Register. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: September 9, 2010.

Ira W. Leighton,

Acting Regional Administrator, EPA New England.

[FR Doc. 2010–23401 Filed 9–17–10; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 325

[Docket No. FMCSA–2006–24065]

RIN–2126–AB31

Compliance With Interstate Motor Carrier Noise Emission Standards: Exhaust Systems

AGENCY: Federal Motor Carrier Safety Administration, DOT.

ACTION: Direct final rule.

SUMMARY: In response to a petition for rulemaking from the Truck Manufacturers Association (TMA), the Federal Motor Carrier Safety Administration (FMCSA) amends its regulations to eliminate turbochargers from the list of equipment considered to be noise dissipative devices. As written, the regulation may allow vehicle operators to remove mufflers and still meet the Federal inspection requirements if commercial motor vehicle (CMV) engines are equipped with turbochargers. This was not the intent of that rule. Therefore, the Agency amends the rule to restore its original intent.

DATES: This rule is effective November 19, 2010, unless an adverse comment, or notice of intent to submit an adverse comment, is either submitted to our online docket via *http://www.regulations.gov* on or before October 20, 2010 or reaches the Docket Management Facility by that date. If an adverse comment, or notice of intent to submit an adverse comment, is received by October 20, 2010, we will withdraw this direct final rule and publish a timely notice of withdrawal in the **Federal Register**.

ADDRESSES: You may submit comments identified by docket number FCMSA–2006–24065 using any one of the following methods:

(1) *Federal eRulemaking Portal: http://www.regulations.gov*.

(2) *Fax:* 202–493–2251.

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand Delivery:* Same as mail address above, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Comments" portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, e-mail or call Mr. Brian Routhier, Vehicle and Roadside Operations Division (MC–PSV), Office of Bus and Truck Standards and Operations, *brian.routhier@dot.gov* or (202) 366–1225.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

If you would like to participate in this rulemaking, you may submit comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

A. Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2006–24065), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, or by fax, mail or hand delivery, but please use only one of these means. We recommend that you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. As a reminder, FMCSA will only consider adverse comments as defined in 49 CFR 389.39(b) and explained below.

To submit your comment online, go to *http://www.regulations.gov,* click on the "submit a comment" box, which will then become highlighted in blue. In the "Document Type" drop down menu select "Rule" and insert "FMCSA–2006–24065" in the "Keyword" box. Click "Search," then click on the balloon shape in the "Actions" column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

B. Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* click on the "read comments" box, which will then become highlighted in blue. In the "Keyword" box insert "FMCSA–2006–24065" and click "Search." Click the "Open Docket Folder" in the "Actions" column. If you do not have access to the Internet, you may also view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

Anyone can search the electronic form of comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review a Privacy Act notice regarding our public dockets in the January 17, 2008, issue of the **Federal Register** (73 FR 3316).

II. Regulatory Information

FMCSA publishes this direct final rule under 49 CFR 389.11 and 389.39 because the Agency determined that the rule is a routine and non-controversial amendment to 49 CFR part 325. The rule will restore the original intent of 49 CFR 325.91(b). FMCSA does not expect any adverse comments. If no adverse comments or notices of intent to submit an adverse comment are received by October 20, 2010, this rule will become effective as stated in the **DATES** section. In that case, approximately 30 days before the effective date, we will publish a document in the **Federal Register** stating that no adverse comments were received and confirming that this rule will become effective as scheduled. However, if we

receive any adverse comments or notices of intent to submit an adverse comment, we will publish a document in the **Federal Register** announcing the withdrawal of all or part of this direct final rule. If we decide to proceed with a rulemaking following receipt of any adverse comments, we will publish a separate notice of proposed rulemaking (NPRM) and provide a new opportunity for comment.

A comment is considered "adverse" if the comment explains why this rule or a part of this rule would be inappropriate, including a challenge to its underlying premise or approach, or would be ineffective or unacceptable without a change.

III. Background

On October 29, 1974, the Environmental Protection Agency (EPA) issued regulations establishing standards (40 CFR 202.21) for maximum external noise emissions of CMVs having a gross vehicle weight rating (GVWR) or a gross combination weight rating (GCWR) of more than 10,000 pounds that are operated by commercial motor carriers engaged in interstate commerce (39 FR 38208). Those regulations were issued under the authority of the Noise Control Act of 1972 (Pub. L. 92–574, 86 Stat. 1234, 42 U.S.C. 4901–4918, October 27, 1972), which also directed the Secretary of Transportation to promulgate regulations to ensure compliance with the EPA standards.

On February 28, 1975, the Federal Highway Administration (FHWA)'s Bureau of Motor Carrier Safety published in the **Federal Register** (40 FR 8658) proposed regulations establishing measurement methodologies for determining whether CMVs conform to the Interstate Motor Carrier Noise Emission Standards published by the EPA. FHWA published final regulations on September 12, 1975 (40 FR 42437), which have remained unchanged since that date. These requirements became effective on October 15, 1975, and are codified at 49 CFR part 325.

While the corresponding section of the EPA regulation requires CMVs with a GVWR or GCWR of more than 10,000 pounds that are operated by interstate motor carriers to be "* * * equipped with a muffler or other noise dissipative device * * *," the language adopted by FHWA in § 325.91 requires the same vehicles to be "* * * equipped with either a muffler or other noise dissipative device, such as a turbocharger (supercharger driven by exhaust gases) * * *."

The language adopted by FHWA is essentially identical to that established by EPA, except that § 325.91(b) specifically treats a turbocharger as a noise dissipative device. There is no discussion of turbochargers in the preambles of FHWA's NPRM or final rule.

On June 17, 2005, TMA submitted a petition for rulemaking requesting that the phrase, " such as a turbocharger (supercharger driven by exhaust gases)" be removed from 49 CFR 325.91(b).

In its petition, TMA noted:

> At the time these regulations were written, many diesel engines were naturally aspirated, and coincidently much louder than then-comparable turbocharged equipped engines/trucks. In that context, it made sense to include turbochargers with mufflers as acceptable noise dissipative devices, since both devices quieted trucks appreciably compared to trucks with naturally aspirated engines and totally unmuffled exhaust systems.

TMA noted that "removing the muffler can cause the truck to be 10–20 dB(A) louder; a 10 to 100 fold increase in the emitted sound power level of the vehicle." TMA concluded that it was "not aware of any other credible, satisfactorily performing, and commercially available exhaust noise dissipative device other than mufflers."

The Agency granted TMA's petition and published a notice in the **Federal Register** on September 25, 2006 (71 FR 55822), requesting public comments on (1) whether the Federal Motor Carrier Safety Regulations should be amended as requested by TMA, (2) whether there are any data or other relevant information to suggest the need for such a change, and (3) the impact of the requested change on motor carriers' ability to achieve compliance with the requirements of § 325.91.

FMCSA received comments from (1) Advocates for Highway and Auto Safety, (2) TMA, (3) the Motor & Equipment Manufacturers Association, and (4) the American Trucking Associations. Each commenter fully supported the requested change and no one opposed the amendment.

IV. Discussion of the Rule

FMCSA amends 49 CFR 325.91(b) by eliminating turbochargers from the list of equipment considered to be noise dissipative devices. This provision no longer serves its original purpose. Section 325.91(b), concerning visual inspection requirements for exhaust systems, was adopted when heavy-duty engines equipped with sound-reducing devices had either a muffler or a turbocharger, but not both. FMCSA notes that all newly manufactured trucks are currently required to be equipped and certified to meet EPA's Transportation Equipment Noise Emission Controls requirement of 80 dB(A) (40 CFR part 202) before they are placed into initial service. This amendment is a non-safety related change to the CFR, and FMCSA further believes that the vast majority of CMV operators currently comply with § 325.91, as intended.

In view of the steady increase in the number of heavy trucks and buses on the road, noise control remains an important issue for many communities. Yet § 325.91(b) allows the operators of vehicles with turbocharged engines to remove the muffler. This might improve fuel economy by a very small amount; and it would obviously eliminate the cost of buying new mufflers; but it would also increase the noise otherwise produced by the vehicle, which is contrary to the purpose of the original rule. While turbochargers were not originally installed as noise dissipative devices, a byproduct of their basic function was a reduction in noise generated by the vehicle. However, given the widespread installation of mufflers or alternative devices that similarly dissipate engine noise (such as diesel particulate filters), there is no further justification for considering turbochargers as noise dissipative devices. Therefore, through this direct final rule, FMCSA removes turbochargers from the list of noise dissipative devices in 49 CFR 325.91(b).

V. Regulatory Analyses

When developing this direct final rule, FMCSA considered numerous statutes and executive orders related to rulemaking. Below the Agency summarizes its analyses.

A. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. The Agency does not believe that this rule will have a significant economic impact.

B. Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, 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.

FMCSA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. Comments submitted in response to this finding will be evaluated under the criteria in the "Regulatory Information" section of this preamble.

C. Paperwork Reduction Act

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism

A rule has federalism implications under Executive Order 13132, Federalism, if the rule has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. We have analyzed this rule under that Order and have determined that it does not have federalism implications.

E. Unfunded Mandates Reform Act

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. In particular, 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 $140.8 million (which is the value of $100,000,000 in 2009 after adjusting for inflation) or more in any 1 year. This rule would not result in such an expenditure.

F. 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 Constitutionally Protected Property Rights.

G. Civil Justice Reform

This 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.

H. Protection of Children

FMCSA has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not economically significant and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

I. Indian Tribal Governments

This 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.

J. Energy Effects

FMCSA has analyzed this 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" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

K. 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 agencies provide Congress, through the Office of Management and Budget, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) that are developed or adopted by voluntary consensus standards bodies.

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

L. Environment

The Agency analyzed this direct 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, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under Appendix 2, paragraph 6 (b) of the Order from further environmental documentation. This CE relates to establishing regulations and actions taken pursuant to these regulations that are editorial in nature. In addition, the Agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

In addition to the NEPA requirements to examine impacts on air quality, we have also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c), (42 U.S.C. 7401 *et seq.*) and implementing regulations promulgated by EPA. Approval of this action is exempt from the CAA's general conformity requirement since it would not result in any potential increase in emissions that are above the general conformity rule's *de minimis* emission threshold levels (40 CFR 93.153(c)(2)). This action merely eliminates turbochargers from the list of equipment considered to be noise dissipative devices.

A Categorical Exclusion Determination is available for inspection or copying in the regulations.gov Web site listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 325

Motor carriers, Noise control.

■ For the reasons discussed in the preamble, the Federal Motor Carrier Safety Administration amends 49 CFR part 325 as follows:

PART 325–COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 42 U.S.C. 4917; 49 U.S.C. 301; 49 CFR 1.73.

■ 2. Amend § 325.91 by revising paragraph (b) to read as follows:

§ 325.91 Exhaust systems.

* * * * *

(b) Is not equipped with either a muffler or other noise dissipative device; or

* * * * *

Issued on: September 15, 2010.

Anne S. Ferro,

Administrator.

[FR Doc. 2010–23419 Filed 9–17–10; 8:45 am]

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