safety Administration's (NHTSA) Federal Motor Vehicle Safety Standards (FMVSSs) (49 CFR part 571); and codified certain FMCSA regulatory guidance concerning the requirements of 49 CFR part 393. Generally, the amendments did not involve the establishment of new or more stringent requirements but clarified existing requirements. The final rule was intended to make many sections more concise, easier to understand, and more performance-oriented.

The final rule was based on a notice of proposed rulemaking (NPRM) published by the Federal Highway Administration (FHWA) on April 14, 1997 (62 FR 18170). FHWA had received numerous petitions for rulemaking and requests for interpretation of the requirements of 49 CFR part 393, which raised the need for amendments to clarify several provisions of the safety regulations.

Parts 393 and 396 of the FMCSRs include several exceptions for driveaway-towaway operations. The driveaway-towaway exceptions are intended to address situations in which compliance with some of the vehicle regulations is not practicable because of the circumstances surrounding the delivery or transportation of the vehicle. Examples of driveaway-towaway operations include the delivery of a newly manufactured CMV from a manufacturer to a dealership, the delivery of a new or used motor vehicle from the dealership to the purchaser, or certain movements of vehicles to a repair or maintenance facility. Among the provisions of 49 CFR parts 393 and 396 which do not apply to driveaway-towaway operations are the requirements for lamps and reflectors, brakes, driver vehicle inspection

reports, maintenance records, and periodic inspection.

Technical Amendment of § 393.95

On December 9, 2005, JHT Holdings, Inc. (JHT) contacted FMCSA by telephone and asked why the longstanding provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher had been deleted in the August 2005 final rule. Based on the conversation with JHT, FMCSA conducted a review of the August 2005 final rule to ensure there were no inconsistencies between the preamble and the accompanying regulatory text. This review confirmed the unintended removal of the provision excepting driveaway-towaway operations from the requirement in § 393.95(a). The provision was originally adopted on May 15, 1952 (17 FR 4422, at 4445).

On December 22, 2005, while conducting the review of the August 2005 final rule, the Agency received a Petition for Rulemaking from JHT. The petition formally requested that the Agency reinstate the provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher.

FHWA did not specifically address the proposed removal of this exception in the preamble of the April 1997 NPRM, and FMCSA did not discuss the issue in the preamble of the August 2005 final rule. In addition, the proposed amendment was not addressed in the regulatory analyses prepared in support of the NPRM or the final rule. However, the regulatory language in both the NPRM and the final rule omitted the exception for driveaway-towaway operations. FMCSA has determined that the removal of this exception from the regulations was inadvertent.

Therefore, FMCSA is today publishing a technical amendment that reinstates the provision excepting driveaway-towaway operations from the requirement in § 393.95(a) that every driven unit be equipped with a fire extinguisher. The exception formerly appeared in § 393.95(a)(4) but is being recodified as § 393.95(a)(6) because paragraph (a) was reorganized in the August 2005 final rule.

Regulatory Analyses and Notices

Good Cause Exception to Notice and Comment

This final rule makes only a minor technical correction to § 393.95. The rule amends that section to reinstate a

provision inadvertently removed by the final rule published on August 15, 2005 (70 FR 48008). Therefore, FMCSA finds good cause to adopt the rule without prior notice or opportunity for public comment (5 U.S.C. 553(b)(3)(B)).

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or Department of Transportation regulatory policies and procedures. This document is not required to be reviewed by the Office of Management and Budget. Because this rulemaking merely makes a minor change that will not result in additional costs, a regulatory evaluation has not been prepared by the Agency.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), FMCSA has considered the effects of this regulatory action on small entities and determined that this rule will not have a significant impact on a substantial number of small entities. Because this rulemaking merely makes a minor change that will not result in additional costs, a regulatory flexibility analysis has not been prepared by the Agency.

Unfunded Mandates Reform Act of 1995

This rulemaking 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 \$120.7 million or more in any one year.

Executive Order 12988 (Civil Justice Reform)

This action will meet applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

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

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. It has been determined that this rulemaking will not have a substantial direct effect on States nor will it limit the policy-making discretion of the States. Nothing in this document will preempt any State law or regulation.

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.

Paperwork Reduction Act

This final rule does not contain a collection of information requirement for the purposes of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined under FMCSA Order 5610.1 (69 FR 9680, March 1, 2004) that this action is categorically excluded (CE) under Appendix 2, paragraph 6.b. from further environmental documentation. This CE relates to establishing regulations and actions taken pursuant to these regulations that are editorial in nature. In addition, FMCSA believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

FMCSA also analyzed this final rule under the Clean Air Act (CAA), as amended 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 involves rulemaking activity which

would not result in any emissions increase nor would it have any potential to result in emissions that are above the general conformity rule's de minimis emission threshold levels (40 CFR 93.153(c)(2)). Moreover, it is reasonably foreseeable that the rule would not increase total CMV mileage, change the routing of CMVs, change how CMVs operate, or change the CMV fleet-mix of motor carriers. This action merely reinstates inadvertently omitted text from a prior FMCSA final rule.

Executive Order 13211 (Energy Effects)

FMCSA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. It has been determined that this action will not be a significant energy action under that order because it will not be economically significant and will not likely have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects for 49 CFR Part 393

Highways and roads, incorporation by reference, motor carriers, motor vehicle equipment, motor vehicle safety.

■ In consideration of the foregoing, FMCSA amends 49 CFR part 393 as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 322, 31136, and 31502; section 1041(b) of Pub. L. 102-240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.73.

■ 2. Amend § 393.95 by adding paragraph (a)(6) to read as follows:

§ 393.95 Emergency equipment on all power units.

* * * * *

(a) * * *

(6) *Exception.* This paragraph (a) does not apply to the driven unit in a driveaway-towaway operation.

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Issued on: July 30, 2007.

John H. Hill,
Administrator.

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