



DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 389

[Docket No. FMCSA-2016-0341]

RIN 2126-AB96

Rulemaking Procedures Update

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

ACTION: Final rule.

SUMMARY: FMCSA amends its rulemaking procedures by revising the process for preparing and adopting rules and petitions. Also, the Agency adds new definitions, and makes general administrative corrections throughout its rulemaking procedures. These actions are authorized under the Fixing America's Surface Transportation (FAST) Act and the Administrative Procedure Act (APA).

DATES: This final rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than [INSERT DATE 30 DAYS FROM THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

You may use today's amended procedures below in 49 CFR 389.35.

FOR FURTHER INFORMATION CONTACT: Mr. Steven J. LaFreniere, Regulatory Ombudsman, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, (202) 366-0596, steven.lafreniere@dot.gov. If you have questions on viewing or submitting material to the docket, contact Dockets Operations, (202) 366-9826.

SUPPLEMENTARY INFORMATION:

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I. RULEMAKING DOCUMENTS

A. Availability of Rulemaking Documents

For access to docket FMCSA-2016-0341 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Dockets Operations at U.S. Department of Transportation, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

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.dot.gov/privacy.

II. LEGAL BASIS FOR THE RULEMAKING

The FAST Act requires FMCSA to address its rulemaking and petitions procedures. Specifically, section 5202 provides requirements for the Agency to follow regarding the development of proposed rulemakings [49 U.S.C. 31136(f)-(h)]. Section 5204 also directs the Agency to be more transparent to the public regarding how FMCSA prioritizes and defines petitions.

The APA (5 U.S.C. 551-706) established procedures for all Federal agencies to use in developing rules and regulations. It also established the standards that allow the public to participate in a rulemaking as well as the opportunity to petition the Federal government for the issuance, amendment, or repeal of a rule. The APA authorizes changes to 49 CFR part 389, beyond what is required by the FAST Act.

DOT's regulatory procedures, codified at 49 CFR part 5, also describe how persons may petition a departmental Operating Administration, like FMCSA, for a new rulemaking, an exemption from an existing rule, or a retrospective review. These departmental procedures apply unless a statute or an Operating Administration's regulations or procedures provide alternate procedures for processing petitions. FMCSA's procedures are housed in 49 CFR part 389, and are the subject of this rulemaking.

III. DISCUSSION OF PROPOSED RULEMAKING

FMCSA published a notice of proposed rulemaking (NPRM) on August 7, 2017 (82 FR 36719) that proposed several changes to the regulatory procedural requirements found in 49 CFR part 389. These changes fell into the three general categories outlined below, and are explained in further detail in the section-by-section analysis.

A. Advance Rulemaking Procedures Required

FMCSA proposed new rulemaking provisions required by the FAST Act where the Agency must consider undertaking a negotiated rulemaking or an ANPRM for all major rules regarding commercial motor vehicle (CMV) safety. However, the FAST Act allows the Administrator to waive this requirement in instances where those tools would be impracticable, unnecessary, or contrary to the public interest. Additionally, the NPRM proposed to adopt the definition of a "major rule" from the Congressional Review Act (5 U.S.C. 804). FMCSA would use this definition to determine whether an ANPRM or negotiated rulemaking process is necessary.

B. *Definition and Processing of a Petition*

Prior to this final rule, FMCSA regulations for submitting petitions (49 CFR part 389) included no regulatory definition of a petition. Section 5204 of the FAST Act defines the term *petition*. It includes requests for: a new regulation; a regulatory interpretation or clarification; or a determination by FMCSA that a regulation should be modified or eliminated for one of several enumerated reasons prescribed in section 5204. FMCSA proposed including this definition in part 389.

Additionally, the NPRM proposed a new process for filing and addressing petitions. These changes were proposed to clarify FMCSA's procedures for rulemaking, and to make editorial changes.

Finally, FMCSA proposed to add a definition for *written or in writing* that would include electronic documentation.

C. *Direct Final Rulemaking Procedures*

Under FMCSA's direct final rulemaking (DFR) procedures in effect at the time of the NPRM, if the Agency received a notice of intent (NOI) to file an adverse comment, the DFR would be withdrawn, even if the comment that was eventually filed did not meet the definition of an adverse comment found in 49 CFR 389.39(b). The NPRM proposed to change this requirement. Upon receiving an NOI to file an adverse comment, the Agency would extend the comment period rather than withdraw the DFR, allowing the commenter additional time to file the comment. Once FMCSA received the comment, the Agency would determine whether it was adverse. If it was an adverse comment, FMCSA would withdraw the DFR; however, if it did not meet the definition of *adverse comment* in § 389.39(b), the Agency would move forward with the DFR. If the same or another commenter submitted an NOI at the end of the extended comment period, FMCSA would determine, on a case-by-case basis, whether to extend the comment period again, withdraw the DFR, or proceed with the DFR using only the comments already received.

IV. DISCUSSION OF COMMENTS AND RESPONSES

General

FMCSA received comments from 10 commenters: the National Federation of Independent Business (NFIB); the National Rural Electric Cooperative Association (NRECA); the National Tank Truck Carriers

(NTTC); the American Fuel and Petrochemical Manufacturers (AFPM); the Transportation Trades Department of the AFL-CIO; an individual, Mr. Max Miller; the New York University School of Law (NYU); the National School Transportation Association (NSTA); and two anonymous commenters. Generally, all commenters were supportive of the rule, though some suggested additional regulatory changes.

Two commenters were overall supportive of the rule, stating that the proposed changes would make the rulemaking process more efficient and alleviate confusion. In addition, the changes to the DFR procedures provide the Agency greater flexibility.

AFPM supports the definition of a “major rule” and the provisions requiring advance or negotiated rulemakings for major rules.

Comments Outside the Scope of this Rulemaking

One anonymous commenter appeared to copy and paste a partial section of Executive Order 13783, Promoting Energy Independence and Economic Growth, which is outside the scope of this rulemaking.

Another anonymous commenter stated that FMCSA should expand on the Digital Accountability and Transparency Act, which was enacted to link Federal agency spending to Federal program activities so that taxpayers and policymakers can more effectively track Federal spending. That comment is outside the scope of this rulemaking.

Comments on the Petition Process

NFIB and NYU both suggested changes to the definition of *petition*. NFIB said the definition should be revised to include FMCSA’s constitutional obligation to receive petitions for the redress of grievances. Secondly, FMCSA should receive petitions for any reason when it comes to issuance, amendment, or repeal of FMCSA rules. NYU stated that the definition of *petition* should be revised because it is too narrowly focused on “burdensome” rules. NYU also stated that FMCSA should provide additional details on its online petition docket such as including links to the text of the original petitions and timetables for responses to them.

NYU also provided recommendations from the Administrative Conference of the United States (ACUS), Recommendations 2014-6, Petitions for Rulemaking. NYU recommended that the Agency should explain how it will coordinate consideration of petitions with other processes used to determine Agency priorities; explain

what type of data and arguments are most useful for petitioners to provide to aid FMCSA's evaluation; expand on its openness to new evidence by facilitating communication between Agency personnel and petitioners; and invite public comment on petitions as appropriate.

FMCSA Response

FMCSA does not limit the scope of stakeholders' petitions for rulemaking. The purpose of the final rule is to implement the FAST Act provisions regarding petitions for rulemaking. The First Amendment right to petition for redress of grievances is available at any time on any issue. FMCSA notes that in addition to petitions for rulemaking, departmental regulations provide that interested persons may file petitions for DOT to issue an exemption from any requirements of a rule or perform a retrospective review of an existing rule.¹ However, this final rule is specific to petitions for rulemaking concerning FMCSA's regulations.

FMCSA does not agree that the proposed definition of *petition*, as defined in the FAST Act, narrowly focuses only on "burdensome" rules. The definition provides perspective on what petitions should focus on. The fact that the first part in the definition is a request for "a new regulation" without any constraints around it, means that Congress is not focused on only removing "burdensome" rules.

With respect to NYU's comment, FMCSA agrees that the Agency should provide more transparent and timely information on the status of petitions that have been filed. While FMCSA has not made any changes to the regulatory text, the Agency currently provides information concerning the status of petitions via its website, <https://www.fmcsa.dot.gov/petitions>. Interested parties can review information on petitions that have been submitted, the date the Agency acknowledged the petition, and the date of Agency decisions and rulemaking actions initiated in response to the petitions. The Agency is committed to continuing to provide such information in the future.

FMCSA has already implemented many of the ACUS recommendations, such as coordinating within FMCSA offices on the prioritization of petitions, and the Agency already invites public comment on petitions as appropriate.

Comments on Section 389.31

¹ See 49 CFR 5.13(c).

NTTC stated that FMCSA's proposed definition of *written or in writing* includes any method of electronic documentation such as email, but that an email address was not included in proposed § 389.31. FMCSA should specify an email address or submission form for electronic petitions for rulemaking to be consistent with the definition of *written or in writing*.

NTTC also stated that in proposed § 389.31(a), FMCSA should add the words "interpret or clarify," between "amend," and "withdraw." AFPM supported the definition of a *petition*, but noted that including "a regulatory interpretation or clarification" in the definition would change the scope of the current regulations, with potentially "negative impacts on FMCSA's ability to provide needed guidance in a timely manner to stakeholders." Additionally, AFPM stated that the NPRM did not include FAST Act requirements from section 5204(a)(1)-(5) for transparency, incorporating process timelines, and petition prioritization.

FMCSA Response

FMCSA currently accepts petitions submitted electronically and agrees that petitioners should be able to submit petitions electronically. FMCSA has provided explicit procedures for stakeholders to use for electronically submitting petitions in § 389.31 and in § 389.35. Petitions should be submitted by mail to the Administrator or electronically by using www.regulations.gov.

Despite AFPM's concern about its effect, the term "a regulatory interpretation or clarification" is one of the elements of the statutory definition of *petition* in section 5204(c) and cannot be omitted.

FMCSA is aware of the requirements on the processing of petitions imposed by section 5204(a)(1)-(5) of the FAST Act. FMCSA determined that inclusion of these requirements in the regulations would make future changes more difficult if alternate methods prove to be more efficient or transparent. However, the Agency will provide more information in the future, once it determines the best path forward to ensure maximum transparency.

Comments on the Comments Process

NFIB requested that FMCSA revise § 389.21 to allow itself to solicit comments in a language other than English, should the need arise.

NFIB also stated that FMCSA should permit commenters to incorporate by reference laws referred to in the comment, instead of requiring submission of copies of such materials.

FMCSA Response

FMCSA does not see a need to add regulatory text to allow submission of comments in a language other than English. Should the need arise for comments in another language, the *Federal Register* document soliciting those comments can make such an exception.

With regard to incorporation by reference, FMCSA can readily obtain copies of State or Federal statutes or regulations mentioned in comments. However, it would be in the petitioners' best interest to quote or provide copies of any other material essential to their argument.

Comments on the Rulemaking Process

NFIB stated that FMCSA should eliminate confusion about when a rule is a final rule in § 389.29. The commenter said that if a final rule is prepared and submitted to the Administrator for consideration, and then, if appropriate, to the Office of Management and Budget (OMB), it is not a final rule.

NYU stated that FMCSA should consider comments to ANPRMs on benefits as well as costs.

The Transportation Trades Department of the AFL-CIO objected to the FAST Act mandates requiring an ANPRM or negotiated rulemaking for all major rules, but recognized the Agency has limited discretion. However, this commenter believed the Agency could make some changes, and suggested the following:

- (1) Additional clarification of the term "significant adverse effect," which the commenter believes is vague;
- (2) Additional consideration on how FMCSA plans to ensure that major regulations are promulgated in a timely manner; and
- (3) Judicious use of the waiver provisions, for example where review of a major rule by the Office of Information and Regulatory Affairs (OIRA) took more than 100 days.

FMCSA Responses

NFIB should note that the changes proposed in § 389.29 are about the various offices within FMCSA that prepare final rules as opposed to a select few FMCSA offices. The process for preparing final rules and

submitting them to the Administrator, and if necessary OMB, was codified in the CFR in 1970 and amended in 1988. Although a final rule is not legally binding until its effective date, FMCSA drafts the document with the intent of making it final. The term final rule is therefore appropriate.

FMCSA agrees with NYU and has added the term “benefits” to the regulatory text of § 389.13(b)(1)(iii).

Regarding AFL-CIO’s comments:

(1) FMCSA will continue to interpret the terms within the definition of “major rule” as it has done when interpreting 5 U.S.C. 804, using guidance provided by OIRA, the Small Business Administration (SBA), and the Department of Transportation;

(2) FMCSA will continue to use its prioritization tools to ensure that delays in rulemaking proceedings do not impose or prolong safety risks; and

(3) FMCSA acknowledges that the example provided by the commenter may present a scenario where use of the waiver provision would be necessary, but the Agency cannot commit to any specific use of the waiver at this time. The Administrator will determine, on a case-by-case basis whether to rely upon the waiver for any particular rulemaking proceeding.

Since the publication of the NPRM, DOT published a final rule on Administrative Rulemaking, Guidance, and Enforcement Procedures,² which applies to FMCSA’s rulemaking procedures. These DOT procedures also require the publication of ANPRMs for the Department’s costliest rulemakings (i.e., those rulemakings considered to be either “economically significant” or “high impact”).³ FMCSA anticipates that if a rule is a “major rule,” then it would likely also qualify as an “economically significant” or “high impact” rulemaking, as defined by the Department’s procedures at 49 CFR 5.17(a). FMCSA’s publication of an ANPRM for these “major rules” would thus satisfy both the requirements of the FAST Act, FMCSA’s procedures in part 389, and DOT’s procedures in part 5. Unlike FMCSA’s part 389 procedures, the ANPRM requirement found in DOT procedures, however, may only be waived by the Secretary of Transportation, the Department’s Regulatory Reform Officer, Regulatory Reform Task Force, or unless otherwise required by law.

² See 84 FR 71714 (Dec. 27, 2019).

³ See 49 CFR 5.17(b).

Comments on the Direct Final Rule Process

AFPM did not object to the change to the Notice of Intent/Direct Final Rule (NOI/DFR) procedures in § 389.39 but questioned the need to make the change. It contended that the proposal was not adequately discussed in the NPRM and did not follow the DFR procedures of other DOT modes.

FMCSA Response

FMCSA is not including any changes to the Direct Final Rule procedures in § 389.39 in today's final rule. Since the publication of the NPRM, the Department's final rule on Administrative Rulemaking, Guidance, and Enforcement Procedures⁴ revised all direct final rule procedures to ensure consistency across DOT Operating Administrations, including FMCSA's procedures at 49 CFR part 389. In that final rule, the Department removed language that requires FMCSA to withdraw a direct final rule if a notice of intent to file an adverse comment is received; instead, withdrawal is required only upon the actual receipt of an adverse comment. Individuals who intend to file an adverse comment, but do not have enough time to do so, may instead ask to extend the comment period of a direct final rule so that they may have more time to file an adverse comment.

V. 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 they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

VI. SECTION-BY-SECTION ANALYSIS

Throughout part 389, FMCSA will change the term "rule making" to "rulemaking" for consistency.

Section 389.3 Definitions

FMCSA adds new definitions of *major rule*, *petition*, and *written or in writing* to § 389.3.

FMCSA slightly revises the definition of *major rule* to ensure that the term "geographic area" is not modified by the terms "Federal, state, or local government agencies." The Agency believes this matches the

⁴ See 84 FR 71714 (Dec. 27, 2019).

intent of the statutory definition found in the CRA. This change is not intended to create a new category of rules that might be deemed major under the CRA but not major under the FMCSA regulations, or vice versa. In applying this definition, FMCSA will adhere to the same guidance used to determine whether a rule is major under the CRA.

Section 389.13 Initiation of Rulemaking

In § 389.13, FMCSA redesignates the existing text as paragraph (a) and adds paragraphs (b)(1) through (c).

Paragraph (a) is revised to align the FMCSA regulations with the DOT final rule on Administrative Rulemaking, Guidance, and Enforcement Procedures,⁵ which requires that the Office of the Secretary approve all new FMCSA rulemakings.

Paragraph (b) of § 389.13 and its subparagraphs include the advanced public participation requirements from section 5202 of the FAST Act. Additionally, based on comments to the NPRM, the term “benefits” has been added to further describe the type of information FMCSA would like to receive if a proposed rule is likely to lead to the promulgation of a major rule. Paragraph (c) includes the waiver provision for bypassing the advanced public participation requirements in certain cases, and a cross reference to the DOT requirements for economically significant and high-impact rules, found in 49 CFR 5.17.

Section 389.15 Contents of Notices of Proposed Rulemaking

The title of § 389.15 and § 389.15(a) are changed by removing the space between “rule” and “making.”

Section 389.21 Submission of Written Comments

FMCSA revises § 389.21 to include directions on how comments should be submitted. The Agency removes the text regarding incorporation by reference because it is not relevant to the topic of comment submission. FMCSA also renames the section heading “Submission of written comments” to reflect this change.

Section 389.29 Adoption of Final Rules

In § 389.29, FMCSA makes minor changes to the text to clarify the procedure followed when the Agency finalizes a rule.

⁵ See 84 FR 71714 (Dec. 27, 2019).

Section 389.31 Petitions for Rulemaking

In § 389.31(a), the word “repeal” is replaced with “withdraw” to more accurately describe the removal of a regulation. In paragraph (b)(1) the word “duplicate” is replaced with “writing” to make use of and follow the definition of this term in § 389.3. This change reflects that the Agency no longer requires duplicate submissions. As a result of comments to the NPRM, FMCSA adds the terms “interpret” and “clarify” to § 389.31(a) to more accurately describe when an interested person may petition the Administrator.

In § 389.31(b)(1), FMCSA added a means for persons wishing to submit petitions electronically to do so.

Section 389.35 Petitions for Reconsideration

In § 389.35(a), FMCSA added a means for persons wishing to submit petitions electronically to do so.

VII. REGULATORY ANALYSES

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

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 21, 2011). In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)). Accordingly, OMB has not reviewed it under that Order.

This rule is procedural in nature, primarily impacting FMCSA’s process for promulgation of regulations. Therefore, there are no costs associated with this final rule.

B. Executive Order 13771 Reducing Regulation and Controlling Regulatory Costs

Executive Order 13771, “Reducing Regulation and Controlling Regulatory Costs,” does not apply to this action because it is not a significant regulatory action, as defined in section 3(f) of Executive Order 12866.

C. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act 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 50,000.⁶ 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 FMCSA believes there are no costs associated with this rule, the Agency does not expect this final rule to have a significant economic impact on a substantial number of small entities. Consequently, I certify that the 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 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. Steven LaFreniere, 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. Specifically, 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 \$168 million

⁶ Regulatory Flexibility Act (5 U.S.C. 601, et seq.). See National Archives at <http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html>.

(which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2019 levels) or more in any one year. As the final rule is procedural in nature and is not expected to result in any costs at the societal level, it would likewise not impose costs to State, local, or Tribal governments.

F. Paperwork Reduction Act (Collection of Information)

This final rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520). Any changes to existing collections are de minimis.

G. Executive Order 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 has determined that this final rule does not have substantial direct costs on or for States, nor does it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Executive Order 12988 (Civil Justice Reform)

This final rule meets applicable standards in sections 3(a) and 3(b) (2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

I. Executive Order 13045 (Protection of Children)

Executive Order 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, the Agency does not anticipate that this regulatory action would in any respect present an environmental or safety risk that could disproportionately affect children.

J. Executive Order 12630 (Taking of Private Property)

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

K. Privacy

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 (PIA) of a regulation that will affect the privacy of individuals. This final rule does not require the collection of personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Pub. L. 107-347, § 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 due to this final rule. Therefore, FMCSA did not conduct a PIA.

L. Executive Order 12372 (Intergovernmental Review)

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

M. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final rule under Executive Order 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 Executive Order 13211. The Administrator of OIRA has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

N. Executive Order 13175 (Indian Tribal Governments)

This final rule does not have Tribal implications under Executive Order 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 (NTTAA) (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 final rule does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

P. National Environmental Policy Act of 1969

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (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.x. The Categorical Exclusion (CE) in paragraph 6.x. addresses regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.) The content in this rule is covered by this CE and the final action would not have any effect on the quality of the environment.

Q. Executive Order 13783 (Promoting Energy Independence and Economic Growth)

Executive Order 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 Executive Order 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 final rule was not identified by DOT under Executive Order 13783 as potentially causing or alleviating unnecessary burdens on domestic energy production.

List of Subjects in 49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III, part 389 to read as follows:

PART 389 — RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

1. The authority citation for part 389 is revised to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114-94, 129 Stat. 1312, 1536; 42 U.S.C. 4917; and 49 CFR 1.87.

2. Amend § 389.3 by adding the definitions for “*Major rule*”, “*Petition*”, and “*Written or in writing*”, in alphabetical order to read as follows:

§ 389.3 Definitions.

* * * * *

Major rule means –

(1) Any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:

(i) An annual effect on the economy of \$100,000,000 or more;

(ii) A major increase in costs or prices for consumers, individual industries, geographic regions, or

Federal, State, or local government agencies; or

(iii) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

(2) The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

Petition means a request for:

(1) A new regulation;

(i) A regulatory interpretation or clarification; or

(ii) A determination made by the Administrator that a regulation should be modified or eliminated because it is:

(A) No longer:

(1) Consistent and clear;

(2) Current with the operational realities of the motor carrier industry; or

(3) Uniformly enforced;

(B) Ineffective; or

(C) Overly burdensome.

Written or in writing means printed, handwritten, typewritten either on paper or other tangible medium, or by any method of electronic documentation such as electronic mail.

§ 389.7 [Amended]

3. Amend § 389.7 by replacing the term “rule making” with “rulemaking”.

4. Revise § 389.13 to read as follows:

§ 389.13 Initiation of rulemaking.

(a) Rulemakings are initiated in accordance with the procedures found in 49 CFR 5.11. The Administrator may recommend the initiation of a rulemaking to the Office of the Secretary on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

(b) If a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, the Administrator, before publishing such proposed rule, shall--

(1) Issue an advance notice of proposed rulemaking that:

(i) Identifies the need for a potential regulatory action;

(ii) Identifies and requests public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives;

(iii) Requests public comment on the available data, benefits, and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and

(iv) Requests public comment on available alternatives to regulation; or

(2) Proceed with a negotiated rulemaking.

(c) Paragraph (b) of this section does not apply to a proposed rule if the Administrator, for good cause, finds (and incorporates the finding and a brief statement of reasons for such finding in the proposed or final rule) that an advance notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest. A proposed rule subject to paragraph (b) of this section should also be evaluated to determine the applicability of 49 CFR 5.17.

§ 389.15 [Amended]

5. The title of § 389.15 and paragraphs (a) and (b)(1) are revised by removing the term “rule making” and replacing it with the term “rulemaking.”

6. Revise § 389.21 to read as follows:

§ 389.21 Submission of written comments.

(a) You may submit comments identified by the docket number provided in the rulemaking document using any of the following methods. To avoid duplication, please use only one of these four methods.

(1) *Federal eRulemaking Portal*: <http://www.regulations.gov>. Follow the online instructions for submitting comments.

(2) *Mail*: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue, SE, West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.

(3) *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.

(4) *Fax*: (202) 493-2251.

(b) All written comments must be submitted in English and include copies of any material that the commenter refers to within the comment.

7. Revise § 389.29 to read as follows:

§ 389.29 Adoption of final rules.

Final rules are prepared by representatives from all relevant offices of FMCSA. The final rule is then submitted to the Administrator for his/her consideration and forwarded, as necessary, to the Office of the Secretary for review and approval. Once approved by the Office of the Secretary, and, if necessary, by the Office of Management and Budget's Office of Information and Regulatory Affairs, the final rule is signed by the Administrator. All final rules must be published in the *Federal Register*, unless all persons subject to the final rule are named and personally served with a copy of it.

8. Revise § 389.31 to read as follows:

§ 389.31 Petitions for rulemaking.

(a) Any interested person may petition the Administrator to establish, amend, interpret, clarify, or withdraw a rule.

(b) Each petition filed under this section must:

(1) Be submitted in writing by mail to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE, Washington, DC 20590-0001 or electronically at www.regulations.gov, using the general petitions for rulemaking docket listed on FMCSA's website at www.FMCSA.gov.

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have interpreted, clarified or withdrawn, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information, data, research studies, and arguments available to the petitioner to support the action sought.

9. Revise § 389.35 paragraph (a) to read as follows:

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition for reconsideration must be in English and submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave. SE, Washington, DC 20590-0001, or electronically submitted using the docket for the rulemaking at www.regulations.gov, and received not later than thirty (30) days after publication of the rule in the *Federal Register*. Petitions for reconsideration filed after that time will be considered as petitions for rulemakings filed under § 389.31 of this part. The petition for reconsideration must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

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Issued under authority delegated in 49 CFR 1.87.

James W. Deck,
Deputy Administrator

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