

**III. Request for Comments**

The FAA invites all interested persons to submit written comments on this proposal by filing their written views in Docket FAA-2006-25755 on or before January 5, 2009.

Issued in Washington, DC, on December 19, 2008.

**Rebecca B. Macpherson,**

*Assistant Chief Counsel for Regulations,  
Federal Aviation Administration.*

[FR Doc. E8-30703 Filed 12-22-08; 4:15 pm]

**BILLING CODE 4910-13-P**

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****Personnel Parachute Assemblies TSO-C23d**

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Notice of re-activation.

**SUMMARY:** The Minimum Performance Standard for Personnel Parachute Assemblies and Components contained in technical standard order (TSO)-C23d, dated June 1, 1994, is re-activated.

**DATES:** TSO-C23d is re-activated as of December 24, 2008.

**ADDRESSES:** Send all inquiries pertaining to the re-activation of TSO-23d to: Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024, ATTN: Hal Jensen, AIR 120. You may deliver your inquiries to: Federal Aviation Administration, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Include in the subject line of your electronic message the following: Inquiries, FAA TSO-23d, Personnel Parachute Assemblies.

**FOR FURTHER INFORMATION CONTACT:** Hal Jensen, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Aircraft Engineering Division, Technical Programs and Continued Airworthiness Branch, AIR-120, 5th Floor, 950 L'Enfant Plaza, SW., Washington, DC 20024. Telephone (202) 385-6334, FAX (202) 385-6475, or e-mail at: [hal.jensen@faa.gov](mailto:hal.jensen@faa.gov).

**SUPPLEMENTARY INFORMATION:****Background**

Technical Standard Order (TSO)-C23d is being reinstated to allow for new models of personnel parachute assemblies to continue to be manufactured while we correct the issues associated with the now

cancelled "e" version of TSO-C23. You may get a copy of TSO-C23d by logging onto: <http://rgl.faa.gov/>, select Technical Standard Orders and Index, and then select Active Historical.

Issued in Washington, DC, on December 17, 2008.

**Susan J.M. Cabler,**

*Assistant Manager, Aircraft Engineering  
Division, Aircraft Certification Service.*

[FR Doc. E8-30638 Filed 12-23-08; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: State Route 374, From State Route 13 to State Route 76 in Clarksville, Montgomery County, TN**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to rescind a Notice of Intent to prepare an Environmental Impact Statement (EIS).

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 12, 1996, at 61 FR 58094, to prepare an Environmental Impact Statement (EIS) for the proposed State Route 374, from State Route 13 to State Route 76 in Clarksville, Montgomery County, Tennessee, is being rescinded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. O'Neill, Planning and Program Management Team Leader, FHWA-Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211. Phone: (615) 781-5772.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Tennessee Department of Transportation is rescinding the Notice of Intent (NOI) to prepare an EIS for State Route 374, from State Route 13 to State Route 76 in Clarksville, Montgomery County, Tennessee. The proposed project called for the construction of a four-lane divided partial access-controlled facility from State Route 13 to State Route 76 in Clarksville, Tennessee.

A Draft Environmental Impact Statement (DEIS) was approved on March 27, 2000. Due to the age of the DEIS and the desire to assess any potential changes in the impacts to the human and natural environment, a new EIS will be prepared. The new EIS will fully evaluate the human and natural environmental impacts and will

evaluate all reasonable alternatives. The original NOI is being rescinded and a new NOI will be published subsequent to this NOI.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: December 17, 2008.

**Charles J. O'Neill,**

*Planning and Program Mgmt. Team Leader,  
Nashville, TN.*

[FR Doc. E8-30577 Filed 12-23-08; 8:45 am]

**BILLING CODE 4910-22-P**

**DEPARTMENT OF TRANSPORTATION****Federal Highway Administration****Notice To Rescind a Notice of Intent To Prepare an Environmental Impact Statement: North Second Street Connector Improvement, From Interstate 40 at North Second Street to U.S. 51/State Route 300, in Memphis, Shelby County, TN**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice to Rescind a Notice of Intent to prepare an Environmental Impact Statement.

**SUMMARY:** The Federal Highway Administration (FHWA) is issuing this notice to advise the public that the Notice of Intent published on November 7, 2002, at 67 FR 67893, to prepare an Environmental Impact Statement (EIS) for the proposed North Second Street Connector in Memphis, Shelby County, Tennessee, is being rescinded.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles J. O'Neill, Planning and Program Management Team Leader, FHWA-Tennessee Division Office, 640 Grassmere Park Road, Suite 112, Nashville, TN 37211. Phone: (615) 781-5772.

**SUPPLEMENTARY INFORMATION:** The FHWA, in cooperation with the Tennessee Department of Transportation, is rescinding the Notice of Intent (NOI) to prepare an EIS for North Second Street Connector in Memphis, Shelby County, Tennessee.

The proposed project called for improving North Second Street and North Third Street to form a one-way pair from Interstate 40 to Chelsea Avenue and constructing a six-lane facility from Chelsea Avenue to the U.S. 51/State Route 300 Interchange in Memphis, Shelby County, Tennessee.

An EIS has not been completed for this proposal since the original NOI to prepare an EIS was published in the **Federal Register** on November 7, 2002. An EIS will be prepared and will evaluate all reasonable alternatives. The original NOI is being rescinded and a new NOI will be published subsequent to this NOI.

To ensure that the full range of issues related to this proposed action are identified and taken into account, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA contact person identified above at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposed program.)

Issued on: December 17, 2008.

**Charles J. O'Neill,**

*Planning and Program Mgmt. Team Leader, Nashville, TN.*

[FR Doc. E8-30570 Filed 12-23-08; 8:45 am]

**BILLING CODE 4910-22-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### Petition for Preemption of California Regulations on Meal Breaks and Rest Breaks for Commercial Motor Vehicle Drivers; Rejection for Failure To Meet Threshold Requirement

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

**ACTION:** Notice of rejection of petition for preemption.

**SUMMARY:** FMCSA announces the rejection of a petition for preemption of California laws and regulations requiring employers to provide employees with meal and rest breaks. The petition does not satisfy the threshold requirement for preemption under 49 U.S.C. 31141(c) because the provisions at issue are not "laws and regulations on commercial motor vehicle safety," but rather laws and regulations applied generally to California employers.

**DATES:** *Effective Date:* This decision is effective December 23, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Charles Medalen, Attorney-Advisor, FMCSA Office of Chief Counsel. Telephone (202) 493-0349.

#### Background

On July 3, 2008, James H. Hanson, Esq., Scopelitis, Garvin, Light, Hanson & Feary, P.C., petitioned the Federal Motor Carrier Safety Administration (FMCSA) on behalf of a group of motor carriers<sup>1</sup> to preempt the California statutes and rules requiring transportation industry employers to give their employees meal and rest breaks during the work day, as applied to drivers of commercial motor vehicles (CMVs) subject to the FMCSA hours-of-service (HOS) regulations. For the reasons set forth below, FMCSA rejects the petition.

#### California Law

Section 512, Meal periods, of the California Labor Code reads in part as follows:

"(a) An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

"(b) Notwithstanding subdivision (a), the Industrial Welfare Commission may adopt a working condition order permitting a meal period to commence after six hours of work if the commission determines that the order is consistent with the health and welfare of the affected employees."

Section 11090 of Article 9 (Transportation Industry) of Group 2 (Industry and Occupation Orders) of Chapter 5 (Industrial Welfare Commission) of Division 1 (Department of Industrial Relations) of Title 8 (Industrial Relations) of the California Code of Regulations, is entitled "Order Regulating Wages, Hours, and Working Conditions in the Transportation

<sup>1</sup> Affinity Logistics Corp.; Cardinal Logistics Management Corp.; C.R. England, Inc.; Diakon Logistics (Delaware), Inc.; Estenson Logistics, LLC; McLane Company, Inc.; McLane/SunEast, Inc.; Penske Logistics, LLC; Penske Truck Leasing Co., L.P.; Trimac Transportation Services (Western), Inc.; and Velocity Express, Inc.

Industry" [hereafter: "8 CCR § 11090," "Section 11090", or "§ 11090"<sup>2</sup>].

Section 11090(11). Meal Periods, reads as follows:

"(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee.

"(B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and employee only if the first meal period was not waived.

"(C) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an 'on duty' meal period and counted as time worked. An 'on duty' meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

"(D) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

"(E) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated."

Section 11090(12). Rest Periods, reads as follows:

"(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hour worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

"(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employer's regular rate of compensation for each workday that the rest period is not provided."

<sup>2</sup> California Industrial Welfare Commission Order No. 9-2001 is identical to 8 CCR § 11090.