

Smithfield, North Carolina, are 35–28–21 NL and 78–19–43 WL, with a site restriction of 4.1 kilometers (2.5 miles) south of Smithfield.

**DATES:** Effective September 27, 2004.

**FOR FURTHER INFORMATION CONTACT:** R. Barthen Gorman, Media Bureau, (202) 418–2180.

**SUPPLEMENTARY INFORMATION:** This is a synopsis of the Commission's *Report and Order*, MM Docket No. 02–40, adopted August 10, 2004, and released August 12, 2004. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. The document may also be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone (202) 863–2893, facsimile (202) 863–2898. The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the General Accounting Office pursuant to the Congressional Review Act, see 5 U.S.C. 801(a)(1)(A).

#### List of Subjects in 47 CFR Part 73

Radio, Radio broadcasting.

■ Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

#### PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for Part 73 reads as follows:

**Authority:** 47 U.S.C. 154, 303, 334 and 336.

##### § 73.202 [Amended]

■ 2. Section 73.202(b), the Table of FM Allotments under North Carolina, is amended by removing Channel 272A at Goldsboro and by adding Smithfield, Channel 272A.

Federal Communications Commission.

**John A. Karousos,**

*Assistant Chief, Audio Division, Media Bureau.*

[FR Doc. 04–19027 Filed 8–18–04; 8:45 am]

**BILLING CODE 6712–01–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 383

[Docket No. FMCSA–2001–11117]

RIN 2126–AA70

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

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

**ACTION:** Interim final rule; delay of compliance date.

**SUMMARY:** FMCSA issues this rule to amend the compliance date in its Interim final rule (IFR) published in the May 5, 2003 *Federal Register* regarding limitations on State issuance of a commercial driver's license (CDL) with a hazardous materials endorsement. States must not issue, renew, transfer or upgrade a CDL with a hazardous materials endorsement unless the Transportation Security Administration (TSA) has first conducted a background records check of the applicant and determined the applicant does not pose a security risk warranting denial of the hazardous materials endorsement. FMCSA is changing the date by which States must comply with TSA regulations to coincide with the new compliance date established by TSA. The compliance date is changed from April 1, 2004, to January 31, 2005.

**DATES:** *Effective:* This rule is effective on September 20, 2004. *Compliance:* States must comply with this rule by January 31, 2005.

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

#### SUPPLEMENTARY INFORMATION:

##### Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 requires FMCSA to comply with small entity requests for information or advice about compliance with statutes and regulations within FMCSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section for information or advice. You can get further information regarding the Small Business Regulatory Enforcement Fairness Act on the Small Business

Administration's Web page at [http://www.sba.gov/advo/laws/law\\_lib.html](http://www.sba.gov/advo/laws/law_lib.html).

#### Summary of Today's Action

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

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

FMCSA shares with TSA responsibility for implementing sec. 1012 of the USA PATRIOT Act.

For reasons described in its April 6, 2004 final rule (*Security Threat Assessment for Individuals Applying for a Hazardous Materials Endorsement for a Commercial Drivers License; Final Rule*, 69 FR 17969), TSA is amending the April 1, 2004, deadline for States to begin collecting fingerprints from a driver requesting authority to transport hazardous materials in commerce. The new compliance date is January 31, 2005. Therefore, FMCSA revises the compliance date for hazardous materials security requirements published in its companion IFR (68 FR 23844, May 5, 2003) from April 1, 2004 to January 31, 2005 to coincide with the new TSA deadline.

#### Rulemaking Analyses and Notices

##### Justification for Immediate Adoption

FMCSA is issuing this IFR without prior notice and opportunity to comment pursuant to its authority under section 4(a) of the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows the agency to issue a final rule without notice and opportunity to comment when the agency for good cause finds that notice and comment procedures are "impracticable, unnecessary or contrary to the public interest." This amended IFR is ministerial in nature. It changes the date on which States are required to collect fingerprints from individuals who are applying for, renewing, upgrading or transferring a CDL with a hazardous materials endorsement. Because the rule relieves a burden on stakeholders by extending the compliance date, FMCSA has concluded

that it is within the scope of the May 5, 2003, IFR and that further notice and comment on this issue are unnecessary.

The agency intends to issue a final rule at a later date and will respond to comments to the May 5, 2003 IFR at that time.

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

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

*Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (RFA), as amended, was enacted by Congress to ensure that small entities (small businesses, small not-for-profit organizations, and small governmental jurisdictions) are not unnecessarily or disproportionately burdened by Federal regulations. The Regulatory Flexibility Act requires agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." I certify that the final rule will not have a significant economic impact on a substantial number of small entities. As noted above, this final rule applies only to State governments and does not impose any costs on any public, private, or government sector.

*Executive Order 13132 (Federalism)*

Executive Order 13132 requires FMCSA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under the Executive Order, FMCSA may construe a Federal statute to preempt State law only where, among other things, the exercise of State authority

conflicts with the exercise of Federal authority under the federal statute.

Although this amended interim final rule potentially has direct effects on the States, they are not substantial because the rule will allow States more time to comply with the TSA regulation published on April 6, 2004 (69 FR 17969), and thus avoid the withholding of Federal-aid highway funds that could result from non-compliance with the TSA rule. FMCSA has determined that this amended interim final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

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

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

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

*National Environmental Policy Act*

The agency analyzed this amended interim final rule for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, issued on March 1, 2004 and effective March 31, 2004, that this action is categorically excluded (CE) under Appendix 2, paragraph 6.d of the Order

from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations that concern the training, qualifying, licensing, certifying, and managing of personnel. In addition, the agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

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

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

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

*Trade Impact Assessment*

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

impose any costs on domestic or international entities and thus would have a neutral trade impact.

#### *Unfunded Mandates Reform Act of 1995*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a rule for which a written statement is needed, sec. 205 of the UMRA generally requires FMCSA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objective of the rule. The provisions of sec. 205 do not apply when they are inconsistent with applicable law. Moreover, sec. 205 allows FMCSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the agency publishes with the rule an explanation why that alternative was not adopted.

This amended interim final rule will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Thus, FMCSA has not prepared a written assessment under the UMRA.

#### *Executive Order 12630 (Taking of Private Property)*

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

#### *Civil Justice Reform*

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

#### *Executive Order 13045 (Protection of Children)*

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This amended interim final rule changes the compliance dates by which States must meet TSA requirements. This rule will not cause an increase in the number of hazardous materials incidents, nor

increase the number of non-hazardous materials commercial motor vehicle crashes. Therefore, the FMCSA certifies that this action is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

#### *Energy Impact*

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

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

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

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

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

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

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

■ 2. Revise § 383.141 paragraph (a) to read as follows:

#### **§ 383.141 General.**

(a) *Applicability date.* Beginning on January 31, 2005, this section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

\* \* \* \* \*

Issued on: August 13, 2004.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 04-19004 Filed 8-18-04; 8:45 am]

**BILLING CODE 4910-EX-P**

## **DEPARTMENT OF TRANSPORTATION**

### **National Highway Traffic Safety Administration**

#### **49 CFR Parts 571 and 586**

[Docket No. NHTSA-2004-18900]

RIN 2127-AJ45

#### **Federal Motor Vehicle Safety Standards; Fuel System Integrity and Electric Powered Vehicles: Electrolyte Spillage and Electrical Shock Protection**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.  
**ACTION:** Final rule; Response to petitions for reconsideration.

**SUMMARY:** This document responds to petitions for reconsideration of the December 2003 final rule upgrading the rear and side impact tests in the agency's fuel system integrity standard. Under that final rule, compliance with the rear impact requirement will be phased-in following a three-year lead time beginning September 1, 2006, by the following annually increasing percentages of production: 40, 70, and 100%. That final rule provided further that compliance with the side impact upgrade will be required for all vehicles on and after September 1, 2004.

In response to the petitions, the agency is providing additional lead time for some vehicles. It is providing manufacturers of motor vehicles with a gross vehicle weight rating greater than 6,000 lb (2,722 kg) an additional year of lead time to comply with the upgraded side impact requirements. The agency is also providing multistage manufacturers and alters an additional year of lead time to comply with both the upgraded side and rear impact requirements. To provide small volume manufacturers with flexibility in complying with the upgraded rear impact requirements, the agency is permitting them to comply with the following percentages of production: 0%, 0%, and 100%.

**DATES:** *Effective date:* The amendments made in this rule are effective August 31, 2004.

*Petitions:* Petitions for reconsideration must be received by October 4, 2004, and should refer to this docket and the notice number of this document.

**ADDRESSES:** Petitions for reconsideration must be sent to: Administrator, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For non-legal issues, you may contact Tewabe Asebe, Office of