

(b) *The regulation.* (1) All persons and vessels are prohibited from entering the waters in the restricted area for any reason without prior written permission from the Commanding Officer, Naval Station Everett.

(2) Mooring, anchoring, fishing and/or recreational boating are prohibited in the restricted area without prior written permission from the Commanding Officer, Naval Station Everett.

(c) *Enforcement.* The regulation in this section shall be enforced by the Commanding Officer, Naval Station Everett and such agencies and persons as he/she shall designate.

Dated: March 10, 2010.

Michael G. Ensich,

Chief, Operations, Directorate of Civil Works.

[FR Doc. 2010-5740 Filed 3-16-10; 8:45 am]

BILLING CODE 3720-58-P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 389

[Docket No. FMCSA-2009-0354]

RIN 2126-AB23

Direct Final Rulemaking Procedures

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

ACTION: Notice of proposed rulemaking.

SUMMARY: FMCSA proposes to amend its regulations by establishing direct final rulemaking procedures for use on noncontroversial rules. Under these procedures, FMCSA would make regulatory changes that would become effective a specified number of days after the date of publication in the **Federal Register**, unless FMCSA receives written adverse comment(s) or written notice of intent to submit adverse comment(s), received by the date specified in the direct final rule. These new procedures would expedite the promulgation of routine or noncontroversial rules by reducing the time and resources necessary to develop, review, clear, and publish separate proposed and final rules. FMCSA would not use the direct final rule procedures for complex or controversial issues.

DATES: You must submit comments on or before April 16, 2010.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Number in the heading of this document by any of the following methods. Do not submit the

same comments by more than one method. However, to allow effective public participation before the comment period deadline, the Agency encourages use of the Web site that is listed first. It will provide the most efficient and timely method of receiving and processing your comments.

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- **Fax:** 1-202-493-2251.

- **Mail:** Docket Management Facility, U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001.

- **Hand Delivery:** Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number for this regulatory action. Note that all comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. Refer to the Privacy Act heading on <http://www.regulations.gov> for further information.

Public Participation: The regulations.gov system is generally available 24 hours each day, 365 days each year. You can find electronic submission and retrieval help and guidelines under the “help” section of the Web site. For notification that FMCSA received the comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on line. Copies or abstracts of all documents referenced in this notice are in the docket: FMCSA-2009-0354. For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, FMCSA will also continue to file relevant information in the docket as it becomes available after the comment period closing date, and interested persons

should continue to examine the docket for new material.

FOR FURTHER INFORMATION CONTACT:

Please contact Mr. Bivan R. Patnaik, Chief, Regulatory Development Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366-8092.

SUPPLEMENTARY INFORMATION:

Background

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that notice and comment rulemaking procedures are not required where the Agency determines that there is good cause to dispense with them. Generally, good cause exists where the procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). FMCSA proposes to use direct final rulemaking to streamline the rulemaking process where the rule is noncontroversial and the Agency does not expect adverse comment.

Direct final rulemaking would be more efficient in using FMCSA resources by reducing the time and resources necessary to develop, review, clear, and publish separate proposed and final rules for rules the Agency expects to be noncontroversial and unlikely to result in adverse public comment. A number of Federal agencies use this process, including various Department of Transportation operating administrations. For example, on January 30, 2004, the Office of the Secretary of Transportation (OST) published a final rule adopting direct final rule procedures (69 FR 4455) and the Federal Railroad Administration published a final rule adopting direct final rule procedures on March 7, 2007 (72 FR 10086).

Direct Final Rule Procedures

FMCSA would determine whether a particular rulemaking is noncontroversial and unlikely to result in adverse comments based on its experience with similar rules that it previously proposed and published without receiving adverse comments. Adverse comments are those comments that are critical of the rule, suggest that the rule should not be adopted, or suggest a change to the rule. Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule would not be considered adverse.

After making the determination that a rule would be appropriate for direct

final rulemaking, FMCSA would publish the rule as a direct final rule in the **Federal Register**. The document would state in the preamble that FMCSA does not anticipate adverse comments and that unless it receives written adverse comments or written notice of intent to submit adverse comments, the rule would become effective a specified number of days after the date it is published in the **Federal Register**. If FMCSA receives adverse comments, or receives notice of intent to file adverse comments by the date specified in the direct final rule, it would publish a rule in the **Federal Register** withdrawing the direct final rule before it goes into effect. FMCSA may then publish a notice of proposed rulemaking with a new comment period if the Agency decides to go forward with the rulemaking.

If no adverse comments or written notice of intent to submit adverse comments are received by the date specified in the direct final rule, FMCSA would publish a rule in the **Federal Register** stating that it did not receive any adverse comments and confirming the effective date of the rule.

Direct final rulemaking may be appropriate for noncontroversial rules that (1) Make non-substantive clarifications or corrections to existing rules; (2) incorporate by reference the latest or otherwise updated versions of technical or industry standards; (3) affect internal procedures of FMCSA such as filing requirements and rules governing inspection and copying of documents; (4) update existing forms; (5) make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary. FMCSA may also use direct final rulemaking for a particular rule if similar rules had been previously proposed and published without adverse comment. Even if a rulemaking falls into one of the above categories, if adverse comments are anticipated, FMCSA would not use the direct final rule process. The additional time and resources expended to withdraw the rule and republish it for comment will serve as an incentive for the Agency to make careful determinations as to whether this procedure is appropriate.

Regulatory Analyses and Notices

FMCSA has determined that this action is not a significant regulatory action under Executive Order 12866 or under the Department's Regulatory Policies and Procedures. There are no costs associated with the proposed rule.

There would be some cost savings in **Federal Register** publication costs and efficiencies for the public and FMCSA personnel in eliminating duplicative reviews. I certify that this rule would not have a significant impact on a substantial number of small entities. Finally, FMCSA believes there are no Federalism implications.

Paperwork Reduction Act

This proposed rulemaking contains no information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Unfunded Mandates Reform Act

FMCSA has determined that the requirements of Title II of the Unfunded Mandates Act of 1995, do not apply to this proposed rulemaking.

Environment

FMCSA considered the environmental impacts of this proposed rulemaking under the National Environmental Policy Act of 1969, and determined it is categorically excluded from further environmental analysis under FMCSA Order 5610.1 paragraph 6.x of Appendix 2. FMCSA Order 5610.1 was published on March 1, 2004 (69 FR 9680). A Categorical Exclusion Determination is available for inspection or copying in the regulations.gov website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 389

Rulemaking procedures.

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR part 389 as follows:

PART 389—[AMENDED]

1. The authority citation for 49 CFR part 389 is amended to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C 4917; and 49 CFR 1.73.

2. Section 389.11 is revised to read as follows:

§ 389.11 General.

Except as provided in § 389.39, Direct final rulemaking procedures, unless the Administrator, for good cause, finds a rule is impractical, unnecessary, or contrary to the public interest, and incorporates such a finding and a brief statement for the reason for it in the rule, a notice of proposed rulemaking must be issued, and interested persons are invited to participate in the rulemaking proceedings involving rules under an Act.

3. Add new § 389.39 to read as follows:

§ 389.39 Direct final rulemaking procedures

A direct final rule makes regulatory changes and states that those changes will take effect on a specified date unless FMCSA receives an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule published in the **Federal Register**.

(a) *Types of actions appropriate for direct final rulemaking.* Rules that the Administrator determines to be non-controversial and unlikely to result in adverse public comments may be published in the final rule section of the **Federal Register** as direct final rules. These include non-controversial rules that:

(1) Make non-substantive clarifications or corrections to existing rules;

(2) Incorporate by reference the latest or otherwise updated versions of technical or industry standards;

(3) Affect internal FMCSA procedures such as filing requirements and rules governing inspection and copying of documents;

(4) Update existing forms;

(5) Make minor changes to rules regarding statistics and reporting requirements, such as a change in reporting period (for example, from quarterly to annually) or eliminating a type of data collection no longer necessary;

(b) *Adverse Comment.* An adverse comment is a comment that FMCSA judges to be critical of the rule, to suggest that the rule should not be adopted, or to suggest that a change should be made to the rule. Under the direct final rule process, FMCSA does not consider the following types of comments to be adverse:

(1) Comments recommending another rule change, in addition to the change in the direct final rule at issue, unless the commenter states that the direct final rule would be ineffective without the change;

(2) Comments outside the scope of the rule and comments suggesting that the rule's policy or requirements should or should not be extended to other Agency programs outside the scope of the rule;

(3) Comments in support of the rule; or

(4) Comments requesting clarification.

(c) *Confirmation of effective date.* FMCSA will publish a confirmation rule document in the **Federal Register**, if it has not received an adverse comment or notice of intent to file an adverse comment by the date specified in the direct final rule. The confirmation rule document tells the public the effective date of the rule.

(d) *Withdrawal of a direct final rule.*

(1) If FMCSA receives an adverse comment or a notice of intent to file an adverse comment within the comment period, it will publish a rule document in the **Federal Register**, before the effective date of the direct final rule,

advising the public and withdrawing the direct final rule.

(2) If FMCSA withdraws a direct final rule because of an adverse comment, the Agency may issue a notice of proposed rulemaking if it decides to pursue the rulemaking.

Issued on: March 10, 2010.

Anne S. Ferro,
Administrator.

[FR Doc. 2010-5737 Filed 3-16-10; 8:45 am]

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