

**DEPARTMENT OF TRANSPORTATION**

**[4910-EX-P]**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 380, 383, and 384**

**[Docket No. FMCSA-2007-27748]**

**RIN 2126-AC25**

**Extension of Compliance Date for Entry-Level Driver Training**

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

**ACTION:** Interim final rule with request for comment.

**SUMMARY:** FMCSA is amending its December 8, 2016, final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (ELDT final rule), by extending the compliance date for the rule from February 7, 2020, to February 7, 2022. This action will provide FMCSA additional time to complete development of the Training Provider Registry (TPR). The TPR will allow training providers to self-certify that they meet the training requirements and will provide the electronic interface that will receive and store entry-level driver training (ELDT) certification information from training providers and transmit that information to the State Driver Licensing Agencies (SDLAs). The extension also provides SDLAs with time to modify their information technology (IT) systems and procedures, as necessary, to accommodate their receipt of driver-specific ELDT data from the TPR. FMCSA is delaying the entire ELDT final rule, as opposed to a partial delay as proposed, due to delays in implementation of the TPR that were not foreseen when the proposed rule was published.

**DATES:** This interim final rule is effective [Insert date of publication in the FEDERAL REGISTER]. Comments on this interim final rule must be received on or before [Insert date 45 days after publication in the FEDERAL REGISTER].

Petitions for Reconsideration of this interim final rule must be submitted to the FMCSA Administrator no later than [Insert date 30 days after publication in the FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Mr. Richard Clemente, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4325, [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions on viewing or submitting material to the docket, contact Docket Operations, (202) 366-9826.

**ADDRESSES:** You may submit comments identified by Docket Number FMCSA-2007-27748 using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments.
- Mail: Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12-140, Washington, DC 20590-0001.
- Hand Delivery or Courier: West Building, Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

To avoid duplication, please use only one of these four methods.

## **SUPPLEMENTARY INFORMATION:**

This interim final rule is organized as follows:

- I. Rulemaking Documents
  - A. Availability of Rulemaking Documents
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  - P. National Technology Transfer and Advancement Act (Technical Standards)
  - Q. Environment
  - R. E.O. 13783 (Promoting Energy Independence and Economic Growth)

## **I. RULEMAKING DOCUMENTS**

- A. Submitting Comments**

If you submit a comment, please include the docket number for this interim final rule (Docket No. FMCSA-2007-27748), indicate the specific section of this document to which each section 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 e-mail address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2007-27748>, click on the “Comment Now!” button and type your comment into the text box on the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party and then submit.

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 comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this interim final rule based on your comments. FMCSA may issue a final rule at any time after the close of the comment period.

#### **Confidential Business Information**

Confidential business information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom

of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to the interim final rule contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this interim final rule, 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 FOIA, and they will not be placed in the public docket of this interim final rule. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Analysis Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington DC 20590. Any comments FMCSA receives which are not specifically designated as CBI will be placed in the public docket for this rulemaking.

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

#### **B. Viewing Comments and Documents**

To view comments, as well as any documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov/#!docketDetail;D=FMCSA-2007-27748> and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting Docket Operations in Room W12-140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

#### **C. Privacy Act**

In accordance with 5 USC 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, 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 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## **II. EXECUTIVE SUMMARY**

### **A. Purpose and Summary of the Interim Final Rule**

FMCSA extends the compliance date for the 2016 final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (81 FR 88732, December 8, 2016), from February 7, 2020, to February 7, 2022. The two-year extension applies to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific training certification information into the TPR, an electronic database that will contain ELDT information;
2. The date by which SDLAs must confirm that applicants for a commercial driver’s license (CDL) have complied with ELDT requirements prior to taking a specified knowledge or skills test;
3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and
4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

This extension is necessary so that FMCSA can complete the IT infrastructure to support the TPR, which will allow training providers to self-certify, request listing on the

TPR, and upload the driver-specific ELDT completion information to the TPR. Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the SDLAs. This delay also provides SDLAs time to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver ELDT completion information transmitted from the TPR.

In addition to providing for this delay, FMCSA is also making clarifying and conforming changes to the regulations established by the ELDT final rule, as proposed. FMCSA does not make any other substantive changes to the requirements established by the ELDT final rule.

#### **B. Costs and Benefits**

In the 2016 ELDT final regulatory impact analysis (RIA), entry-level drivers, motor carriers, training providers, SDLAs, and the Federal government were estimated to incur costs for compliance and implementation. In 2019, FMCSA published a separate final rule that amended the existing ELDT regulations by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B CDL holders upgrading to a Class A CDL.

In the 2016 and 2019 final rules, FMCSA projected costs and benefits beginning in 2020. Because FMCSA is delaying ELDT implementation to 2022, this regulatory evaluation accounts for the costs and benefits that will therefore not be realized in years 2020 through 2021, as well as the temporal shift of the 2016 and 2019 final rules' costs and benefits to years 2022 and beyond. Because FMCSA estimated the net impact of the 2016 and 2019 final rules to include both costs and benefits, we estimate the delay to

result in cost savings and disbenefits. Updated to 2018 dollars,<sup>1</sup> the 2016 final rule resulted in annualized costs of \$390 million at a 3 percent discount rate and \$391 million at a 7 percent discount rate. The 2016 final rule resulted in annualized benefits of \$251 million at a 3 percent discount rate and \$252 million at a 7 percent discount rate, also updated to 2018 dollars. The 2019 final rule reduced those annualized costs by \$19 million (in 2018 dollars) at both 3 percent and 7 percent discount rates, and did not have an impact on benefits. The Agency estimates this final rule will result in annualized cost savings of \$179 million and \$196 million at 3 percent and 7 percent discount rates, respectively, over a 4-year period from 2020 through 2023.<sup>2</sup> The Agency estimates this final rule will result in annualized forgone benefits of \$108 million at a 3 percent discount rate and \$112 million at a 7 percent discount rate. In the summary table below, FMCSA presents the changes in total costs and benefits that will result from this rule relative to the baseline.

<b>Total Costs and Benefits of the Final Rule (in millions of 2018 dollars)</b>						
<b>Year</b>	<b>Costs</b>			<b>Benefits</b>		
	<b>Discount Rate</b>			<b>Discount Rate</b>		
	<b>Undiscounted</b>	<b>3%</b>	<b>7%</b>	<b>Undiscounted</b>	<b>3%</b>	<b>7%</b>
<b>2020</b>	(\$420)	(\$420)	(\$420)	(\$86)	(\$86)	(\$86)
<b>2021</b>	(\$343)	(\$333)	(\$320)	(\$146)	(\$142)	(\$137)
<b>2022</b>	\$87	\$79	\$68	(\$120)	(\$113)	(\$105)

<sup>1</sup> All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065. The GDP deflator for 2014 is 103.680 and the deflator for 2018 is 110.389.  $110.389/103.680 = 1.065$ . This is based on Implicit Price Deflators for Gross Domestic Product (GDP) from on the Bureau of Economic Analysis (BEA) archive of National Accounts (NIPA) data that were initially published on March 1, 2019 in connection with the Initial estimates for 2018 Q4. Accessed April 2019 at <https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2018&DQ=Q4&DV=Initial&dNRD=March-1-2019>.

<sup>2</sup> In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there will be no change in costs or benefits under this NPRM for years 5 through 10 (2024-2029). While FMCSA did not use the following values in the analysis, for comparison with the previous rules, the cost savings of this final rule annualized across 10 years would be \$78 million at a 3% discount rate and \$95 million at a 7% discount rate. The forgone benefits annualized over 10 years would be \$47 million at a 3% discount rate and \$54 million at a 7% discount rate.



<b>2023</b>	\$9	\$9	\$8	(\$62)	(\$61)	(\$50)
<b>Total</b>	(\$666)	(\$664)	(\$664)	(\$414)	(\$403)	(\$378)
<b>Annualized</b>		(\$179)	(\$196)		(\$108)	(\$112)

### III. ABBREVIATIONS AND ACRONYMS

AAMVA	American Association of Motor Vehicle Administrators
ANPRM	Advance Notice of Proposed Rulemaking
BTW	Behind the Wheel
CDL	Commercial Driver's License
CDLIS	Commercial Driver's License Information System
CFR	Code of Federal Regulations
CMV	Commercial Motor Vehicle
CMVSA	Commercial Motor Vehicle Safety Act
DOT	U.S. Department of Transportation
ELDT	Entry-Level Driver Training
E.O.	Executive Order
FMCSA	Federal Motor Carrier Safety Administration
FMCSRs	Federal Motor Carrier Safety Regulations
FR	Federal Register
FRFA	Final Regulatory Flexibility Analysis
IT	Information Technology
NEPA	National Environmental Policy Act of 1969
NPRM	Notice of Proposed Rulemaking
OMB	Office of Management and Budget
PIA	Privacy Impact Assessment
PII	Personally Identifiable Information
PRA	Paperwork Reduction Act
RIA	Regulatory Impact Analysis
RIN	Regulation Identifier Number
SDLA	State Driver Licensing Agency
SORN	Systems of Records Notice
§	Section symbol
TPR	Training Provider Registry
U.S.C.	United States Code

### IV. LEGAL BASIS

The legal basis of the ELDT final rule, set forth at 81 FR 88738-88739, also serves as the legal basis for this interim final rule. A summary of the statutory authorities identified in that discussion follows.

FMCSA's authority to amend the ELDT final rule by extending the compliance date and making other necessary clarifying and conforming changes is derived from several concurrent statutory sources. The Motor Carrier Act of 1935, as amended, codified at 49 U.S.C. 31502(b), authorizes the Secretary of Transportation (the Secretary) to prescribe requirements for the safety of motor carrier operations. The rule also relies on the Motor Carrier Safety Act of 1984, as amended, codified at 49 U.S.C. 31136(a)(1) and (2), requiring the Secretary to establish regulations to ensure that CMVs are operated safely, and that responsibilities placed on CMV drivers do not impair their ability to safely operate CMVs. The rule does not address medical standards for drivers or physical effects related to CMV driving (49 U.S.C. 31136(a)(3) and (4)). The Agency does not anticipate that drivers will be coerced as a result of this rule (49 U.S.C. 31136(5)). The Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as amended, codified generally in 49 U.S.C. chapter 313, established the CDL program and required the Secretary to promulgate implementing regulations, including minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The specific statutory provision underlying the ELDT final rule, enacted as part of The Moving Ahead for Progress in the 21<sup>st</sup> Century Act and codified at 49 U.S.C. 31305(c), required the Secretary to establish minimum entry-level driver training standards for certain individuals required to hold a CDL.

The Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311, 313, and 315, as they relate to CMV operators, programs, and safety.

## **V. REGULATORY HISTORY**

*ELDT Final Rule*

The ELDT 2016 final rule established minimum training standards for individuals applying for a Class A or Class B CDL for the first time; individuals upgrading their CDL to a Class B or Class A; and individuals obtaining the following endorsements for the first time: hazardous materials (H), passenger (P), and school bus (S). The final rule also defined curriculum standards for theory and behind-the-wheel (BTW) instruction for Class A and B CDLs and the P and S endorsements, and theory instruction requirements for the H endorsement. Additionally, the rule required that SDLAs verify ELDT completion before allowing the applicant to take a skills test for a Class A or Class B CDL, or a P or S endorsement; or a knowledge test prior to obtaining the H endorsement.

The final rule also established the TPR, an online database which would allow ELDT providers to electronically register with FMCSA and certify that individual driver-trainees completed the required training. The rule set forth eligibility requirements for training providers to be listed on the TPR, including a certification, under penalty of perjury, that their training programs meet those requirements. The final rule, when fully implemented, will require training providers to enter driver-specific ELDT information, which FMCSA will then verify before transmitting to the SDLA. The process is designed to deliver a finished “product” (i.e., verified driver-specific ELDT information) to the end user, the SDLA.

*NPRM to Partially Extend the ELDT Compliance Date*

On July 18, 2019, FMCSA published a notice of proposed rulemaking (NPRM) titled “Partial Extension of Compliance Date for Entry-Level Driver Training” (84 FR 34324). That NPRM proposed delaying, from February 7, 2020 to February 7, 2022, two

provisions from the ELDT final rule published on December 8, 2016 (81 FR 88732). The NPRM is discussed further below.

## **VI. DISCUSSION OF PROPOSED RULE**

The NPRM proposed a new compliance date of February 7, 2022, for two provisions of the ELDT final rule: the requirement that training providers upload driver-specific training certification information to the TPR, and the requirement that SDLAs confirm driver applicants are in compliance with the ELDT requirements prior to taking a skills test for a Class A or Class B CDL, or a P or S endorsement, or prior to taking the knowledge test to obtain the H endorsement. In the NPRM, FMCSA explained that the proposed delay was necessary to allow both the Agency and SDLAs to complete the requisite IT infrastructure to accommodate the two requirements. The NPRM, which did not propose extending the compliance date for any other ELDT requirement, also proposed several clarifying and conforming changes to the ELDT final rule. FMCSA received 56 comments on the NPRM. No public meeting was requested and none was held.

## **VII. DISCUSSION OF COMMENTS AND CHANGES TO THE PROPOSED RULE**

FMCSA received 56 comments on the proposed rule. Of these, 40 commenters requested that FMCSA delay all provisions of the ELDT final rule. These comments endorsing a delay of the rule in its entirety were filed by individuals, State organizations, and several industry organizations. Commenters noted that a partial delay would cause confusion, particularly regarding how SDLAs should verify driver applicant compliance with the training requirements without being able to check using the electronic system

envisioned by the ELDT final rule. Commenters questioned the effectiveness of enforcement if the SDLAs were not verifying training completion prior to administering required tests. They also argued that the partial extension would place an undue burden on the driver applicants, who would incur the costs of taking the new training even though there would not be “proof” of that training in the TPR for another two years. Several of these commenters went on to argue that the partial delay could make it harder to recruit drivers, particularly in rural areas.

Six additional commenters opposed the proposed partial delay, with two of these commenters specifically stating the ELDT final rule should be implemented on the original compliance date of February 7, 2020. The commenters opposing the partial delay included the Commercial Vehicle Training Association (CVTA) and the National Association of Publicly Funded Truck Driving Schools (NAPFTDS), as well as individual commenters. CVTA and NAPFTDS stated that FMCSA must take into consideration how the partial delay could impact motor carrier liability, and one individual noted that the partial delay would make enforcement ineffective. One individual noted that the States have had plenty of notice, and another cited the need for full implementation as soon as possible to improve highway safety.

Five commenters expressed support for the proposed partial delay, with two of these commenters (Instructional Technologies, Inc. and the SAGE Truck Driving Schools Corporation) specifically commenting on the IT issues discussed in the NPRM. Two of these commenters (Power and Communications Contractors Association and American Truck Dealers/National Automobile Dealers Association) offered lukewarm support, stating that they preferred full implementation of the ELDT final rule as originally

intended, but that in light of the IT issues discussed in the NPRM they agreed a partial delay was necessary.

Two commenters, the American Trucking Associations, Inc. and Owner-Operator Independent Drivers' Association, requested that FMCSA answer questions prior to implementing a partial delay. These questions related to the actions SDLAs would be expected to take in order to verify that driver applicants had received the required ELDT prior to administering testing, in the absence of being able to receive ELDT verification from the TPR.

Three commenters offered no position on the NPRM, and offered no substantive comments.

The Agency agrees with the enforcement concerns raised by commenters, noting that the partial delay proposed in the NPRM would have placed SDLAs in an unfavorable position of having to take applicants' word, or create a new paperwork burden, that they completed their required training prior to appearing at an SDLA for required testing. FMCSA also recognizes the potential impacts on motor carrier's liability, as noted by CVTA and NAPFTDS. Given the delay in developing the IT infrastructure, however, FMCSA is not making a determination whether these concerns, alone, would have been enough to warrant a full delay.

FMCSA is issuing this interim final rule to delay all of the ELDT final rule's requirements by 2 years, to February 7, 2022. As discussed below in section VIII., FMCSA cannot complete the development of the IT system required to implement the ELDT final rule in full by the original compliance date of February 7, 2020. FMCSA acknowledges that delaying the implementation for the entire ELDT final rule addresses

many of the implementation questions presented by commenters, and that the majority of commenters requested the full delay of the ELDT final rule.

As discussed above in Section II. B., “Costs and Benefits,” delaying the full ELDT final rule will also delay the qualitative safety benefits associated with that rule, which would not have occurred with a partial delay, as proposed. However, due to the fact that FMCSA cannot complete development of the TPR in time for the February 2, 2020, compliance date, the Agency must extend the compliance date for all requirements set forth in the ELDT final rule to February 7, 2022. The specific impacts of the full two-year delay are discussed below in Section XI, “Regulatory Analyses.”

#### **VIII. DISCUSSION OF INTERIM FINAL RULE**

FMCSA extends the compliance date for the 2016 final rule, “Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators” (81 FR 88732, December 8, 2016), from February 7, 2020, to February 7, 2022. The 2-year extension applies to all requirements established by the ELDT final rule, including:

1. The date by which training providers must begin uploading driver-specific training certification information into the TPR, an electronic database that will contain ELDT information;
2. The date by which SDLAs must confirm that applicants for a CDL have complied with ELDT requirements prior to taking a specified knowledge or skills test;
3. The date by which training providers wishing to provide ELDT must be listed on the TPR; and
4. The date by which drivers seeking a CDL or endorsement must complete the required training, as set forth in the ELDT final rule.

This extension is necessary so that FMCSA can complete the IT infrastructure to support the TPR, which will allow training providers to self-certify, request listing on the TPR, and upload the driver-specific ELDT completion information to the TPR. Despite the Agency's best efforts, due to IT development issues largely beyond its control, FMCSA cannot complete any portion of the TPR in time for the February 7, 2020, compliance date established by the ELDT final rule. These issues include changes in Department of Transportation (DOT) internal requirements for cloud-based IT systems, which added time to the development process, which in turn made it impossible for FMCSA to implement a TPR that would be able to accept training provider registrations by February 7, 2020.

Completion of the TPR technology platform is also necessary before driver-specific ELDT completion information can be transmitted from the TPR to the SDLAs. FMCSA has determined that two years will provide sufficient time for the Agency to develop and complete this infrastructure, as well as for the SDLAs to make changes, as necessary, to their IT systems and internal procedures to allow them to receive the driver's ELDT completion information transmitted from the TPR.

In addition to providing for this delay, FMCSA is also making clarifying and conforming changes to the regulations established by the ELDT final rule, as proposed. FMCSA does not make any other substantive changes to the requirements established by the ELDT final rule.

#### **Administrative Procedure Act - "Good Cause" Exception**

FMCSA has good cause to proceed with the immediate delay of the compliance date for the entire rule, including the two regulatory provisions not included in the NPRM



proposing a partial delay.<sup>3</sup> The Administrative Procedure Act (APA) provides that notice and public comment procedures are not required when an Agency finds there is “good cause” to dispense with such procedures and incorporates the finding and a brief statement of reasons to support the finding in the rule issued. Good cause exists when the agency determines that notice and public comment procedures are impracticable, unnecessary, or contrary to the public interest (5 U.S.C. 553 (b)(3)(B)). In this case, FMCSA finds that allowing for notice and comment on delaying the training provider curriculum and registration requirements and the driver applicant training portions of the ELDT final rule is impracticable and contrary to the public interest. Despite the Agency’s best efforts, due to IT development issues largely beyond its control, FMCSA cannot complete any portion of the TPR in time for the February 7, 2020, compliance date established by the ELDT final rule. These issues include changes in Department of Transportation (DOT) internal requirements for cloud-based IT systems, which added time to the development process, which in turn made it impossible for FMCSA to implement a TPR that would be able to accept training provider registrations by February 7, 2020.

In addition to being impracticable to provide prior notice and comment on extending the compliance date for the final rule, it would also be contrary to the public interest by prolonging uncertainty among individuals seeking to obtain the impacted CDLs and endorsements as to what training provisions will apply to them. Additionally, questions regarding a firm compliance date could potentially delay motor carriers from

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<sup>3</sup> Good cause need not be claimed for the two provisions that were part of the proposed partial delay, namely the training provider upload of driver-specific training completion information and the SDLA verification of driver-applicant training completion prior to conducting a skills test or, in the case of an H endorsement, a knowledge test.

hiring or otherwise utilizing those drivers until the uncertainty is lifted. FMCSA therefore finds that good cause exists to forgo prior notice and comment before extending the compliance date. Nonetheless, this interim final rule includes a 45-day comment period. FMCSA will consider and address any submitted comments in the final rule that will follow this interim final rule.

For the same reasons discussed above, FMCSA finds good cause for making this final rule effective less than 30 days after publication, in accordance with 5 U.S.C. 553(d).

## **IX. INTERNATIONAL IMPACTS**

The FMCSRs, and any exceptions to the FMCSRs, apply only within the United States (and, in some cases, United States territories). Motor carriers and drivers are subject to the laws and regulations of the countries in which they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences among nations.

## **X. SECTION-BY-SECTION ANALYSIS**

FMCSA revises the headings for Subparts E and F in part 380, as well as sections 380.600 and 380.603, by changing the compliance date for entry-level drivers to obtain the training found in Subpart F. In all places where it appears, the date is changed from February 7, 2020, to February 7, 2022.

In section 383.71, paragraphs (a)(3), (b)(11), and (e)(5), FMCSA changes the individual drivers' compliance date from February 7, 2020, to February 7, 2022. This delays by two years the date by which individuals seeking a Class A or B CDL for the first time, a passenger endorsement for the first time, a school bus endorsement for the

first time, or a hazardous materials endorsement for the first time must complete the training prescribed in 49 CFR part 380, subpart F, prior to taking the skills test (for all but the hazardous materials endorsement) or knowledge test (for the hazardous materials endorsement).

In section 383.73, paragraphs (b)(11), (e)(9), and (p), FMCSA changes the States' compliance date from February 7, 2020, to February 7, 2022. This delays by two years the date by which a State must verify the applicant has completed the required ELDT, and also delays the date when a State must begin complying with the requirement to notify FMCSA if a training provider in that State does not meet the minimum requirements for CMV instruction. The Agency also revises the States' compliance date in section 384.230, from February 7, 2020, to February 7, 2022. In paragraph (a), this date identifies when a State must comply with the requirements of sections 383.73(b)(11) and (e)(9). In paragraphs (b)(1) and (b)(2), this date identifies when States must come into substantial compliance with the ELDT-related requirements of sections 383.73 and 384.230.

Unrelated to the changes made to delay the compliance date wherever it appears, FMCSA is making clarifying changes to existing ELDT-related requirements in section 383.73. In paragraphs (b)(3) and (b)(3)(ii), FMCSA removes references to the State performing a check for whether the applicant has completed required training prior to initial issuance of the CDL. This change reflects that, as intended by the ELDT final rule, the threshold for the SDLA's verification that an applicant completed the required ELDT is at the point of skills testing or, in the case of the H endorsement, knowledge testing. This change eliminates what would otherwise be a duplicative requirement inadvertently

imposed on the States; the requirement that States verify the applicant received ELDT training before conducting skills testing is already set forth in section 383.73(b)(11). Similarly, FMCSA revises paragraph (e)(9) to clarify that the State must verify an applicant's completion of required ELDT at the point of testing, not issuance.

## **XI. REGULATORY ANALYSES**

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

The Office of Information and Regulatory Affairs has determined that this interim final rule is an economically significant regulatory action under E.O. 12866,<sup>4</sup> Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). It also is significant under DOT regulatory policies and procedures because the economic costs and benefits of the rule exceed the \$100 million annual threshold.

As discussed above, this interim final rule will delay, until February 7, 2022, the compliance date of the provisions in the 2016 Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators Final Rule (81 FR 88732) and the 2019 ELDT Commercial Driver's License Upgrade from Class B to Class A final rule (84 FR 8029), henceforth referred to as the "2016 final rule" and "2019 final rule," respectively. FMCSA did not propose any substantive changes to the existing regulatory text in 49 CFR part 380, 383, or 384 in the NPRM.

In the 2016 ELDT final RIA, entry-level drivers, motor carriers, training providers, SDLAs, and the Federal government were estimated to incur costs for

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<sup>4</sup> 58 FR 51735-51744 (Sept. 30, 1993).

compliance and implementation starting in 2020. In 2019, FMCSA published a separate final rule that amended the existing ELDT regulations by adopting a new Class A CDL theory instruction upgrade curriculum to reduce the training time and costs incurred by Class B CDL holders upgrading to a Class A CDL.

In the 2016 and 2019 final rules, FMCSA projected costs and benefits beginning in 2020. Because FMCSA is delaying ELDT implementation by 2 years to 2022, this regulatory evaluation accounts for the costs and benefits that will therefore not be realized in years 2020 through 2021, as well as the temporal shift of the 2016 and 2019 final rules' costs and benefits to years 2022 and beyond. Because FMCSA estimated the net impact of the 2016 and 2019 final rules to include both costs and benefits, we estimate the delay to result in cost savings and disbenefits. Updated to 2018 dollars,<sup>5</sup> the 2016 final rule resulted in annualized costs of \$390 million at a 3 percent discount rate and \$391 million at a 7 percent discount rate. The 2019 final rule reduced those annualized costs by \$19 million (in 2018 dollars) at both 3 percent and 7 percent discount rates. FMCSA estimates this final rule will result in annualized cost savings of \$179 million and \$196 million at 3 percent and 7 percent discount rates, respectively, over a 4-year period from 2020 through 2023.<sup>6</sup>

### **History of ELDT Rulemakings' Regulatory Impacts**

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<sup>5</sup> All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065. The GDP deflator for 2014 is 103.680 and the deflator for 2018 is 110.389.  $110.389/103.680 = 1.065$ . This is based on Implicit Price Deflators for Gross Domestic Product (GDP) from on the Bureau of Economic Analysis (BEA) archive of National Accounts (NIPA) data that were initially published on March-1-2019 in connection with the Initial estimates for 2018 Q4. Accessed April 2019 at <https://apps.bea.gov/histdata/fileStructDisplay.cfm?HMI=7&DY=2018&DQ=Q4&DV=Initial&dNRD=March-1-2019>.

<sup>6</sup> In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there will be no change in costs or benefits under this NPRM for years 5-10 (2024-2029).

The costs of the 2016 final rule included tuition expenses, the opportunity cost of time while in training, compliance audit costs, and implementation and monitoring of the TPR. The 2019 ELDT final rule established a new theory instruction upgrade curriculum that removed eight instructional units involving “Non-Driving Activities” for Class B CDL holders upgrading to a Class A CDL because Class B CDL holders have previous training or experience in the CMV industry. The 2019 final rule did not change the BTW training requirements set forth in the 2016 final rule. FMCSA estimated that the new theory curriculum resulted in cost savings by taking less time to complete, without impacting the benefits of the 2016 ELDT final rule.

#### **Costs of the Interim Final Rule**

In this regulatory evaluation, FMCSA estimates the impacts of this rule for years 2020 through 2023, and uses the 2016 and 2019 ELDT final rules as the baseline for its estimates. This rule will delay implementation of the ELDT final rules to 2022, making 2022 the first year in which regulatory impacts of the previous final rules will be realized. Accordingly, this final rule will result in net cost savings using the previous final rules as the baseline. The Agency presents the costs and cost savings of this rule below.

#### **Entry-Level Driver Costs**

The cost savings of this rule to entry-level drivers include costs that would have been incurred in 2020 through 2021 for identifying a training provider on the registry, the cost of tuition, and the opportunity cost of time spent in training. In Table 1 below, FMCSA presents the change in costs to entry-level drivers that will result from the rule relative to the baseline.

To illustrate the logic behind the cost impacts of this rule to entry-level drivers, the following example discusses those impacts that will occur in year 2020. In the 2016 final rule, FMCSA estimated that drivers would incur costs of \$345 million<sup>7</sup> (at both 3 percent and 7 percent discount rates) in 2020. In the 2019 final rule, FMCSA estimated drivers would incur \$8 million in cost savings (at both 3 percent and 7 percent discount rates) in 2020. Thus, FMCSA estimates that this rule will result in a net savings of \$337 million in 2020 (\$337 million = \$345 million - \$8 million), at both 3 percent and 7 percent discount rates, with a similar magnitude of savings in 2021.

FMCSA estimates the annualized cost savings of this rule to entry-level drivers will be \$179 million over four years at a 3 percent discount rate and \$193 million at a 7 percent discount rate as shown in Table 1.

<b>Year</b>	<b>Undiscounted</b>	<b>Discounted at 3%</b>	<b>Discounted at 7%</b>
2020	(\$337)	(\$337)	(\$337)
2021	(\$339)	(\$329)	(\$317)
Total	(\$675)	(\$666)	(\$653)
Annualized		(\$179)	(\$193)

### **Motor Carrier Costs**

In the 2016 final RIA, FMCSA valued the opportunity cost to motor carriers as represented by the forgone profit resulting from the amount of time drivers spend in training rather than driving.<sup>8</sup> In Table 2 below, FMCSA presents the change in costs to motor carriers that will result from this rule relative to the baseline.

<sup>7</sup> All estimates in this analysis have been updated from 2014 dollars to 2018 dollars using a multiplier of 1.065 based on BEA NIPA data.

<sup>8</sup> Please see 2016 RIA page 76 for further details on motor carrier costs.

To illustrate the logic behind the cost impacts of this rule to motor carriers, the following example discusses those impacts that would occur in year 2020. FMCSA estimated that the 2016 final rule would result in \$21 million in costs to motor carriers in 2020 (at both 3 percent and 7 percent discount rates), and that the 2019 final rule would result in \$1 million in cost savings (at both 3 percent and 7 percent discount rates). FMCSA estimates that this rule will result in \$20 million in cost savings to motor carriers in 2020 (at both 3 percent and 7 percent discount rates), with a similar magnitude of savings in 2021. As this final rule only defers the compliance date to 2022, it will not impact motor carrier costs in 2022 through 2029 relative to the baseline.

FMCSA estimates that the annualized cost savings over four years to motor carriers will be \$11 million at both 3 percent and 7 percent discount rates as presented in Table 2.

<b>Year</b>	<b>Undiscounted</b>	<b>Discounted at 3%</b>	<b>Discounted at 7%</b>
2020	(\$20)	(\$20)	(\$20)
2021	(\$20)	(\$19)	(\$19)
<b>Total</b>	<b>(\$40)</b>	<b>(\$39)</b>	<b>(\$39)</b>
<b>Annualized</b>		<b>(\$11)</b>	<b>(\$11)</b>

### **Training Provider Costs**

In the 2016 final RIA, FMCSA estimated that training providers would incur costs starting in 2020 for submitting documentation to the TPR and for preparing for and being subject to compliance audits. The 2019 final rule did not result in cost savings to training providers. FMCSA estimates that this rule, by deferring training provider costs to



2022, will result in cost savings of \$4 million at both 3 percent and 7 percent discount rates on an annualized basis over 4 years.

### **State Driver Licensing Agency (SDLA) Costs: Delayed Information Technology (IT) System Upgrades**

In the 2016 final rule, FMCSA assumed that SDLAs would upgrade their IT systems so that they can receive training completion information through the Commercial Driver's License Information System (CDLIS) and store the information in their State systems. That upgrade required States to create new fields in their State driver record databases by 2020. Because this rule will shift by 2 years the date by which this requirement must be satisfied, SDLAs will incur these costs in 2022 rather than 2020. This change is merely a temporal shift of a cost of the 2016 final rule.

FMCSA estimated in the 2016 final RIA that in 2020 this IT system upgrade would cost \$1.2 million per SDLA, and therefore \$60 million,<sup>9</sup> across all 51 SDLAs. FMCSA acknowledged in the 2016 final RIA that while some of these costs may be incurred prior to the effective date of the rule, FMCSA applied this entire cost to the first year of the analysis (2020). As noted above, this rule shifts these costs from 2020 to 2022, which will result in a cost savings to SDLAs of \$1 million annualized over 4 years at a 3 percent discount rate and \$2 million at a 7 percent discount rate. These estimates of cost savings represent the sum across all 51 SDLAs.

### **Federal Government Costs**

This rule will delay by 2 years the Federal government's incurrence of administrative costs related to the TPR as well as compliance audit costs. FMCSA

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<sup>9</sup> Using estimates updated to 2018 dollars, 51 SDLAs x \$1,171,180 = \$59,730,159.

estimates annualized cost savings across 4 years of \$554,000 and \$715,000 at 3 percent and 7 percent discount rates, respectively. The rule will not delay or alter the Federal government's incurrence of IT costs related to the development of the TPR.

### **Maintenance and Repair Costs**

In the 2016 final rule, FMCSA estimated there would be a cost savings for maintenance and repair of commercial motor vehicles operated by entry-level drivers. The 2016 final RIA considered those savings to be a benefit of that rule. This rule will defer the realization of those benefits by 2 years – that is, from 2020 to 2022. While consistency with the 2016 final RIA would argue for accounting for this change as a disbenefit, the Agency recognizes that repair and maintenance expenses are borne directly by drivers and carriers (rather than an externality) and that it is therefore more appropriate to consider this impact of this rule as a cost rather than a disbenefit. Consequently, the Agency estimates the forgone cost savings of the rule as costs.

To estimate these costs, FMCSA applies the same methodology used in the analysis of the other cost impacts of this rule by applying an implicit gross domestic product (GDP) price deflator to the yearly estimates used in the 2016 final RIA and then discounting and annualizing those adjusted figures over 4 years. As established in the 2016 final RIA, the maintenance and repair cost savings were affected by an assumed 3-year period of knowledge retention of driver training.<sup>10</sup> In short, in both the 2016 final RIA and the analysis of this rule, the Agency assumes that driver behavior reverts linearly over a 3-year period (that is, in the first year of driving following pre-CDL training, a driver experiences the full amount of maintenance and repair cost savings; in

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<sup>10</sup> Please see 2016 RIA page 97 for further details on knowledge retention methodology.

year two (the second year of driving following pre-CDL training), he or she experiences 66.67 percent of that amount; in year three (the third year of driving following pre-CDL training), 33.33 percent of that amount and after three years of driving no cost savings remains). Accordingly, under this rule, while none of the 2016 final rule's maintenance and repair cost savings will be realized in 2020 through 2021, 33.33 percent of that rule's cost savings will be realized in 2022, 66.67 percent in 2023, and 100 percent in 2024. These impacts are reflected in Table 3 (year 2024 is excluded from Table 3 as there are no delta in 2024 relative to the baseline). On an annualized basis across 4 years, this rule will result in costs resulting from forgone maintenance and repair cost savings of \$17 million at both 3 percent and 7 percent discount rates, as shown in Table 3.

<b>Table 3. Discounted and Annualized Forgone Maintenance and Repair Savings @ \$0.0034/VMT (in millions of 2018 dollars)</b>			
<b>Year</b>	<b>Undiscounted</b>	<b>3% Discount Rate</b>	<b>7% Discount Rate</b>
2020	\$14	\$14	\$14
2021	\$23	\$22	\$21
2022	\$19	\$17	\$16
2023	\$9	\$9	\$8
Total	\$64	\$62	\$59
Annualized		\$17	\$17

#### **Total Costs of the Interim Final Rule**

In Table 4 below, we show the annualized cost savings of this rule (over 4 years, from 2020 through 2023). FMCSA estimates the annualized cost savings of this rule to be \$179 million at a 3 percent discount rate and \$196 million at a 7 percent discount rate.

<b>Table 4. Total Cost of the Final Rule (in millions of 2018 dollars)</b>			
<b>Year</b>	<b>Undiscounted</b>	<b>3% Discount Rate</b>	<b>7% Discount Rate</b>

2020	(\$420)	(\$420)	(\$420)
2021	(\$343)	(\$333)	(\$320)
2022	\$87	\$79	\$68
2023	\$9	\$9	\$8
Total	(\$666)	(\$664)	(\$664)
Annualized		(\$179)	(\$196)

### **Benefits of the Interim Final Rule**

FMCSA estimated the 2016 final rule to result in benefits to CMV operators, the transportation industry, the traveling public, and the environment. The Agency estimated benefits in two broad categories: safety benefits and non-safety benefits. Training related to the performance of complex tasks was expected to improve performance; in the context of the training required by the 2016 final rule, improvement in task performance constitutes adoption of safer driving practices that the Agency expected to reduce the frequency and severity of crashes, thereby resulting in safer roadways for all. The Agency estimated training related to fuel efficient driving practices taught under the “speed management” and “space management” sections of the curriculum to reduce fuel consumption and consequently lower environmental impacts associated with carbon dioxide emissions. Similarly, safer driving and better-informed drivers were estimated to reduce maintenance and repair costs.<sup>11</sup>

In this analysis, FMCSA estimates the forgone benefits resulting from this rule for years 2020 through 2023, and uses the 2016 and 2019 ELDT final rules as the baseline for its estimates. As mentioned above, this rule will delay implementation of the ELDT

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<sup>11</sup> While maintenance and repair cost savings were analyzed as a benefit in the 2016 final RIA, today’s analysis of the rule considers the deferral of those savings to be a cost rather than a disbenefit. Therefore, impacts of this rule to maintenance and repair expenses are discussed in the costs section only.

final rules to 2022, making 2022 the first year in which benefits of the previous final rules will be realized, accounting for the assumptions made in the 2016 analysis around knowledge retention.<sup>12</sup>

### **Fuel Consumption**

In the 2016 final rule, FMCSA projected there would be an increase in fuel economy attributable to the rule. The 2016 final RIA monetized fuel savings benefits beginning in 2020. This rule will defer the realization of those benefits to 2022. As per the discussion of the knowledge retention assumption in relation to the costs associated with maintenance and repair (presented earlier in this analysis), under this rule only 33.33 percent of the fuel savings benefits of the 2016 final rule will be realized in 2022.

Likewise, 66.67 percent of the fuel savings benefits of the 2016 final rule will be realized in 2023, and 100 percent of those benefits will be realized in 2024. Therefore, as shown in Table 5, the value of forgone fuel savings that will result from this rule is equal to 100 percent of the 2016 final rule's fuel savings for years 2020 and 2021, 66.67 percent of the corresponding value for 2022, 33.33 percent for 2023, and zero for 2024.

<b>Year</b>	2020	2021	2022	2023	Total
<b>Forgone Savings</b>	(\$84)	(\$142)	(\$117)	(\$60)	(\$403)

<sup>12</sup> As established in the 2016 final RIA, the benefits of the 2016 final rule were affected by an assumed 3-year period of knowledge retention of driver training. In short, FMCSA assumed that driver behavior reverts linearly over a 3-year period (that is, in the first year of driving following pre-CDL training, a driver experiences the full benefit of training; in year two, he or she experiences 66.67 percent of the initial benefit; in year three, 33.33 percent of the initial benefit, and after year three no benefit remains). Thus, in today's analysis of the final rule, the estimated impacts to benefits for years 2022-2023 were adjusted to account for this assumption.

Discounting and annualizing (across 4 years<sup>13</sup>) the above disbenefits at the 3 percent and 7 percent discount rates produces the following, shown below.

<b>Table 6. Discounted and Annualized Value of Forgone Fuel Savings (3 percent discount rate, in millions of 2018 dollars)</b>						
<b>Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>	<b>Annualized</b>
<b>Forgone Savings</b>	(\$84)	(\$138)	(\$110)	(\$60)	(\$392)	(\$106)

<b>Table 7. Discounted and Annualized Value of Forgone Fuel Savings (7 percent discount rate, in millions of 2018 dollars)</b>						
<b>Year</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>	<b>Annualized</b>
<b>Forgone Savings</b>	(\$84)	(\$133)	(\$102)	(\$49)	(\$368)	(\$109)

### **Monetized CO<sub>2</sub> Impacts – Social Cost of Carbon Dioxide Emissions**

FMCSA estimates the forgone climate benefits from this interim final rule using a measure of the domestic social cost of carbon (SC-CO<sub>2</sub>)<sup>14</sup>. The SC-CO<sub>2</sub> is a metric that estimates the monetary value of impacts associated with marginal changes in CO<sub>2</sub> emissions in a given year. FMCSA included an analysis of the climate benefits in the 2016 final rule using the SC-CO<sub>2</sub>, therefore we are also including this analysis here. The SC-CO<sub>2</sub> estimates used in this regulatory evaluation focus on the direct impacts of

<sup>13</sup> In the previous ELDT RIAs, the Agency annualized impacts across a 10-year period. FMCSA annualizes the costs and benefits of this final rule across 4 years as, compared to the baseline, there is no change in costs or benefits under this NPRM for years 5 through 10 (2024-2029).

<sup>14</sup> For the estimates and methodology used in analyzing SC-CO<sub>2</sub> disbenefits, FMCSA relied on the Regulatory Impact Analysis for the Review of the Clean Power Plan by the Environmental Protection Agency, EPA-HQ-OAR-2017-0355-0110.

climate change that are anticipated to occur within U.S. borders<sup>15</sup>. The SC-CO<sub>2</sub> estimates presented in Table 8<sup>16</sup> below are interim values developed under E.O. 13783<sup>17</sup> for use in regulatory analyses until an improved estimate of the impacts of climate change to the U.S. can be developed based on the best available science and economics.

<b>Year</b>	<b>3 percent Avg Discount Rate</b>	<b>7 percent Avg Discount Rate</b>
2020	\$6.75	\$1.13
2021	\$7.03	\$1.13
2022	\$7.31	\$1.13
2023	\$7.59	\$1.13

In Table 9 below, the Agency estimates the forgone reduction, in metric tons, of CO<sub>2</sub> emissions per year.

<b>Scenario</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>
<b>Reference Case</b>	325,754	541,599	432,936	216,288

<sup>15</sup> FMCSA follows established precedent set forth in the aforementioned 2017 EPA RIA in focusing on domestic impacts. Circular A-4 states that analysis of economically significant proposed and final regulations “should focus on benefits and costs that accrue to citizens and residents of the United States.” EPA followed this guidance by adopting a domestic perspective in the RIA.

<sup>16</sup> These estimates were adjusted from 2011\$ to 2018\$ using a GDP deflator of 1.125 and then extrapolated. The aforementioned EPA RIA provided SC-CO<sub>2</sub> values in 5 year intervals from 2020-2050. FMCSA linearly extrapolated those figures to fill in the missing years needed for our analysis.

<sup>17</sup> E.O. 13783 directed agencies to ensure that estimates of the social cost of greenhouse gases used in regulatory analyses “are based on the best available science and economics” and are consistent with the guidance contained in OMB Circular A-4, “including with respect to the consideration of domestic versus international impacts and the consideration of appropriate discount rates” (E.O. 13783, Section 5(c)).

Applying the interim domestic SC-CO<sub>2</sub> estimates presented in Table 8 to the estimated forgone reduction in CO<sub>2</sub> emissions attributable to this rule (as shown in Table 9), FMCSA monetizes the value of the forgone reduction. The resulting values are presented below in Tables 10, 11, and 12.

<b>Discount Rate and Statistic</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>
3 percent Avg	(\$2)	(\$4)	(\$3)	(\$2)	(\$11)
7 percent Avg	(\$0.4)	(\$1)	(\$0.5)	(\$0.2)	(\$2)

<b>Discount Rate and Statistic</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>	<b>Annualized</b>
3 percent Avg	(\$2)	(\$4)	(\$3)	(\$2)	(\$10)	(\$3)
7 percent Avg	(\$0.4)	(\$1)	(\$0.5)	(\$0.2)	(\$2)	(\$0.4)

<b>Discount Rate and Statistic</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>Total</b>	<b>Annualized</b>
3 percent Avg	(\$2)	(\$4)	(\$3)	(\$1)	(\$10)	(\$3)
7 percent Avg	(\$0.4)	(\$1)	(\$0.4)	(\$0.2)	(\$2)	(\$0.5)

### **Total Benefits of the Interim Final Rule**



In Table 13 below, we show the annualized (over 4 years, from 2020 to 2023) benefits of this rule. FMCSA estimates the annualized forgone benefits for this rule to be \$108 million at a 3 percent discount rate and \$112 million at a 7 percent discount rate<sup>18</sup>.

<b>Year</b>	<b>Undiscounted Total</b>	<b>3 percent Discount Rate</b>	<b>7 percent Discount Rate</b>
2020	(\$86)	(\$86)	(\$86)
2021	(\$146)	(\$142)	(\$137)
2022	(\$120)	(\$113)	(\$105)
2023	(\$62)	(\$61)	(\$50)
<b>Total</b>	<b>(\$414)</b>	<b>(\$403)</b>	<b>(\$378)</b>
<b>Annualized</b>		<b>(\$108)</b>	<b>(\$112)</b>

**B. E.O. 13771 (Reducing Regulation and Controlling Regulatory Costs)**

This rule will result in total costs less than zero, and qualifies as an E.O. 13771 deregulatory action. The present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016 dollars, and discounted to 2020 (the year the rule goes into effect and cost savings will first be realized), is \$627 million. On an annualized basis, these cost savings are \$44 million.

For the purpose of E.O. 13771 accounting, the April 5, 2017, OMB guidance requires that agencies also calculate the costs and cost savings discounted to year 2016. In accordance with this requirement, the present value of the cost savings of this rule, measured on an infinite time horizon at a 7 percent discount rate, expressed in 2016

<sup>18</sup> When aggregating total benefits for both 3 percent and 7 percent discount rates (Table 13), the Agency utilized the 3 percent average rate SC-CO<sub>2</sub> model (as seen in Table 8) for the forgone CO<sub>2</sub> emissions reductions inputs (Tables 11 and 12). Had we used the 7 percent average rate, the annualized values would have been \$106 million at a 3 percent discount rate and \$109 at a 7 percent discount rate.

dollars, and discounted to 2016, is \$478 million. On an annualized basis, these cost savings are \$33 million.

### **C. Congressional Review Act**

Pursuant to the Congressional Review Act (5 U.S.C. 801, et seq.), the Office of Information and Regulatory Affairs designated this rule as a “major rule,” as defined by 5 U.S.C. 804(2).<sup>19</sup>

### **D. Regulatory Flexibility Act (Small Entities)**

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any 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.<sup>20</sup> 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.

FMCSA is not required to complete a regulatory flexibility analysis, because, as discussed earlier in the “Administrative Procedure Act - “Good Cause” Exception” section, this action is not subject to notice and comment under section 553(b) of the APA.

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<sup>19</sup> A “major rule” means any rule that the Administrator of Office of Information and Regulatory Affairs at 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, Federal agencies, State agencies, local government agencies, or geographic regions; 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. 804(2)).

<sup>20</sup> Regulatory Flexibility Act (5 U.S.C. 601 et seq.) see National Archives at <http://www.archives.gov/federal-register/laws/regulaotry-flexibility/601.html>

### **E. Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Mr. Richard Clemente, listed in the **For Further Information Contact** section of this interim final rule.

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 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.

### **F. Unfunded Mandates Reform Act of 1995**

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. 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 \$165 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2018 levels) or more in any

one year. Though this final rule will not result in such an expenditure, the Agency does discuss the effects of this rule in section XI, subsections A. and B., above.

#### **G. Paperwork Reduction Act**

This rule calls for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) (PRA). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The 2016 ELDT final rule discussed the changes to the approved collection of information, but did not revise the supporting statement for that collection at that time, because the changes from the final rule would not take effect until after the expiration date of that approved collection (see PRA discussion at 81 FR 88732, 88788). This collection is currently being revised as part of its renewal cycle, and as required by the PRA (44 U.S.C. 3507(d)), FMCSA will submit its estimate of the burden of the proposal contained in this interim final rule to the Office of Management and Budget (OMB) for its review of the collection of information renewal. FMCSA published the 60-day notice in the Federal Register on July 3, 2019 (84 FR 31982). FMCSA will publish the 30-day notice in the Federal Register, reflecting the changes made by this IFR.

It is the agency's intent to obtain OMB approval for the revised collection of information in advance of the new compliance date so that training providers may complete the TPR registration process and begin uploading student certificates as soon as the TPR is available, even if prior to the new compliance date of February 7, 2022.

You are not required to respond to a collection of information unless it displays a currently valid OMB control number.

#### **H. E.O. 13132 (Federalism)**

A rule has implications for Federalism under Section 1(a) of Executive Order 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 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.

**I. E.O. 12988 (Civil Justice Reform)**

This interim final rule meets applicable standards in sections 3(a) and 3(b) (2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

**J. E.O. 13045 (Protection of Children)**

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. While this interim final rule is economically significant, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

**K. E.O. 12630 (Taking of Private Property)**

FMCSA reviewed this interim final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

#### **L. Privacy**

The Consolidated Appropriations Act, 2005, (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not change the collection of personally identifiable information (PII) as set forth in the 2016 ELDT final rule. The supporting PIA, available for review on the DOT Web site, <http://www.transportation.gov/privacy>, gives a full and complete explanation of FMCSA practices for protecting PII in general and specifically in relation to the ELDT final rule, which would also apply to this final rule.

As required by the Privacy Act (5 U.S.C. 552a), FMCSA and DOT will publish, with request for comment, a system of records notice (SORN) that will describe FMCSA's maintenance and electronic transmission of information affected by the requirements of the ELDT final rule that are covered by the Privacy Act. This SORN will be published in the Federal Register not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

#### **M. E.O. 12372 (Intergovernmental Review)**

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

#### **N. E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this interim final rule under E.O. 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, though it is a “significant regulatory action,” it 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.

**O. 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.

**P. National Technology Transfer and Advancement Act (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 agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary

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

#### **Q. Environment**

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) requires Federal agencies to integrate environmental values into their decision-making processes by considering the potential environmental impacts of their actions. In accordance with NEPA, FMCSA's NEPA Order 5610.1 (NEPA Implementing Procedures and Policy for Considering Environmental Impacts), and other applicable requirements, FMCSA prepared an Environmental Assessment (EA) to review the potential impacts of the ELDT final rule. That EA is available for inspection or copying in the Regulations.gov Web site listed under ADDRESSES.

Because this interim final rule will only delay the compliance date of the ELDT final rule without any other substantive change to the regulations, FMCSA continues to rely upon the previously published EA to support this interim final rule. As noted in that EA, implementation of the 2016 ELDT final rule imposed new training standards for certain individuals applying for their CDL, an upgrade of their CDL, or hazardous materials, passenger, or school bus endorsement for their license. FMCSA found that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act of 1966, 49 U.S.C. 303, as amended by Public Law 109-59, would not be impacted. The impact areas that may be affected and were evaluated in the EA included air quality, hazardous materials transportation, solid waste, and public safety. Specifically, as outlined in the 2016 RIA for the ELDT final rule, FMCSA anticipated



that an increase in driver training would result in improved fuel economy based on changes to driver behavior, such as smoother acceleration and braking practices. Such improved fuel economy is anticipated to result in lower air emissions and improved air quality for gases, including carbon dioxide. For today's final rule, FMCSA estimates the forgone environmental benefits for years 2020 through 2023. As mentioned above, today's final rule temporally shifts the benefits of the 2016 final rule by two years but otherwise retains the overall environmental impacts of the 2016 final rule.

**R. E.O. 13783 (Promoting Energy Independence and Economic Growth)**

E.O. 13783 directs executive departments and agencies to review existing regulations that potentially burden the development or use of domestically produced energy resources, and to appropriately suspend, revise, or rescind those that unduly burden the development of domestic energy resources. In accordance with E.O. 13783, DOT prepared and submitted a report to the Director of OMB that provides specific recommendations that, to the extent permitted by law, could alleviate or eliminate aspects of agency action that burden domestic energy production. This interim final rule has not been identified by DOT under E.O. 13783 as potentially alleviating unnecessary burdens on domestic energy production.

**List of Subjects**

*49 CFR Part 380*

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

*49 CFR Part 384*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

For the reasons set forth in the preamble, FMCSA amends 49 CFR parts 380, 383, and 384 as follows:

**PART 380—SPECIAL TRAINING REQUIREMENTS**

1. The authority citation for part 380 continues to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102-240, 105 Stat. 1914, 2151; sec. 32304, Pub. L. 112-141, 126 Stat. 405, 791; and 49 CFR 1.87.

**§ 380.600 [Revised]**

2. Amend § 380.600 by removing the year “2020” and replacing it with the year “2022”.

**§ 380.603 [Revised]**

3. In § 380.603, amend paragraphs (b), (c)(1), and (c)(2) by removing the year “2020” and replacing it with the year “2022” in each place that it appears.

**PART 383—COMMERCIAL DRIVER’S LICENSE STANDARDS;  
REQUIREMENTS AND PENALTIES.**

4. 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; secs. 5401 and 7208 of Pub. L. 114- 94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

**§ 383.71 [Revised]**

5. In § 383.71, amend paragraphs (a)(3), (b)(11), and (e)(5) by removing the year “2020” and replacing it with the year “2022” in each place that it appears.

6. Amend § 383.73 by

a. revising paragraph (b)(3) introductory text as laid out below;

b. revising paragraph (b)(3)(ii) as laid out below;

c. revising paragraph (e)(9) as laid out below; and

d. amend paragraphs (b)(11) and (p) by removing the year “2020” and replacing it with the year “2022” in each place that it appears:

**§ 383.73 State procedures.**

\* \* \* \* \*

(b) \* \* \*

(3) Initiate and complete a check of the applicant’s driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license disqualification under State law, and does not have a driver’s license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

\* \* \* \* \*

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant’s license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle;

\* \* \* \* \*

(e) \* \* \*

(9) Beginning on February 7, 2022, not conduct a skills test of an applicant for an upgrade to a Class A or Class B CDL, or a passenger (P), school bus (S) endorsement, or administer the knowledge test to an applicant for the hazardous materials (H) endorsement, unless the applicant has completed the training required by subpart F of part 380 of this subchapter.

\* \* \* \* \*

**PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER'S  
LICENSE PROGRAM**

7. The authority citation for part 384 continues to read as follows:

**Authority:** 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106-59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 5401 and 7208 of Pub. L. 114-94, 129 Stat. 1312, 1546, 1593; and 49 CFR 1.87.

**§ 384.230 [Revised]**

8. In § 384.230, amend paragraphs (a), (b)(1), and (b)(2) by removing the year “2020” and replacing it with the year “2022” in each place that it appears.

**§ 384.301 [Revised]**

9. In § 384.301, amend paragraph (k) by removing the year “2020” and replacing it with the year “2022”.

Issued under the authority of delegation in 49 CFR 1.87.

Dated: JAN 23 2020

  
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Jim Mullen,  
Acting Administrator