

considering an appeal. In addition, the rules provide a waiver process for those individuals who otherwise could not obtain a hazmat endorsement because they had a disqualifying felony, or were adjudicated as a mental defective or involuntarily committed to a mental institution. Finally, the rules prohibit an individual from holding, and a State from issuing, renewing, or transferring, a hazmat endorsement for a CDL unless the individual met the TSA security threat assessment standards.

The FMCSA rule places States on notice that failure to comply with those portions of the TSA rule applicable to States by November 3, 2003, will result in the withholding by DOT of certain Federal-aid highway funds.

The TSA rule requires States to begin collecting fingerprints from individuals applying for, renewing, or transferring a hazmat endorsement for a CDL on November 3, 2003, and to submit those fingerprints to TSA so that TSA can conduct fingerprint-based criminal history records checks (CHRCs).

Summary of Today's IFR

Elsewhere in today's issue of the **Federal Register**, TSA is postponing the date on which States are required to collect fingerprints from individuals who are applying for, renewing, upgrading, or transferring a hazmat endorsement for a CDL from November 3, 2003, to April 1, 2004. However, if a State requests a postponement of that date and provides a written justification, TSA may grant an extension, but in no case beyond December 1, 2004. FMCSA is therefore amending its rule to incorporate the same standard: States must comply with the TSA rule requiring the collection of fingerprints by April 1, 2004, unless TSA authorizes a later date under 49 CFR 1572.5(c)(4). After this date, whatever it may be, States that fail to comply with the TSA rule risk the loss of Federal-aid highway funds. FMCSA and TSA are making this change for several reasons.

TSA received comments from departments of motor vehicles and other agencies in over 23 States stating they have neither the infrastructure nor the funding to comply with the requirements of the rule. The main costs identified by States included the costs of purchasing fingerprinting equipment, and hiring and training personnel to operate the fingerprinting equipment. Most of the States requested Federal funding for these costs. The TSA rule discusses the cost issue in more detail.

Many States also commented that compliance with the Patriot Act rule, specifically the fingerprinting requirements, would require legislative

changes. In many States, the State legislatures meet only once a year with a few State legislatures meeting biennially. These States requested additional time to make necessary legislative changes.

For these reasons, FMCSA and TSA are moving the date that States must begin collecting fingerprints to April 1, 2004, with the possibility of postponement to a later date.

FMCSA is amending 49 CFR 383.141 paragraphs (a) and (c) to move the date on which States are required to collect fingerprints from individuals who are applying for, renewing, or transferring a hazmat endorsement for a CDL from November 3, 2003, to April 1, 2004, though TSA may extend the compliance date to not later than December 1, 2004. Section 383.141(c) requires States to notify drivers at least 180 days before the expiration date of a hazardous materials endorsement. Because FMCSA's May 5 IFR allowed only slightly more than 180 days before States were required to begin collecting fingerprints, part of which the States would need to establish notification procedures, § 383.141(c) provides that "Before November 3, 2003, a State must give the holder of a hazardous materials endorsement as much advance notice as practicable" [68 FR at 23850]. In view of today's postponement of the States' compliance date, which will allow them to give drivers a full 180 days of advance notice, the sentence quoted above has been deleted.

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." If the agency fails to immediately adopt this interim final rule, States could lose certain Federal-aid funding due to the short implementation deadline for TSA requirements announced in the May 2003 interim final rule (68 FR 23852) and an inability to meet those requirements due to lack of infrastructure and funding through no fault of their own and circumstances beyond their control.

This IFR changes the date on which States are required to collect fingerprints from individuals who are

applying for, renewing, or transferring a hazmat endorsement for a CDL. Because this IFR does not impose any new burdens on stakeholders, FMCSA believes that notice and comment procedures are "unnecessary." Due to the short deadline, the agency finds good cause under 5 U.S.C. 553(d)(3) to make this rule effective upon publication.

Regulatory Evaluation

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. FMCSA has determined that this is a significant regulatory action within the meaning of Executive Order 12866 and under the Department's regulatory policies and procedures because of substantial public interest. This rule does not impose any costs on any public, private, or government sector, therefore further economic analysis is unnecessary.

Regulatory Flexibility Determination

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 RFA 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 IFR will not have a significant economic impact on a substantial number of small entities. As noted above, this IFR will not impose any costs on any public, private, or government sector.

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 IFR does not contain any information collection requirements.

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