



DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 380, 383, and 384

[Docket No. FMCSA-2007-27748]

RIN 2126-AC25

Partial Extension of Compliance Date for Entry-Level Driver Training

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

ACTION: Notice of Proposed Rulemaking; extension of compliance date.

SUMMARY: FMCSA proposes to amend its December 8, 2016, final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (ELDT final rule), by extending the compliance date for two provisions from the rule. The date for training providers to upload entry-level driver training (ELDT) certification information into the Training Provider Registry (TPR) and for State Driver Licensing Agencies (SDLAs) to receive driver-specific ELDT information would be extended from February 7, 2020, to February 7, 2022. This action would provide FMCSA additional time to complete development of the electronic interface that will receive and store ELDT certification information from training providers and transmit that information to the SDLAs. The proposed extension would also provide SDLAs with sufficient time to modify their information technology (IT) systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR.

DATES: Comments on this notice must be received on or before [INSERT DATE 30 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2007-27748 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, Washington, DC, between 9 a.m. and 5 p.m., 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 for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, Driver and Carrier Operations (MC-PSD) Division, FMCSA, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001 by telephone at 202-366-4325 or by e-mail at MCPSD@dot.gov. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

This notice of proposed rulemaking (NPRM) is organized as follows:

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I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA-2007-27748), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. 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 e-mail 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>, put the docket number, FMCSA-2007-27748, in the keyword box, and click “Search.” When the new screen appears, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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.

FMCSA 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.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is exempt from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as “confidential” or “CBI.” Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI

should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE., Washington DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>. Insert the docket number, FMCSA-2007-27748, in the keyword box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document to review. 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 DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. 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.dot.gov/privacy.

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America’s Surface Transportation Act, Public Law, 114-94 (FAST Act), FMCSA is required to publish an advance notice of proposed rulemaking

(ANPRM) or conduct a negotiated rulemaking “if a proposed rule is likely to lead to the promulgation of a major rule” (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to lead to the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. EXECUTIVE SUMMARY

A. Purpose and Summary of the Proposed Rule

FMCSA proposes to extend the compliance date for two provisions from the final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (81 FR 88732, Dec. 8, 2016) (ELDT final rule) from February 7, 2020, to February 7, 2022. The proposed two-year extension would delay the date by which training providers must begin uploading driver-specific training certification information into the Training Provider Registry (TPR), an electronic database that will contain entry-level driver training (ELDT) information. It would also delay the date by which State Driver Licensing Agencies (SDLAs) must confirm that applicants for a commercial driver’s license (CDL) have complied with ELDT requirements prior to taking a specified knowledge or skills test. The extension would give FMCSA time to complete the IT infrastructure for the TPR to allow for the upload, storage, and transmission of the driver-specific training records. It would also provide SDLAs time to make changes, as necessary, to their IT systems and internal procedures that would allow them to receive the driver course completion information transmitted from the TPR. The Agency proposes to extend the compliance date at this time, so that SDLAs and other stakeholders can take the proposed delay into account when setting budget and resource

allocation priorities. In proposing this delay, FMCSA is also proposing clarifying and conforming changes to the regulations established by the ELDT final rule.

FMCSA does not propose any other substantive changes to the requirements established by the ELDT final rule. This means that, beginning February 7, 2020, training providers wishing to provide ELDT must be listed on the TPR and drivers seeking a CDL or endorsement on or after February 7, 2020, must complete the required training, as set forth in the ELDT final rule.

B. Costs and Benefits

The Agency estimates that this proposed rule would result in annualized cost savings over a three-year period of \$8.06 million at a 3% discount rate and \$10.13 million at a 7% discount rate.

III. ABBREVIATIONS AND ACRONYMS

AAMVA	American Association of Motor Vehicle Administrators
ANPRM	Advance Notice of Proposed Rulemaking
BTW	Behind the Wheel
CDL	Commercial Driver's License
CDLIS	Commercial Driver's License Information System
CFR	Code of Federal Regulations
CMV	Commercial Motor Vehicle
CMVSA	Commercial Motor Vehicle Safety Act
DOT	U.S. Department of Transportation
ELDT	Entry-Level Driver Training
E.O.	Executive Order
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
FRFA	Final Regulatory Flexibility Analysis
IT	Information Technology
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
PRA	Paperwork Reduction Act

RIA	Regulatory Impact Analysis
RIN	Regulation Identifier Number
SDLA	State Driver Licensing Agency
SORN	Systems of Records Notice
§	Section symbol
TPR	Training Provider Registry
U.S.C.	United States Code

IV. LEGAL BASIS FOR THE RULEMAKING

The legal basis of the ELDT final rule, set forth at 81 FR 88738-88739, also serves as the legal basis for this NPRM. A brief summary of the statutory authorities identified in that discussion follows. FMCSA’s authority to amend the ELDT final rule by extending the compliance date for two requirements and making other necessary clarifying and conforming changes, as proposed, is derived from several concurrent statutory sources. The Motor Carrier Act of 1935, as amended, codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (the Secretary) to prescribe requirements for the safety of motor carrier operations. The NPRM also relies on the provisions of the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. 31136(a)(1) and (2), requiring the Secretary to establish regulations to ensure that commercial motor vehicles (CMVs) are operated safely, and that responsibilities placed on CMV drivers do not impair their ability to safely operate CMVs. The NPRM does not address medical standards for drivers or physical effects related to CMV driving (49 U.S.C. 31136(a)(3) and (4)). The Agency does not anticipate that drivers will be coerced as a result of this proposal (49 U.S.C. 31136(5)). The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified generally in 49 U.S.C. chapter 313, established the commercial driver’s license (CDL) program and required the Secretary to promulgate implementing regulations, including minimum standards for testing and

ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The specific statutory provision underlying the ELDT final rule, enacted as part of The Moving Ahead for Progress in the 21st Century Act and codified at 49 U.S.C. 31305(c), required the Secretary to establish minimum entry-level driver training standards for certain individuals required to hold a CDL.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315, as they relate to CMV operators, programs, and safety.

V. BACKGROUND

The ELDT final rule established minimum training standards for individuals applying for a Class A or Class B CDL for the first time; individuals upgrading their CDL to a Class B or Class A; and individuals obtaining the following endorsements for the first time: hazardous materials (H), passenger (P), and school bus (S). The final rule also defined curriculum standards for theory and behind-the-wheel (BTW) instruction for Class A and B CDLs and the P and S endorsements, and theory instruction requirements for the H endorsement. Additionally, the rule required that SDLAs verify ELDT completion before allowing the applicant to take a skills test for a Class A or Class B CDL, or a P or S endorsement; or a knowledge test prior to obtaining the H endorsement.

The final rule also established the TPR, an online database which would allow ELDT providers to electronically register with FMCSA and certify that individual driver-trainees completed the required training. The rule set forth eligibility requirements for training providers to be listed on the TPR, including a certification, under penalty of perjury, that their training programs meet those requirements. The final rule, when fully

implemented, will require training providers to enter driver-specific ELDT information, which FMCSA will then verify before transmitting to the SDLA. The process is designed to deliver a finished “product” (*i.e.*, verified driver-specific ELDT information) to the end user, the SDLA. The NPRM is therefore consistent with the Agency’s position that full implementation of the final rule presumes an integrated electronic system used concurrently by training providers, FMCSA, and the SDLAs. As FMCSA stated in the ELDT final rule, SDLAs will not be required to accept paper training certificates as evidence of ELDT completion.¹

In adopting the February 7, 2020, compliance date for the ELDT final rule, FMCSA noted that several changes to the ELDT NPRM, published on March 7, 2016 (81 FR 11944), reduced the regulatory implementation burden on SDLAs. For example, the final rule dropped the proposed requirement for refresher training, which would have required SDLAs to issue restricted CDLs so that the BTW portion of the training could be completed on public roads. FMCSA also removed the proposed requirements that SDLAs verify the applicant received ELDT from a provider listed on the TPR and maintain a separate record of the applicant’s training certification information. These provisions, if retained in the ELDT final rule, would have required more extensive IT modifications by the SDLAs. FMCSA therefore believed, in light of the simplified requirements, that the TPR and State-based systems could be integrated and operational by the February 7, 2020, compliance date, allowing adequate time for the States to pass implementing legislation and modify their technology platforms as necessary.

Unfortunately, due to unanticipated delays in completing the entire IT infrastructure for

¹ See 81 FR 88732, 88767 (Dec. 8, 2016)

the TPR, FMCSA concludes that the compliance date of February 7, 2020, must be extended to February 7, 2022, for the two provisions discussed above in section II.A, “Purpose and Summary of the Proposed Rule.”

FMCSA previously acknowledged that the American Association of Motor Vehicle Administrators (AAMVA) and individual SDLAs, in comments submitted to the NPRM, raised important questions and concerns regarding transmittal of the applicant’s ELDT information through the Commercial Driver’s License Information System (CDLIS). Accordingly, the Agency said that it “will work closely with AAMVA and the SDLAs during the implementation phase to address these issues in a way that minimizes the administrative burden on States to the greatest extent possible.”² FMCSA continues to follow that approach and remains actively engaged with AAMVA to identify the most efficient means of transmitting the ELDT certification information to the SDLAs.

VI. DISCUSSION OF NOTICE OF PROPOSED RULEMAKING (NPRM)

Today’s NPRM proposes a new compliance date of February 7, 2022, for two provisions from the ELDT final rule: the requirement that training providers upload driver-specific training certification information to the TPR, and the requirement that SDLAs confirm driver applicants are in compliance with the ELDT requirements prior to taking a skills test for a Class A or Class B CDL, or a passenger (P) or school bus (S) endorsement, or prior to taking the knowledge test to obtain the hazardous materials (H) endorsement. The proposed two-year extension of the compliance date of these two requirements, from February 7, 2020, to February 7, 2022, is necessary to allow the Agency time to complete full functionality for the TPR and to establish the electronic

² 81 FR 88767 (Dec. 8, 2016).

means by which the ELDT certification information will be transmitted to the SDLAs. The proposed extension would also permit the SDLAs time to make necessary modifications to their IT systems that would allow them to receive ELDT certification information from the TPR, and to adopt required procedural changes to ensure the information is used in accordance with the ELDT final rule. The Agency requests comment on the proposed two-year extension of the compliance date for the two provisions discussed above.

The proposed extension of the compliance date does not apply to any other provision from the ELDT final rule, which retains the initial compliance date of February 7, 2020. This means that by February 7, 2020, in order to be listed on the TPR, a training provider must meet the applicable eligibility requirements set forth in 49 CFR part 380, subpart G, and electronically register with the TPR, which will include affirming, under penalty of perjury, that the provider meets the eligibility requirements and will, at a minimum, follow the FMCSA-prescribed curriculum for the CDL class or endorsement. Although the TPR will not be able to accept or transmit the ELDT training certification information needed for SDLAs to confirm that drivers are meeting their training requirements, training providers listed on the TPR would remain subject to the documentation and recordkeeping requirements set forth in § 380.725, beginning February 7, 2020. The Agency intends to permit training providers to begin electronic registration prior to the compliance date of February 7, 2020. FMCSA will provide additional guidance on the TPR registration process before the registration period opens.

Additionally, beginning February 7, 2020, driver applicants must complete the training required in 49 CFR part 380, subpart F, and comply with the requirements of 49

CFR 383.71(a)(3), (b)(11), and (e)(5), prior to obtaining any of the following commercial license credentials for the first time: a Class A or Class B CDL; an upgrade to a Class B or a Class A CDL; or an H, P, or S endorsement. Driver applicants must obtain ELDT from a training provider listed on the TPR. The TPR will be accessible to driver applicants who need to identify a registered training provider that meets their needs.

VII. International Impacts

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

VIII. SECTION-BY-SECTION ANALYSIS

FMCSA proposes to revise section 380.717 by changing the compliance date for training providers to electronically transmit training certification information to the TPR from February 7, 2020, to February 7, 2022. In section 383.73, paragraphs (b)(11) and (e)(9), FMCSA proposes to change the compliance date from February 7, 2020, to February 7, 2022. This would delay by two years the date by which a State must verify the applicant has completed the required ELDT. The Agency also proposes to revise section 384.230 by changing the compliance date from February 7, 2020, to February 7, 2022. This date identifies when a State must comply with the requirements of sections 383.73(b)(11) and (e)(9). In addition, current paragraph (b) of section 384.230 would be deleted in conformance with the change in the States' compliance date. As a result of that

change, current paragraph (a) would be designated as section 384.230. Finally, the NPRM would revise section 384.301(k) by requiring States to come into substantial compliance with the ELDT-related requirements of sections 383.73 and 384.230 no later than February 7, 2022.

Unrelated to the delayed compliance date for these portions of the final rule, FMCSA also proposes to make several clarifying changes to existing ELDT-related requirements in section 383.73. In paragraphs (b)(3) and (b)(3)(ii), the proposal would remove references to the State performing a check for whether the applicant has completed required training prior to initial issuance of the CDL. This proposed change reflects that, as intended by the ELDT final rule, the threshold for the SDLA's verification that an applicant completed the required ELDT is at the point of skills testing or, in the case of the H endorsement, knowledge testing. This proposed change would therefore eliminate what would otherwise be a duplicative requirement inadvertently imposed on the States; the requirement that States verify the applicant received ELDT training before conducting skills testing is already set forth in section 383.73(b)(11). Similarly, the NPRM would revise paragraph (e)(9) to clarify that the State must verify an applicant's completion of required ELDT at the point of testing, not issuance.

IX. 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 performed an analysis of the impacts of the proposed rule and determined it is not a significant regulatory action under section 3(f) of 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. 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 2100.6 dated Dec. 20, 2018).

As discussed above, this proposed rule would delay, until February 7, 2022, the compliance date of two provisions from the “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” Final Rule (81 FR 88732, Dec. 8, 2016), (ELDT final rule). The two provisions proposed for delay are the requirement that training providers electronically transmit training certification information to the TPR, and the requirement that States verify the applicant has completed the required ELDT. This proposed rule would not impact any other substantive requirement of the ELDT final rule, which retains the compliance date of February 7, 2020.

Because FMCSA proposes to delay the implementation of these two provisions of the ELDT final rule to 2022, this regulatory evaluation presents the costs that would not be realized in years 2020-2021. Because the Agency does not propose any changes to the training requirements of the ELDT final rule, this NRPM would not impact the benefits enumerated in the ELDT final rule.

As a result of the two-year delay, SDLAs and training providers would experience marginal cost savings in years 2020 and 2021, with no changes to the costs presented in the 2016 Regulatory Impact Analysis that accompanied the ELDT final rule (2016 RIA) for years 2022-2029. The Agency presents the costs relative to the baseline of the ELDT final rule.

In the ELDT final rule, FMCSA assumed that SDLAs would incur costs related to IT system modifications necessary to allow them to receive the ELDT certification information and use it in accordance with the ELDT final rule. Because this proposed rule would shift the SDLAs' compliance date by two years, we conclude that any assumed costs by the SDLAs would also be shifted two years, to 2022 rather than 2020. This change is merely a temporal shift of a cost assumed as part of the 2016 RIA for the ELDT final rule.

FMCSA estimated in the 2016 RIA that in 2020 this IT system upgrade would cost \$1.2 million per SDLA, and therefore \$60 million,³ across all 51 SDLAs. FMCSA acknowledged in the 2016 RIA that, while some of these costs may be incurred prior to the effective date of the rule, FMCSA applied this entire cost to the first year of the analysis (2020). As noted above, the proposed rule shifts these costs from 2020 to 2022, which would result in a cost savings to SDLAs of \$1.21 million annualized over three years at a 3% discount rate and \$2.88 million at a 7% discount rate. These estimates of cost savings represent the sum across all 51 SDLAs.

In the 2016 RIA, FMCSA estimated that training providers would incur costs starting in 2020 for submitting training certificate information to the TPR. FMCSA estimates that this proposed rule, by deferring these training provider costs to 2022,

³ The 2016 final RIA estimated costs and benefits in 2014 dollars. All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065. The GDP deflator for 2014 is 103.680 and the deflator for 2018 is 110.389. $110.389/103.680 = 1.065$. This is based on Implicit Price Deflators for Gross Domestic Product (GDP) from on the Bureau of Economic Analysis (BEA) archive of National Accounts (NIPA) data that were initially published on March-1-2019 in connection with the Initial estimates for 2018 Q4. Accessed April 2019 at <https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2018&DQ=Q4&DV=Initial&dNRD=March-1-2019>. Using estimates updated to 2018 dollars, 51 SDLAs x \$1,171,180 = \$59,730,159.

would result in cost savings to training providers of \$6.84 million at a 3% and \$7.25 million at a 7% discount rate on an annualized basis over three years.⁴

The Agency estimates that this proposed rule would result in total annualized cost savings over a three-year period of \$8.06 million at a 3% discount rate and \$10.13 million at a 7% discount rate.

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

E.O. 13771 was issued on January 30, 2017 (82 FR 9339, Feb. 3, 2017).

This proposed rule is expected to have total costs less than zero and would qualify as an E.O. 13771 deregulatory action if finalized. The present value of the cost savings of this proposed rule, measured on an infinite time horizon at a 7% discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the proposed rule would go into effect and cost savings would first be realized), is \$18 million. On an annualized basis, these cost savings are \$1 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7% discount rate, expressed in 2016 dollars, and discounted to 2016, is \$14 million. On an annualized basis, these cost savings are \$1 million.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110

⁴The 2016 RIA annualized costs over the ten-year period estimated. As this proposed rule would be shifting costs out to begin in 2022, FMCSA annualized costs over 2020, 2021, and 2022.

Stat. 857), 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 (5 U.S.C. 601(6)). 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.

As part of the ELDT final rule, FMCSA prepared a Final Regulatory Flexibility Analysis (FRFA). As noted in that FRFA, the ELDT final rule would affect all entities that choose to become training providers. Accordingly, this NPRM would also affect all entities choosing to become training providers. As shown in the FRFA,⁵ FMCSA estimated that approximately 4.6 million small entities could employ entry-level drivers, but that only 22,000 entities would register with FMCSA to become training providers. The impact of this NPRM on those entities that choose to become training providers would be even less than the \$500 in the first year that the 2016 RIA estimated, as the costs for the first year of this NPRM would now only include costs for uploading individual entry-level driver training certifications, as registering in the TPR will have already been completed as required by the ELDT final rule. As the full \$500 first year cost estimate used in the 2016 RIA and FRFA was determined to be less than 1% of revenues for entities in any of the potentially affected industries, the same would be the

⁵ Section 5 of the 2016 RIA.

case for any cost estimate lower than \$500. Therefore, I certify that the proposed action would 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 Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this NPRM 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, Mr. Richard Clemente listed in the FOR FURTHER INFORMATION CONTACT section of this NPRM. 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. 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 million in 1995, adjusted for inflation to 2017 levels) or more in any one year. This proposed rule would not result in such an expenditure. However, the Agency does discuss the economic effects of this NPRM in section VIII, subsections A. and B., above.

F. Paperwork Reduction Act

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The 2016 ELDT final rule discussed the changes to the approved collection of information, but did not revise the supporting statement for that collection at that time, because the changes from the final rule would not take effect until after the expiration date of that approved collection (see PRA discussion at 81 FR 88732, 88788). This collection is currently being revised as part of its renewal cycle, and as required by the PRA (44 U.S.C. 3507(d)), FMCSA will submit its estimate of the burden of the proposal contained in this NPRM to the Office of Management and Budget (OMB) for its review of the collection of information renewal, and will provide notice and an opportunity for public comment on the estimate. It is the agency's intent to obtain OMB approval for the revised collection of information in advance of the February 7, 2020, compliance date for training providers under the 2016 ELDT final rule, to allow them time to complete the TPR registration process prior to February 7, 2020.

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.” FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it 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 proposed 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 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.

J. 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 would not effect a taking of private property or otherwise have taking implications.

K. Privacy

The Consolidated Appropriations Act, 2005, (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not change the collection of personally identifiable information (PII) as set forth in the 2016 ELDT final rule. The supporting PIA, available for review on the DOT Web site, <http://www.transportation.gov/privacy>, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the ELDT final rule, which would also cover this proposed action.

As required by the Privacy Act (5 U.S.C. 552a), FMCSA and DOT will publish, with request for comment, a system of records notice (SORN) that will describe FMCSA's maintenance and electronic transmission of information affected by the requirements of the ELDT final rule that are covered by the Privacy Act. This SORN will be developed to reflect the new storage and electronic transmission of information and will be published in the Federal Register not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

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 NPRM.

M. 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. 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

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) requires Federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their actions. In accordance with NEPA, FMCSA's NEPA Order 5610.1 (NEPA Implementing Procedures and Policy for Considering Environmental Impacts), and other applicable requirements, FMCSA prepared an Environmental Assessment (EA) to review the potential impacts of the ELDT final rule. That EA is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

Because this NPRM would only delay the compliance date of portions of the ELDT final rule without any other substantive change to the regulations, FMCSA proposes to continue to rely upon the previously published EA to support this NPRM. As noted in that EA, implementation of the ELDT final rule would impose new training standards for certain individuals applying for their CDL, an upgrade of their CDL, or hazardous materials, passenger, or school bus endorsement for their license. FMCSA found that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, as amended by Public Law 109-59, would not be impacted. The impact areas that may be affected and are evaluated in the EA include air quality, hazardous materials transportation, solid waste, and public safety. But the impact area of focus for the EA is air quality. Specifically, as outlined in the 2016 RIA for the ELDT final rule, FMCSA anticipated that an increase in driver training will result in improved fuel economy based on changes to driver behavior, such

as smoother acceleration and braking practices. Such improved fuel economy is anticipated to result in lower air emissions and improved air quality for gases, including carbon dioxide. FMCSA expects that all negative impacts, if any, will be negligible. However, we expected the overall environmental impacts of the ELDT final rule to be beneficial.

Q. E.O. 13783 (Promoting Energy Independence and Economic Growth)

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This proposed rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

List of Subjects

49 CFR Part 380

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, 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 proposes to amend 49 CFR parts 380, 383, and 384 as follows:

PART 380—SPECIAL TRAINING REQUIREMENTS

1. The authority citation for part 380 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102-240, 105 Stat. 1914, 2151; sec. 32304, Pub. L. 112-141, 126 Stat. 405, 791; and 49 CFR 1.87.

2. Amend § 380.717 by revising the introductory text to read as follows:

380.717 Training certification.

Beginning on February 7, 2022, after an individual completes training administered by a provider listed on the TPR, that provider must, by midnight of the second business day after the driver-trainee completes the training, electronically transmit training certification information through the TPR including the following:

* * * * *

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

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

Authority: 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.

4. Amend § 383.73 by revising paragraph (b)(3) introductory text, paragraphs (b)(3)(ii), (b)(11), and (e)(9) to read as follows:

§ 383.73 State procedures.

* * * * *

(b) * * *

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license disqualification under State law, and does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

* * * * *

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle;

* * * * *

(11) Beginning on February 7, 2022, not conduct a skills test of an applicant for a Class A or Class B CDL, or a passenger (P) or school bus (S) endorsement, until the State verifies electronically that the applicant completed the training prescribed in subpart F of part 380 of this subchapter.

* * * * *

(e) * * *

(9) Beginning on February 7, 2022, not conduct a skills test of an applicant for an upgrade to a Class A or Class B CDL, or a passenger (P), school bus (S) endorsement, or administer the knowledge test to an applicant for the hazardous materials (H) endorsement, unless the applicant has completed the training required by subpart F of part 380 of this subchapter.

* * * * *

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

5. The authority citation for part 384 continues to read as follows:

Authority: 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.

6. Revise § 384.230 to read as follows:

§ 384.230 Entry-level driver certification.

Beginning on February 7, 2022, a State must comply with the requirements of § 383.73(b)(11) and (e)(9) to verify that the applicant completed the training prescribed in subpart F of part 380.

11. Amend § 384.301 by revising paragraph (k) to read as follows:

384.301 Substantial compliance-general requirements.

* * * * *

(k) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of February 6, 2017, as soon as practicable but not later than February 7, 2022.

* * * * *

Issued under the authority of delegation in 49 CFR 1.87.

Raymond P. Martinez,
Administrator.

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