period runs until end of the next day which is not one of the aforementioned days.

Issued in Washington, DC on September 16, 2019, under authority delegated in 49 CFR 1.97.

Howard R. Elliott,

Administrator.

[FR Doc. 2019–20308 Filed 9–90–19; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

Limitations on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement; Interim Final Rule Made Final

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

ACTION: Final rule.

SUMMARY: FMCSA adopts those requirements of the interim final rule (IFR) published on May 5, 2003 (2003 IFR), and the IFR published on April 29, 2005 (2005 IFR), which have not previously been finalized, as final without change. The 2003 IFR amended the Federal Motor Carrier Safety Regulations (FMCSRs) to 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) in the Department of Homeland Security has first conducted a security threat assessment and determined that the applicant does not pose a security risk warranting denial of the hazardous materials endorsement, as required by the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act). The 2005 IFR amended the FMCSRs to conform to the TSA's compliance date and reduce 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. In addition, this rule incorporates a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 and two provisions of the FAA Reauthorization Act of 2018, which together authorize a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid transportation security card. In particular, the Agency incorporates TSA's definition of a Transportation Worker Identification Credential (TWIC) as equivalent to a Transportation Security Card (TSC).

DATES: This final rule is effective on October 31, 2019.

FOR FURTHER INFORMATION CONTACT: Mr. Selden Fritschner, CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; by email at *Selden.Fritschner@dot.gov,* or by telephone at (202) 366–0677. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2001–11117 to read background documents and comments received, go to *http://www.regulations.gov* at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.transportation.gov/privacy.*

II. Executive Summary

A. Purpose of the Regulatory Action

This final rule adopts the provisions of the IFR published on May 5, 2003 (68 FR 23844) that have not previously been made final, and the provisions of the subsequent IFR published on April 29, 2005 (70 FR 22268). This is an administrative action to finalize these rules. This final rule includes conforming changes to incorporate a provision of the Implementing Recommendations of the 9/11 Commission Act of 2007 (9/11 Act) (Pub. L. 110–53, Aug. 3, 2007) and two provisions of the FAA Reauthorization Act of 2018 (FAA Act) (Pub. L. 115–254, Oct. 5, 2018).

B. Costs and Benefits

This rulemaking does not make substantive changes to the obligations of regulated entities. It adopts as final certain elements of the 2003 IFR and the 2005 IFR and includes non-discretionary provisions from the 9/11 Act and the FAA Act. This rulemaking has no incremental impacts on the regulated entities.

III. Legal Basis for the Rulemaking

The legal basis for the 2003 IFR was explained in that document (68 FR 23844) and repeated in the 2005 IFR (70 FR 22268). Because those IFRs are available in the docket listed at the beginning of this document, the legal basis will not be repeated in detail here.

Briefly, section 1012 of the USA PATRIOT Act enacted 49 U.S.C. 5103a, which prohibits States from issuing a driver a hazardous materials endorsement to his/her CDL until the Secretary of Transportation has first determined that the driver does not pose a security risk warranting denial of the endorsement (Pub. L. 107–56, 115 Stat. 272, 396, Oct. 26, 2001).

The 9/11 Act made a technical correction to replace the reference to the ''Secretary of Transportation'' in 49 U.S.C. 5103a(a)(1) with a reference to the ''Secretary of Homeland Security'' (Sec. 1556, Pub. L. 110–53, 121 Stat. 266, 475, Aug 3, 2007). The change did not alter the legal basis of the 2003 and 2005 IFRs because those actions rested on a different provision, 49 U.S.C. 31305(a)(5)(C). The 9/11 Act also provided that an individual who has a valid transportation employee identification card issued by the Secretary of Homeland Security shall be deemed to have met the background check required by 49 U.S.C. 5103a.

The FAA Act (Pub. L. 115–254, Oct. 5, 2018) provides that an applicable individual subject to credentialing or a background investigation may satisfy that requirement by obtaining a valid TSC. Section 1978 of the FAA Act amended 49 U.S.C. 5103a(a)(1), by allowing a State to issue a license to operate a motor vehicle transporting hazardous material in commerce to an individual who holds a valid TSC issued under 46 U.S.C. 70105.

The Administrative Procedure Act requires an Agency to promulgate final rules only after prior notice and opportunity for comment, unless the Agency finds good cause that notice and opportunity for public comment are ''impracticable, unnecessary, or contrary to the public interest'' (5 U.S.C. 553(b)(3)(B)). FMCSA finds good cause that notice and comment are

''unnecessary'' for this rule. This rule simply makes final certain provisions of two interim final rules (IFRs) that have been in effect since 2003 and 2005. The Agency accepted post-publication comments on both IFRs, most recently in 2018 (see Limitation on the Issuance of Commercial Driver's Licenses With a Hazardous Materials Endorsement, Interim rules; re-opening of comment (83 FR 62503, Dec. 4, 2018)). Many other provisions of both IFRs were made final by notice-and-comment rulemaking after 2003 and 2005. In response to a comment filed when this docket was reopened (83 FR 62503, Dec. 4, 2018), the Agency also makes ministerial changes to incorporate provisions of the 9/11 Act and the FAA Act. None of these actions changes the burden on drivers, motor carriers, or State driver licensing agencies. The incorporation of provisions in the 9/11 Act and FAA Act merely codifies in the FMCSRs provisions already in effect by operation of law. Specifically, the Agency incorporates TSA's definition of a TWIC as equivalent to a TSC. Because public comments would not result in changes to any of these actions, additional notice and opportunity for comment are unnecessary.

IV. Background

Regulatory History

On May 5, 2003, FMCSA published an IFR titled ''Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement'' (68 FR 23844). In that document, the Agency revised its regulations to require State driver licensing agencies to issue or renew a hazardous materials endorsement for a CDL only if TSA has first determined that the applicant does not pose a security risk warranting denial of such endorsement. A CDL renewal, transfer, or upgrade was also considered a new issuance and fell within the scope of these requirements if it involved a hazardous materials endorsement. The IFR implemented FMCSA's part of the requirements of section 1012 of the USA PATRIOT Act, which limited the issuance of hazardous materials licenses. Because FMCSA shares with TSA the responsibility for implementing section 1012—codified in 49 U.S.C. 5103a and 31305(a)(5)(C)—TSA concurrently published an IFR containing regulations governing the security risk determination process in 49 CFR parts 1570 and 1572 (May 5, 2003, 68 FR 23852). FMCSA received comments, which are summarized in a document filed in the docket. No public meeting was requested and none was held. The IFR became effective upon publication on May 5, 2003.

On April 29, 2005, FMCSA published an IFR titled ''Limitations on the Issuance of Commercial Driver's Licenses with a Hazardous Materials Endorsement'' (70 FR 22268). That rule was issued as an IFR because it related to the 2003 IFR. In the preamble, FMCSA wrote that the 2005 IFR would be subsumed into the 2003 IFR when that rulemaking was finalized. FMCSA's 2003 IFR provided a specific date on which States became subject to the new requirement. The 2005 IFR amended the FMCSRs to cross-reference the TSA's compliance date as the date when FMCSA's companion requirements also became applicable (70 FR 22268). Consistent with the TSA regulations, FMCSA also reduced 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. FMCSA did not receive any comments on the 2005 IFR. No public meeting was requested and none was held. The IFR became effective upon publication on April 29, 2005.

Some of the provisions in the May 5, 2003 IFR were subsequently changed in notice and comment rulemaking, and became final. They are described in the following table. Those items listed as ''same'' in the second column have not been changed since they were originally implemented in 2003.

REGULATORY ACTIONS RELATED TO THIS FINAL RULE

IFR provisions May 5, 2003	Current IFR status	Changed in post 2003 notice and comment rulemaking
§ 383.5 *Alien*	Same.	
§ 383.5 *CMV*		Definition of CMV was revised May 9, 2011 (76 FR 26878); October 2, 2014 (79 FR 59455); October 1, 2015 (80 FR 59072).
§ 383.5 *Hazardous materials*	Same.	
§ 383.23(c) *Learner's permit*		§ 383.23 was revised May 9, 2011 (76 FR 26878, 26879). Requirements for commercial learner's permit moved to § 383.25.
§ 383.71(a)(9)		§ 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(a)(9) now in § 383.71(b)(8) and (9).
§ 383.71(b)(3) [License transfer]		§ 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(b)(3) now in § 383.71(c)(3).
§ 383.71(c)(3) [License renewal]		§ 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(c)(3) now in § 383.71(d)(3).
§ 383.71(d) [License upgrades]		§ 383.71 was revised May 9, 2011 (76 FR 26881). Requirements of § 383.71(d) now in § 383.71(e)(1)–(4).
§ 383.73(a)(5) [Initial licensure]		§ 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(a)(5) moved to § 383.73(b)(8) [Initial CDL].
§ 383.73(b)(4) [License transfers]		§ 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(b)(4) now in § 383.73(c)(4) [License transfers].
§ 383.73(c)(4) [License renewals]		§ 383.73 was revised May 9, 2011 (76 FR 26883). Requirements of § 383.73(c)(4) now in § 383.73(d)(1) [License renewals].
§ 383.93(b)(4) [Endorsement descriptions]	Same.	
Part 383, Subpart I, Title	Same.	
§ 383.141(a) [Applicability date]	Subsequent IFR	Revised by IFR April 29, 2005 (70 FR 22271). Corrected in a revision October 1, 2012 (77 FR 59825).
§ 383.141(b) [Prohibition]	Same.	
§ 383.141(c) [Individual notification]	Subsequent IFR	Revised by IFR April 29, 2005 (70 FR 22271).
§ 383.141(d) [Hazardous materials endorsement renewal cycle].	Same.	

REGULATORY ACTIONS RELATED TO THIS FINAL RULE—Continued

IFR provisions May 5, 2003	Current IFR status	Changed in post 2003 notice and comment rulemaking
§ 384.233 [Background records checks]	Same.	

In a document published in the **Federal Register** on December 4, 2018 (83 FR 62503), FMCSA announced its plan to adopt the provisions of the IFRs that had not previously been made final, and its intention to incorporate sections 1977 and 1978 of the FAA Act. That document re-opened the comment period for 15 days to ensure that interested parties had an opportunity to offer comments on the prior IFRs and the provisions from the FAA Act. The comment period closed on December 19, 2018. FMCSA received one comment, which is discussed below.

V. Discussion of the Interim Final Rules and Those Provisions Being Finalized in This Final Rule

In the 2003 IFR, FMCSA amended the CDL driver application (§ 383.71) and State licensing (§ 383.73) procedures to require all individuals to pass the TSA screening process when renewing, upgrading, transferring, or newly applying for a CDL with a hazardous materials endorsement. Similarly, the Agency added a new subpart I (§ 383.141) to prohibit the issuance of a hazardous materials endorsement for a CDL unless TSA has determined that the applicant does not pose a security risk warranting denial of the endorsement. FMCSA added § 383.141(c) to require a State to notify an individual at least 180 days (6 months) prior to the expiration date of a CDL or hazardous materials endorsement that he or she must pass the new TSA security screening process. Finally, the Agency added § 383.141(d) to require States to adopt, at minimum, a 5-year renewal cycle for a CDL hazardous materials endorsement.

To comply with statutory requirements, FMCSA added a definition of ''Alien.'' FMCSA also revised the definition of ''Hazardous materials'' to include ''any chemical or biological material or agent determined by the Secretary of Health and Human Services or the Attorney General to pose a threat to national security.'' Additionally, in the definition of ''Commercial motor vehicle'' (CMV) and in § 383.93(b)(4), FMCSA made conforming changes to ensure that drivers newly covered by the hazardous materials definition are required to obtain a CDL with a hazardous materials endorsement, and are subject to the TSA security screening process. The Agency made changes to § 383.23(c) to ensure that the rules governing the CDL learner's permit were consistent with TSA's implementing regulations. FMCSA also added § 384.233 to describe the requirements with which States must comply.

On April 29, 2005, FMCSA published another IFR that changed § 383.141 to conform to changes in the TSA regulations. In § 383.141(a), the Agency removed the applicability date and inserted a cross-reference to the date in 49 CFR 1572.13(b). FMCSA also shortened the time frame in § 383.141(c) in which a State must give notice to a holder from 180 days to 60 days. FMCSA required the notice to inform the individual that he or she may initiate the security threat assessment no later than 30 days before the date of expiration of the endorsement, not the 90 days in the 2003 IFR.

As noted in the table above, many of these provisions have been amended and finalized in separate regulatory actions occurring since 2005. Today's action will finalize the following provisions, which have not been otherwise revised or finalized since they were first promulgated in 2003 or 2005:

(1) Definition of ''Alien'' in § 383.5;

(2) Definition of ''Hazardous materials'' in § 383.5;

(3) Addition of paragraph (b)(4) to § 383.93, requiring State-issued endorsements on CDLs when the holder is operating a CMV used to transport hazardous materials;

(4) Creation of the Subpart title for subpart I (Requirement for Transportation Security Administration approval of hazardous materials endorsement issuances);

(5) Addition of paragraphs (b) and (d) in § 383.141, prohibiting a State from issuing, renewing, upgrading, or transferring a hazardous materials endorsement on a CDL unless TSA has determined that the holder of the CDL does not pose a security risk, and establishing a 5-year renewal cycle for hazardous materials endorsements, respectively; and

(6) Addition of § 384.233, requiring States to comply with any TSA requirements regarding background checks for drivers seeking to obtain, renew, transfer, or upgrade a hazardous materials endorsement.

VI. Comment Response

FMCSA solicited comments to both the 2003 and 2005 IFRs. The Agency received over 50 comments on the 2003 IFR; a summary of those comments is available in docket FMCSA–2001–11117. No comments were received on the 2005 IFR.

The comments filed in the FMCSA docket by the Commercial Vehicle Safety Alliance, the American Association of Motor Vehicle Administrators, and various States focused almost entirely on TSA requirements rather than the FMCSA rule, and most appear to have been filed in the TSA docket as well. TSA's 2003 IFR required States to begin fingerprint-based criminal records background checks by November 3, 2003. The comments of the Iowa Department of Transportation are typical of those filed by other affected parties: ''[T]he compliance date of November 3, 2003, does not provide a reasonable amount of time in which to make changes to the Iowa Administrative Code, to make technical amendments to state statutes, to make appropriate computer programming changes, to train employees and to put in place the mechanism with law enforcement agencies for fingerprinting services or contract with a third party for such services. Holding the jurisdictions to an unreasonable compliance date may place every state into a status of noncompliance with a CDL program we have worked hard to be compliant with since 1992.'' In response to these and subsequent objections, TSA moved the compliance date for fingerprint-based background checks, first to April 1, 2004 (68 FR 63033, Nov. 7, 2003) and then to January 31, 2005 (69 FR 17969, Apr. 6, 2004).

Individual drivers, trucking companies, and several States commented on TSA's list of offenses that would permanently disqualify a driver from obtaining a hazardous materials endorsement. TSA therefore amended that list in an IFR of November 24, 2004 (69 FR 68720).

Finally, many States raised technical questions about the necessary electronic interface with TSA and the Federal Bureau of Investigation, which compares the fingerprints used for the criminal check against available

criminal rap sheets. These were not strictly regulatory issues and were resolved over time through technical and administrative solutions.

FMCSA's IFR of April 29, 2005, simply required the States to comply with the various changes TSA had implemented over the previous two years.

In short, the issues raised by commenters in 2003 are moot because they involved procedural questions that have been resolved and implementation deadlines that have long passed. The questions posed by commenters have been resolved outside the context of the IFRs, and requests for clarification of the IFRs or the TSA rules have been satisfied through direct contacts with commenters and other affected parties. Most importantly, commenters' objections have been met by significant amendments to the TSA rules on background checks and by subsequent conforming changes to the FMCSA regulations.

As noted earlier, FMCSA re-opened the comment period on these two IFRs in late 2018, and received one comment, jointly submitted by The National Tank Truck Carriers, Inc. (NTTC) and the American Trucking Associations (ATA), regarding Sec. 1978 of the FAA Act. NTTC and ATA called for an update of 49 CFR 383.141, arguing that States are empowered by 49 U.S.C. 5103(a) to issue hazardous materials endorsements to drivers holding TWIC cards. NTTC and ATA requested that FMCSA issue guidance to ensure that States adopt a common standard. NTTC and ATA maintained that FMCSA is in a better position to instruct States on how best to verify a TWIC's validity. NTTC and ATA argued that, by virtue of 6 U.S.C. 1206 and Sec. 1978 of the FAA Act, Congress intended the State driver licensing agencies and FMCSA to be the primary actors in regulating the issuance of hazardous material endorsements when TSA background checks are not required.

Accordingly, NTTC and ATA requested that the Agency:

- Include 6 U.S.C. 1206 into the legislative authority for hazardous materials endorsement background checks;
- Modify the requirements on States for issuing hazardous materials endorsements to conform with Sec. 1978 of the FAA Act, including the addition of a definition for TWIC; and
- Advise and liaise with TSA to modify 49 CFR part 1572, subpart A, to conform with Sec. 1978 of the FAA Act.

NTTC and ATA requested expansion of the rule's legislative authority section to include Sec. 1556(b) of the Implementing Recommendations of the 9/11 Commission Act of 2007, codified at 6 U.S.C. 1206. Section 1206 provides that an individual who has a valid transportation employee identification card issued under 46 U.S.C. 70105 shall be deemed to have met the background records check required under 49 U.S.C. 5103a. Although Sec. 1206 is directed to the Department of Homeland Security, and not FMCSA, 49 U.S.C. 31305(a)(5)(C) requires this Agency to issue regulations to ensure that a CDL applicant ''is licensed by a State to operate the [commercial motor] vehicle after having first been determined under section 5103a of this title as not posing a security risk warranting denial of the license.'' To carry out Sec. 31305(a)(5)(C), FMCSA must be able to implement the mandate of 6 U.S.C. 1206 and the amendments to 49 U.S.C. 5103a. The authority of those provisions is therefore implicitly delegated to FMCSA and will be listed in the authority citation for 49 CFR part 383.

Further, NTTC and ATA requested modification of § 383.141 to properly vest the authority to issue hazardous materials endorsements to individuals who hold TWICs with State driver licensing agencies. FMCSA makes this adjustment to the regulation pursuant to the FAA Act. The Agency is also adding a definition of TWIC as requested by the commenter, to ensure there is no confusion among State driver licensing agencies or drivers.

Regarding the request that FMCSA liaise with the TSA to update 49 CFR parts 1570 and 1572 to ensure that they are grounded in congressionally-delegated authority, FMCSA will forward this comment to TSA, which has the sole authority to make changes to the cited regulations.

VII. Regulatory Analyses

A. Executive Order (E.O). 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

FMCSA determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order (E.O.) 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. Accordingly, the Office of Management and Budget (OMB) has not reviewed it under that Order. It is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, Feb. 26, 1979).

In a document published on December 4, 2018, FMCSA announced its plan to adopt the provisions of the IFRs that had not previously been made final, as well as its intention to incorporate sections 1977 and 1978 of the FAA Act. These sections, which were enforceable upon the Act's publication on October 5, 2018, provided an exemption from the TSA screening process for individuals holding a valid TWIC. This final rule adds § 383.141(b)(2) to 49 CFR to be consistent with this provision in the FAA Act. This rulemaking also adopts as final the elements of the 2003 IFR and the 2005 IFR.

While some parts of the 2003 IFR remain unchanged, other elements have been changed and made final by subsequent rulemaking. This rulemaking finalizes the following sections:

- Section 383.5 (Definitions of ''Alien'', ''Hazardous materials'', and ''TWIC'');
- Section 383.93(b)(4) (Endorsements);
- Section 383.141(b), (c), and (d) (Subpart I—Requirement for Transportation Security Administration Approval of Hazardous Materials Endorsement Issuances); and
- Section 384.233 (Background Records Checks).

Because this rulemaking is procedural and simply finalizes those provisions of the 2003 and 2005 IFRs that are not already final, and incorporates provisions of the 9/11 Act and the FAA Act, this rulemaking does not result in an incremental change from the IFRs. Those statutes have been in effect since their enactment in 2007 and 2018, respectively. Thus, this rulemaking has no incremental impacts on the regulated entities.

B. E.O. 13771 Reducing Regulation and Controlling Regulatory Costs

This rule is not an E.O. 13771 regulatory action because this rule is not significant under E.O. 12866.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment.

The term ''small entities'' means 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 under 50,000.[1] 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 entities. Section 605 of the RFA allows an Agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This rule directly affects the States and driver applicants for a hazardous materials endorsement. Under the standards of the RFA, as amended by the SBREFA, neither the States nor driver applicants for a hazardous materials endorsement are small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State, including the District of Columbia, has a population of less than 50,000, which is the criterion for a governmental jurisdiction to be considered small under section 601(5) of the RFA. Driver applicants for a hazardous materials endorsement are not considered small entities because they too do not meet the definition of a small entity in section 601 of the RFA. Specifically, driver applicants for a hazardous materials endorsement are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA. Therefore, this final rule does not have an impact on a substantial number of small entities.

Accordingly, I hereby certify that the action does not have a significant economic impact on a substantial number of small entities.

D. Assistance for Small Entities

In accordance with section 213(a) of the SBREFA, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will 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, Mr. Selden Fritschner, listed in the **FOR FURTHER INFORMATION CONTACT** section of this final 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.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any 1 year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of Executive Order 13132 if it has ''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.'' When FMCSA issued the original IFRs on May 5, 2003 (68 FR 28344), and April 29, 2005 (70 FR 22268), it determined that those rules did not impose substantial direct costs on or for States, nor did they limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

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

This final rule 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.

I. 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 final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, this regulatory action could not disproportionately affect children.

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

FMCSA reviewed this final 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.

K. Privacy Impact Assessment

Because the 2003 IFR was in effect prior to the enactment of section 522, of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108–447, 118 Stat. 2809, 3268, Dec. 8, 2004, 5 U.S.C. 552a note), FMCSA was not required to provide a Privacy Impact Assessment (PIA) for that rulemaking. This rulemaking is an administrative action to clarify the legal status of the 2003 and 2005 IFRs, and it makes minor conforming changes to the CFR to incorporate subsequent legislation. FMCSA, however, submitted a Privacy Threshold Assessment (PTA) analyzing the rulemaking to the Secretary of Transportation's Privacy Office for formal adjudication. FMCSA provides the following description of the PTA, describing current requirements, for information.

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, requires the Agency to conduct a PIA of a regulation that will affect the privacy of individuals. Any such

[1] Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Available at: *https://www.sba.gov/advocacy/regulatory-flexibility-act* (accessed Feb. 13, 2017).

assessment must consider impacts of a final rule on the privacy of information in an identifiable form and related matters. The FMCSA Privacy Officer and the DOT Privacy Officer have evaluated the risks and effects this rulemaking might have on collecting, storing, and sharing personally identifiable information (PII) and have evaluated protections and alternative information handling processes in developing the final rule in order to mitigate potential privacy risks and have determined that this rule does not require the collection of PII by FMCSA. This rulemaking has the ultimate effect of requiring individuals to provide sensitive PII to the Transportation Security Administration (TSA). Individuals should refer to the TSA privacy office website at *https://www.dhs.gov/privacy-documents-transportation-security-administration-tsa* for more information about TSA's collection and use of the data.

The E-Government Act of 2002, Public Law 107–347, Sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. This is formally documented in the PTA submitted to the DOT Privacy Officer. Therefore, FMCSA has not conducted a privacy impact assessment.

L. 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.

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

FMCSA has analyzed this final 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. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

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

This 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.

O. 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 rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. Environment (National Environmental Policy Act of 1969 (NEPA))

FMCSA analyzed this rule for the purpose of NEPA (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraph 6.d. That categorical exclusion relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, 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: 6 U.S.C. 1206, 49 U.S.C. 521, 31136, 31301 *et seq.,* and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56; 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; secs. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

■ 2. In § 383.5:

■ a. Adopt as final without change the definitions of ''Alien'' and ''Hazardous materials'' of the interim rule published May 5, 2003 (68 FR 23844); and

■ b. Add, in alphabetical order, a definition for ''TWIC''.

The addition reads as follows:

§ 383.5 Definitions.

* * * * *

TWIC means Transportation Worker Identification Credential as that term is defined in 49 CFR 1570.3, which is the transportation security card issued by TSA under the authority of 46 U.S.C. 70105.

* * * * *

§ 383.93 [Adopted as final and Amended]

■ 3. Adopt as final the revision to § 383.93(b)(4) in the interim rule published May 5, 2003 (68 FR 23844) and revise paragraph (b)(4) by removing '', or'' and adding ''; or'' in its place.

■ 4. In § 383.141:

■ a. Revise paragraph (b);

■ b. Adopt as final without change paragraph (d) of the interim rule published May 5, 2003 (68 FR 23844); and

■ c. Adopt as final without change paragraph (c) of the interim rule published April 29, 2005 (70 FR 22268).

The revision reads as follows:

§ 383.141 General.

* * * * *

(b) *Prohibition.* A state may not issue, renew, upgrade, or transfer a hazardous material endorsement for a CDL to any individual authorizing that individual to operate a commercial motor vehicle transporting a hazardous material in commerce unless—

(1) The Transportation Security Administration has determined that the individual does not pose a security risk warranting denial of the endorsement; or

(2) The individual holds a valid TWIC.

* * * * *

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE PROGRAM

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

Authority: 6 U.S.C. 1206, 49 U.S.C. 31136, 31301 *et seq.,* and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114–94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

§ 384.233 [Adopted as final]

■ 6. Adopt as final without change § 384.233 of the interim rule published May 5, 2003 (68 FR 23844).

Issued under authority delegated in 49 CFR 1.87.

Dated: September 18, 2019.

Raymond P. Martinez,

Administrator.

[FR Doc. 2019–20584 Filed 9–30–19; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 190220141–9141–01]

RIN 0648–PIR–A001

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Closure of Purse Seine Fishery in the ELAPS in 2019

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; fishery closure.

SUMMARY: NMFS announces that the purse seine fishery in the Effort Limit Area for Purse Seine, or ELAPS, will close as a result of reaching the 2019 limit on purse seine fishing effort in the ELAPS. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: Effective 00:00 on October 9, 2019 Universal Coordinated Time (UTC), until 24:00 on December 31, 2019 UTC.

FOR FURTHER INFORMATION CONTACT: Rini Ghosh, NMFS Pacific Islands Regional Office, 808–725–5033.

SUPPLEMENTARY INFORMATION: U.S. purse seine fishing in the area of application of the Convention, or Convention Area, is managed, in part, under the Western and Central Pacific Fisheries Convention Implementation Act, 16 U.S.C. 6901 *et seq.* (Act). Regulations implementing the Act are at 50 CFR part 300, subpart O. On behalf of the Secretary of Commerce, NMFS promulgates regulations under the Act as may be necessary to carry out the obligations of the United States under the Convention, including implementation of the decisions of the Commission.

Pursuant to WCPFC Conservation and Management Measure 2018–01, NMFS issued regulations that established a limit of 1,616 fishing days that may be used by U.S. purse seine fishing vessels in the ELAPS in calendar year 2019 (see interim rule at 84 FR 37145, published July 31, 2019, to be codified at 50 CFR 300.223). The ELAPS consists of the areas of the U.S. Exclusive Economic Zone (EEZ) and the high seas that are in the Convention Area between the latitudes of 20° N and 20° S (see definition at 50 CFR 300.211). A fishing day means any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a fish aggregating device (FAD), services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch (see definition at 50 CFR 300.211).

Based on data submitted in logbooks and other available information, NMFS expects that the limit of 1,616 fishing days in the ELAPS will be reached, and in accordance with the procedures established at 50 CFR 300.223(a), announces that the purse seine fishery in the ELAPS will be closed starting at 00:00 on October 9, 2019 UTC, and will remain closed until 24:00 on December 31, 2019 UTC. Accordingly, it shall be prohibited for any fishing vessel of the United States equipped with purse seine gear to be used for fishing in the ELAPS from 00:00 on October 9, 2019 UTC until 24:00 December 31, 2019 UTC, except that such vessels will not be prohibited from bunkering in that area during that period (50 CFR 300.223(a)). Fishing means using any vessel, vehicle, aircraft or hovercraft for any of the following activities, or attempting to do so: (1) Searching for, catching, taking, or harvesting fish; (2) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking, or harvesting of fish for any purpose; (3) placing, searching for, or recovering fish aggregating devices or associated electronic equipment such as radio beacons; (4) engaging in any operations at sea directly in support of, or in preparation for, any of the activities previously described in elements (1) through (3) of this definition, including, but not limited to, bunkering; or (5) engaging in transshipment at sea, either unloading or loading fish (see definition at 50 CFR 300.211). As noted above, bunkering will not be prohibited in the closure area during the closure period.

Classification

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and opportunity for public comment on this action. Compliance with the notice and comment requirement would be impracticable and contrary to the public interest, since NMFS would be unable to ensure that the 2019 limit on purse seine fishing effort in the ELAPS is not exceeded. This action is based on the best available information on U.S. purse seine fishing effort in the ELAPS. The action is necessary for the United States to comply with its obligations under the Convention and is important for the conservation and management of bigeye tuna, yellowfin tuna, and skipjack tuna in the western and central Pacific Ocean. For the same reasons, there is good cause under 5 U.S.C. 553(d)(3) to establish an effective date less than 30 days after the date of publication of this notice.

This action is required by 50 CFR 300.223(a) and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 6901 *et seq.*

Dated: September 24, 2019.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2019–20998 Filed 9–30–19; 8:45 am]

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