

and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing 111(d) submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a 111(d) submission, to use VCS in place of a 111(d) submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 28, 2005. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Total reduced sulfur.

Dated: April 17, 2005.

**Robert W. Varney,**

*Regional Administrator, EPA New England.*

■ Part 62 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

#### PART 62—[AMENDED]

■ 1. The authority citation for part 62 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et. seq.*

#### Subpart U—Maine

■ 2. Section 62.4845 is amended by adding paragraph (b)(6) to read as follows:

#### § 62.4845 Identification of plan.

\* \* \* \* \*

(b) \* \* \*

(6) A revision to the plan controlling TRS from existing kraft pulp mills which extends the final compliance date for brownstock washers to April 17, 2007, was submitted on June 23, 2004.

\* \* \* \* \*

[FR Doc. 05-8603 Filed 4-28-05; 8:45 am]

**BILLING CODE 6560-50-P**

### DEPARTMENT OF TRANSPORTATION

#### Federal Motor Carrier Safety Administration

#### 49 CFR Part 383

[Docket No. FMCSA-2001-11117]

RIN 2126-AA70

#### Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement

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

**ACTION:** Interim final rule.

**SUMMARY:** The Federal Motor Carrier Safety Regulations (FMCSRs) prohibit States from issuing, renewing, transferring or upgrading a commercial driver's license (CDL) with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a security threat assessment of the applicant and determined the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. The FMCSRs currently provide a specific date on which States become subject to the new requirement. This interim final

rule amends the FMCSRs to cross-reference the TSA's compliance date as the date when FMCSA's companion requirements also become applicable. Consistent with TSA regulations, FMCSA also reduces the amount of advance notice that States must provide to drivers that a security threat assessment will be performed when they renew a hazardous materials endorsement. This rule is being issued as an IFR because it relates back to an existing substantive IFR published on May 5, 2003. This IFR will be subsumed into that rulemaking when it is finalized. All outstanding comments on these issues will be addressed in that final document.

**DATES:** This rule is effective on April 29, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert Redmond, Office of Safety Programs, (202) 366-9579, FMCSA, 400 7th Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** This interim final rule is available for inspection and copying between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays at the Docket Clerk, U.S. DOT Dockets, Room PL-401, Department of Transportation, 400 7th Street, SW., Washington, DC 20590-0001. An electronic version of this document along with all documents entered into this docket is available on the Internet at <http://dms.dot.gov>.

#### Summary of Today's Action

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act [Pub. L. 107-56, 115 Stat. 272] was enacted on October 25, 2001. Section 1012 of the USA PATRIOT Act amended 49 U.S.C. Chapter 51 by adding a new sec. 5103a titled "Limitation on issuance of hazmat licenses." Section 5103a(a)(1) provides:

"A State may not issue to any individual a license to operate a motor vehicle transporting in commerce a hazardous material unless the Secretary of Transportation has first determined, upon receipt of a notification under subsection (c)(1)(B), that the individual does not pose a security risk warranting denial of the license."

FMCSA shares with TSA responsibility for implementing sec. 1012 of the USA PATRIOT Act. TSA has established the security threat assessment, including security risk factors, citizenship/immigration requirements for the hazardous

materials endorsement, fingerprinting options, fees, compliance dates and other process details. FMCSA regulations require State licensing agencies to comply with TSA's security threat assessment process. The FMCSA compliance dates for the States under 49 CFR part 383, subpart I—Requirements for Transportation Security Administration Approval of Hazardous Materials Endorsement Issuances, are the same as those in 49 CFR 1572.13 of the TSA security requirements. More specifically, the applicability date under § 383.141(a) is always the same as the deadline for TSA requirements under § 1572.13(b). To ensure FMCSA's regulations always remain current with any changes made by TSA which affect the § 383.141(a) applicability date, the agency revises § 383.141(a) to cross-reference the date under 49 CFR 1572.13(b).

On May 5, 2003, TSA published an interim final rule (68 FR 23852, referred to as the May 5 IFR) that established the security threat assessment requirements for drivers who apply for, renew, or transfer a hazardous materials endorsement for a commercial driver's license. The May 5 IFR required States to notify drivers who hold a hazardous materials endorsement about the need for a security threat assessment 180 days prior to the expiration date of the endorsement. The notice was required to inform the driver that he or she could initiate the security threat assessment at any time after receiving the notice, but no later than 90 days before the expiration date of the driver's endorsement.

On November 24, 2004, TSA published an interim final rule (*Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License*, 69 FR 68720) amending the security threat assessment standards established under the May 5 IFR. For reasons described in the November 24, 2004 interim final rule, TSA has reduced the amount of advance notice States must provide to a driver who holds a hazardous materials endorsement about the need for a security threat assessment. Accordingly, FMCSA amends its regulations to implement the November 24, 2004, changes. At least 60 days prior to the expiration date of the CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that he or she must pass TSA's security threat assessment as a condition of renewing the endorsement. The notice must inform the individual that he or she may initiate the security threat assessment at

any time after receiving the notice, but no later than 30 days before the expiration date of the individual's endorsement. These timelines have been shortened from the 180/90-day notification deadlines in existing § 383.141(c).

#### **Rulemaking Analyses and Notices**

##### *Justification for Immediate Adoption*

FMCSA is issuing this IFR without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows the agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." This amended IFR is ministerial in nature. It cross-references TSA's compliance deadline for the requirements of part 383, subpart I and reduces the lead-time States must give individuals currently holding a hazardous materials endorsement under § 383.141(c). Because the rule relieves a burden on stakeholders by extending the general compliance date and relaxing the dates for State driver notification requirements, FMCSA has concluded that it is within the scope of the May 5, 2003, IFR which requested comment and that further notice and comment on this issue are unnecessary.

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

FMCSA has determined this interim final rule is a significant regulatory action within the meaning of Executive Order 12866 and within the meaning of the Department of Transportation's regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 26, 1979) because of substantial public interest. This rule does not impose any costs on any public, private, or government sector, therefore further economic analysis is unnecessary.

##### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The Regulatory Flexibility Act requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." In this case,

the requirement is inapplicable because a notice of proposed rulemaking was not required. Nonetheless, I certify that this interim final rule will not have a significant economic impact on a substantial number of small entities. As noted above, this interim final rule applies only to State governments and, through them, certain commercial motor vehicle drivers. It does not impose any costs on any public, private, or government sector.

##### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires FMCSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." The term "policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects 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." Under the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority conflicts with the exercise of Federal authority under the federal statute.

Although this amended interim final rule potentially has direct effects on the States, they are not substantial because the rule will allow States more time to comply with the TSA regulation published on November 24, 2004 (69 FR 68720), and thus avoid the withholding of Federal-aid highway funds that could result from non-compliance with the TSA rule. FMCSA has determined that this amended interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

The provisions of 49 U.S.C. 31314 require DOT to withhold certain Federal-aid highway funds from States that fail to comply substantially with the requirements for State participation in the CDL program. As discussed in detail in the May 5 IFR [see 68 FR at 23847–23848], those provisions apply also to State compliance with portions of the TSA rule implementing sec. 1012 that apply to States. In addition, 49 U.S.C. 31312 authorizes DOT to prohibit States from issuing CDLs if the Secretary determines "that a State is in substantial noncompliance" with 49 U.S.C. chapter 313. These penalties are available for DOT to use when and if appropriate to encourage State compliance with TSA's sec. 1012 rule.

*Executive Order 12372  
(Intergovernmental Review)*

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

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. This amended interim final rule does not contain any information collection requirements.

*National Environmental Policy Act*

The agency analyzed this amended interim final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued on March 1, 2004 and effective March 31, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under sec. 175(c) of the Clean Air Act, as amended (CAA) sec. 176(c), (42 U.S.C. 7506(c)) and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General Conformity requirement since it involves policy development and civil enforcement activities, such as investigations, inspections, examinations, and the training of law enforcement personnel. See 40 CFR 93.153(c)(2). It will not result in any emissions increase nor will it have any potential to result in emissions that are above the general conformity rule's *de minimis* emission threshold levels. Moreover, it is reasonably foreseeable that the rule change will not increase total CMV mileage, change how CMVs operate, the routing of CMVs, or the CMV fleet-mix of motor carriers. This action merely changes a number of

compliance dates for State licensing agencies to coincide with the new TSA deadlines.

*Executive Order 13211 (Energy Supply, Distribution, or Use)*

We have analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of sec. 4(b) of the Executive Order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

*Trade Impact Assessment*

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety and security, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. FMCSA has assessed the potential effect of this final rule and has determined that it will not impose any costs on domestic or international entities and thus would have a neutral trade impact.

*Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$120.7 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, sec. 205 of the UMRA generally requires FMCSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of sec. 205 do not apply when they are inconsistent with applicable law. Moreover, sec. 205 allows FMCSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the rule an explanation why that alternative was not adopted.

This amended interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

more than \$120.7 million annually. Thus, FMCSA has not prepared a written assessment under the UMRA.

*Executive Order 12630 (Taking of Private Property)*

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutional Protected Property Rights.

*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)*

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This amended interim final rule changes the compliance dates by which States must meet TSA requirements. This rule will not cause an increase in the number of hazardous materials incidents, nor increase the number of non-hazardous materials commercial motor vehicle crashes. Therefore, the FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

*Energy Impact*

FMCSA has assessed the energy impact of this rule in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). FMCSA has determined that this final rule is not a major regulatory action under the provisions of the EPCA.

*Privacy Act*

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://dms.dot.gov>.

**List of Subjects in 49 CFR Part 383**

Administrative practice and procedure, Commercial driver's license,

Commercial motor vehicles, Highway safety, Motor carriers.

■ For the reasons set forth in the preamble, FMCSA amends title 49, Code of Federal Regulations, Chapter III, as follows:

**PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES**

■ 1. The authority citation for part 383 continues to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; Sec. 1012(b) of Pub. L. 107–56, 115 Stat. 397; and 49 CFR 1.73.

■ 2. Amend § 383.141 to revise paragraphs (a) and (c) to read as follows:

**§ 383.141 General.**

(a) *Applicability date.* Beginning on the date(s) listed in 49 CFR 1572.13(b), this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

\* \* \* \* \*

(c) *Individual notification.* At least 60 days prior to the expiration date of the CDL or hazardous materials endorsement, a State must notify the holder of a hazardous materials endorsement that the individual must pass a Transportation Security Administration security threat assessment process as part of any application for renewal of the hazardous materials endorsement. The notice must

advise a driver that, in order to expedite the security screening process, he or she should file a renewal application as soon as possible, but not later than 30 days before the date of expiration of the endorsement. An individual who does not successfully complete the Transportation Security Administration security threat assessment process referenced in paragraph (b) of this section may not be issued a hazardous materials endorsement.

\* \* \* \* \*

Issued on: April 25, 2005.

**Annette M. Sandberg,**  
*Administrator.*

[FR Doc. 05–8572 Filed 4–28–05; 8:45 am]

**BILLING CODE 4910–EX–P**