

substantial direct effect on 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, as specified in Executive Order 13132, because it affects only one State. This action simply provides EPA approval of South Carolina's voluntary proposal for its State underground storage tank program to operate in lieu of the Federal underground storage tank program in that State. Thus, the requirements of section 6 of the Executive Order do not apply.

*National Technology Transfer and Advancement Act*

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104-113, § 12(d) (15 U.S.C. 272) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

*Executive Order 13211 (Energy Effects)*

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

**List of Subjects in 40 CFR Part 281**

Environmental protection, Administrative practice and procedure, Hazardous substances, Intergovernmental relations.

**Authority:** This rule is issued under the authority of Section 9004 of the Solid Waste

Disposal Act as amended 42 U.S.C. 6912(a), 6974(b), 6991c.

Dated: August 13, 2002.

**A. Stanley Meiburg,**

*Acting Regional Administrator, Region 4.*

[FR Doc. 02-21938 Filed 8-27-02; 8:45 am]

**BILLING CODE 6560-50-P**

**DEPARTMENT OF TRANSPORTATION**

**Coast Guard**

**46 CFR Parts 71, 115, 126, 167, 169 and 176**

**[USCG-2000-6858]**

**RIN 2115-AF95**

**Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Nautical School, Offshore Supply, Passenger and Sailing School Vessels**

**AGENCY:** Coast Guard, DOT.

**ACTION:** Interim rule; announcement of effective date.

**SUMMARY:** Coast Guard is announcing the approval of a collection-of-information requirement for vessel owners or operators to send applications, hull exam reports, hull condition assessments, and preventive maintenance plans to the Coast Guard in order to participate in the Alternative Hull Exam and UWILD Programs.

**DATES:** 46 CFR 71.50-5(b), 71.50-23(b), 71.50-29(b), 71.50-31(b), 71.50-31(c), and 71.50-31(d)(1); 115.615(b), 115.630, 115.640(b), 115.655(a), 115.655(b), 115.660(c), and 115.660(d); 126.140(f), 126.140(g)(1), and 126.140(g)(3); 176.615(c), 176.615(c), 176.630, 176.640(b), 176.655(a), 176.660(b), 176.660(c), and 176.660(d)(1); as published April 29, 2002 (67 FR 21062), are effective August 28, 2002.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this document, call Don Darcy, Office of Standards Evaluation and Development (G-MSR), Coast Guard, at 202-267-1200. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202-366-5149.

**SUPPLEMENTARY INFORMATION:** The interim rule published in the **Federal Register** on April 29, 2002, at 67 FR 21062 became effective on June 28, 2002, except for revised 46 CFR 71.50-5(b), 71.50-23(b), 71.50-29(b), 71.50-31(b), 71.50-31(c), and 71.50-31(d)(1); 115.615(b), 115.630, 115.640(b), 115.655(a), 115.655(b), 115.660(c), and 115.660(d); 126.140(f), 126.140(g)(1),

and 126.140(g)(3); 167.15-33(b) and 167.15-33(c); 169.230(b) and 169.230(c); 176.615(b), 176.615(c), 176.630, 176.640(b), 176.655(a), 176.660(b), 176.660(c), and 176.660(d)(1). These parts contained collection-of-information requirements. These parts could not become effective until its collection-of-information requirement was approved by the Office of Management and Budget (OMB). Those parts were approved by OMB in control no. 2115-0133 on June 24, 2002, and are effective August 28, 2002.

Dated: August 23, 2002.

**Joseph J. Angelo,**

*Director of Standards, Marine Safety, Security & Environmental Protection.*

[FR Doc. 02-21983 Filed 8-27-02; 8:45 am]

**BILLING CODE 4910-15-P**

**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**49 CFR Parts 350 and 392**

**[Docket No. FMCSA-2002-13015]**

**RIN 2126-AA78**

**Registration Enforcement**

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

**ACTION:** Interim final rule (IFR); request for comments.

**SUMMARY:** The FMCSA amends its regulations to require that a motor carrier subject to the registration requirements under 49 U.S.C. 13902 may not operate a commercial motor vehicle in interstate commerce unless it has registered with this agency. These motor carriers are further prohibited from operating beyond the scope of their registration. If an unregistered carrier's motor vehicle is discovered in operation or being operated beyond the scope of the carrier's registration, such motor vehicle will be placed out of service and the carrier may be subject to additional penalties. The States are currently required to enforce these registration requirements as a condition for receipt of Motor Carrier Safety Assistance Program funds. Amending the Federal Motor Carrier Safety Regulations (FMCSRs) to specifically include the out-of-service (OOS) provisions will help ensure that all carriers subject to 49 U.S.C. 13902 are apprised of and comply with applicable FMCSR's, operate only within the scope of registration, and operate safe vehicles within the United States. Benefits to the agency include the ability to more

accurately identify and monitor the safety fitness of motor carriers.

**DATES:** This interim final rule is effective September 27, 2002. FMCSA must receive comments by October 28, 2002.

**ADDRESSES:** You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, United States Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001 FAX (202) 493-2251, on-line at <http://dms.dot.gov/submit>. You must include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., EST, Monday through Friday, except Federal holidays. You can also view all comments or download an electronic copy of this document from the DOT Docket Management System (DMS) at <http://dms.dot.gov/search.htm> and typing the last four digits of the docket number appearing at the heading of this document. The DMS is available 24 hours each day, 365 days each year. You can get electronic submission and retrieval help and guidelines under the "help" section of the web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard or print the acknowledgement page that appears after submitting comments on-line.

Comments received after the comment closing date will be included in the docket and we will consider late comments to the extent practicable.

**FOR FURTHER INFORMATION CONTACT:** Mr. Larry Minor, (202) 366-4009, FMCSA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

**Background**

Currently, a carrier desiring to operate in interstate commerce must submit to FMCSA a Motor Carrier Identification Report (Form MCS-150). Additionally, for-hire applicants who are subject to 49 U.S.C. 13902 must apply for appropriate operating authority and make the necessary administrative filings as required by the ICC Termination Act of 1995 (ICCTA) [Pub. L. 104-88, 109 Stat. 803 (1995)].

Effective January 1, 2003, the agency will initiate its New Entrant Safety Assurance Process for all applicants to operate in interstate commerce. FMCSA announced this initiative in an interim

final rule published in the May 13, 2002, **Federal Register** (67 FR 31978). Under the new entrant initiative, an applicant must additionally file a Safety Certification for Applications for U.S. DOT Number (Form MCS-150A) with the MCS-150 and the application for operating authority (if applicable). The applicant will be provided educational and technical assistance material to assist in complying with the FMCSRs and applicable Hazardous Materials Regulations (HMRs), and must certify that he/she is knowledgeable about, and will comply with, these regulations. This will help ensure that the carrier is knowledgeable about applicable Federal motor carrier safety standards before being granted "new entrant registration" that will continue for a minimum of 18 months. During the 18-month period, FMCSA will evaluate the new entrant's safety management practices through a safety audit and monitor its on-road performance prior to granting the new entrant permanent registration.

Once granted permanent registration, carriers continue to be subject to all Federal Motor Carrier Safety Regulations (FMCSRs) and operating requirements. Although the FMCSA makes every effort to help carriers comply with the FMCSRs and operating requirements, when necessary, the agency may apply a full range of enforcement actions to non-complying carriers. These include, but are not limited to, compliance reviews, civil penalties, and revocation of registration for serious safety violations.

On December 9, 1999, the President signed into law the Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106-159, 113 Stat. 1748) (MCSIA). Section 205 of MCSIA, which amended 49 U.S.C. 13902 by creating subsection (e), requires the agency to assess penalties for failure to comply with motor carrier registration requirements under 49 U.S.C. 13902. Specifically, if a motor carrier fails to register its operations or operates beyond the scope of its registration, the carrier would be subject to certain enforcement penalties. If, upon inspection or investigation, it is determined that a motor vehicle providing transportation requiring registration is operating without the carrier having registered with the agency or if that vehicle is being operated beyond the scope of such registration, the vehicle will not be allowed to continue to operate and will be placed out-of-service. The violating motor carrier may be subject to additional enforcement penalties. This interim final rule sets forth implementing regulations for section 205 of MCSIA.

**State Enforcement of Registration Requirements**

Although FMCSA officials routinely conduct vehicle inspections at a carrier's place of business, agency employees are not authorized to stop commercial motor vehicles along the nation's highways to subject them to inspection. Instead, Federal officials partner with State personnel who are responsible for enforcing highway safety to compel selected commercial motor vehicles and their operators to undergo roadside inspections. Enforcement of the provisions in this interim final rule depends largely upon the ability to detect violators "in the act" along our nation's highways, and we will continue to rely largely upon assistance from State enforcement personnel.

The FMCSA administers a grant-in-aid program, the Motor Carrier Safety Assistance Program (MCSAP), as an incentive for State enforcement of motor carrier safety regulations. The MCSAP was first authorized in the Surface Transportation Assistance Act of 1982 (STAA)(Pub. L. 97-424, 96 Stat. 2079, 2154), reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, 100 Stat. 3207, 3207-186), in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 31101-31104, as amended), and again in the Transportation Equity Act for the 21st Century (TEA-21) (Pub. L. 105-178, 112 Stat. 107). The original authorization contained certain eligibility requirements for financial assistance, including agreement to adopt and enforce safety regulations compatible with the FMCSRs and HMRs. The regulatory compatibility requirement remains today and ensures a permanent and consistent enforcement and safety presence throughout the nation. This interim final rule will make enforcement of the registration requirements a condition for continued eligibility for MCSAP funds.

Section 207 of the MCSIA amended 49 U.S.C. 31102(b)(1) by inserting new subparagraph (R), adding as a requirement of MCSAP participation, the "cooperation" of the States in the enforcement of registration requirements under 49 U.S.C. 13902 and the financial responsibility requirements of the Department. Subsequently, on March 21, 2000, the FMCSA revised the regulations for MCSAP participation (65 FR 15102). Those regulations required the States to enforce the registration and financial responsibility requirements.

All States are required, as a condition of receiving MCSAP funding (49 CFR 350.201), to adopt the FMCSRs

contained in 49 CFR parts 390–397, as applicable. Adoption of the changes to 49 CFR 350.201(t), added the registration and insurance requirements found in 49 CFR parts 365 and 387. In a June 2001 policy statement, FMCSA guidance to the States interpreted the term “cooperation,” as used in section 207 of MCSIA, to merely require State enforcement to the extent each State’s legislature authorized enforcement of the Federal registration and insurance requirements. The States could confirm their cooperation by certifying (in their MCSAP commercial vehicle safety plan) the following: “(t)he State of XXX will cooperate with the FMCSA, to the extent permissible by State law, in the enforcement of Federal requirements pertaining to registration and financial responsibility.” In order to restrict commercial highway transportation to those entities having the appropriate operating authority and possessing adequate insurance, we are now broadening our interpretation of the term “cooperation” found in section 207 of the MCSIA to specifically include placing out of service any vehicles discovered operating without 13902 registration or operating beyond the scope of their registration. As to the financial responsibility requirements in 49 CFR 350.201(t), the States must now take enforcement by assessing appropriate State penalties. We believe this expansion of our June 2001 policy statement is necessary in light of the heightened security environment in which we all live. Our previous policy statement could allow unregistered or improperly registered vehicles to travel our nation’s highways unchecked. Given FMCSA’s mission of ensuring safe transportation, it is incumbent upon the agency to close this potential loophole.

The FMCSA has also included 49 CFR part 365 (Rules Governing Applications for Operating Authority) to 49 CFR 350.201(t) as a condition of MCSAP funding. States are expected to notify the FMCSA when they have information on the fitness of an applicant for authority.

### Regulatory Change

We believe that the registration requirements in this IFR are important to ensure that carriers are apprised of and compliant with applicable motor carrier safety standards.

We are adding new § 392.9a to require that a motor vehicle providing transportation requiring registration under 49 U.S.C. 13902 may not be operated unless the carrier has complied with registration requirements. Nor may a driver operate a motor vehicle

providing transportation that requires section 13902 registration beyond the scope of that registration. For example, a motor carrier must register with the FMCSA to transport property in interstate commerce for hire. If Carrier A fails to register pursuant to section 13902, but is later discovered hauling appliances in a commercial motor vehicle for a department store from one State to another, under § 392.9a(b) Carrier A’s CMV would be placed out of service and Carrier A may be subject to additional penalties. In another scenario, Carrier B registers to transport property for hire, but is later discovered operating a commuter bus service for a municipality using 49-passenger buses, the bus would be subject to an out-of-service order and the carrier may be subject to penalties.

In the second scenario in the preceding paragraph, Carrier B applied for and obtained authority to transport property for-hire. Carrier B met the registration requirements and his/her drivers are qualified to operate a truck, but Carrier B’s drivers may know nothing at all about passenger transportation safety and are not qualified to transport passengers. Because Carrier B is registered with FMCSA, the chances of detecting Carrier B’s illegal operations are much greater.

But in scenario one where Carrier A decides to go into business hauling furniture for a department store but fails to register with FMCSA, the agency would not even be aware of its existence unless one of the carrier’s vehicles were stopped for roadside inspection. Because the carrier is not registered with the agency at all, that carrier would not be targeted for a compliance review. Roadside inspections would be the only means of detecting errant Carrier A.

Any vehicles found to be operating in violation of § 392.9a would be placed out-of-service, immediately prohibiting the driver from further operation. Furthermore, the motor carrier may be subject to further penalties under 49 U.S.C. 14901. The motor carrier would be entitled to a hearing to review the out-of-service order pursuant to 5 U.S.C. 554 within 10 days of the issuance of the order.

This rulemaking will become effective thirty days after publication because of the need to close a potential loophole that may be used to circumvent FMCSA’s safety regulations. Given the heightened security environment, the time needed to complete notice and comment procedures prior to issuing an enforceable standard lengthens the time that individuals could exploit this loophole. FMCSA has asked for comment with publication of the rule,

and will consider all comments received shortly thereafter. If changes to the rule are necessary to address this issue more effectively, or in a less burdensome but equally effective manner, FMCSA will not hesitate to make such changes. The Administrator for FMCSA believes that the circumstances described herein warrant quick action, and finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

### Rulemaking Analyses and Notices

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

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866. Accordingly, the Office of Management and Budget reviewed this regulatory action. In addition, this action is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It is anticipated that the economic impact of the revisions in this rulemaking will be minimal.

#### *Economic Analysis*

This rulemaking has been reviewed by the Office of Management and Budget. It is significant within the meaning of the Executive Order and DOT’s policies and procedures. Because of the potential security threat and the need to act quickly, no regulatory analysis or evaluation accompanies this rule. This rule may, however, impose some costs. FMCSA will assess the costs and benefits of the rule as soon as possible and will include the analysis in the docket of this matter.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (RFA) (Pub. L. 96–354, 5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement and Fairness Act (Pub. L. 104–121), requires Federal agencies to analyze the impact of rulemakings on small entities, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Therefore, FMCSA certifies that this rule will not have a significant impact on a substantial number of small entities.

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

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the

private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of \$100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. FMCSA has determined that the changes proposed in this rulemaking would not have an impact of \$100 million or more in any one year.

*Executive Order 13045 (Protection of Children)*

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (April 23, 1997, 62 FR 19885), requires that agencies issuing "economically significant" rules that also concern an environmental health or safety risk that an agency has reason to believe may disproportionately affect children must include an evaluation of the environmental health and safety effects of the regulation on children. Section 5 of Executive Order 13045 directs an agency to submit for a "covered regulatory action" an evaluation of its environmental health or safety effects on children. The agency has determined that this rule is not a "covered regulatory action" as defined under Executive Order 13045.

This rule is not economically significant under Executive Order 12866 because the FMCSA has determined that the changes in this rulemaking would not have an impact of \$100 million or more in any one year. This rule also does not concern an environmental health risk or safety risk that would disproportionately affect children.

*Executive Order 12630 (Taking of Private Property)*

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

*Executive Order 13132 (Federalism Assessment)*

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). FMCSA has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States.

*Executive Order 12372 (Intergovernmental Review)*

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*Paperwork Reduction Act*

Under the Paperwork Reduction Act of 1995 (PRA) [44 U.S.C. 3501–3520], Federal agencies must determine whether requirements contained in rulemakings are subject to information collection provisions of the PRA and, if they are, obtain approval from the Office of Management and Budget for each collection of information they conduct, sponsor or require through regulations. FMCSA has determined that this regulation does not constitute an information collection within the scope or meaning of the PRA.

*National Environmental Policy Act*

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). The FMCSA analyzed this rule under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), the Council on Environmental Quality Regulations Implementing NEPA (40 CFR 1500–1508), and DOT Order 5610.1C, Procedures for Considering Environmental Impacts. This rule would be categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under paragraph 4.c.(3) of DOT's Order as a project amendment that does not significantly alter the environmental impact of the action. This rule would merely amend the Federal registration program to allow States and State law enforcement personnel to enforce the Federal registration requirements (49 U.S.C. 13902) by placing motor carriers out-of-service along our nation's highways for operating beyond the scope of their registration authority.

**List of Subjects**

*49 CFR Part 350*

Grant programs—transportation, Highway safety, Motor carriers.

*49 CFR Part 392*

Highway safety, motor carriers.

For the reasons stated in the preamble, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, as follows:

**PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM [AMENDED]**

1. Revise the authority citation for part 350 to read as follows:

**Authority:** 49 U.S.C. 13902, 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

2. Amend § 350.201 to revise paragraph (t) to read as follows:

**§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?**

\* \* \*

(t)(1) Enforce registration requirements under 49 U.S.C. 13902, and 49 CFR parts 356 and 365, and 49 CFR 392.9a by placing out-of-service the vehicle discovered to be operating without registration or beyond the scope of its registration.

(2) Enforce financial responsibility requirements under 49 U.S.C. 13906, 31138, 31139, and 49 CFR part 387.

\* \* \* \* \*

**PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES [AMENDED]**

3. Revise the authority citation for part 392 to read as follows:

**Authority:** 49 U.S.C. 13902, 31136, 31502; and 49 CFR 1.73.

4. Add a new § 392.9a to read as follows:

**§ 392.9a Operating authority.**

(a) *Registration required.* A motor vehicle providing transportation requiring registration under 49 U.S.C. 13902 may not be operated without the required registration or operated beyond the scope of its registration.

(b) *Penalties.* Every motor vehicle providing transportation requiring registration under 49 U.S.C. 13902 shall be ordered out-of-service if determined to be operating without registration or beyond the scope of its registration. In addition, the motor carrier may be subject to penalties in accordance with 49 U.S.C. 14901.

(c) *Administrative Review.* Upon the issuance of the out-of-service order under paragraph (b) of this section, the driver shall comply immediately with such order. Opportunity for review shall be provided in accordance with section 554 of title 5, United States Code not later than 10 days after issuance of such order.

Issued on: August 22, 2002.

**Joseph M. Clapp,**  
*Administrator.*

[FR Doc. 02–21917 Filed 8–27–02; 8:45 am]

**BILLING CODE 4910-EX-P**