252.222–70XX Representation with Regard to Combating Trafficking in Persons.

As prescribed in 222.1771, use the following provision:

REPRESENTATION WITH REGARD TO COMBATING TRAFFICKING IN PERSONS

(DATE)

By submission of its offer, the Offeror represents that it—

(a) Will not engage in any trafficking in persons or related activities, including but not limited to the use forced labor, in the performance of this contract;

(b) Has hiring and subcontracting policies to protect the rights of its employees and the rights of subcontractor employees and will comply with those policies in the performance of this contract;

(c) Has notified its employees and subcontractors of—

(1) The responsibility to report trafficking in persons violations by the Contractor or subcontractor employees, at any tier; and

(2) Employee protection under 10 U.S.C. 2409, as implemented in FAR subpart 3.9, from retribution for whistleblowing on trafficking in persons violations.

(End of provision)

■ 9. Section 252.225–7040 is amended by—

■ a. Removing the clause date ''(FEB 2013)'' and adding in its place ''(DATE)''; and

■ b. Adding paragraph (d)(8) to read as follows:

252.225–7040 Contractor Personnel Authorized To Accompany U.S. Armed Forces Deployed Outside the United States.

* * * * *

(d) * * *

(8)(i) The Contractor shall ensure that Contractor employees accompanying the U.S. Armed Forces are aware of their rights to—

(A) Hold their own identity or immigration documents, such as passport or driver's license;

(B) Receive agreed upon wages on time;

(C) Take lunch and work-breaks;

(D) Elect to terminate employment at any time;

(E) Identify grievances without fear of reprisal;

(F) Have a copy of their employment contract in a language they understand;

(G) Receive wages that are not below the legal in-country minimum wage;

(H) Be notified of their rights, wages, and prohibited activities prior to signing their employment contract; and

(I) If housing is provided, live in housing that meets host-country housing and safety standards.

(ii) The Contractor shall post these rights in employee work spaces in English and in any foreign language(s) spoken by a significant portion of the workforce.

(iii) The Contractor shall enforce the rights of Contractor personnel accompanying the U.S. Armed Forces.

* * * * *

[FR Doc. 2013–23501 Filed 9–25–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383

[Docket No. FMCSA–2013–0140]

RIN 2126–AB61

Commercial Driver's License Standards: Definition of Tank Vehicle Used for Determining the License Endorsement Requirement

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

ACTION: Notice of proposed rulemaking (NPRM), request for comments.

SUMMARY: FMCSA proposes to revise its definition of ''tank vehicle.'' Commercial driver's license (CDL) holders who operate such vehicles are required to obtain a tank vehicle endorsement. On May 9, 2011, FMCSA published a final rule on ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' that included a new definition of tank vehicle which required additional drivers to obtain tank vehicle endorsements on their commercial learners' permits (CLPs) and CDLs. FMCSA received numerous petitions regarding the new definition. On May 24, 2012, the Agency published guidance in the **Federal Register** to clarify the ''tank vehicle'' definition. This NPRM would revise the definition by incorporating the 2012 regulatory guidance. FMCSA seeks comment on the proposal and information on the impact that the revised definition would have on the industry.

DATES: Comments must be received on or before November 25, 2013.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2013–0140 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–5014 or via email at *robert.redmond@dot.gov.* Office hours are from 8 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Table of Contents for Preamble

I. Public Participation and Request for Comments

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted without change to *http://www.regulations.gov* and will include any personal information you provide.

A. Submitting Comments

You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0140'' and click the search button. When the new screen appears, click on the blue ''Comment Now!'' button on the right hand side of the page. On the new page, enter information required including the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

We will consider all comments and material received during the comment period and may change this proposed rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, or to submit your comments online, go to *http://www.regulations.gov* and in the search box insert the docket number ''FMCSA–2013–0140'' and click ''Search.'' Next, click ''Open Docket Folder'' and you will find all documents and comments related to the proposed rulemaking. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the U.S. Department of Transportation's (DOT) Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January17, 2008 (73 FR 3316), or you may visit *http://www.gpo.gov/fdsys/pkg/FR-2008-01-17/pdf/E8-785.pdf.*

II. Executive Summary

A. Purpose and Summary of the Major Provisions

FMCSA proposes to revise the definition of ''tank vehicle'' in 49 CFR 383.5. The revised version makes changes to clarify two points: that the quantity amounts apply regardless of the method of tank securement, and that the transportation of tanks that are manifested as empty or as residue (and that are actually empty or contain only residue) does not require the driver to have a tank vehicle endorsement.

B. Benefits and Costs

Although the Agency does not know the precise number of additional drivers that would be required to obtain a tank endorsement due to this proposed rule, we estimate that even if every existing less than truckload (LTL) driver were to get an endorsement the total cost would be $5.82 million, far below the $100 million threshold for economic significance. The safety benefit of this rule, like the 2011 final rule, derives from the added training and knowledge (which may be accomplished through self-study) that drivers of tank vehicles will need in order to pass the test for the tank vehicle endorsement, thereby reducing the risk of rollover crashes.

III. Abbreviations

ATA American Trucking Associations
CE Categorical Exclusion
CDL Commercial Driver's License
CFR Code of Federal Regulations
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
DOT U.S. Department of Transportation
DGAC Dangerous Goods Advisory Council
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
IBC Intermediate Bulk Container
HM Hazardous Material
HMRs Hazardous Materials Regulations
LTL Less Than Truckload
MCA Motor Carrier Act of 1935
MCSA Motor Carrier Safety Act of 1984
NEPA National Environmental Policy Act
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
RFA Regulatory Flexibility Act
SAFETEA–LU Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users
Secretary Secretary of Transportation
TEA–21 Transportation Equity Act for the 21st Century

IV. Legal Basis for the Rulemaking

This rulemaking is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98–554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, 49 U.S.C. 31502). It is also based on section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), and section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, at 1734, 49 U.S.C. 31302, 31308, and 31309).

The CDL program was established by the CMVSA of 1986. Parts 383 and 384 of Title 49, Code of Federal Regulations (CFR), implement the CMVSA requirements. The CMVSA prohibits any person who does not hold a valid CDL or CLP issued by his/her State of domicile from operating a CMV that requires a driver with a CDL. The CMVSA also authorized the Secretary of Transportation (Secretary) to adopt regulations for a CLP [49 U.S.C. 31305(b)(2)]. This NPRM would revise the definition of ''tank vehicle'' which would impact commercial motor vehicle (CMV) drivers operating certain types and sizes of tank vehicles.

The authority for this rulemaking is also based in part on the MCA. The MCA authorizes the Secretary to prescribe requirements for the ''qualifications . . . of employees'' of for-hire and private motor carriers [49 U.S.C. 31502(b)]. This rule, like the CDL regulations, is based in part on that authority and is intended to enhance the qualifications of CMV drivers by ensuring that they obtain the proper endorsements before operating a CMV.

Section 4019 of TEA–21 required the DOT to complete a review of the CDL testing system to determine if the current CDL system is an accurate measure of an individual's knowledge and skills as an operator of a CMV. It also authorized the Agency to issue regulations reflecting the results of its review. This rule includes new or enhanced requirements adopted in response to the Agency's review.

Section 4122 of SAFETEA–LU required the DOT to prescribe regulations on minimum uniform standards for the issuance of CLPs, as it has already done for CDLs [49 U.S.C. 31308(2)]. More specifically, section 4122 provided that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary; that the CLP document must have the same information and security features as the CDL; and that a driver's record must be created for each CLP holder in

the Commercial Driver's License Information System.

V. Background

FMCSA proposes a new definition of ''tank vehicle'' to clarify the population required to secure a CDL tank vehicle endorsement.

On April 9, 2008, FMCSA published an NPRM entitled ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (73 FR 19282) to revise the standards for CDL testing and to require new standards for a CLP. The NPRM acknowledged that the definition of ''tank vehicle'' in § 383.5 was confusing because of the reference to the definition of ''cargo tank'' in 49 CFR part 171. The definition in Part 383 could be misinterpreted to mean that a driver needed a tank vehicle endorsement to operate a vehicle with a permanently attached tank that had a rated capacity greater than 119 gallons. In the case of a portable tank temporarily attached to the vehicle, a tank endorsement was needed only if the portable tank had a rated capacity of 1,000 gallons or more.

FMCSA recognized the disparity in minimum rated capacity between permanently attached tanks (119 gallons) and temporarily attached portable tanks (1000 gallons) for the tank vehicle endorsement. As FMCSA had no reports of any problems with drivers transporting portable tanks with a rated capacity of less than 1,000 gallons, the NPRM proposed a rated capacity threshold of 1,000 or more gallons for all tanks before a driver would need a tank endorsement. The proposed change was also expected to eliminate the controversy over whether the driver of a ready mix concrete truck equipped with a small water tank to clean the mixer drum or a truck transporting generators with small fuel tanks needed a tank vehicle endorsement.

The NPRM proposed defining ''tank vehicle'' as any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

In the final rule, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (76 FR 26854), published on May 9, 2011, FMCSA responded to comments submitted to the NPRM docket and stated that, while the proposed amendment setting a 1,000 gallon *aggregate* capacity threshold was included in the final rule, there was also a need to retain a minimum *individual* rated tank capacity of more than 119 gallons for the purpose of determining the aggregate capacity of a vehicle carrying multiple tanks. In the final rule, reference was made to cargo tanks and portable tanks as defined in 49 CFR 171. Both of these types of tanks are defined as ''bulk packaging'' which is further defined in part 171 as having a capacity greater than 119 gallons. Therefore, only tanks with a rated capacity greater than 119 gallons were considered in determining the 1,000-gallon aggregate capacity threshold for a tank vehicle endorsement.

The definition of ''tank vehicle,'' adopted in the final rule is any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

After publication of the final rule, FMCSA received questions and requests for clarification from the Dangerous Goods Advisory Council (DGAC), American Trucking Associations (ATA), FedEx Corporation, and Fremont Carriers, Inc. In response, FMCSA published guidance in the **Federal Register** on May 24, 2012 [77 FR 30919]. The guidance explained that the definition proposed by the NPRM would have included a single tank with a capacity of 1,000 gallons. However, after reviewing the public comments to the rulemaking docket, the Agency modified the definition to include multiple tanks with an aggregate capacity of 1,000 gallons.

FMCSA recognized that the revised definition meant that intermediate bulk containers (IBCs) being delivered to a shipper meet the ''tank vehicle'' definition, and that the driver would require a tank vehicle endorsement. IBCs are commonly used as containers for transporting liquid hazardous materials (HM). They are subject to the DOT Hazardous Materials Regulations (HMRs). These packages commonly move by less than truckload (LTL) carriers. While IBCs may have a capacity of up to 3,000 liters, the sizes more commonly in use range up to 1,000 liters (264 gallons).

The guidance published on May 24, 2012, confirmed that the transportation of IBCs is covered by the definition whether they are temporarily or permanently attached—by bolts, straps, chains, or by blocking and bracing—because the characteristics of tanks and their liquid contents, and the driving skills needed to safely operate a tank vehicle, are essentially identical, no matter how the tanks are secured in or on the vehicle. The aggregate capacity of four or more 1,000 liter IBCs would exceed the 1,000 gallon threshold. To be qualified to haul the range of cargo they normally handle, drivers for many LTL carriers must obtain a CDL tank vehicle endorsement.

The guidance also clarified that the definition of tank vehicle does not cover the transportation of empty IBCs or other tanks when these containers are cargo manifested on a bill of lading either as empty or empty except for residue.

Lastly, the guidance confirmed that the effective date of the final rule was 60 days after publication, or July 9, 2011. While the rule provided a compliance date of July 9, 2014 (3 years from the effective date of the rule) for the State requirements under subpart B of Part 384 (49 CFR part 384), this compliance date was limited to the subpart referenced.

FMCSA recognizes that the States participating in the Motor Carrier Safety Assistance Program (currently all States) have different timeframes for incorporating the Agency's definitional changes into State law. However, States that automatically implement the Federal Motor Carrier Safety Regulations (FMCSRs) are able to take immediate action against drivers transporting HM in a tank vehicle without the proper endorsement. As a result, FMCSA recommended that tank vehicle drivers impacted by the final rule secure the needed endorsement as quickly as possible or investigate the requirements of the States where they travel to avoid violating an endorsement requirement already in effect.

FMCSA received petitions for reconsideration and rulemaking from the ATA, FedEx Corporation, and Fremont Carriers, Inc. The Agency also received letters of concern from the DGAC and others supporting the ATA petition. Each of these documents is available in docket FMCSA–2013–0140.

The Agency appreciates that the 2011 final rule expanded the number of vehicles requiring drivers with tank endorsements on their CDLs, which

resulted in increased costs for the drivers. As the tank vehicle definition continues to be a source of questions and concern, the Agency proposes a slightly revised version to improve understanding and enforcement.

The Agency offers this revised definition to clarify that vehicles transporting multiple IBCs (over 119 gallons each) with an aggregate capacity of 1,000-gallons or more are tank vehicles that would require an endorsement; and that the endorsement is needed if one or more tanks are on the vehicle, regardless of the method by which the tanks are secured to the vehicle. In addition, this definition clearly explains that tanks manifested as empty or as residue as part of the load (assuming they are actually empty or contain only residue) do not make the vehicle a ''tank vehicle'' provided the tanks are actually empty or contain only residue. The revised definition incorporates the substance of the regulatory guidance published on May 24, 2012.

Because, DOT uses 119 gallons in the definition of bulk package in the HMRs, that value is also used here to specify the minimum tank size that can be aggregated to reach the 1,000-gallon threshold. The Agency specifically seeks comments and data on whether or not a different threshold should be used.

VI. Section-by-Section Analysis

This section includes a summary of the regulatory changes proposed for 49 CFR part 383 organized by section number.

Proposed Changes to Part 383

Part 383, Commercial Driver's License Standards; Requirements and penalties, contains the requirements for CLPs and CDLs. With certain exceptions, the rules in this part apply to every person who operates a CMV in interstate, foreign or intrastate commerce, to all employers of such persons, and to all States.

Section 383.5, Definitions. FMCSA proposes to revise the definition of ''tank vehicle.'' The revised version makes changes to clarify two points: that the quantity amounts apply regardless of the method of tank securement, and that the transportation of tanks manifested as empty or as residue, provided they are actually empty or contain only residue, does not require the driver to have a tank endorsement.

In view of the revised definition of tank vehicle proposed in this NPRM, FMCSA would withdraw previous regulatory guidance on this subject, including the questions and answers published on May 24, 2012. Specifically, the guidance to be withdrawn is question 33 to 49 CFR 383.3 and questions 13 and 14 to 49 CFR 383.5, as printed below.

Guidance to 49 CFR 383.3

Question 33: Must the driver of an empty tank vehicle that is being transported from the manufacturer to a local distributor or purchaser have a tank endorsement on his or her commercial driver's license (CDL)?

Guidance: Yes. One of the primary objectives of the CDL program is to ensure that drivers are qualified to safely operate the type of vehicle they will be driving. To achieve this objective, the FMCSRs require a driver to pass a knowledge and skills test for the CMV group they intend to drive. In addition to this requirement, if the driver will be operating double/triple trailers, a tank vehicle, or a CMV used to transport passengers, they must also obtain an appropriate endorsement on their CDL. The specific requirements for the knowledge and skills tests an applicant must meet to obtain a CDL and the various endorsements can be found in Subpart G of part 383 of the FMCSRs.

Guidance to 49 CFR 383.5

Question 13: On May 9, 2011, FMCSA revised the definition of ''tank vehicle'' to include any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. Does the new definition include loaded IBCs or other tanks temporarily attached to a CMV?

Guidance: Yes. The new definition is intended to cover (1) a vehicle transporting an IBC or other tank used for any liquid or gaseous materials, with an individual rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or chassis; or (2) a vehicle used to transport multiple IBCs or other tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that are permanently or temporarily attached to the vehicle or the chassis.

Question 14: On May 9, 2011, FMCSA revised the definition of ''tank vehicle.'' Does the new definition cover the transportation of empty intermediate bulk containers (IBCs) or other tanks, or empty storage tanks?

Guidance: No. The definition of ''tank vehicle'' does not cover the transportation of empty IBCs or other tanks when these containers are manifested as either empty or as residue on a bill of lading. Furthermore, the definition of tank vehicle does not cover the transportation of empty storage tanks that are not designed for transportation and have a rated capacity of 1,000 gallons or more, that are temporarily attached to a flatbed vehicle.

VII. Regulatory Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this proposed rule is not a significant regulatory action under E.O. 12866 (58 FR 51735, October 4, 1993), as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), and not significant within the meaning of the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). This rule may affect some drivers who may need a tank endorsement and will thus be subject to §§ 383.71(b)(8), 383.121, and 383.141. The revised definition in 49 CFR 383.5 clarifies that vehicles with a tank or multiple bulk tanks (each over 119 gallons, including IBCs) with an aggregate capacity of 1,000-gallons or more are tank vehicles; and that the endorsement is needed if the tank(s) is (are) on the vehicle, regardless of the method of tank securement. The modified definition does not cover the transportation of empty IBCs, storage tanks not designed for transportation of liquid or gaseous materials, or tanks empty except for residue. FMCSA welcomes the submission of any relevant comments, data, or other materials be submitted to the Docket Number FMCSA–2013–0140.

The total financial burden imposed on drivers to obtain a tank endorsement depends on a number of factors. The average fee charged for a tank endorsement by the States is about $20 (California $30, Georgia $20, Maryland $20, Oregon $10 and Pennsylvania $23.50). That is a minimal burden for an individual driver. FMCSA does not have data on how many drivers currently have tank endorsements, as States are not required to report on that information. Nor is the number of drivers who would be required to obtain a tank endorsement precisely known, but to be conservative, we have used the total number of LTL drivers: 291,045.[1]

[1] U.S. Department of Commerce, U.S. Census Bureau: 2007 Economic Census—Transportation and Warehousing available at *http://*

Continued

Multiplying this number of LTL drivers by $20 per endorsement will result in an over-estimate of the total cost of the rule because some unknown numbers of these LTL drivers already have tank endorsements. In any case, 291,045 LTL drivers × $20 per endorsement produces a total cost of the rule of $5.82 million. This action could not exceed the $100 million threshold required for an economically significant rule.[2] The Agency does not expect the rule to generate substantial congressional or public interest due to the fact that the NPRM would not change the substance of the guidance published in the **Federal Register** on May 24, 2012 (77 FR 30919). Therefore, a full regulatory impact analysis has not been conducted, nor has this NPRM been reviewed by Office of Management and Budget (OMB).

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.[3] Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the RFA, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), the proposed rule is not expected to have a significant economic impact on the LTL driver population most likely to be affected. The current number of LTL drivers with tank vehicle endorsements could not be determined unless all 50 State Driver Licensing Agencies performed computer searches of their databases, which they have never done. However, FMCSA believes that, historically, the tank vehicle endorsement has been closely tied to the HM endorsement, and that nearly all drivers who transport HM have already obtained the tank vehicle endorsement. In other words, the drivers likely to be affected by this rule are only that small group which neither transported HM in bulk nor hauled non-hazardous products like milk or orange juice in tank vehicles large enough to require a tank endorsement. FMCSA believes that number to be relatively small. As indicated above, the number of drivers assumed for purposes of this analysis to need a tank vehicle endorsement (291,045, at a total cost of $5.82 million) is almost certainly an over-estimate.

Consequently, I certify that the proposed action would not have a significant economic impact on a substantial number of small entities.

C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Robert Redmond, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

D. Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $143.1 million (which is the value of $100 million in 2010 after adjusting for inflation) or more in any 1 year.

E. E.O. 13132 (Federalism)

A rulemaking has implications for Federalism under Section 1(a) of E.O. 13132 if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on State or local governments. FMCSA analyzed this action in accordance with E.O. 13132. This proposed rule does not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications.

F. E.O. 12988 (Civil Justice Reform)

This proposed action meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

G. E.O. 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

H. E.O. 12630 (Taking of Private Property)

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

I. Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. FMCSA has determined that this proposed rule does not require

factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=BP_2011_00A1&prodType=table.

[2] 5,000,000 drivers would have to seek a $20 tank vehicle endorsement before the $100 million threshold was reached.

[3] RFA (5 U.S.C. 601 et seq.) see National Archives at *http://www.archives.gov/federal-register/laws/regulatory-flexibility/601.html.*

the collection of personally identifiable information.

J. E.O. 12372 (Intergovernmental Review)

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

K. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. There is no new information collections requirement associated with this NPRM to pose an undue burden on drivers, their employers, States or others in the motor carrier industry.

L. National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded from further environmental documentation under two categorical exclusions (CEs) in FMCSA's NEPA Order. The first CE in Paragraph 6(b) applies to the editorial nature of this rule in aligning the definitions. The second, found in Paragraph 6(s)(7) address regulations concerning requirements for drivers to have a single CMV driver's license. In addition, the Agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, FMCSA determines action does not require an environmental assessment or an environmental impact statement. FMCSA requests comments on this determination.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

M. E.O. 12898 (Environmental Justice)

FMCSA evaluated the environmental effects of this proposed rule in accordance with E.O 12898 and determined that there are no environmental justice issues associated with its provisions nor any collective environmental impact resulting from its promulgation. Environmental justice issues would be raised if there were ''disproportionate'' and ''high and adverse impact'' on minority or low-income populations.

N. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

O. E.O. 13175 (Indian Tribal Governments)

This proposed rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

P. National Technology Transfer and Advancement Act (Technical Standards)

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This proposed rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

List of Subjects in 49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, Motor carriers.

For the reasons stated in the preamble, FMCSA proposes to amend 49 CFR,part 383 as follows:

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

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

Authority: 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 397; sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

■ 2. Amend § 383.5 by revising the definition for ''tank vehicle'' to read as follows:

§ 383.5 Definitions.

* * * * *

Tank vehicle:

* * * * *

(1) Means any commercial motor vehicle transporting, or designed to transport, any liquid or gaseous materials within:

(i) A tank that is either permanently or temporarily attached or secured to the vehicle or chassis and has a rated capacity of 1,000 gallons or more; or

(ii) Multiple tanks either permanently or temporarily attached or secured, when the aggregate rated capacity of those tanks is 1,000 gallons or more, as determined by adding the capacity of each individual tank with a capacity of more than 119 gallons.

(2) If a commercial motor vehicle transports one or more tanks that are manifested either as empty or as residue and that are actually empty or contain only residue, those tanks shall not be considered in determining whether the vehicle is a tank vehicle.

* * * * *

Issued under the authority delegated in 49 CFR 1.87 on August 15, 2013.

Anne S. Ferro,

Administrator.

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