

§ 310.66 [Amended]

4. Section 310.66 is amended in paragraph (c) by adding at the end thereof the following sentence: "The Secretary may allow, upon approval of the Secretary of State, additional individuals from the Republic of Panama to receive instruction at the Academy on a reimbursable basis."

Dated: August 22, 1995.

By Order of the Maritime Administrator.

Joel Richard,

Secretary, Maritime Administration.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[GC Docket No. 92-223; FCC 95-346]

Broadcast Indecency

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules on enforcement of prohibitions against broadcast indecency so as to be in compliance with the instructions given by the United States Court of Appeals for the D.C. Circuit in *Action for Children's Television v. FCC*. The intended effect of the Court's instruction is to make the time periods during which the indecency ban applies the same for both public broadcasters and commercial broadcasters.

EFFECTIVE DATE: August 28, 1995.

FOR FURTHER INFORMATION CONTACT: Steve Bailey, Office of General Counsel, (202) 418-1720.

SUPPLEMENTARY INFORMATION:

Memorandum Opinion and Order

Adopted: August 7, 1995.

Released: August 18, 1995.

By the Commission:

1. By this Order, the Commission conforms its rules to comply with the instructions given by the United States Court of Appeals for the District of Columbia Circuit in *Action for Children's Television v. FCC*, No. 92-1092 (decided *en banc* June 30, 1995; mandate issued July 12, 1995). Although the Court generally upheld the Commission's implementation of Section 16(a) of the Public Telecommunications Act of 1992, Pub. L. No. 102-356, 106 Stat. 949 (1992), relating to the prohibition on indecent programming by broadcast stations, it remanded the case to the Commission

"with instructions to limit its ban on the broadcasting of indecent programs to the period from 6:00 a.m. to 10:00 p.m." *Id.*, slip op. at 30. The effect of the Court's instruction is to make the time periods during which the indecency ban applies the same for both public broadcasters and commercial broadcasters. Thus, we are hereby amending Section 73.3999 of the Commission's Rules, 47 C.F.R. § 73.3999, to provide that no licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

2. Accordingly, it is ordered, That Section 73.3999 of the Commission's Rules, 47 CFR § 73.399, is amended as set forth below.

List of Subjects in 47 CFR Part 73

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Appendix—Amendatory Text

Part 73, Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.3999 is revised to read as follows:

§ 73.3999 Enforcement of 18 U.S.C. 1464 (restrictions on the transmission of obscene and indecent material).

(a) No licensee of a radio or television broadcast station shall broadcast any material which is obscene.

(b) No licensee of a radio or television broadcast station shall broadcast on any day between 6 a.m. and 10 p.m. any material which is indecent.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 390

RIN 2125-AC51

Accident Recordkeeping Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document technically amends the definition of the term *accident* in FHWA's Federal motor carrier safety regulations to include language that was inadvertently omitted from a previous final rule, and technically amends those regulations to indicate that the Office of Management and Budget has approved the accident recordkeeping requirements as amended by this rule. The full intention of the FHWA was to require interstate motor carriers to include their accidents involving a commercial motor vehicle engaged in intrastate commerce on accident registers. The definition of the term *accident* is amended to reflect this intention.

EFFECTIVE DATE: September 27, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366-5763, or Mrs. Allison Smith, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: On February 2, 1993, the FHWA published a final rule in the **Federal Register** (58 FR 6726) which removed the accident notification and reporting requirements in part 394 of the Federal Motor Carrier Safety Regulations (FMCSRs) and added a requirement in part 390 that motor carriers maintain an accident register consisting of a list of information about accidents and copies of all accident reports required by governmental authorities or insurers. The accidents that must be included in an accident register were specified by the definition of the term *accident* in 49 CFR 390.5. The term *accident*, as currently defined, does not include an accident involving a commercial motor vehicle engaged in intrastate commerce. This type of accident was covered by the accident notification and reporting requirements in part 394. The FHWA inadvertently failed to include this type of accident in the definition of the term *accident*. The full intention of the FHWA was to require interstate motor carriers to include their accidents involving a commercial motor vehicle engaged in intrastate commerce on accident registers.

The FHWA is therefore making a technical amendment to the definition of the term *accident* to include accidents involving a commercial motor

vehicle engaged in intrastate commerce. The phrase "in interstate or intrastate commerce" is being inserted into the definition of the term *accident*. This technical amendment will require interstate motor carriers to include accidents involving a commercial motor vehicle engaged in interstate or intrastate commerce in their accident registers. There is a long precedent of interstate motor carriers being required to file and/or maintain reports about accidents involving a commercial motor vehicle engaged in interstate, foreign, or intrastate commerce. This technical amendment clarifies the FHWA's intent regarding this issue.

An accident register, which includes all accidents meeting this amended definition, assists the FHWA in evaluating a motor carrier's accidents and developing countermeasures to reduce future accidents. The FHWA is also able to compare a motor carrier's accident register with the accident data from the automated State accident reporting system to ensure that all accidents as defined in § 390.5 are accounted for in the system.

Rulemaking Analyses and Notices

Prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) because this rule does not impose any additional duty or obligation on any motor carrier. Instead, it simply reinstates the requirement to keep records on accidents involving a commercial motor vehicle operating in intrastate commerce, which was inadvertently omitted when the accident recordkeeping requirements were last revised, and provides notice to the public that the Office of Management and Budget has approved the information collection burden of the accident recordkeeping requirements of part 390, as amended by this rule. Therefore, in this purely procedural action, the FHWA is not exercising its discretion in a way that could be meaningfully affected by public comment. In addition, due to the technical nature of this final rule, the FHWA has determined that prior notice and opportunity for comment are not required under Department of Transportation's regulatory policies and procedures, as it is anticipated that such action would not result in the receipt of useful information. Therefore, the FHWA is proceeding directly to a final rule.

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

The FHWA has determined that this action is not a significant regulatory

action within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. The FHWA estimates that approximately 87,000 accidents, as defined in 49 CFR 390.5, occur annually. The FHWA believes that the amount of time needed for interstate motor carriers to collect and record the seven elements of information on accident registers is minimal because the information is readily available. In consideration of the total number of accidents which must be included on accident registers and the short period of time necessary to record information about each accident, the economic burden imposed by the accident recordkeeping requirements is minimal. Since the economic burden for maintaining records about all accidents as defined in 49 CFR 390.5 is not significant, the economic burden of the recordkeeping for the portion of these accidents which occur in intrastate commerce is also not significant. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this action on small entities. This action does not impose any additional duty or obligation on any motor carrier, regardless of its size, because this action simply reinstates a requirement which was inadvertently omitted when the accident recordkeeping requirements were last revised. The majority of small motor carriers do not have an accident, as defined in 49 CFR 390.5, in a given year. Any motor carrier without an accident, as defined in 49 CFR 390.5, in a given year is not required to maintain an accident register for this year. The FHWA certifies that this action will not have a significant impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Nothing in this document preempts any State law or regulation. This final rule does not limit the policymaking discretion of the States. Federal funding is available to assist States in implementing and operating their accident reporting systems. Nothing in this document changes any condition

for this funding or has any other impact upon State governments.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

The information collection requirements as amended by this rule have been approved by the Office of Management and Budget in accordance with the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and assigned the control number of 2125–0526 which expires on March 31, 1998.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 390

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: August 21, 1995.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, subtitle B, chapter III, part 390 as set forth below:

PART 390—[AMENDED]

1. The authority citation for Part 390 continues to read as follows:

Authority: 49 U.S.C. 5901–5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

2. Section 390.5 is amended by revising the definition of *Accident* to read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in:

- (i) A fatality;
- (ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
- (iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the

scene by a tow truck or other motor vehicle.

(2) The term *accident* does not include:

- (i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
- (ii) An occurrence involving only the loading or unloading of cargo; or
- (iii) An occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in § 571.3 of this title) by a motor carrier and is not transporting passengers for hire or hazardous materials of a type and quantity that

require the motor vehicle to be marked or placarded in accordance with § 177.823 of this title.

* * * * *

§ 390.15 [Amended]

3. Section 390.15 is amended by adding the following parenthetical language at the end of the section to read as follows:

(Approved by the Office of Management and Budget under control number 2125-0526)

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