

## EPA APPROVED NONREGULATORY PROVISIONS AND QUASI-REGULATORY MEASURES IN THE TEXAS SIP

Name of SIP provision	Applicable geographic or nonattainment area	State submittal/effective date	EPA approval date	Comments
Post 1999 Rate of Progress Plan ...	Houston/Galveston, TX .....	11/16/04	February 14, 2005. [Insert FR page number where document begins].	
Revisions to the 1990 Base Year Inventory.	Houston/Galveston, TX .....	11/16/04	February 14, 2005. [Insert FR page number where document begins].	

[FR Doc. 05-2791 Filed 2-11-05; 8:45 am]

BILLING CODE 6560-50-P

## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 303

[Docket No. FMCSA-2002-13248]

RIN 2126-AA79

#### Title VI Regulations for Federal Motor Carrier Safety Administration Financial Assistance Recipients

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

**ACTION:** Interim Final Rule (IFR); request for comments.

**SUMMARY:** FMCSA issues this Interim Final Rule (IFR) to clarify and modify the applicability of certain Federal Highway Administration (FHWA) and Departmental Title VI provisions that implement Title VI of the Civil Rights Act of 1964, and related nondiscrimination statutes, as they apply to FMCSA Federal financial assistance recipients. The "savings provision" of section 106(b) of the Motor Carrier Safety Improvement Act of 1999 provides the opportunity for this clarification and modification. As part of this initiative, FMCSA establishes a new Part 303 under 49 CFR chapter III, Subchapter A, for future FMCSA Title VI implementing regulations and any future guidelines on Title VI compliance.

This IFR will provide FMCSA with initial guidelines and procedures for implementing its Title VI procedures. This will be done by continuing to apply and use the Departmental umbrella Title VI regulations in 49 CFR part 21 to any program or activity for which Federal financial assistance is

authorized under a law administered by FMCSA. FMCSA will remain subject to those Title VI requirements at the Departmental level, and will develop as needed further guidelines and procedures in accordance with the law to assure effective and consistent implementation for financially assisted recipients. FMCSA also removes itself from the FHWA Title VI regulations set forth at 23 CFR part 200, because they are not appropriate for FMCSA programs and activities. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees. **DATES:** This Interim Final Rule is effective March 16, 2005. We must receive your comments by April 15, 2005.

**ADDRESSES:** You may submit comments identified by the FMCSA docket number and/or Regulatory Identification Number (RIN) of this interim rule by any one of the following methods:

- *Comments submitted by mail, in person, or Fax.*

U.S. Department of Transportation, Docket Management System (DMS) Facility, 400 Seventh Street, SW., Plaza Level, Washington, DC 20590; or FAX (202) 493-2251. You may examine the FMCSA docket, including any comments we have received, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

- *Comments filed electronically.*  
DMS Web site at <http://dms.dot.gov>;

or  
Federal eRulemaking Portal at <http://www.regulations.gov>. Follow instructions for submitting your comments.

- *Privacy Act:*

Please be aware that anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted by on behalf of

an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000 (65 FR 19477), or you may visit <http://dms.dot.gov>.

#### Waiver of General Notice of Proposed Rulemaking

FMCSA is issuing this Interim Final Rule (IFR) without prior notice and opportunity for comment pursuant to the Administrative Procedure Act (5 U.S.C. 553(b)). This provision allows an 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 IFR clarifies the Title VI authorities covering FMCSA programs by deleting references specific to only FHWA programs and by stating specifically the applicability of the Department-wide Title VI regulations to FMCSA. Doing so will avoid any potential confusion while not altering the substantive Title VI obligations of FMCSA and its grantees. Under these circumstances, FMCSA has determined that an opportunity for notice is unnecessary, impracticable, or contrary to the public interest. We will respond to any comments we receive, and will amend the IFR if comments warrant any changes.

**FOR FURTHER INFORMATION CONTACT:** Ms. Carmen Sevier, (202) 366-4330, Office of Civil Rights (MC-CR), FMCSA, 400 Seventh Street, SW., Washington, DC 20590; [Carmen.Sevier@fmcsa.dot.gov](mailto:Carmen.Sevier@fmcsa.dot.gov). Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

#### SUPPLEMENTARY INFORMATION:

##### Background

In early October 1999, Congress prohibited the FHWA from spending appropriated funds to carry out the motor carrier safety functions and

operations of its former Office of Motor Carrier and Highway Safety, unless the Secretary of Transportation (Secretary) redelegate that authority outside of the FHWA (*see* Pub. L. 106–69, 113 Stat. 986, at 1022 (October 9, 1999)). Thereafter, the Department created the Office of Motor Carrier Safety (OMCS) within DOT to carry out the duties and powers related to motor carrier safety vested in the Secretary.

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 105–159, 113 Stat. 1748). MCSIA created a new modal administration within the DOT—the Federal Motor Carrier Safety Administration—and transferred certain motor carrier safety and related responsibilities from the former OMCS to FMCSA. The FMCSA is charged with enforcing motor carrier safety requirements previously enforced by OMCS and its predecessors.

To accommodate the organizational change, the Office of the Secretary published a final rule on January 4, 2000 (65 FR 220), rescinding authority previously delegated to the former OMCS, and redelegate it to the Administrator of the FMCSA beginning January 1, 2000. Prior to MCSIA, the powers and authorities transferred to the FMCSA had been exercised by various entities within the Department, including FHWA. To preserve actions previously taken under such powers, section 106(b) of MCSIA contained a “savings provision.” Among other things, the savings provision preserved for FMCSA the applicability of various rules and regulations that were applicable to its predecessor agencies and offices. Included within such regulations are certain FHWA nondiscrimination protections and provisions that implement Title VI of the 1964 Civil Rights Act (42 U.S.C. 2000d, *et seq.*, and related nondiscrimination statutes). The FHWA regulations, located in 23 CFR part 200, are applicable to recipients of Federal grant and cooperative agreement aid. Those regulations, which FHWA had promulgated in 1975 and 1976, supplemented the Departmental umbrella Title VI protections contained in 49 CFR part 21.

#### Title VI

Title VI states that “No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving Federal financial assistance.” In addition, Title VI and the other related

nondiscrimination statutes<sup>1</sup> bar intentional discrimination, as well as disparate impact discrimination, which is a neutral policy or practice that has an unequal and adverse impact on protected groups.

#### Applicability of FHWA Title VI Provisions to FMCSA

The FHWA regulations set forth at 23 CFR part 200 provide guidance on how FHWA will implement its Title VI compliance and define the role and responsibilities of State transportation agencies in ensuring compliance with Title VI. We have reviewed those regulations in light of FMCSA’s motor carrier safety objectives as a new modal agency within the Department. We have concluded that those FHWA regulations in 23 CFR part 200 do not meet the needs of FMCSA Federal financial assistance recipients. This is because FHWA non-discrimination policies and procedures are geared toward highway planning and development, which generally involve much larger financial commitments than programs or activities of the FMCSA. Alternatively, the Departmental level implementing regulations in 49 CFR part 21 specify the manner and degree to which recipients must comply, and the basic recordkeeping requirements necessary to meet the intent of the nondiscrimination statutes. The Departmental regulations are broader in scope and therefore do not involve the degree of specificity required by the FHWA regulations. We have concluded that these broader regulations are more appropriate for the level of financial assistance involved in FMCSA programs

or activities. For that reason, FMCSA clarifies and modifies the applicability of the FHWA Title VI provisions, and the Departmental level provisions, as they apply to FMCSA.

#### Programs or Activities

Under this interim rule, FMCSA Federal financial assistance recipients must comply with the Title VI regulations in 49 CFR part 21 for FMCSA-only programs or activities. As noted above, FMCSA believes the less cumbersome but equally effective Departmental provisions better accommodate the interests of State agencies and other recipients by providing them with more streamlined Title VI procedures than those established in 23 CFR part 200. FMCSA established a new Part 303 in 49 CFR chapter III, Subchapter A, for its new Title VI implementing regulations. This will be done by adopting the Departmental Title VI provisions under 49 CFR part 21. FMCSA will remain subject to those requirements, and may develop further guidelines and procedures in accordance with the law to assure effective implementation by recipients.

For Joint or Multi-agency programs or activities, FMCSA recipients must follow the requirements of 49 CFR part 21 unless an agreement is reached by the Federal funding agencies for the recipients to use those Title VI procedures of the Federal lead agency.<sup>2</sup>

#### Conclusion

FMCSA has carefully weighed the benefits to be gained by clarifying and modifying Title VI regulations applicable to the agency. By taking the agency out from under FHWA Title VI regulations, this action will likely increase grant and cooperative agreement participation levels for FMCSA programs or activities by simplifying reporting requirements. The FHWA Federal-aid programs or activities tend to be much more costly than the FMCSA financially assisted programs or activities. It will also lower administrative costs for grantees in carrying out their Title VI responsibilities. FMCSA will continue to apply and use the adequate Title VI protections under the Departmental umbrella regulations at 49 CFR part 21.

<sup>1</sup> Nondiscrimination Program Requirements

1. *Title VI of the Civil Rights Act of 1964*—“No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

2. *Age Discrimination Act of 1975*—“No person in the United States shall, on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”

3. *Section 504. Rehabilitation Act of 1973*—“No qualified handicapped person shall, solely by reason of his handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity that receives or benefits from Federal financial assistance.”

4. *Title IX of the Education Amendments Act of 1972* prohibits discrimination on the basis of sex, in education and training programs provided by recipients of Federal financial assistance. Title IX is designed to eliminate (with certain exceptions) discrimination on the basis of sex in any education program or activity receiving Federal financial assistance, whether or not such program or activity is offered or sponsored by an educational institution.

<sup>2</sup> The Federal lead agency is the agency that provides the most overall funding to the recipient.

## Rulemaking Analyses and Notices

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

This Interim Final Rule (IFR) is considered a non-significant regulatory action within both the meaning of Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. We anticipate that the economic impact of this IFR will be negligible, because all FMCSA Federal financial assistance recipients are currently complying with the requirements of Title VI. In fact, we have determined that there probably will be no cost impacts, because this IFR merely clarifies and modifies the applicability of certain Title VI provisions of the FHWA and of the Department as they concern FMCSA's Federal financial assistance recipients under the motor carrier safety program. This IFR also establishes a new Part 303 in 49 CFR chapter III, Subchapter A, to provide FMCSA with new Title VI implementing regulations, as well as any further procedures for ensuring compliance with Title VI. This has been done by adopting the Department's longstanding Title VI regulations at 49 CFR part 21. Thus, no regulatory analysis or evaluation accompanies this IFR. We invite comments from the public, however, to assess any potential costs or burdens that may be associated with this IFR.

### *Regulatory Flexibility Act*

FMCSA has evaluated the effects of this rule on small entities in accordance with the Regulatory Flexibility Act (5 U.S.C. 601-612), as amended by the Small Business Regulatory Enforcement Fairness Act. By taking itself out from under the FHWA's Title VI reporting and procedural requirements, because they are not appropriate for the level of financial assistance in FMCSA's programs, the agency will ease the compliance standards for Title VI by all prospective FMCSA Federal-aid recipients. The IFR thus may have a limited, positive economic impact on small entities, among others. Accordingly, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

### *Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104-4; 2 U.S.C. 1532, *et seq.*) requires Federal agencies to assess the effects of its regulatory actions on State, local, or tribal governments, or on the private sector. Any agency promulgating a

proposed or final rule likely to result in a Federal mandate requiring expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year must prepare a written assessment of the costs, benefits, and other effects. In any event, regulations implementing civil rights requirements are explicitly excluded from unfunded mandates consideration. Thus, FMCSA has determined that this IFR will not have an annual impact of \$100 million or more.

### *Executive Order 13132 (Federalism)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999. We have determined that this action will not have a substantial direct effect on, or sufficient federalism implications for the States, nor will it limit the policymaking discretion of the States. Nothing in this IFR directly preempts any State law or regulation.

### *Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

FMCSA has analyzed this action in accordance with the principles and criteria in Executive Order 13175, dated November 6, 2000. We believe this action will not significantly or uniquely affect the communities of Indian tribal governments and will not impose substantial direct compliance costs. Accordingly, Executive Order 13175 does not apply to this IFR.

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

FMCSA has analyzed this IFR under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). It is a procedural action, is not economically significant, and will not likely have significant adverse effect on the supply, distribution, or use of energy.

### *Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. We have determined that this IFR will not contain an information collection requirement for purposes of the PRA.

### *Executive Order 12988 (Civil Justice Reform)*

This action meets the 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)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997) has special requirements that apply to certain rules that are economically significant under E.O. 12866. This IFR is not economically significant. Accordingly, Executive Order 13045 does not apply to this IFR.

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

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

### *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 apply to this program.

### *Executive Order 13166 (Limited English Proficiency)*

Executive Order 13166, "Improving Access to Services for Persons With Limited English Proficiency" (LEP) applies to Federally assisted programs. It requires each Federal agency to examine the services it provides and develop reasonable measures to ensure that persons seeking government services but limited in their English proficiency can meaningfully access these services consistent with, and without unduly burdening, the fundamental mission of the agency.

Its purpose is to clarify for Federal-fund recipients the reasonable steps those recipients should take to ensure that its programs or activities are meaningfully accessible to individuals who are LEP. To this end, the Executive Order on LEP requires each Federal agency to provide guidance on Federal financial assistance to ensure that the recipients' programs or activities are meaningfully accessible.

In developing its Title VI program, the agency will explore whether additional outreach to LEP individuals is

appropriate. FMCSA will be operating under DOT LEP guidance. Thus, this IFR complies with the principles enunciated in the Executive Order.

#### *National Environmental Policy Act*

This IFR is categorically excluded from environmental studies under paragraph 6.a. of the FMCSA Environmental Order 5610.1C dated March 1, 2004 (69 FR 9680). This IFR merely clarifies and modifies FMCSA's Title VI program, the applicability of both the FHWA's and the Department's Title VI provisions, and establishes a new part in 49 CFR chapter III, Subchapter A, for civil rights matters.

#### *Regulation Identification Number*

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in spring and fall of each year. The RIN located in the heading of this document is used to cross-reference this action with the Unified Agenda.

#### **List of Subjects in 49 CFR Part 303**

Civil Rights, Implementation and review procedures, Title VI compliance program, Title VI program and related statutes, Transportation.

■ Based on the foregoing, FMCSA adds a new Part 303 for Civil Rights under 49 CFR chapter III, Subchapter A, to read as follows:

#### **PART 303—CIVIL RIGHTS**

Sec.

303.1 Purpose.

303.3 Application of this part.

**Authority:** Public Law 105–159, 113 Stat. 1748, Title I, sections 107(a) and 106 (Dec. 9, 1999) (49 U.S.C. 113); 42 U.S.C. 2000d, *et seq.*; and 49 CFR 1.73.

#### **§ 303.1 Purpose.**

The purpose of this part is to provide guidelines and procedures for implementing the Federal Motor Carrier Safety Administration's (FMCSA) Title VI program under Title VI of the Civil Rights Act of 1964 and related civil rights laws and regulations. For FMCSA-only programs or activities, Federal financial assistance recipients or grantees will continue to apply and use the Departmental Title VI provisions at 49 CFR part 21. For joint and multi-agency programs/projects, FMCSA Federal assistance recipients or grantees must use the Title VI requirements at 49 CFR part 21, unless agreement is reached by the Federal funding agencies for the recipients to use the Title VI procedures of another agency.

#### **§ 303.3 Application of this part.**

The provisions of this part are applicable to all elements of the FMCSA and to any program or activity for which Federal financial assistance is authorized under a law administered by the FMCSA. This part provides Title VI guidelines for State Departments of Transportation and local State agencies, including their sub-recipients, to implement Title VI. It also applies to money paid, property transferred, or other Federal financial assistance extended under any program of the FMCSA after the date of this part.

Issued on: February 7, 2005.

**Annette M. Sandberg,**

*Administrator.*

[FR Doc. 05–2768 Filed 2–11–05; 8:45 am]

**BILLING CODE 4910–EX–P**

### **DEPARTMENT OF TRANSPORTATION**

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

#### **49 CFR Parts 555, 567, 568, and 571**

[Docket No. NHTSA–99–5673]

**RIN 2127–AE27**

#### **Vehicles Built in Two or More Stages**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The final rule amends four different parts of title 49 to address the certification issues related to vehicles built in two or more stages and, to a lesser degree, to altered vehicles. The amendments allow the use of pass-through certification so that it can be used not only for multi-stage vehicles based on chassis-cabs, but also for those based on other types of incomplete vehicles. The amendments also create a new process under which intermediate and final-stage manufacturers and alterers can obtain temporary exemptions from dynamic performance requirements, and provide an automatic one year of additional lead time for new safety requirements for intermediate and final-stage manufacturers and alterers, unless the agency determines with respect to a particular requirement that a longer or shorter time period is appropriate. This final rule also refines the agency's interpretation of "vehicle type" to more appropriately reflect the congressional and judicial considerations. Because vehicles built in two or more stages are more properly considered a "vehicle type," the agency will be able more properly to consider the benefits and burdens of various

compliance options when developing Federal motor vehicle standards.

**DATES:** Effective Date: The amendments made in this final rule are effective September 1, 2006.

**ADDRESSES:** If you wish to petition for reconsideration of this rule, you should refer in your petition to the docket number of this document and submit your petition to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** For nonlegal issues: Harry Thompson, Office of Vehicle Safety Compliance, NHTSA (telephone 202–366–5289).

For legal issues: Steve Wood, Office of the Chief Counsel, NHTSA (telephone (202) 366–2992).

You can reach both of these officials at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC 20590.

#### **SUPPLEMENTARY INFORMATION:**

##### **I. Background**

The National Traffic and Motor Vehicle Safety Act, as amended and recodified, mandates the issuance of Federal motor vehicle safety standards and requires the manufacturers of motor vehicles to certify that their vehicles comply with all applicable standards. While some vehicles are manufactured in a single stage by a single manufacturer, others are manufactured in multiple stages by a series of manufacturers.

Certification problems related to vehicles built in two or more stages have troubled both the automotive industry and the National Highway Traffic Safety Administration (NHTSA) almost since the agency's creation. An early set of NHTSA regulations on this subject was overturned by the Seventh Circuit Court of Appeals thirty years ago. *Rex Chainbelt v. Volpe*, 486 F.2d 757 (7th Cir. 1973); appeal after remand, *Rex Chainbelt v. Brinegar*, 511 F.2d 1215 (7th Cir. 1975). The court's decision focused on chassis-cabs and stated that for such vehicles a "dual certification" was required: a partial certification by the incomplete vehicle manufacturer and a complementary partial certification by the final-stage manufacturer, resulting in a fully certified vehicle. In response, the agency amended 49 CFR 567.5, Requirements for manufacturers of vehicles manufactured in two or more stages, and part 568, Vehicles manufactured in two or more stages, to define "chassis-cabs" and establish special certification requirements for chassis-cab manufacturers, which are