

Federal Communications Commission.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383 and 384

[Docket No. FMCSA-2005-21603]

RIN 2126-AA94

Commercial Driver's License Standards; School Bus Endorsement

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

ACTION: Final rule.

SUMMARY: FMCSA adopts as final and without change its interim regulations which implement section 4140 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The regulations specify that: A driver who passed FMCSA-approved knowledge and skills tests for a Commercial Driver's License (CDL) school bus endorsement before September 30, 2002, has met the requirements for a school bus endorsement; the compliance date for States to administer knowledge and skills tests to all school bus drivers is extended to September 30, 2006; and the expiration date for allowing States to waive the driving skills test is also extended to September 30, 2006.

DATES: Effective Date: February 17, 2006.

FOR FURTHER INFORMATION CONTACT: Mr. Dominick Spataro, (202) 366-2995, Chief, Commercial Driver's License Division (MC-ESL), Office of Safety Programs, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or e-mail dominick.spataro@fmcsa.dot.gov. Office hours are from 8 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Copies of This Final Rule and the Interim Final Rule

Copies are available for viewing or downloading through the Internet at: The U.S. Department of Transportation (DOT) Docket Management System (DMS) using the URL, <http://dms.dot.gov>, and typing the last 5 digits of docket number FMCSA-2005-21603;

the **Federal Register** Web page at <http://www.gpoaccess.gov>; or the FMCSA's Rules and Regulations Web site at <http://www.fmcsa.dot.gov/rules-regulations>. If you do not have access to the Internet, you may contact the person listed above.

Background

Legal Basis

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Public Law 99-570, 100 Stat. 3207-170 (October 27, 1986), codified with amendments in 49 U.S.C. chapter 313, forms the statutory foundation of the CDL program. The CMVSA required the Secretary of Transportation to issue regulations establishing minimum standards which States must meet when licensing drivers of commercial motor vehicles (CMVs), as defined in 49 U.S.C. 31301.¹ Section 12005 of CMVSA required, among other things, that the regulations include minimum standards for written and driving tests for an individual driving a CMV (49 U.S.C. 31305). The minimum testing and fitness standards for obtaining a CDL are in title 49 of the Code of Federal Regulations, Part 383.

Section 214 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA), Public Law 106-159, 113 Stat. 1748 at 1766 (December 9, 1999), required a special CDL endorsement for drivers of school buses, including: (1) A driving skills test in a school bus; and (2) proper safety procedures for loading and unloading children, using emergency exits and traversing highway rail grade crossings, 49 U.S.C. 31305 note. These regulations are found in 49 CFR 383.123.

As we stated in the interim rule, recent changes in the law necessitated revisions to the testing requirements for drivers of school buses.

Section 4140(a) of SAFETEA-LU, Public Law 109-59, 119 Stat. 1144, at 1746 (August 10, 2005), directed the Secretary of Transportation to recognize any driver who passes a test approved by FMCSA as meeting the *knowledge* test requirement for a school bus endorsement under 49 CFR 383.123. Because 383.123 requires a driver to pass both knowledge and skills tests, FMCSA interpreted section 4140(a) of SAFETEA-LU as requiring recognition of any driver who passes both approved knowledge and skills tests. Thus, section 4140(a) of SAFETEA-LU eliminates the need for States to retest drivers who passed agency-approved

knowledge and skills tests before September 30, 2002.

Section 4140(b) of SAFETEA-LU gave the States an additional year in which to fully implement § 383.123 for all school bus drivers. Thus, the compliance date in 49 CFR 384.301 was extended to September 30, 2006. FMCSA interpreted section 4140(b) of SAFETEA-LU as also extending the sunset date in § 383.123(b) from September 30, 2005, to September 30, 2006, because that subsection permits States to waive the driving skills test requirement for currently-licensed school bus drivers who meet certain conditions.

Interim Final Rule (IFR) and IFR Comments

On September 28, 2005, FMCSA published an IFR (70 FR 56589) implementing section 4140 of SAFETEA-LU and making the interim regulations effective that same day. Because section 4140 of SAFETEA-LU required the regulatory changes to be in effect before October 1, 2005, FMCSA issued the IFR without prior notice and prior opportunity for public comment. However, we invited the public to submit comments on the IFR, and the comment period ended on October 28, 2005.

We received comments on the IFR from: the Ohio State Highway Patrol; American Federation of Teachers, AFL-CIO; and Mr. Lev Vozchikov of Limited Mobility School Bus Co. The commenters agreed with FMCSA's decision not to require retesting of those drivers who had passed knowledge and skills tests approved by the Agency for a CDL school bus endorsement before September 30, 2002. The Ohio State Highway Patrol said the decision will save Ohio and other States millions of dollars. The AFL-CIO teachers' union said the decision was a positive step. Mr. Vozchikov said FMCSA acted in accordance with the legislation.

Rulemaking Analyses and Notices

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

FMCSA determined this final rule is not a significant regulatory action as defined in Executive Order 12866, and is not significant under DOT's Regulatory Policies and Procedures, because it does not impose new costs on the States. This rule implements congressionally-mandated changes which clarify acceptance of approved knowledge and skills tests administered to school bus drivers prior to September 30, 2002 for CDL school bus

¹ As pertinent to this rule, a CMV is a motor vehicle used in commerce that is designed to transport at least 16 passengers, including the driver. 49 U.S.C. 31301(4)(B).

endorsements; extend compliance dates for CDL school bus drivers obtaining a school bus endorsement on their CDL; and, give States an additional year to finish administering such knowledge and skills tests to all school bus drivers.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities. Since this rule does not impose any additional costs or burdens on school bus companies or local governments, and no adverse comments were received, we certify that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

FMCSA determined that the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply to this rule. This rule does not include a Federal mandate likely to result in expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of \$120.7 million or more annually.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FMCSA analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule does not create an environmental risk to the health or safety of children.

Executive Order 12630 (Taking of Private Property)

This rule 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 13132 (Federalism)

FMCSA analyzed this final rule under the principles and criteria of Executive Order 13132. As discussed earlier in the Background section, Congress initially mandated establishment of CDL school bus endorsements in the Motor Carrier Safety Improvement Act of 1999 (MCSIA). In section 4140 of SAFETEA-LU, Congress mandated that FMCSA-approved tests given before September 30, 2002, be accepted as meeting the requirement for a school bus endorsement, and that States be given an additional year to meet the school bus endorsement requirement of MCSIA. This action merely clarifies procedures and extends compliance dates for CDL school bus drivers obtaining a school bus endorsement on their CDL. Thus, there are no new Federalism impacts associated with this final rule.

Executive Order 12372 (Intergovernmental Review)

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

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*) requires Federal agencies to obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA reviewed this rule and determined it does not change any of the existing information collection requirements.

National Environmental Policy Act (NEPA)

FMCSA reviewed this final rule for the purpose of the NEPA (42 U.S.C. 4321 *et seq.*) and determined that it is categorically excluded from the requirement to prepare an environmental document under Appendix 2, paragraph 6.s(6) of FMCSA's Environmental Order 5610.1C, published March 1, 2004 (69 FR 9680). That exclusion relates to actions taken under regulations which concern requirements for States to give knowledge and skills tests to all qualified applicants for commercial driver's licenses. On that basis, we

determined this rule does not have any effect on the quality of the environment.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA) section 176(c), (42 U.S.C. 7401 *et seq.*) and the Environmental Protection Agency's implementing regulations. Under 40 CFR 93.153(c)(2), approval of this action is exempt from the CAA's General conformity requirement since it involves rulemaking and policy development and issuance. This rule will not result in any emissions increase or result in emissions that are above the general conformity rule's minimal emission threshold levels. Further, it is unlikely this rule will increase total CMV mileage, or will change the routing of CMVs, how CMVs operate, or the CMV fleet-mix of motor carriers. This action merely clarifies procedures and extends compliance dates for CDL school bus operators obtaining a school bus endorsement on their CDL.

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

FMCSA analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This rule is not a significant regulatory action under Executive Order 12866, and is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 383

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

49 CFR Part 384

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

The Final Rule

Accordingly, the interim regulations published September 28, 2005 at 70 FR 56589, amending Parts 383 and 384 of Subchapter B, Chapter III of Title 49, Code of Federal Regulations, are adopted without further revision.

Issued on: January 10, 2006.

Annette M. Sandberg,
Administrator.

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