

III. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule merely updates references to authoritative accounting standards owing to the FASB's GAAP Accounting Standard Codification.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2010-005), in correspondence.

IV. Paperwork Reduction Act

The proposed rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 31 and 52

Government procurement.

Dated: February 8, 2011.

Millisa Gary,

Acting Director, Office of Governmentwide Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

1. The authority citation for 48 CFR parts 31 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

2. Amend section 31.205-11 by revising the introductory text of paragraph (h) to read as follows:

31.205-11 Depreciation.

* * * * *

(h) A "capital lease," as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases, is subject to the requirements of this cost principle. (See 31.205-36 for Operating Leases.) FASB ASC 840 requires that capital

leases be treated as purchased assets, i.e., be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

* * * * *

3. Amend section 31.205-36 by revising paragraph (a) to read as follows:

31.205-36 Rental costs.

(a) This section is applicable to the cost of renting or leasing real or personal property acquired under "operating leases" as defined in Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 840, Leases. (See 31.205-11 for Capital Leases.)

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 52.204-10 by revising the date of the clause and in paragraph (a), in the definition "Total compensation", revising paragraph (2) to read as follows:

52.204-10 Reporting Executive Compensation and First-Tier Subcontract Awards.

* * * * *

Reporting Executive Compensation and First-Tier Subcontract Awards (Date)

(a) * * * Total compensation * * *

(2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Financial Accounting Standards Board's Accounting Standards Codification (FASB ASC) 718, Compensation-Stock Compensation.

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5. Amend section 52.212-5 by revising the date of the clause and paragraph (b)(4) to read as follows:

52.212-5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items.

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Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Items (Date)

* * * * *

(b) * * * (4) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Date) (Pub. L. 109-282) (31 U.S.C. 6101 note).

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6. Amend section 52.213-4 by revising the date of the clause and paragraph (a)(2)(i) to read as follows:

52.213-4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Items) (Date)

(a) * * * (2) * * *

(i) 52.204-10, Reporting Executive Compensation and First-Tier Subcontract Awards (Date) (Pub. L. 109-282) (31 U.S.C. 6101 note).

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 385, 386, 390, and 395

[Docket No. FMCSA-2004-19608]

RIN 2126-AB26

Hours of Service of Drivers; Availability of Supplemental Documents and Corrections to Notice of Proposed Rulemaking

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

ACTION: Notice of Proposed Rulemaking; notice of availability of supplemental documents and corrections; extension of comment period.

SUMMARY: This document advises the public that FMCSA has placed in the public docket three additional documents concerning hours of service (HOS) for commercial motor vehicle drivers. This notice also makes clerical corrections to both the preamble and the regulatory text of FMCSA's notice of proposed rulemaking (NPRM) on HOS requirements, which was published in the Federal Register on December 29, 2010. Finally, the notice extends the public comment period for the NPRM from February 28, 2011 to March 4, 2011.

DATES: Comments on the NPRM are due by March 4, 2011.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Yager, Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-4325.

SUPPLEMENTARY INFORMATION:

Availability of Supplemental Documents

For a full background on this rulemaking, please see the preamble to the December 2010 HOS NPRM (75 FR 82170; December 29, 2010). The docket for this rulemaking (FMCSA–2004–19608) contains all of the background information for this rulemaking, including comments. As explained more fully below, this notice calls attention to three supplemental documents that FMCSA has placed as electronic files in the docket:

- *FMCSA–2004–19608–6147*—Response to January 28, 2011, Request from American Trucking Associations, Inc. for Further Information on the Cumulative Fatigue Function Used in Docket Item Number FMCSA–2004–19608–4116 Titled “2010–2011 Hours of Service Rule Regulatory Impact Analysis for the Proposed Hours of Service (HOS) of Drivers Rule, December 20, 2010”.

- *FMCSA–2004–19608–6147.1*—An Excel Spreadsheet presenting the information requested by ATA: Coefficient estimates, an explanation of the coefficient names, and the formulas for the cumulative fatigue function used in Chapter 4 of the Regulatory Evaluation for the HOS NPRM, and displayed graphically in Exhibit 4–14 of that document.

- *FMCSA–2004–19608–6147.2*—An Excel Spreadsheet containing a column of data using the formula in the HOS Regulatory Evaluation to link the hours worked in the previous week to fatigue the following week.

On January 28, 2011, ATA requested further information on “Analyses of Fatigue-Related Large Truck Crashes, The Assignment of Critical Reason, and Other Variables Using the Large Truck Crash Causation Study, May 30, 2008.” The study at issue estimated the impact that cumulative hours worked have on driver fatigue, and FMCSA used the study to calculate some of the safety

benefits associated with the reduced driver working hours the Agency proposed in the NPRM. FMCSA placed the study, which analyzed Large Truck Crash Causation Study data, in the HOS docket (FMCSA–2004–19608–3481). While the study provides a detailed description of the analysis and methodology, it did not include the actual coefficients estimated for the cumulative fatigue function that linked greater working hours in a week with increased fatigue involvement in the following week. ATA requested those coefficients on January 28, 2011, so it could recreate the safety benefit calculations FMCSA used in the Regulatory Impact Analysis. On February 1, 2011, FMCSA sent ATA the spreadsheets with a cover memo. FMCSA has docketed both the memo and the spreadsheets.

The coefficients for the cumulative fatigue function from the 2008 study are shown in Table 1.

TABLE 1—COEFFICIENTS FOR THE CUMULATIVE FATIGUE FUNCTION FROM “ANALYSES OF FATIGUE-RELATED LARGE TRUCK CRASHES, THE ASSIGNMENT OF CRITICAL REASON, AND OTHER VARIABLES USING THE LARGE TRUCK CRASH CAUSATION STUDY, MAY 30, 2008”

Figure	Variable	DF	Term	Standard error	Chi Square statistic	P-value
5	Intercept	1	–3.70411	0.343315	116.4078	Less than 0.000001.
5	Last	1	0.03717	0.006648	31.2692	Less than 0.000001.

These coefficients relate fatigue involvement to total hours worked the week before the crash. The formula using these coefficients is as follows:

Prob (driver fatigue) = $1 / (1 + \exp(3.70411 - 0.03717 * \text{last}))$, where “last” is the number of hours the driver worked in the last week and “driver fatigue” is the probability that the driver was coded as fatigued at the time of the crash.

There are two accompanying spreadsheets. The first, docketed at FMCSA–2004–19608–6147.1, presents the coefficient estimates, explanation of the coefficient names, and the formulas for the 2008 study for figure 5, which contains the cumulative fatigue formula. The second spreadsheet, docketed at FMCSA–2004–19608–6147.2, contains a column of data using the formula from the 2008 study to link hours worked in the previous week to fatigue involvement percentages the following week. This column includes the raw predicted values from the estimated equation. Because FMCSA used baseline estimates of average work and fatigue involvement in the Regulatory Impact Analysis docketed at FMCSA–2004–

19608–4116, the fatigue-involvement predicted values from the equation were scaled so that the average work and fatigue levels predicted by the equation (for all hours) would equal the averages used in the Regulatory Impact Analysis. The second column of fatigue percentages presents these scaled values, which are only slightly different from the raw values estimated directly from the equation. FMCSA used a look-up table for scaling the individual hours of work in the previous week. Look-up tables act like step functions: a reduction of 10.7 hours is treated as though it is a reduction of 11 hours (it goes to the next step), and so forth. The use of this methodology may result in slightly higher estimated benefits for each option, compared to using exact values. The differences in total benefits for the central case, between the lookup function and actual raw values, would have been no more than a few percent; they would not have affected the net benefits of the options relative to one another, or significantly changed their attractiveness from a cost-benefit standpoint.

The spreadsheet containing these values and formulas incorporates two worksheets, one titled “Parameters” and another titled “Driving Hours Data.” The formula coefficients are presented in cells B87 through B90 of the “Driving Hours Data” worksheet. The cells in A92 through C137 use the coefficients to link work hours (contained in Column A, cells A93–A137) to fatigue involvement percentages in Column B (contained in cells B93–137). Column C (cells C93–137) presents the values scaled to our average work (52 hours per week of work) and fatigue involvement (13 percent).

FMCSA is extending the comment period for all comments on the NPRM, not just on the issues raised in this notice, so everyone may have an opportunity to review this formula and its data.

Corrections to Notice of Proposed Rulemaking

In addition, FMCSA makes the following clerical corrections to the HOS NPRM published in the **Federal Register** on December 29, 2010 (75 FR 82170):

1. Page 82177. Correct footnote 17 to read as follows:

¹⁷ Balkin, T., Thorne, D., Sing, H., Thomas, M., Redmond, D., Wesensten, N., Williams, J., Hall, S. & Belenky, G., "Effects of Sleep Schedules on Commercial Vehicle Driver Performance," 2000. FMCSA-2004-19608-2007.

2. Page 82178. Correct footnote 31 to read as follows:

³¹ Fu, J.S., Calcagno, J.A., Davis, W.T., Boulet, J.A.M. & Wasserman, J.F., "Improving Heavy-Duty Diesel Truck Ergonomics to Reduce Fatigue and Improve Driver Health and Performance," FMCSA, December 2010.

3. Page 82179. Correct the third sentence in the last paragraph of the third column to read: "An answer would turn on knowing the total number of crashes in each hour and the percentage of driving that takes place in each hour."

4. Page 82182, correct footnote 39 to read as follows:

³⁹ Van Dongen, H.P.A. & Belenky, G., "Investigation into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance: Phase I," December 2010. FMCSA-2004-19608-4120.

5. Page 82182. Correct footnote 45 to read as follows:

⁴⁵ Van Dongen, H.P.A., Jackson, M. & Belenky, G., "Duration of Restart Period Needed to Recycle with Optimal Performance: Phase II," FMCSA, December 2010. FMCSA-2004-19608-4440.

6. Page 82183. Correct the sentence that begins on the fourth line from the bottom of the second column to read, "Because one of the team members drives while the other takes his or her break, the result of the rule is that the non-working driver has to take both periods in the sleeper berth because it is not possible to log the shorter time as off duty while he or she is 'in or upon any commercial motor vehicle.'"

7. Page 82187. Correct the sentence that begins on the ninth line of the second column to read, "To analyze the safety impacts of these changes, the Agency has developed a series of functions that relate fatigue-coded crashes to hours of daily driving and hours of weekly work."

8. Page 82188. Remove the comma after "benefits" and before "These" in the thirteenth line of the first full paragraph in the third column and add in its place a period.

9. Page 82189. Remove the period in "Section V." in line five of the paragraph that begins after Table 8 in the second column.

10. Page 82192. Remove "numbers" and add in its place "number" in the eighth line of the third column.

11. Page 82193. Revise the heading of Table 13 to read: "Table 13—First-Year

Costs to Affected Firms per Power Unit for Option 3."

12. Page 82193. Revise the last sentence of footnote 63 to read, "When the Agency has looked at the impact on private carriers in relation to their revenue in the past, the percentage impact of costs to private carriers as a share of revenue has generally been an order of magnitude smaller than the impacts on for-hire trucking firms."

13. Page 82195. Remove the abbreviation "EA" in the third line from the bottom of the third column and add in its place "Environmental Assessment."

14. Page 82197. Correct:

a. § 395.1 by revising paragraph (b)(1).

b. § 395.1(d)(2) by removing the period after "§§ 395.8" in the second sentence and adding in its place a comma.

c. § 395.1(g) by revising paragraphs (g)(1)(i)(A)(4), (g)(1)(i)(B), and (g)(1)(i)(C).

§ 395.1 Scope of rules in this part.

* * * * *

(b) *Driving conditions*—

(1) *Adverse driving conditions.* Except as provided in paragraph (h)(2) of this section, a driver who encounters adverse driving conditions, as defined in § 395.2, and cannot, because of those conditions, safely complete the run within the maximum driving time permitted by §§ 395.3(a) or 395.5(a) may drive and be permitted or required to drive a commercial motor vehicle for not more than 2 additional hours to complete that run or to reach a place offering safety for the occupants of the commercial motor vehicle and security for the commercial motor vehicle and its cargo. However, that driver may not drive or be permitted to drive—

(i) For more than 12 hours in the aggregate following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles;

(ii) After the end of the 14th or 16th hour since coming on duty following 10 consecutive hours off duty for drivers of property-carrying commercial motor vehicles, pursuant to § 395.3(a)(2);

(iii) For more than 12 hours in the aggregate following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles; or

(iv) After he/she has been on duty 15 hours following 8 consecutive hours off duty for drivers of passenger-carrying commercial motor vehicles.

* * * * *

(g) * * *

(1) * * *

(i) * * *

(A) * * *

(4) The equivalent of at least 10 consecutive hours off duty if the driver

does not comply with paragraph (g)(1)(i)(A)(1), (2), or (3) of this section;

(B) May not drive more than 10/11 hours following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; however, driving is permitted only if 7 hours or less have passed since the driver's last off-duty or sleeper-berth period of at least 30 minutes; and

(C) May not be on duty for more than the 13-hour period in § 395.3(a)(4) or drive beyond the 14- or 16-hour driving window in § 395.3(a)(2) after coming on duty following one of the 10-hour off-duty periods specified in paragraph (g)(1)(i)(A)(1) through (4) of this section; and

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Issued on: February 9, 2011.

Anne S. Ferro,

Administrator.

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DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Part 1152

[Docket No. EP 702]

National Trails System Act and Railroad Rights-of-Way

AGENCY: Surface Transportation Board, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Surface Transportation Board (STB or Board) has instituted a proceeding to clarify, update, and seek public comments on proposed changes to its existing regulations and procedures regarding the use of railroad rights-of-way for railbanking and interim trail use under the National Trails System Act (Trails Act).

DATES: Comments are due by April 12, 2011; replies are due by May 12, 2011.

ADDRESSES: Comments on this proposal may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's Web site, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 702, 395 E Street, SW., Washington, DC 20423-0001.

Copies of written comments will be available for viewing and self-copying at the Board's Public Docket Room, Room