

Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission seeks specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies in this document. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments provided in this document. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

In the FNPRM, the Commission seeks comment on several issues pertaining to the implementation of the ACF. In doing so, the Commission continues to work towards its objectives of providing service to rural and high-cost areas of Alaska, which historically are some of the most difficult and costliest areas to serve in the country and where many residents continue to lack access to the high-quality, affordable broadband service enjoyed by other parts of our nation. Specifically, the Commission seeks comment on ACF Mobile Phase II service goals or requirements, as well as on a methodology to determine a single support amount for areas where more than one provider had been receiving support for overlapping service areas, as well as for use in determining support amounts for areas that the Commission deems ineligible in the concurrently adopted Order. Additionally, the Commission seeks comment on how to resolve duplicative funding so that only one provider would continue receiving support in the area, in particular proposing two possible mechanisms to address this issue. Further comment is also sought to update the record on how best to deploy service to unserved areas using the approximately \$162 million collected from the Alaska Plan. Finally, the Commission seeks comment on additional issues, such as retail consumer conditions, Open RAN, and Tribal consent under the ACF. In further developing the record in this proceeding, the Commission relies on the experiences of carriers with operations in Alaska, many of which are small business entities, to build a record on how best to implement the ACF.

The proposed action is authorized pursuant to sections 4(i), 214, 254, 303(r), and 403 of the Communications

Act of 1934, as amended, 47 U.S.C. 154(i), 201, 205, 214, 254, 303(r), 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421.

Small entities potentially affected by the rules herein include Wired Telecommunications Carriers, LECs, Incumbent LECs, Competitive LECs, Interexchange Carriers (IXC's), Local Resellers, Toll Resellers, Other Toll Carriers, Prepaid Calling Card Providers, Fixed Microwave Services, Cable and Other Subscription Programming, Cable Companies and Systems (Rate Regulation), Cable System Operators (Telecom Act Standard), Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, Satellite Telecommunications, Wireless Telecommunications Carriers (except Satellite), All Other Telecommunications, Wired Broadband internet Access Service Providers (Wired ISPs), Wireless Broadband internet Access Service Providers (Wireless ISPs or WISPs), internet Service Providers (Non-Broadband), and All Other Information Services.

Potential rules resulting from comments in the FNPRM, could impose new or additional recordkeeping and reporting requirements for small and other entities, if adopted. Specifically, in the FNPRM, the Commission seeks comment on a number of issues related to the implementation of the ACF. For example, the FNPRM seeks comment on setting a minimum goal of deployment of 5G–NR 7/1 Mbps for all mobile providers participating in ACF Mobile Phase II, as well as whether any exemptions should be made for certain areas. Under the competitive mechanism, providers seeking to participate would submit proposals including coverage maps for the areas where more than one provider currently receives support, as well as the surrounding community where no provider or only a single provider may currently offer service. The coverage map would comply with BDC mobile coverage data requirements and would predict 5G–NR coverage in an outdoor stationary environment. An ETC may propose to cover a tract with 5G–NR 7/1 Mbps service or 5G–NR 35/3 Mbps service, but separate coverage maps must be submitted for each proposed service. For the alternative mechanism, the Commission seeks comment on whether to set a minimum goal of deployment for support under ACF Mobile Phase II of 5G–NR 7/1 Mbps measured in an outdoor stationary environment.

The RFA requires an agency to describe any significant alternatives that

could minimize impacts to small entities that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): “(1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) the use of performance rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for such small entities.”

The FNPRM also takes the step of outlining an alternative mechanism that would allow a provider to retain its funding if it provides comparable service in a nonduplicate-support area, as well as consider alternative approaches from small and other entities on how best to achieve an outcome that dovetails both the Commission's policy goals and the minimization of substantial economic impact to small entities.

### III. Ordering Clauses

*It is further ordered* that, pursuant to the authority contained in sections 4(i), 201, 205, 214, 254, 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 201, 205, 214, 254, 303(r), 403, and §§ 1.1 and 1.421 of the Commission's rules, 47 CFR 1.1, 1.421, the FNPRM *is adopted*. The FNPRM will be *effective* upon publication in the **Federal Register**, with comment dates indicated therein.

Federal Communications Commission.

**Marlene Dortch,**

*Secretary, Office of the Secretary.*

[FR Doc. 2024–28170 Filed 12–3–24; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

#### 49 CFR Part 383

[Docket No. FMCSA–2024–0121]

RIN 2126–AC59

### Transportation of Fuel for Agricultural Aircraft Operations

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

**ACTION:** Notice of proposed rulemaking (NPRM).

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**SUMMARY:** This proposed rule would amend the Federal Motor Carrier Safety Regulations (FMCSRs) to allow States to waive the hazardous materials (HM) endorsement requirement for holders of Class A commercial driver's licenses (CDL) who transport no more than 1,000 gallons of aviation grade jet fuel in support of seasonal agricultural operations.

**DATES:** Comments must be received on or before February 3, 2025.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2024-0121 using any of the following methods:

- *Federal eRulemaking Portal:* Go to <https://www.regulations.gov/docket/FMCSA-2024-0121/document>. Follow the online instructions for submitting comments.
- *Mail:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001.
- *Hand Delivery or Courier:* Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.
- *Fax:* (202) 493-2251.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rebecca Rehberg, Transportation Specialist, CDL Division, Office of Safety Programs, FMCSA; (850)-728-2034; [rebecca.rehberg@dot.gov](mailto:rebecca.rehberg@dot.gov). If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366-9826.

**SUPPLEMENTARY INFORMATION:** FMCSA organizes this NPRM as follows:

- I. Public Participation and Request for Comments
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- B. Advance Notice of Proposed Rulemaking
- C. Regulatory Flexibility Act
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- H. Privacy
- I. E.O. 13175 (Indian Tribal Governments)
- J. National Environmental Policy Act of 1969
- K. Rulemaking Summary

## I. Public Participation and Request for Comments

### A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2024-0121), indicate the specific section of this document to which your 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. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <https://www.regulations.gov/docket/FMCSA-2024-0121/document>, click on this NPRM, click "Comment," and type your comment into the text box on the following screen.

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.

FMCSA will consider all comments and material received during the comment period.

### Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as "PROPIN" to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI

should be sent to Brian Dahlin, Chief, Regulatory Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001 or via email at [brian.g.dahlin@dot.gov](mailto:brian.g.dahlin@dot.gov). At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

### B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to <https://www.regulations.gov/docket/FMCSA-2024-0121/document> and choose the document to review. To view comments, click this NPRM, then click "Browse Comments." If you do not have access to the internet, you may view the docket online by visiting Dockets Operations on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE, Washington, DC 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366-9317 or (202) 366-9826 before visiting Dockets Operations.

### C. Privacy

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov) as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at <https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices>. The comments are posted without edit and are searchable by the name of the submitter.

## II. Executive Summary

### A. Purpose and Summary of the Regulatory Action

FMCSA proposes to amend the commercial driver's license (CDL) regulations to allow States additional flexibility to waive the hazardous materials (HM) endorsement<sup>1</sup> requirement for certain drivers transporting aviation fuel in furtherance of agricultural aviation operations. Many farm operations rely on aircraft to apply pesticides or fertilizers to their

<sup>1</sup> *Endorsement* as defined in § 383.5 means an authorization to an individual's commercial learner's permit (CLP) or CDL required to permit the individual to operate certain types of commercial motor vehicles.

crops. Agricultural aviation companies often deliver aircraft fuel to staging areas some distance from their headquarters. These companies, particularly in remote, rural areas, have difficulty finding CDL holders with HM endorsements to complete these deliveries. Under the current regulations, most CDL holders must obtain an HM endorsement before transporting fuels. However, 49 CFR 383.3(i) provides a limited exception to this requirement and allows States to waive the requirement of an HM endorsement if the holder of a Class A CDL is transporting diesel fuel in the CDL holder's State of domicile as an employee of four specific agriculture-related businesses. FMCSA proposes to give States authority to waive the HM endorsement requirement for Class A CDL holders who transport up to 1,000 gallons of aviation grade jet fuel (often called Jet A, referred to as *jet fuel* for the purposes of this preamble) in the CDL holder's State of domicile and in support of agricultural aircraft operations.

#### B. Costs and Benefits

This proposal could result in costs to States and their State driver licensing agencies (SDLAs) and may result in cost savings to drivers and to agricultural aviation operators. States and their SDLAs may incur costs for updating their websites and other informational materials to reflect the changes in requirements for Class A CDL holders transporting hazardous materials and for training roadside officers. The proposal would result in cost savings for agricultural aviation operators and the drivers these operators hire to mix, load, and transport jet fuel in quantities of 1,000 gallons or less in participating States. Class A CDL holders would avoid approximately \$261 in costs associated with each driver obtaining an HM endorsement, and agricultural aviation operators would be able to run their businesses more efficiently by making use of satellite airstrips. FMCSA does not expect that this proposed rule would negatively impact CMV safety. For various reasons, drivers who transport jet fuel operate in low-risk safety conditions and rarely experience crashes. More in depth discussion of the potential impacts resulting from this rule are found in the regulatory analyses section below.

#### III. Abbreviations

ANPRM Advanced notice of proposed rulemaking  
 BLS Bureau of Labor Statistics  
 CBI Confidential business information  
 CDL Commercial driver's license

CFR Code of Federal Regulations  
 CE Categorical exclusion  
 CLP Commercial learner's permit  
 CMV Commercial motor vehicle  
 CMVSA Commercial Motor Vehicle Safety Act  
 DOT Department of Transportation  
 ELOS Equivalent level of safety  
 FAST Act Fixing America's Surface Transportation Act  
 FHWA Federal Highway Administration  
 FMCSA Federal Motor Carrier Safety Administration  
 FMCSRs Federal Motor Carrier Safety Regulations  
 FR Federal Register  
 HM Hazardous materials  
 HMRs Hazardous materials regulations  
 IRFA Initial regulatory flexibility analysis  
 MCMIS Motor Carrier Management Information System  
 NAAA National Agricultural Aviation Association  
 NAICS North American Industry Classification System  
 NEPA National Environmental Policy Act  
 NHTSA National Highway Traffic Safety Administration  
 NPRM Notice of proposed rulemaking  
 OMB Office of Management and Budget  
 PHMSA Pipeline and Hazardous Materials Safety Administration  
 PIA Privacy impact assessment  
 PTA Privacy threshold assessment  
 RFA Regulatory Flexibility Act  
 SBA Small Business Administration  
 SBREFA Small Business Regulatory Enforcement Fairness Act  
 SDLA State driver's licensing agency  
 STA Security Threat Assessment  
 TPR Training Provider Registry  
 TSA Transportation Security Administration  
 UMRM Unfunded Mandates Reform Act  
 U.S.C. United States Code

#### IV. Legal Basis

The CDL regulations are based on the authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). Section 12013 of the CMVSA allowed the Federal Highway Administration (FHWA), FMCSA's predecessor agency, to "waive, in whole or in part, application of any provision of this title or any regulation issued under this title with respect to class of persons or class of commercial motor vehicles if the Secretary of Transportation (the Secretary) determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles" (Pub. L. 99-570, Title XII, 100 Stat. 3207-170, 3207-186, Oct. 27, 1986, codified at 49 U.S.C. app. 2711).

On the basis of section 12013, FHWA authorized the States to waive the knowledge and skills tests otherwise required to obtain a CDL for employees of custom harvesters, farm retail outlets and suppliers, agrichemical businesses, and livestock feeders (57 FR 13650, Apr.

17, 1992). CDL applicants in States that exercised this waiver option were required to meet certain conditions, including a prohibition on carrying any placarded quantities of HM, except for diesel fuel in quantities of 1,000 gallons or less (57 FR 13650, 13654). The 1992 CDL waiver option, with the 1,000-gallon restriction on the transportation of diesel fuel, was codified originally as 49 CFR 383.3(f)(3)(v) (61 FR 9546, March 8, 1996).

Following statutory amendments,<sup>2</sup> the language of the CMVSA's section 12013—that a waiver must be "not contrary to the public interest" and "not diminish the safe operation of commercial motor vehicles"—has been replaced by the standard that a waiver or exemption must "likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the waiver" (49 U.S.C. 31315(a)) or "absent such exemption" (49 U.S.C. 31315(d)(1)).

Section 7208 of the Fixing America's Surface Transportation (FAST) Act (Pub. L. 114-94, Dec. 4, 2015, 129 Stat. 1312, 1593) allowed the States to waive the requirement that a holder of a Class A CDL obtain the HM endorsement required by 49 CFR 383.93(b)(4), provided the Class A CDL holder is an employee of one of the four categories of business specified in FHWA's 1992 waiver who transports diesel fuel in quantities of 1,000 gallons or less. As thus amended, the State waiver authority is now codified at 49 CFR 383.3(i).

FMCSA believes that the equivalent-level-of-safety (ELOS) standard required by the waiver and exemption provisions in 49 U.S.C. 31315 and 49 CFR part 381 is the appropriate standard for this NPRM. The 1992 rule required that the State waiver option not diminish the safe operation of CMVs, and all subsequent versions of the statute and regulation have retained that ELOS concept. Congress itself clearly embraced that standard when section 7208 was explicitly limited to the same four agriculture-related businesses covered by the 1992 exemption.

Pursuant to 49 U.S.C. 31305(a), which sets forth the general standards for the CDL rules, also provides that FMCSA "shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual

<sup>2</sup> Title 49, United States Code, was recodified in 1994, the waiver authority in 49 U.S.C. app. 2711 was redesignated as 49 U.S.C. 31315 (Pub. L. 103-272, 108 Stat. 745, 1029, July 5, 1994), and the Transportation Equity Act for the 21st Century (TEA-21) revised 49 U.S.C. 31315 as "Waivers, exemptions, and pilot programs" (Pub. L. 105-178, 112 Stat. 107, 401, June 9, 1998).

operating a commercial motor vehicle.” Implicit in that provision is the authority to decide whether certain CDL holders may meet the “fitness” requirement without complying with every part of the CDL regulations. FMCSA believes that exempting employees of agricultural aviation companies who hold Class A CDLs and transport jet fuel from the requirement to obtain an HM endorsement is consistent both with the standard of the CMVSA’s section 12013 and with the current ELOS and “fitness” standards enacted by Congress. A waiver granted by a State under this proposal, as under section 7208 of the FAST Act, would also exempt eligible drivers from the Transportation Security Administration’s (TSA) background records check in 49 CFR part 1572, subpart B.

## V. Background

### A. Commercial Driver’s License

Since April 1, 1992, drivers have been required to obtain and hold a CDL if they operate in interstate, intrastate, or foreign commerce and drive a vehicle that meets one or more of the classifications of a CMV in 49 U.S.C. 31301(4).<sup>3</sup> The physical requirements and knowledge and skills testing are intended to help to ensure safe operations of CMVs. FHWA and, since 2000, FMCSA have developed and issued standards for State licensing and testing of CDL applicants. Under § 383.133(c)(6) of the FMCSRs, States must administer a three-part CDL skills test to CDL applicants in the following order: (1) pre-trip inspection, (2) basic vehicle control skills, and (3) on-road skills. Drivers who operate special types of CMVs, such as school buses, vehicles carrying HM, double/triple trailers, tank vehicles, and combination vehicles, must pass additional tests to obtain the relevant endorsement for their CDLs. Endorsement testing requirements are found in § 383.93(c). The HM endorsement requires a knowledge test.

### B. National Agricultural Aviation Association Interactions With FMCSA

The National Agricultural Aviation Association (NAAA) is a trade association that represents over 1,900 members in 46 States. NAAA member operators/pilots are licensed as commercial applicators who use aircraft to enhance food and fiber production and control health-threatening pests. According to NAAA’s petition for rulemaking, aircraft operations are often

the only, or the only economical, method to apply pesticides or fertilizers. Almost 28 percent of crop protection product applications to commercial farmland are made aerially. As a result, NAAA estimates that 127 million acres of cropland are treated via aerial application in the U.S. each year.<sup>4</sup>

While fueling, mixing, and loading of crop-protection products (e.g., fertilizers, insecticides, fungicides, or herbicides) are normally conducted at a location where agriculture aviation operators have permanent fuel tanks and mixing and loading facilities, at times operators and pilots work so far from their permanent facility that it is cost-effective to use a satellite landing strip and an on-site fuel truck. In such scenarios, fuel is pumped from the fixed-base tanks into the fuel truck that transports it to the satellite landing strip. Additional trips are made to the satellite strip as needed, and the CMV returns to the fixed-base location at the end of the day. Some CMVs may also be loaded with crop-protection products (e.g., insecticides, fungicides, or herbicides). The driver may serve both as a “mixer loader” of the fertilizers or pesticides and of the aircraft fuel.

### 2005 Exemption Request

On June 17, 2005, NAAA requested an exemption<sup>5</sup> under 49 CFR 381.310 on behalf of its members. NAAA asked that CMV drivers supporting agricultural aircraft operations be exempted from the required knowledge and skills tests required for a CDL and that they be eligible to receive restricted CDLs allowed for certain drivers in farm-related service industries, as described in § 383.3(f). In addition, NAAA sought an exemption from § 383.3(f)(3)(v) to allow these restricted CDL holders to transport fuel used to power crop-sprayer aircraft, if transported in quantities of 1,000 gallons or less. NAAA argued that the exemptions would provide parity with the CDL regulations for other, nearly identical farm-related services. NAAA did not offer any countermeasures to ensure an ELOS, as required by 49 U.S.C. 31315(b)(5)(D), but it argued that compliance with all other DOT requirements would ensure safe CMV operations.

### 2007 Federal Register Notice

On July 5, 2007, FMCSA issued a **Federal Register** notice (72 FR 36748)

<sup>4</sup> Industry Facts, Environmental Benefits and FAQs—National Agricultural Aviation Association (agaviation.org) (accessed June 11, 2024).

<sup>5</sup> The request for exemption and other associated documents may be found at <https://www.regulations.gov/docket/FMCSA-2007-28480>.

soliciting comments on the NAAA application. The Agency received a total of 17 comments, 9 supporting and 6 opposing the exemption. Two comments were out of scope. All comments that supported the request were from agricultural entities. Opponents included a safety association and State safety agencies.

Supporters of the request noted that they were experiencing the same shortage of qualified CDL drivers as NAAA members, creating a hardship for the industry. Commenters also mentioned CMVs transporting jet fuel and pesticides operate primarily in rural areas, where low population and traffic density reduced crash risk. These trips usually occur within a 50-mile radius or less of their permanent facilities. One farmer indicated that agriculture relies on crop spraying operations.

The NAAA’s application was opposed by Advocates for Highway and Auto Safety and safety agencies of Missouri, Virginia, and Ohio. The commenters pointed out that, if this exemption were in place, NAAA drivers would be transporting HM more dangerous than that permitted by § 383.3(f)(3)(v) and would be doing so without demonstrating basic competency in CMV operations. The drivers would also avoid two requirements for the HM endorsement: successful completion of the written HM test required by § 383.135, and a determination by the TSA pursuant to § 383.141(b) that the driver is “not a security threat.” The commenters also pointed out that NAAA failed to propose an alternative method of assessing the knowledge and skills of these CMV drivers, as required by § 381.415(c)(6) through (c)(8).

### 2010 Denial

After reviewing NAAA’s request for exemption and the public comments received, FMCSA concluded that NAAA had failed to demonstrate how it would ensure that the operations of its members under the exemption would achieve an ELOS. The Agency published the notice of denial in the **Federal Register** on June 10, 2010 (75 FR 32983).

### FAST Act Implementation

Section 7208 of the FAST Act directed the Secretary to allow a State, at its discretion, to waive the requirement that a Class A CDL holder obtain an HM endorsement when that individual is transporting 3,785 liters (1,000 gallons) or less of diesel fuel, marked “flammable” or “combustible,” as appropriate, as an employee of a custom harvester operation,

<sup>3</sup> Commercial Motor Vehicle Safety Act of 1986, Public Law 99-570, Title XII, 100 Stat. 3207-170, 49 U.S.C. chapter 313.

agricultural business, farm retail outlet and supplier, or livestock feeder.

On July 22, 2016, FMCSA implemented this and other provisions of the FAST Act (81 FR 47714). The final rule amended § 383.3 by adding a new paragraph (i), providing that a State may waive the requirement that a driver obtain a HM endorsement to transport diesel fuel under certain circumstances.

#### 2018 NAAA Petition

In April of 2018, NAAA submitted a petition to amend § 383.3(i), which FMCSA treated as a petition for rulemaking under § 389.31. NAAA argued that expanding the exemption options allowed by section 7208 of the FAST Act to include an HM exception for drivers with a Class A CDL transporting 1,000 gallons or less of jet fuel would provide an economic benefit to agriculture aviation operators while keeping America's roads safe. NAAA asserted that the similar chemical properties of jet fuel and diesel fuel, along with infrequency of trips involving aviation fuel, the rural environments in which these trips typically occur, and exceptional weather conditions would provide an ELOS while reducing regulatory burdens on agriculture aviation operators.

NAAA emphasized the cost to agriculture aviation operators, almost all of them small businesses, of paying drivers to obtain an HM endorsement when they already have the knowledge and skills required to hold a CDL. NAAA noted that retaining drivers with an HM endorsement is extremely difficult due to the seasonal nature of agriculture aviation work. NAAA indicated that a shortage of available drivers with such an endorsement may block the transportation of jet fuel to a satellite airstrip closer to the application site. In December of 2022, after review of the petition and consultation with technical staff from the Pipeline and Hazardous Materials Safety Administration (PHMSA), FMCSA granted NAAA's petition for rulemaking to amend § 383.3(i).<sup>6</sup>

#### VI. Discussion of Proposed Rulemaking

Pursuant to §§ 383.93(a)(1) and (b)(4), a CDL holder may not drive a vehicle used to transport HM without obtaining a State-issued HM endorsement. The term *hazardous materials* is defined in § 383.5 to include materials for which placarding is required under subpart F of 49 CFR part 172. Current regulations

generally require a CDL holder to obtain an HM endorsement in order to transport fuel, including jet fuel.

This NPRM would amend § 383(i) to allow States to waive the HM requirement for Class A CDL holders who are employed by agricultural aviation operators in their State of domicile and drive a vehicle transporting up to 3,785 liters (1,000 gallons) of jet fuel (clearly marked with a “flammable” or “combustible” placard) for use in agricultural aviation operations. The Agency also proposes to add a definition of *jet fuel* to mean “fuel, aviation, turbine engine” as listed in the Hazardous Materials Table in 49 CFR 172.101 that is reclassified as a combustible liquid in accordance with 49 CFR part 173.

FMCSA developed the proposal in this NPRM based on evaluation and review of available data relating to the similarity of jet fuel and diesel fuel, the safety of the trucking operations of the agricultural aviation industry, NAAA's petition content, existing exemptions to subpart H of 49 CFR part 383, potential impact on the States, and the ELOS for an addition of a jet fuel exemption. These topic areas are discussed individually below. In addition to the specific areas detailed below, FMCSA also requests comment on other questions regarding the agricultural aviation industry transport of fuel in general which can be found in Section VI.6. Issues on Which the Agency Seeks Further Comment.

##### 1. Jet Fuel and Diesel Fuel

Both diesel and jet fuel are kerosene-based fuels and have similar chemical characteristics, transportation requirements, and related exceptions. Under the HM regulations, both diesel fuel and jet fuel are classified as flammable liquids in the hazardous materials table (§ 172.101), but in most instances, may be reclassified as combustible liquids if they have a flash point at or above 100 °F (38°C). If properly reclassified as *combustible liquids* and transported in *non-bulk packaging*, as defined in § 171.8, diesel and jet fuel are not subject to the requirements of Subchapter C of the HM regulations unless the combustible liquid is a hazardous substance, a hazardous waste, or a marine pollutant. This exception allows drivers to potentially transport more than 1,000 gallons of diesel or jet fuel in multiple non-bulk packagings without an HM endorsement. However, when diesel or jet fuel are properly reclassified as combustible liquids but transported in a bulk packaging, as defined in § 171.8, they are subject to some of the HM

regulations including the placarding requirements of subpart F of 49 CFR part 172 and the HM endorsement. Additionally, PHMSA's Emergency Response Guidebook provides emergency responders the same guidance on what to do during the initial stages of a HM transportation incident.

##### 2. Safety of the Trucking Operations of the Agricultural Aviation Industry

FMCSA reviewed the supporting evidence provided by NAAA in its petition. NAAA indicated that several factors support the safety of its proposed HM exemption, primarily the similarity of jet fuel to diesel fuel, for which an exemption option is already available. Additionally, agriculture aviation operations typically take place in rural areas with minimal traffic and during fair weather conditions. In many cases, driving occurs only once or twice a week to a satellite facility. These factors, in addition to the knowledge and skills required to obtain a Class A CDL, create low-risk safety conditions. FMCSA agrees diesel fuel is similar to jet fuel, as defined in this NPRM, and that agricultural aviation transport of jet fuel generally occurs in lower traffic areas which are linked to lower incident rates. In the FAST Act, Congress implicitly determined that allowing States the option to waive the HM endorsement for drivers transporting diesel fuel for the four agriculture-related businesses now listed in § 383.3(i), would not adversely affect safety. Because jet fuel is chemically very similar to diesel fuel and because agricultural aviation companies transport jet fuel in the same rural areas, on roads with low traffic density, as drivers transporting diesel fuel for the four agricultural businesses listed in the FAST Act, FMCSA concludes that the ELOS determination underlying the FAST Act waiver option is equally valid and applicable to the option for a State waiver of the HM endorsement proposed by this rulemaking.

##### 3. Impact on the States

FMCSA is aware that States may have concerns if the HM knowledge test were allowed to be waived. These concerns could include undermining the purpose of a CDL and its intended level of safety, opening the possibility for other industries to request such exemptions, and inconsistency across the States that exercise discretion with the proposed *jet fuel* exemption.

The Agency notes that, regardless of whether any State exercises its discretion, a driver may still be required to obtain an HM endorsement when

<sup>6</sup> The grant letter and all other correspondence with NAAA related to this rulemaking can be found in the docket for this rule.

operating a CMV in a State that has not opted to waive the requirement. This scenario could occur when jet fuel is transported across a State line. As detailed earlier in the section V. B. Background, most satellite locations utilizing exempted CMVs are expected to be within a 50-mile radius of the permanent facility. FMCSA therefore believes that such discrepancies in endorsement requirements would be uncommon.

The Agency's experience with SDLAs' responses to codification of the diesel fuel exemption indicate that 16 of 50<sup>7</sup> States choose to grant the exemption. FMCSA believes that States with economies heavily dependent on agriculture would be most likely to exercise a jet fuel exemption. The Agency expects a similar level of use if this proposal were to be made final, but requests comment on that assumption.

States utilizing the exemption would need to provide training to roadside officers on the application of the new rule. The added development cost of the training would be minimal, however, due to the similarity of the existing diesel fuel exemption.

#### 4. Equivalent Level of Safety

As part of evaluating the NAAA petition, FMCSA considered whether granting the exemption for jet fuel would likely maintain a level of safety equivalent to, or greater than, the level achieved by the current regulations. The Agency reviewed available safety records, reports, and statistics to evaluate the safety of the proposal presented in this NPRM.

In addition to other analysis, FMCSA evaluated the existing diesel fuel exemption to determine if jet fuel has similar risk characteristics. FMCSA reviewed the conference report that accompanied the FAST Act, and found no indication that Congress intentionally excluded the transportation of kerosene-based fuels other than diesel fuels, such as fuels used in support of agriculture aviation operations.<sup>8</sup>

FMCSA analyzed existing data sources available in the National Highway Traffic Safety Administration's (NHTSA) Fatality Analysis Reporting

System and FMCSA's Motor Carrier Management Information System (MCMIS) as well completing a 47-question survey of Agency field staff directly involved in the enforcement of, and compliance with, Federal regulations. The study did not return evidence of safety or enforcement impacts directly attributable to the FAST Act provisions, which include the HM endorsement exemption for diesel fuel.<sup>9</sup>

NAAA indicated that agricultural aviation fuel transportation occurs most commonly in rural agricultural areas where there is less traffic. This is supported by research which indicates, for example, that 16.4 percent of crashes are on roads with 10,000 vehicles/day or fewer, compared to 36.9 percent of crashes on roads with 10,000–50,000 vehicles, and 46.7 percent of crashes on roads with 50,000+ vehicles.<sup>10</sup> Likewise, the 2005 FMCSA Report to Congress on the Large Truck Crash Causation Study reviewed crashes by roadway type and indicated the following: Interstate (25.1 percent), U.S. highway (24.2 percent), State highway (30.3 percent), country road (9.1 percent), township (1.5 percent), municipality (6.8 percent), and other (2.6 percent).<sup>11</sup>

Finally, the FAST Act addition of § 383.3(i) does not provide exemptions from additional regulatory requirements related to the transportation of diesel fuel and, for the purposes of this rulemaking, jet fuel. Because drivers transporting jet fuel are hazmat employees as defined in 49 CFR 171.8, hazmat training is still required under parts 172 and 177 for the agricultural aviation industry.

PHMSA initial and recurring HM training requirements, found in § 172.704, include general awareness/familiarization with HM, function specific training, safety training including emergency response, and security awareness. Additionally, § 177.816 requires driver training that is

very similar to the training required to obtain the HM endorsement.

FMCSA finds that initiation of a rulemaking to provide States the option to grant relief from the HM endorsement for agriculture aviation operators seeking a Class A CDL to be reasonable, given the similarity of diesel fuel to jet fuel and the available research.

#### 5. Issues on Which the Agency Seeks Further Comment

The Agency requests comment on certain aspects of the agriculture aviation industry and the use of CMVs to transport jet fuel.

a. FMCSA believes that States with economies heavily dependent on agriculture would be most likely to exercise a jet fuel exemption. Is this an accurate assumption?

b. Will this proposal lead to additional burden or costs to SDLAs and/or roadside officers and any other law enforcement officials responsible for enforcing CDL and HM endorsement compliance?

c. How many Class A CDL holders with HM endorsements are currently involved in transporting jet fuel in quantities of 1,000 gallons or less for agriculture aviation operations?

d. How many CMV drivers will enter the market for transporting jet fuel in quantities of 1,000 gallons or less in participating States due to relaxed requirements?

e. As part of the initial petition for rulemaking, the NAAA claimed that a shortage of available drivers may prevent the use of a satellite airstrip closer to the application site. How many satellite airstrips would be available for use if this proposal were to be finalized? How many refueling trips from application sites back to operational bases (mixing-loading sites) do aircraft currently make, and how much fuel do these trips require?

f. How much revenue do agriculture aviation operators lose as a result of not having an available CMV driver with a Class A CDL and HM endorsement? In a survey from 2005 cited in its initial petition for rulemaking, the NAAA mentioned that one operator claimed that he loses \$2,500 to \$5,000 per day as a result of not having an available CDL holder and loses work as a result of this shortage. FMCSA is seeking an estimate of the revenue the typical (average) agriculture aviation operator loses per day by not having an available CMV driver to transport jet fuel and therefore occasionally being unable to work.

<sup>7</sup> FMCSA contacted the States, 50 of which responded as of July 25, 2024, to determine which States choose to grant the exemption for diesel. The 16 States that grant the diesel exemption are: Alabama, Connecticut, Iowa, Kansas, Kentucky, Minnesota, Mississippi, Nebraska, North Dakota, New Mexico, New Jersey, Oklahoma, Pennsylvania, South Dakota, Texas, and Wisconsin.

<sup>8</sup> FAST Act Conference Report to Accompany H.R. 22, Dec. 1, 2015. <https://www.congress.gov/114/crpt/hrpt357/CRPT-114hrpt357.pdf> (accessed June 21, 2024).

<sup>9</sup> FMCSA *Congress Safety and Enforcement Impacts Report to Congress*. Feb. 2023. This document is available at: <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/2023-03/Safety%20and%20Enforcement%20Impacts%20Report%20Final%20February%202023.pdf> and in the docket for this rulemaking (last accessed May 24, 2024).

<sup>10</sup> Dong, Chunjiao, Qiao Dong, Baoshan Huang, Wei Hu, and Shashi S. Nambisan. "Estimating factors contributing to frequency and severity of large truck-involved crashes." 2017. *Journal of Transportation Engineering*, Part A: Systems 143, no. 8: 04017032.

<sup>11</sup> *Report to Congress on the Large Truck Crash Causation Study*. Federal Motor Carrier Safety Administration, U.S. Department of Transportation: Washington, DC, USA (2005).

## VII. International Impacts

Motor carriers and drivers are subject to the laws and regulations of the countries that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences between nations.

## VIII. Section-by-Section Analysis

This section-by-section analysis describes the proposed changes in numerical order. Part 383 “Applicability” would be amended in five locations. Paragraph (i) of § 383.3 would be amended to add “or jet fuel” to the commodities States may exempt from the subpart H CDL requirement. Paragraph (i)(1) would be amended by adding “agriculture aviation operation” to the list of industries to which the hazardous material endorsement exemption applies. Paragraph (i)(2)(i) would be amended to add operators of vehicles transporting jet fuel in a quantity of 1,000 or less gallons to the conditions of the hazardous material exemption. Paragraph (i)(2)(ii) would be revised to indicate that jet fuel or diesel fuel transported under this hazardous material endorsement exemption must be clearly placarded in accordance with Part 172 subpart F and all other applicable HMRS.

Finally, section 383.5 “Definitions” would be amended to add a definition for *jet fuel*. The definition includes all classes of fuel, aviation, turbine engine as listed in the Hazardous Materials Table in 49 CFR 172.101, including Jet A, that are reclassified as a combustible liquid in accordance with 49 CFR part 173.

## IX. Regulatory Analyses

*A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA has considered the impact of this NPRM under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and E.O. 14094 (88 FR 21879, Apr. 11, 2023) Modernizing Regulatory Review. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this NPRM is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that

order. Accordingly, OMB has not reviewed it under that E.O.

This proposal would amend the CDL regulations to allow States additional flexibility to waive the HM endorsement requirement for holders of a Class A CDL who are transporting aviation fuel in quantities of 1,000 gallons or less in service of agricultural aviation operations. Under the current regulations, before undertaking this task, drivers working for agricultural aviation operators must obtain an HM endorsement, which requires training, testing, and a TSA background check. This proposal would allow flexibility for a limited population of drivers while operating within their State of domicile to provide services to agricultural aviation operations without obtaining an HM endorsement.

This proposed rule is voluntary in nature and does not require that States adopt any flexibilities contained herein. This proposed rule could impact States, SDLAs, agricultural aviation operators, and drivers. The analysis below discusses these affected entities, the need for the regulation, and the costs and benefits that could result from the proposed rule.

### Affected Entities

#### States

States could be impacted by this proposal; however, FMCSA does not know how many States would opt to waive the HM endorsement for agricultural aviation businesses and their drivers under this proposal. In response to Section 7208 of the FAST Act, 16 of 50 States chose to grant the exemption for diesel fuel, which is similar to the jet fuel exemption specified in this proposal. FMCSA assumes that there would be a similar level of adoption for this proposal, and that the majority of participating States would be those with agriculture-dependent economies.

#### SDLAs

This proposal would impact SDLAs in States that choose to waive the requirement for HM endorsements for Class A CDL holders employed by agricultural aviation operators. SDLAs are responsible for administering CDLs and endorsements for the motor carrier driver population. SDLAs in participating States would need to become familiar with these new requirements and update information on requirements for CDL holders.

#### Drivers

This proposal would impact Class A CDL holders who are employed by agricultural aviation operators in

participating States and are responsible for transporting jet fuel in quantities of 1,000 gallons or less. Drivers serve as “mixer-loaders” for crop protection products and load agricultural aircrafts with these products and fuel. Drivers pump fuel from fixed base tanks into the fuel truck then transport it to the satellite airstrip to load into agricultural aircraft. Under this proposal, drivers operating Group A vehicles would still need to hold a Class A CDL since this proposal would only allow States to waive the HM endorsement requirement. These drivers would still be required to obtain an HM endorsement when transferring jet fuel across State lines.

FMCSA anticipates that any impacted drivers would work in the same North American Industry Classification System (NAICS) industry as agricultural aviation operators; 1151—support activities for crop production. As of May 2023, Bureau of Labor Statistics (BLS) reports that there are 5,430 heavy tractor-trailer drivers working in the 1151 industry.<sup>12</sup> The 1151 industry is broader than agricultural aviation operations, and as such drivers impacted by this rule would be a subset of the 5,430 within this industry. Further, FMCSA does not know how many drivers are employed by agricultural aviation operators in the States that would waive the HM endorsement requirement. FMCSA requests comment on the size of this population.

### Agricultural Aviation Operators

According to the NAAA, there are approximately 1,560 agricultural aviation businesses and 3,400 agricultural pilots (approximately 2,000 are hired pilots and 1,400 are owner/operators) operating in the United States.<sup>13</sup> FMCSA does not know how many agricultural aviation businesses would be impacted by this rule.

### Need for the Regulation

While both fueling and mixing and loading of crop-protection products (e.g., fertilizers, insecticides, fungicides, or herbicides) are normally conducted at a location where agriculture aviation operators have permanent fuel tanks and mixing and loading facilities, at times operators and pilots work so far from their permanent facility that it is cost-effective to use a satellite landing strip and an on-site fuel truck. When on-site fuel trucks or drivers are not available, pilots must fly agricultural

<sup>12</sup> BLS, date extracted: July 11, 2024.

<sup>13</sup> <https://www.agaviation.org/about/about-ag-aviation/industry-facts-faqs/>.

aircraft back to their permanent mixing and loading facilities, which limits the amount of land pilots can spray on a given day and increases fuel costs, leading to reduced revenue for businesses.

Agricultural aviation businesses face a shortage of qualified drivers because for a Class A CDL an HM endorsement is a marketable asset, and these drivers are likely to find consistent, non-seasonal work. Furthermore, these businesses tend to operate in remote, rural areas that may be hundreds of miles away from the nearest SDLA. These factors limit agricultural aviation businesses from meeting their workforce needs.

Costs and Benefits

Costs

This proposal could result in costs to States and their licensing agencies and may result in cost savings to drivers and to agricultural aviation operators. Under this proposal, States and their SDLAs may incur costs. SDLAs in participating States may need to update their websites to reflect the changes in requirements for Class A CDL holders transporting hazardous materials. Also, roadside officers in participating States would need to undergo training to be able to determine which drivers are operating under the waiver. FMCSA anticipates that States would update their biannual training to include a module on any changes to the CDL regulations and model any changes resulting from this rule after the training for the diesel fuel exemption. Because this training is ongoing, FMCSA anticipates that any additional costs related to this change would be de minimis. The Agency does not have data with which to estimate these potential State and SDLA costs and requests comments on the scope and magnitude of costs in participating States as a result of this proposal.

The proposal would result in cost savings for agricultural aviation operators and the drivers these operators hire to mix, load, and transport jet fuel in quantities of 1,000 gallons or less in participating States. Under the proposal, Class A CDL holders would not need to undergo the 4-step process of obtaining an HM endorsement: completing a theory training module, passing a written exam, passing a TSA Security Threat Assessment (STA), and paying an SDLA fee, if applicable. As outlined below, the total cost per driver to obtain an HM endorsement is \$261.

Drivers must take theory training from training providers listed on the FMCSA Training Provider Registry (TPR).

FMCSA anticipates that drivers impacted by this rule would opt to take online theory training because they live in remote areas. There are over 1,000 providers listed on the TPR that provide online HM endorsement training. FMCSA took a random sample of approximately 180 providers and researched websites to develop estimates of training cost and time. Based on those websites that provided information, FMCSA found that the theory training cost ranges from \$16 to \$200, with a mean cost of \$96 and a median cost of \$99. These trainings tend to be self-paced, so few companies advertise the average length of time to complete the training. From those companies that provided information, the time ranges from 1 hour to 16 hours, with a mean of 5 and a median of 2 hours. For estimation purposes, FMCSA anticipates that drivers impacted by this rule would save a \$99 theory training fee and 2 hours of training, valued at \$61.50. The opportunity cost of training time is valued at the rate at which drivers would accept in exchange for it, \$30.75 per hour (\$20.75 median hourly wage × 48.19 percent fringe benefit rate).<sup>14 15</sup>

Drivers seeking an HM endorsement must complete a background investigation through the TSA HM Endorsement Threat Assessment Program on-line application, visiting an application center, and paying a non-refundable fee of \$86.50. This process must be completed every 5 years in order to maintain the HM endorsement. Drivers operating under the waiver provided in the proposed rule would not be required to complete this process.

Lastly, Class A CDL holders operating under the waiver provided in the proposed rule would not need to return to the SDLA to obtain an HM endorsement and would not be required to pay the associated SDLA fee. The SDLA HM endorsement fee changes by jurisdiction, ranging from \$0 to over \$40. For illustrative purposes, FMCSA estimates the average SDLA fee to be \$14. As displayed in the table below, the total per driver cost to obtain an HM endorsement is \$261.

<sup>14</sup> Department of Labor (DOL), BLS. *Occupational Employment Statistics (OES)*. May 2023. Median hourly wage for Heavy and Tractor-Trailer truck drivers in the 115110 occupation is \$20.75. Available at: <http://www.bls.gov/oes/tables.htm> (accessed July 11, 2024).

<sup>15</sup> DOL, BLS. *Employer Cost for Employee Compensation for Transportation and Warehousing, Table 4: Table 4: Employer Costs for Employee Compensation for private industry workers by occupational and industry group*. March 17, 2023. Available at: <https://www.bls.gov/news.release/pdf/ecec.pdf> (accessed Apr. 22, 2024).

TABLE 1—COSTS TO OBTAIN HM ENDORSEMENT

Component	Value
Theory Training Fee .....	\$99.00
Driver Opportunity Cost of Training .....	61.50
TSA Background Fee .....	86.50
SDLA HM Endorsement Fee .....	14.00
<b>Total Cost Savings for each Class A CDL Holder .....</b>	<b>261.00</b>

FMCSA does not expect this proposal would immediately impact drivers who currently hold a Class A CDL and HM endorsement. The proposal could impact these drivers at the time of renewal by eliminating the fees for the HM endorsement.

These estimates do not include the costs associated with traveling to a TSA appointment center for the STA or traveling to the SDLA to take an HM knowledge test or obtain the HM endorsement. In rural areas where aerial agricultural operations are based, an SDLA may be several hundred miles away. FMCSA does not have data on how far drivers must travel to a TSA appointment center or an SDLA to pass the requirements to operate a vehicle transporting jet fuel but welcomes comment on the costs associated with this process.

Agricultural aviation operators would gain efficiencies from this proposal because pilots working for operators in participating States would not need to expend time and fuel to travel back to their home bases to refuel. Instead, they would rely on CMV drivers with Class A CDLs to transport jet fuel and crop protection products from permanent facilities, which are often far from the agricultural fields, to satellite airstrips. According to an NAAA survey from 2005, operators shared that in many cases they could not work because drivers were not available. The NAAA maintains that a shortage of available drivers with HM endorsements prevents the use of satellite airstrips, limiting the amount of land that can be sprayed on a given day and resulting in increased jet fuel costs. FMCSA does not know the current fuel or time (opportunity) costs these trips entail. In addition, FMCSA does not know how many more satellite facilities would be available as a result of this proposal and how many trips to mixing-loading facilities would be avoided by agricultural pilots. As such, FMCSA cannot estimate the cost savings that could result from this provision but requests comment on the impact of this proposed change as well as any data that the Agency can use to quantify the impact of this provision.



## Benefits

FMCSA does not expect this proposed rule would negatively impact CMV safety. For various reasons, drivers who transport jet fuel operate in low-risk safety conditions and rarely experience crashes. According to the previously mentioned survey from 2005 cited in the NAAA's initial application for endorsement, 95.3 percent of agricultural aviation operations had never been involved in any type of accident, and 92.9 percent travel on rural roads with minimal traffic. The NAAA also noted in this survey that drivers transporting fuel and chemicals travel an average of 57.81 miles per day, although they drive only once or twice a week to a satellite facility. Furthermore, the NAAA currently provides highway safety education for a large portion of the small business owners of agricultural aircraft operations throughout the country through its Professional Agricultural Aviation Support System.

The Agency has not identified any other benefits to society that would result from the proposed change to § 383.3(i).

### B. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking if a proposed rule is likely to lead to the promulgation of a major rule.<sup>16</sup> As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

### C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 September 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any

<sup>16</sup> A major rule means any rule that the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

significant economic impact. The term “small entities” comprises small businesses and 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. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. Therefore, FMCSA is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM.

An IRFA must contain the following:

1. A description of the reasons why the action is being considered;
2. A succinct statement of the objectives of, and legal basis for, the proposed rule;
3. A description—and where feasible, an estimate of the number of small entities to which the rule will apply;
4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record; and
5. An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

(1) *A description of the reasons why the action is being considered.*

FMCSA proposes to amend the CDL regulations to allow States additional flexibility to waive the HM endorsement<sup>17</sup> requirement for certain drivers transporting aviation fuel in furtherance of agricultural aviation operations. Many such operations rely on aircraft to apply pesticides or fertilizers to their crops. Agricultural aviation operators often deliver aircraft fuel to staging areas some distance from their headquarters. These companies, particularly in remote, rural areas, have difficulty finding CDL holders with HM endorsements to complete these deliveries.

(2) *A succinct statement of the objectives of, and legal basis for, the proposed rule.*

The CDL regulations are based on the authority of CMVSA. Section 12013 of the CMVSA allowed the FHWA, FMCSA's predecessor agency, to

<sup>17</sup> Endorsement as defined in § 383.5 means an authorization to an individual's CLP or CDL required to permit the individual to operate certain types of commercial motor vehicles.

“waive, in whole or in part, application of any provision of this title or any regulation issued under this title with respect to class of persons or class of commercial motor vehicles if the Secretary determines that such waiver is not contrary to the public interest and does not diminish the safe operation of commercial motor vehicles” (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, 3207–186, Oct. 27, 1986, codified at 49 U.S.C. app. 2711). Following statutory amendments,<sup>18</sup> the language of the CMVSA's section 12013—that a waiver must be “not contrary to the public interest” and “not diminish the safe operation of commercial motor vehicles”—has been replaced by the standard that a waiver or an exemption must “likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved in the absence of the waiver” (49 U.S.C. 31315(a) or “absent such exemption” (49 U.S.C. 31315(b)(1)).

FMCSA believes that the ELOS standard required by the waiver and exemption provisions is the appropriate standard for this NPRM. The 1992 FHWA rule authorized the States to waive the knowledge and skills tests otherwise required to obtain a CDL for employees of custom harvesters, farm retail outlets and suppliers, agrichemical businesses, and livestock feeders (57 FR 13650, Apr. 17, 1992) and required that the State waiver option not diminish the safe operation of CMVs, and all subsequent versions of the statute and regulation have retained that ELOS concept. Congress itself clearly embraced that standard when section 7208 was explicitly limited to the same four agriculture-related businesses covered by the 1992 exemption.

Pursuant to 49 U.S.C. 31305(a), which sets forth the general standards for the CDL rules, FMCSA “shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle.” Implicit in that provision is the authority to decide whether certain CDL holders may meet the “fitness” requirement without complying with every part of the CDL regulations. FMCSA believes that exempting employees of agricultural aviation companies who hold Class A CDLs and transport jet fuel from the

<sup>18</sup> Title 49, United States Code, was recodified in 1994, the waiver authority in 49 U.S.C. app. 2711 was redesignated as 49 U.S.C. 31315 (Pub. L. 103–272, 108 Stat. 745, 1029, July 5, 1994), and the Transportation Equity Act for the 21st Century (TEA–21) revised 49 U.S.C. 31315 as “Waivers, exemptions, and pilot programs” (Pub. L. 105–178, 112 Stat. 107, 401, June 9, 1998).

requirement to obtain a HM endorsement is consistent, both with the standard of the CMVSA's section 12013 and with the current ELOS and "fitness" standards enacted by Congress. A waiver granted by a State under this proposal, as under section 7208 of the FAST Act, would also exempt eligible drivers from the TSA background records check in 49 CFR part 1572, subpart B.

(3) *A description—and, where feasible, an estimate of the number—of small entities to which the proposed rule will apply.*

Under the standards of the RFA, as amended by SBREFA, the participating States are not small entities. States are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, States are not considered small governmental jurisdictions under section 601(5) of the RFA, both because State government is not included among the various levels of government listed in section 601(5), and because, even if this were the case, no State or the District of Columbia has a population of less than 50,000, which is the criterion by which a governmental jurisdiction is considered small under section 601(5) of the RFA.

Drivers are not considered small entities because they do not meet the definition of a small entity in section 601 of the RFA. Specifically, drivers are considered neither a small business under section 601(3) of the RFA, nor are they considered a small organization under section 601(4) of the RFA.

The Small Business Administration (SBA) defines the size standards used to classify entities as small. SBA establishes separate standards for each industry, as defined by the NAICS. FMCSA expects that CMV drivers transporting jet fuel would largely be employed by aerial application operators that operate within the Agriculture, Forestry, Fishing and Hunting sector (NAICS sector 11), and more specifically, within NACIS industry 115110 (support activities for crop production). Industry groups within the 1151 NAICS industry have size standards based on the amount of annual revenue and ranging from \$8.5 million in revenue to \$34 million in revenue. There is not a specific NAICS national industry for aerial application operators, and therefore it is not possible to narrow down the Census data to determine the number of small entities that are potentially impacted by this rule. Based on the NAAA membership, FMCSA estimates that, if adopted in all jurisdictions, this rule could impact up to 1,900 aerial

application operators.<sup>19</sup> FMCSA requests comment on how many of these entities would be considered small based on the SBA size standards.

(4) *A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record.*

This proposal would not result in reporting, recordkeeping, or other compliance requirements. This proposed rule is voluntary in nature and does not require that States adopt any flexibilities provided in the proposed rule. Further, the Agency did not identify significant alternatives that would lessen the burden on small entities beyond the proposed exemption in § 383.3(i).

(5) *An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.*

FMCSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule.

#### D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this proposed rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-ombudsman>) and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by

employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 \$200 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. Though this NPRM would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

#### F. Paperwork Reduction Act

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

#### G. E.O. 13132 (Federalism)

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has "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."

FMCSA has determined that this rule would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

#### H. Privacy

The Consolidated Appropriations Act, 2005,<sup>20</sup> requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information (PII).

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program.

<sup>19</sup>National Agricultural Aviation Association (NAAA), <https://www.agaviation.org/about/>. Accessed: July 18, 2024

<sup>20</sup>Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

The E-Government Act of 2002,<sup>21</sup> requires Federal agencies to conduct a Privacy Impact Assessment (PIA) for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

In addition, the Agency submitted a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA has been submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

*I. E.O. 13175 (Indian Tribal Governments)*

This rule does not have Tribal implications under E.O. 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. National Environmental Policy Act of 1969*

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321, *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680), Appendix 2, paragraph (6)(t)(2). The categorical exclusion (CE) in paragraph (6)(t)(2) covers requirements ensuring that States have the appropriate regulations concerning the qualification and licensing of persons who apply and are issued a commercial driver's license. The proposed requirements in this rule are covered by this CE.

*K. Rulemaking Summary*

As required by 5 U.S.C. 553(b)(4), a summary of this rule can be found in the Abstract section of the Department's Unified Agenda entry for this rulemaking at <https://www.reginfo.gov/>

<sup>21</sup> Public Law 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

[public/do/eAgendaViewRule?pubId=202310&RIN=2126-AC59](https://www.govinfo.gov/public/do/eAgendaViewRule?pubId=202310&RIN=2126-AC59).

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

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

Accordingly, FMCSA proposes to amend 49 CFR chapter III, part 383 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.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 23019 of Pub. L. 117-58, 135 Stat. 429, 777; and 49 CFR 1.87.

■ 2. Amend § 383.3 by revising paragraph (i) to read as follows:

**§ 383.3 Applicability.**

\* \* \* \* \*

(i) *Hazardous materials endorsement exemption for certain drivers transporting diesel or jet fuel.* A State may waive the requirement for a holder of a Class A commercial driver's license to obtain a hazardous materials endorsement under this part, if the license holder is:

(1) Acting within the scope of the license holder's employment, and within the State of domicile (or another State with a hazardous materials endorsement exemption) as an employee of a custom harvester operation, agrichemical business, farm retail outlet and supplier, livestock feeder, or agriculture aviation operation; and

(2) Operating a service vehicle that is: (i) Transporting diesel or jet fuel in a quantity of 3,785 liters (1,000 gallons) or less; and

(ii) Clearly placarded in accordance with 49 CFR part 172 subpart F and all other applicable HMRs.

\* \* \* \* \*

■ 3. Amend § 383.5 by adding in alphabetical order a definition for *jet fuel* to read as follows:

**§ 383.5 Definitions.**

\* \* \* \* \*

*Jet fuel* means "fuel, aviation, turbine engine" as listed in the Hazardous Materials Table in § 172.101 of this title that is reclassified as a combustible liquid in accordance with part 173 of this title.

\* \* \* \* \*

Issued under authority delegated in 49 CFR 1.87.

Vincent G. White,  
Deputy Administrator.

[FR Doc. 2024-28097 Filed 12-3-24; 8:45 am]

BILLING CODE 4910-EX-P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 679**

[Docket No. 241127-0305; RTID 0648-XE346]

**Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands; Proposed 2025 and 2026 Harvest Specifications for Groundfish**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Proposed rule; harvest specifications and request for comments.

**SUMMARY:** NMFS proposes 2025 and 2026 harvest specifications, apportionments, and prohibited species catch allowances for the groundfish fisheries of the Bering Sea and Aleutian Islands (BSAI) management area. This action is necessary to establish harvest limits for groundfish during the 2025 and 2026 fishing years and to accomplish the goals and objectives of the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP). The 2025 harvest specifications supersede those previously set in the final 2024 and 2025 harvest specifications, and the 2026 harvest specifications will be superseded in early 2026 when the final 2026 and 2027 harvest specifications are published. The intended effect of this action is to conserve and manage the groundfish resources in the BSAI in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

**DATES:** Comments must be received by January 3, 2025.

**ADDRESSES:** A plain language summary of this proposed rule is available at <https://www.regulations.gov/docket/NOAA-NMFS-2024-0116>. You may submit comments on this document, identified by NOAA-NMFS-2024-0116, by any of the following methods:

- *Electronic Submission:* Submit all electronic public comments via the