(Catalog of Federal Domestic Assistance No. 97.022, "Flood Insurance.")

Dated: September 1, 2010.

Sandra K. Knight,

Deputy Federal Insurance and Mitigation Administrator, Mitigation, Department of Homeland Security, Federal Emergency Management Agency.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385 and 395

[Docket No. FMCSA–2004–18940]

RIN 2126–AA89

Electronic On-Board Recorders for Hours-of-Service Compliance

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

ACTION: Final rule; Technical amendments and response to petitions for reconsideration.

SUMMARY: FMCSA amends its April 5, 2010, final rule that established new performance standards for electronic on-board recorders (EOBRs) installed in commercial motor vehicles (CMVs). In response to petitions for reconsideration from Qualcomm Incorporated, XATA Corporation, and a group of industry stakeholders, FMCSA amends requirements relating to the temperature range in which EOBRs must be able to operate, and the connector type specified for the Universal Serial Bus (USB) interface.

DATES: The amendments in this final rule become effective September 13, 2010.

ADDRESSES: *Public Access to the Docket:* You may view, print, and download this final rule and all related documents and background material on-line at *http://www.regulations.gov,* using the Docket ID Number FMCSA–2004–18940. These documents can also be examined and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building–Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Vehicle and Roadside Operations Division, Office of Bus and Truck Standards and Operations (MC–PSV), Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590; telephone (202) 366–4325.

SUPPLEMENTARY INFORMATION:

Legal Basis

The legal basis of the April 2010 final rule is also applicable to this final rule. See 75 FR 17208–17252, April 5, 2010.

Background

The FMCSA was notified about two technical errors in the April 5, 2010, "Electronic On-board Recorders for Hours of Service Compliance" final rule. (75 FR 17208). The FMCSA also received several petitions for reconsideration of the final rule that are discussed further in this final rule.

Technical Corrections

(1) The first sentence in § 385.807(a) currently reads "Following the close of the compliance review described in § 385.805(a), FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness." The regulatory citation should read "§ 385.805," not "§ 385.805(a)"

(2) Section 385.815(e) currently reads "The exemption granted under this section shall not apply to CMVs manufactured on or after the date 2 years from the effective date of this rule." The effective date referenced should be June 4, 2012, as is stated elsewhere in the final rule.

Petitions for Reconsideration

FMCSA received petitions for reconsideration, timely filed, from Qualcomm Incorporated (Qualcomm), XATA Corporation (XATA), and a group of industry stakeholders, including the American Trucking Associations' Technology & Maintenance Council (TMC) EOBR Task Force [1] (Stakeholders). Qualcomm and Stakeholders requested that FMCSA reconsider the final rule's requirements for (1) the temperature range in which EOBRs must be able to operate, and (2) the connector type specified for the USB interface. XATA's petition covered the same matters as those of Qualcomm and Stakeholders, but further requested that FMCSA (1) clarify certain reportable events in the diagnostic table, and (2) consider offering an additional alternative for the data transfer between an EOBR and a roadside safety official's portable computer. FMCSA met with the stakeholders on June 2, 2010 (a list of the attendees and a summary of the meeting has been placed in the docket) in response to their request for an opportunity to present their concerns in person.

A discussion of each of the petitioner's issues, followed by the Agency's assessment and decision, follows.

Operating Temperature Range

On January 18, 2007 (72 FR 2340), FMCSA published a notice of proposed rulemaking (NPRM) that proposed to amend the Federal Motor Carrier Safety Regulations to incorporate new performance standards for EOBRs. Among other things, the NPRM proposed to require an EOBR to be able to operate in temperatures ranging from −20 °F to 120 °F (−29 °C to 49 °C) (72 FR 2340, at 2393).

In comments to the docket, International Truck and Engine Corporation stated "Typical industry standards for commercial vehicles (See Society of Automotive Engineers (SAE) recommended practice J1455, "Surface Vehicle Recommended Practice: Recommended Environmental Practices for Electronic Equipment Design in Heavy-Duty Vehicle Applications") exceed the minimum requirements stated for operating temperature. Interior spaces are rated from −40 degrees C to +85 degrees C. International notes that under the minimum temperature specification there will be occasions where the EOBR may not operate until the vehicle interior is heated (or cooled) to the operating temperature given." Qualcomm stated "We recommend that environmental requirements defer to industry standards for comparable equipment and not be specified in this regulation. Specifically, SAE standard J1455—Recommended Environmental Practices for Electronic Equipment Design in Heavy-Duty Vehicle Applications should be referenced." TMC offered a similar comment in a Technical Policy Advisory submitted to the docket: "The environmental factors should be based on industry standards for similar types of equipment."

In the April 2010 final rule, FMCSA revised the EOBR operating temperature range to −40 °C to 85 °C (−40 °F to 185 °F). (75 FR 17208, at 17232). In doing so, the Agency referred to the detailed discussion in Section 5.2 of the SAE standard, which addresses temperature ranges in the forward interior of the vehicle, an area that includes the floor, instrument panel, and headliner. The instrument panel, discussed in Section 5.2.1, "includes the top of the dashboard

[1] Companies and organizations submitting the petition included Qualcomm Enterprise Services, PeopleNet, XATA Corporation, Continental Corporation, American Trucking Associations, American Bus Association, Commercial Vehicle Safety Alliance, National Private Truck Council, and United Motorcoach Association.

and the near vertical section carrying the instruments and steering wheel." The applicable design guidelines for this area, shown in Table 5 of the SAE standard, include a nominal temperature range of −40 °C to 85 °C (−40 °F to 185 °F), and a top surface temperature of −40 °C to 115 °C (−40 °F to 240 °F).[2]

In the April 2010 final rule, the Agency adopted the nominal temperature range of −40 °C to 85 °C (−40 °F to 185 °F) based on the SAE standard. Qualcomm, Stakeholders, and XATA all addressed the operating temperature range in their petitions for reconsideration. Qualcomm's description of its concern was representative. Qualcomm stated the final rule's EOBR temperature operating range, −40 °C to 85 °C, (40 °F to 185 °F), is beyond the range of the leading commercially-available systems today. Qualcomm noted that off-the-shelf telematics and on-board recorder systems are typically designed for −20 °C to 60 °C (−4 °F to 140 °F), and that it would require significant added technical features and costs in such devices to meet the requirements of the new regulation. Qualcomm also stated that it has been providing on-board computer systems to trucking companies operating throughout the United States and Canada for over 20 years, and that its units have not experienced any significant degradation in performance due to extreme weather conditions. Qualcomm added that its devices typically support a temperature operating range of −30 °C to 70 °C, (−22 °F to 158 °F), although some components of wireless communications systems are specified to operate in a −20 °C to 60 °C (−4 °F to 140 °F) range. During the June 2, 2010 meeting, the industry participants elaborated on the technical rationale for their statements and recommendation. Among other things, they noted that the operating temperature range is particularly important for the proper operation of displays, batteries, and the hardware components to support the Institute of Electrical and Electronics Engineers (IEEE) 802.11 wireless communications requirement.

Agency's Assessment and Decision

The −40 °C to 85 °C (−40 °F to 185 °F) operating temperature range requirement established in the April 2010 final rule was adopted based upon the Agency's review of the SAE standard referenced above. However, it is not the Agency's intention to require an EOBR to be so rugged that it is operable at extreme temperatures that will not realistically be seen in a truck's normal operating environment. As noted earlier, the Agency believes that drivers will be heating or cooling the cab to more reasonable temperatures prior to driving.

The petitioners note that there will be significant additional costs and transitional time delays associated with the production of EOBRs that are compliant with the operating temperature range specified in the April 2010 final rule. The Agency does not believe that the cost increases and time delays associated with producing EOBRs that comply with the temperature range specified in the April 2010 rule are commensurate with any potential benefits that might be derived from operability of EOBRs at these extreme temperatures.

For these reasons, FMCSA amends Appendix A of § 395.16 to delete the requirement for a specific operating temperature range.

USB Connector

In the 2007 NPRM, FMCSA proposed to require that EOBRs be capable of transferring records of duty status (RODS) using either the USB 2.0 or the RS–232 wired communication standards, as well as IEEE 802.11g or Bluetooth wireless communication standards. The NPRM did not specify the type of USB connector.

Most of the comments received expressed a preference for wireless standards, rather than wired. Of those that addressed wired standards, the main concern was that the RS–232 standard was outdated. No commenters addressed the type of USB connector.

Based upon the best information available to the Agency at the time, the final rule requires (1) a single USB compliant interface featuring a Type B connector, and (2) that the USB interface must (a) comply with USB V1.1 and V2.0 USB signaling standards, and (b) implement the Mass Storage class (08h) for software driverless operation.

All petitioners requested that FMCSA reconsider the requirement for a Type B connector. They noted that, although many EOBRs and related devices on the market support USB, these devices generally use a Type A connector. Very few, if any, EOBRs in the marketplace today would meet the final rule's requirement, and there would be significant added costs to retrofit current units, or to replace them with new devices that are Type B connector compliant. The petitioners noted that if the regulation were to be amended to permit the use of Type A connectors, existing devices would be immediately compliant with this provision.

Agency's Assessment and Decision

FMCSA amends Appendix A, Paragraph 2.2, to delete the requirement for a Type B connector, and replaces it with a requirement for a Type A connector. Although the Type B connector has sometimes been used to connect portable and handheld computing devices to printers, the Type A connector is much more appropriate for a computer-to-computer (or EOBR-to-computer) communications interface.

Fault Codes

XATA requests that FMCSA more clearly define the frequency, duration, and availability for capture of five EOBR Diagnostic Event Codes listed in Table 3 of Appendix A. Those codes are Low Voltage (LOWVLT), Battery Low (BATLOW), Communications Error (COMERR), Display Error (DYPERR), and Keyboard Error (KEYERR). The first two of these diagnostic events could occur when a vehicle is being started during cold weather, but would be resolved when the vehicle is warmed up. The third diagnostic events could occur when a CMV is operating in areas with limited cellular carrier coverage. [XATA notes that truckload motor carriers operate on irregular routes and in areas of the country where cellular communications coverage is sparse, and asks FMCSA to clarify how frequently gaps in coverage would have to occur to trigger an EOBR error report. [XATA is also concerned that the fourth and fifth diagnostic events, associated with malfunctions of the EOBR display and the keyboard or input device, are not sufficiently defined in the final rule to indicate what conditions needed to be reported.]]

Agency's Assessment and Decision

FMCSA agrees with XATA that there is a need to clarify thresholds and frequencies for the diagnostic events that would trigger fault codes for these various conditions. The Agency is aware that CMVs are equipped with sensors to detect these diagnostic events, and that setting or adjusting the reporting thresholds would be accomplished though software revisions. In contrast, the resolution of the petitioners' questions concerning the operating temperature range and the USB connector must be implemented through the EOBR hardware. Hardware

[2] The SAE standard notes that components on the top surface of the instrument panel experience a greater heat buildup when closed vehicles are parked in the bright sun. Heat radiated, incident sunlight, and re-radiated energy from the windshield can cause the temperature to build up to 115 °C (240 °F) in this region.

changes (operating temperature range and USB connecter) take considerably more lead time to address than the software changes that are the subject of XATA's request. Therefore, the Agency has determined that it would be more appropriate to consider the fault-code reporting thresholds during the implementation period prior to the June 4, 2012 compliance date of the final rule. Prior to the compliance date the Agency will make a determination if it is necessary to have a separate rulemaking or other regulatory action to address this matter.

Additional Data Transfer Options

XATA recommended that FMCSA consider adding an additional option for EOBR data transfer that would use the internet or internet-enabled technology. XATA's main concern is that this method would provide a longer-term solution than the wired and wireless methods specified in the final rule. Although this requested option would not take the place of the data transfer requirements specified in the April 2010 final rule, it could provide an alternative method, although it would require safety officials to be trained and provided the appropriate communications hardware to take advantage of it.

Agency's Assessment and Decision

FMSCA acknowledges the importance of using communications and data-transfer methods that are robust and have long-term implementability. The Agency is aware that some providers of EOBRs and support services currently use internet (Web) based storage and archiving of Hours of Service records. Unlike the fault-codes question, the resolution of this matter relates to the availability of communications hardware and software for roadside safety officials, rather than for the EOBR itself. The Agency will make a determination if it is necessary to have a separate rulemaking or other regulatory action to address this matter prior to the June 4, 2012 compliance date of the final rule.

FMCSA has notified Qualcomm Incorporated, XATA Corporation, and the group of industry stakeholders of the disposition of their respective petitions. Copies of these letters have been placed in the docket.

Rulemaking Analyses and Notices

Administrative Procedure Act

If an agency determines that the prior notice and opportunity for public comment on a rule normally required by the Administrative Procedure Act are impracticable, unnecessary, or contrary to the public interest (the so-called "good cause" finding), it may publish the rule without providing such notice and opportunity for comment. (See 5 U.S.C. 553 (b).) The amendments made by this final rule make changes to correct inadvertent errors and to respond to petitions for reconsideration. For these reasons, FMCSA finds good cause that notice and public comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553 (d) (3) to make the amendments effective upon publication.

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 within the meaning of Department of Transportation regulatory policies and procedures. The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), requires agencies to consider the impact of regulations on small businesses, small non-profit organizations, and small governmental jurisdictions, unless the Agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities (SEISNOSE). This rule will not have a SEISNOSE.

Unfunded Mandates Reform Act of 1995

This rulemaking does 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 $140.8 million or more in any 1 year.

Executive Order 12988 (Civil Justice Reform)

This action 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.

Executive Order 13045 (Protection of Children)

FMCSA analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We determined that 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 affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

FMCSA analyzed this rule in accordance with the principles and criteria contained in Executive Order 13132. We determined that this rulemaking does not create a substantial direct effect 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.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal Agency must consider the impact of paperwork and other information collection burdens imposed on the public. FMCSA has determined that no new information collection requirements are associated with the technical amendments to this final rule.

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 our environmental procedures Order 5610.1 the National Environmental Policy Act Implementing Procedures and Policy for Considering Environmental Impacts, published March 1, 2004 (69 FR 9680), that this action does not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6.x of Appendix 2. The CE under paragraph 6.x relates to regulations implementing procedures for the issuance, amendment, revision

and rescission of Federal motor carrier regulations (*e.g.,* the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.). A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov* website listed under **ADDRESSES**.

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 has no effect on the environment.

Executive Order 13211 (Energy Effects)

FMCSA analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We determined that it is not a "significant energy action" under that Executive Order because it is not economically significant and is not likely to have an adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping.

49 CFR Part 395

Highway safety, Incorporation by reference, Motor carriers, Reporting and recordkeeping.

■ In consideration of the foregoing, FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

PART 385—SAFETY FITNESS PROCEDURES

■ 1. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103–311; Sec. 408, Pub. L. 104–88; Sec. 350, Pub. L. 107–87; and 49 CFR 1.73.

■ 2. In § 385.807, revise paragraph (a) to read as follows:

§ 385.807 Notice and issuance of remedial directive.

(a) Following the close of the compliance review described in § 385.805, FMCSA will issue the motor carrier a written notice of remedial directive and proposed determination of unfitness. FMCSA will issue the notice and proposed determination as soon as practicable, but not later than 30 days after the close of the review.

* * * * *

■ 3. In § 385.815, revise paragraph (e) to read as follows:

§ 385.815 Exemption for AOBRD users.

* * * * *

(e) The exemption granted under this section shall not apply to CMVs manufactured on or after June 4, 2012.

PART 395—HOURS OF SERVICE OF DRIVERS

■ 4. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31151, and 31502; and 49 CFR 1.73.

■ 5. In Appendix A to part 395:

■ a. Revise paragraph 2.2, and

■ b. Remove and reserve paragraph 3.1.5.1 to read as follows:

Appendix A to Part 395—Electronic On-Board Recorder Performance Specifications

* * * * *

2.2 *Wired.* EOBRs must be capable of transferring RODS using the "Universal Serial Bus Specification (Revision 2.0)" (incorporated by reference, see § 395.18). Each EOBR device must implement a single USB compliant interface featuring a Type A connector. The USB interface must implement the Mass Storage class (08h) for driverless operation.

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3.1.5.1 [Reserved.]

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Issued on: September 7, 2010.

Anne S. Ferro,

Administrator.

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