I areas within the State, which consists of Montana relying on the national IMPROVE network to meet monitoring and data collection goals.[75] There are currently IMPROVE sites located near seven of the twelve Class I areas within Montana, as well as representative surrogate monitors located near the remaining five Class I areas in Montana.[76] In the Progress Report, the State concludes that no modifications to the existing visibility monitoring strategy are necessary. The State will continue its reliance on the IMPROVE monitoring network. The IMPROVE monitoring network is the primary monitoring network for regional haze, both in Montana and nationwide.

The EPA proposes to find that Montana has adequately addressed the applicable provisions of 40 CFR 51.308(g) regarding the monitoring strategy because the State reviewed its visibility monitoring strategy and determined that no further modifications to the strategy are necessary.

B. Determination of Adequacy of the Existing Regional Haze Plan

The provisions under 40 CFR 51.308(h) require states to determine the adequacy of their existing implementation plan to meet established goals. Montana's Progress Report includes a negative declaration regarding the need for additional actions or emissions reductions in Montana beyond those already in place and those to be implemented by 2018 according to Montana's FIP.[77] In its Progress Report, Montana notifies the EPA that the FIP may be inadequate to address regional haze at the Medicine Lake Wilderness Area Class I area due to the influence of international emissions.[78] Discussion of this issue is addressed above.

The EPA proposes to conclude that Montana has adequately addressed 40 CFR 51.308(h) because (1) the visibility trends in the majority of Class I areas in the State indicate that the relevant RPGs will be met via emission reductions already in place (except as explained above that some RPGs will not be met due to nonanthropogenic wildfire emissions not subject to control pursuant to Montana's regional haze plan), and therefore the FIP does not require substantive revisions at this time to meet those RPGs, and (2) because Montana has notified EPA that the FIP may be inadequate to address regional haze at the Medicine Lake Wilderness Area Class I area due to international emissions.

[75] Montana Progress Report, p. 4–3.

[76] Montana Progress Report, p. 4–2.

[77] Montana Progress Report, p. 6–8.

[78] Ibid.

III. Proposed Action

The EPA is proposing to approve Montana's November 7, 2017, Regional Haze Progress Report as meeting the applicable regional haze requirements set forth in 40 CFR 51.308(g) and 51.308(h).

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: June 28, 2019.

Gregory Sopkin,

Regional Administrator, EPA Region 8.

[FR Doc. 2019–14249 Filed 7–8–19; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 383

[Docket No. FMCSA–2018–0292]

RIN 2126–AC14

Third Party Commercial Driver's License Testers

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

ACTION: Notice of Proposed Rulemaking.

SUMMARY: FMCSA proposes to allow States to permit a third party skills test examiner to administer the Commercial Driver's License (CDL) skills test to applicants to whom the examiner has also provided skills training. Under this proposal, States would have the option to permit this practice, which is currently prohibited under FMCSA rules. The Agency believes that allowing States to permit this practice could alleviate CDL skill testing delays and reduce inconvenience and cost for third party testers and CDL applicants, without negatively impacting safety.

DATES: Comments on this document must be received on or before September 9, 2019.

ADDRESSES: You may submit comments identified by Docket Number FMCSA–2018–0292 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. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments, including collection of information comments for the Office of Information and Regulatory Affairs, OMB.

FOR FURTHER INFORMATION CONTACT: Ms. Nikki McDavid, Chief of the CDL Division, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, by email at *Nikki.mcdavid@dot.gov,* or by telephone at 202–366–0831. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: This notice of proposed rulemaking (NPRM) is organized as follows:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (Docket No. FMCSA–2018–0292), 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 email 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 *www.regulations.gov,* put the docket number, FMCSA–2018–0292, in the keyword box, and click ''Search.'' When the new screen appears, 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 proposed 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 customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is exempt from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as ''confidential'' or ''CBI.'' Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Mr. Brian Dahlin, Chief, Regulatory Evaluation Division, 1200 New Jersey Avenue SE, Washington, DC 20590. Any commentary that FMCSA receives that is not designated specifically 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.* Insert the docket number, FMCSA–2018–0292, in the keyword box, and click ''Search.'' Next, click the ''Open Docket Folder'' button and choose the document to review. If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility 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., e.t., Monday through Friday, except Federal holidays.

C. Privacy Act

In accordance with 5 U.S.C. 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,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

D. Waiver of Advance Notice of Proposed Rulemaking

Under the Fixing America's Surface Transportation Act (FAST Act) (Pub. L. 114–94), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or conduct a negotiated rulemaking ''if a proposed rule is likely to lead to the promulgation of a major rule'' (49 U.S.C. 31136(g)(1)). As this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

II. Executive Summary

49 CFR 383.5 defines a ''third party skills test examiner'' as a person employed by a third party tester who is authorized by the State to administer the CDL skills test. Section 383.75(a)(7) prohibits a third party skills test examiner who is also a skills instructor from administering the CDL skills test to an applicant who received skills training from that examiner. The Agency proposes to remove that restriction and permit the States to allow this practice at their discretion.

Removing the restriction may reduce testing delays and improve how quickly a driver could be hired. Additionally, the increased efficiency in skills testing could benefit third party testers and CDL applicants by reducing the time and cost spent to complete testing. FMCSA believes the proposed change would not undermine the integrity or effectiveness of CDL skills training or testing. The Agency's proposal to remove the skills testing restriction on third party examiners responds to public comment received in response to the DOT's Notification of Regulatory Review (82 FR 45750 (Oct. 2, 2017)), discussed further below. This proposal, if adopted as a final rule, would be a deregulatory action as defined by Executive Order (E.O.)13771, ''Reducing Regulation and Controlling Regulatory Costs.''

Costs and Benefits

The proposed removal of the restriction would not impose new costs on Commercial Learner's Permit holders (CLP) holders, SDLAs, motor carriers, third party testers or third party skills examiners. FMCSA believes the proposed change may increase the efficiency of CDL skills testing by reducing testing delays and improving how quickly a driver may be hired while maintaining an equivalent level of safety.

III. Abbreviations and Acronyms

ANPRM Advance Notice of Proposed Rulemaking
BEA Bureau of Economic Analysis
BLS Bureau of Labor Statistics
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CLP Commercial Learner's Permit
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act
CSTIMS Commercial Skills Test Information Management System
DOT U.S. Department of Transportation
E.O. Executive Order
FMCSA Federal Motor Carrier Safety Administration
FMCSRs Federal Motor Carrier Safety Regulations
FR Federal Register
IT Information Technology
MAP–21 Moving Ahead for Progress in the 21st Century Act
MPR Master Pointer Record
NAICS North American Industry Classification System
NPRM Notice of Proposed Rulemaking
OMB Office of Management and Budget
PIA Privacy Impact Assessment
PII Personally Identifiable Information
PRA Paperwork Reduction Act
RFA Regulatory Flexibility Act
RIA Regulatory Impact Analysis
RIN Regulation Identifier Number
SBA Small Business Administration
SDLA State Driver Licensing Agency
§ Section Symbol
U.S.C. United States Code

IV. Legal Basis for the Rulemaking

This NPRM would modify a requirement adopted in the final rule, ''Commercial Driver's License Testing and Commercial Learner's Permit Standards'' (78 FR 17875 (Mar. 25, 2013)). This proposed change is based primarily on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended (the 1986 Act) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313), which established the CDL program. The 1986 Act required the Secretary, after consultation with the States, to prescribe uniform minimum standards for the issuance of CDLs, including ''minimum standards for written and driving tests of an individual operating a commercial motor vehicle'' (49 U.S.C. 31305(a)(1)). This proposal would amend one of the current CDL testing requirements imposed on the States.

This NPRM is also consistent witth the concurrent authorities of the Motor Carrier Safety Act of 1984, as amended (the 1984 Act) (Pub. L. 98–554, Title II, 98 Stat. 2832, codified at 49 U.S.C. 31136); and the Motor Carrier Act of 1935, as amended (the 1935 Act) (Chapter 498, codified at 49 U.S.C. 31502). The 1984 Act grants the Secretary broad authority to issue regulations ''on commercial motor vehicle safety,'' including to ensure that ''commercial motor vehicles are . . . operated safely.'' 49 U.S.C. 31136(a)(1). The proposed change is consistent with the safe operation of CMVs. In accordance with section 31136(a)(2), the removal of the restriction on third party examiners would not impose any ''responsibilities . . . on operators of commercial motor vehicles [that would] impair their ability to operate the vehicles safely.'' This proposed rule does not directly address medical standards for drivers (section 31136(a)(3)) or possible physical effects caused by driving CMVs (section 31136(a)(4)). FMCSA does not anticipate that drivers would be coerced (section 31136(a)(5)), as a result of this rulemaking.

The Motor Carrier Act of 1935, codified at 49 U.S.C. 31502(b), provides that ''The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation.'' This NPRM, addressing skills testing requirements, is related to the safe operation of motor carrier equipment .

Lastly, the Administrator of FMCSA is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary of Transportation by 49 U.S.C. Chapters 311, 313, and 315 as they relate to commercial motor vehicle operators, programs, and safety.

V. Background

On May 9, 2011, FMCSA published a final rule amending the CDL knowledge and skills testing standards and establishing minimum Commercial Learner's Permit Standards (76 FR 26854). That final rule included a provision prohibiting driver training schools from administering the CDL skills test to applicants who received skills training from that school, unless there is no skills testing alternative location within 50 miles of the school and an examiner does not train and test the same skills applicant (§ 383.785(a)(7)). In adopting the prohibition, FMCSA noted that its purpose was ''to reduce both the opportunity for fraud and unintended bias in skills testing.'' [1]

Following publication of the May 9, 2011 final rule, FMCSA received petitions requesting reconsideration of § 383.75(a)(7) on the grounds that the prohibition was too restrictive and would create hardship for States, training schools, and motor carriers. The Agency granted the petitions,[2] ultimately revising the provision in a March 25, 2013, final rule (78 FR 17875). In the 2013 final rule, FMCSA acknowledged the ''hardship and unintended consequences that this provision could cause for States,

[1] 76 FR 26854, 26869 (May 9, 2011).

[2] *See* ''Before the Federal Motor Carrier Safety Administration, Decision on Petition for Reconsideration'' (August 12, 2012), available in Docket No. FMCSA–2007–27659.

schools, and aspiring CDL holders.'' [3] Accordingly, the revised (and current) version of § 383.75(a)(7), in effect since April 24, 2013, permits CDL training schools to skills-test their student applicants, as long as the individual examiner who provided skills training to the applicant does not administer the skills test to that applicant. In making this change, FMCSA noted that ''prohibiting individual examiners from administering skills tests to student applicants they have trained will further the Agency's and Congress's fraud prevention objectives.'' [4]

In October 2017, as part of the Administration's ongoing efforts to review existing regulations to evaluate their continued necessity and determine whether they are crafted effectively to solve current problems, DOT published a ''Notification of Regulatory Review'' seeking the public's input on existing rules and other agency actions (82 FR 45750 (Oct. 2, 2017)). In response to that notification, SAGE Truck Driving Schools (SAGE) recommended that FMCSA eliminate the prohibition, set forth in § 383.75(a)(7), that prevents a third party skills examiner from administering a CDL skills test to an applicant who received skills training from that examiner.[5] In support of its recommendation, SAGE made the following points: (1) The prohibition is unnecessary because State-based CDL testing compliance agencies have many other effective tools to detect and prevent fraud in CDL skills testing; (2) it causes significant inconvenience and cost for third party testers, CDL applicants, the transportation industry, and the public; (3) it needlessly makes CDL training and testing operation more difficult and costly, thereby exacerbating the CMV driver shortage; and (4) it contributes to CDL testing delays in some States.

For the reasons discussed below, FMCSA agrees with SAGE's recommendation to remove the current prohibition on third party skills test examiners and proposes to amend § 383.75(a)(7) accordingly.

VI. Discussion of Proposed Rule

The Agency, having reconsidered the efficacy of § 383.75(a)(7) in light of SAGE's comments, proposes to permit third party examiners to administer the skills test to CDL applicants to whom they have also provided skills training. Under this approach, States utilizing third party examiners would have the flexibility to determine whether examiners may test CDL applicants they also trained. The decision to permit those examiners to conduct skills testing would be entirely at the State's discretion.

FMCSA believes that the proposed change is appropriate because, as SAGE noted, there are other means of detecting and preventing fraud in CDL skills testing. Section 383.75, ''Third party testing,'' requires States that utilize third party testers, (defined in § 383.5 as a person/entity authorized by the State to employ skills test examiners to administer the CDL skills test) to undertake a number of actions designed to ensure the integrity of the skills testing process. For example, at least every two years, States must do one of the following: Have State employees covertly take the skills tests administered by the third party, as if the employee were a CDL applicant; have State employees co-score the applicant during the skills test to compare pass/fail results with the third party examiner; or re-test a sample of drivers tested by a third party to compare pass/fail results (§ 383.75(a)(5)). Additionally, States must: Take prompt remedial action against a third party tester that fails to comply with applicable CDL testing standards (§ 383.75(a)(6)); maintain an agreement with the third party tester that includes, among other things, provisions allowing FMCSA or the State to conduct random inspections, examinations, and audits of its operations (§ 383.75(a)(8)(i)); and require the third party tester to use only examiners who complete formal training approved by the State and are certified by the State to conduct CDL skills testing (§ 383.75(a)(8)(vi)).

Additionally, under § 384.229, States must establish and maintain a database to track the skills tests administered by each State and third party examiner; examiners must be identified by name and identification number. State-established databases must also track pass/fail rates of applicants tested by each State and third party skills test examiner (to detect examiners who have unusually high pass or failure rates), as well as dates and results of the States' monitoring of third party testers and skills examiners. The databases can be used by both FMCSA and SDLAs to identify and investigate potentially fraudulent testing. The Agency invites comment from the States addressing the extent to which they have detected fraud in third party testing, including quantitative data derived from the required monitoring of third party testers and skills examiners.

The Agency monitors each State's CDL program through Annual Performance Reviews (APRs) and Skills Testing Reviews (STRs) conducted in accordance with § 384.307. If FMCSA determines that a State does not meet one or more of the minimum standards for substantial compliance under part 384, the State must take action to correct the cited deficiencies, or explain why FMCSA's determination of non-compliance is incorrect. As part of this review process, the Agency evaluates the States' compliance with the CDL regulations in parts 383 and 384, and is therefore able to timely identify potential problem areas in third party testing. During the five-year period beginning in 2014, FMCSA identified 16 States that were out of compliance with at least one provision in 383.75.[6] Each of these States has either corrected the problem, or is in the process of implementing corrective actions.

The Agency notes that, in addition to these current regulatory requirements, another fraud-detection tool will be available when the Entry Level Driver Training (ELDT) regulations are implemented. Information collected through the Training Provider Registry (TPR) established by the ELDT final rule will allow FMCSA to determine whether applicants trained by specific providers have abnormally high (or low) CDL skills test passage rates. In such cases, investigation of the training provider may be warranted, which could reveal whether, if the provider is also a third party tester in the State(s) in which training is provided, the individual examiner who administered the skills test also trained the CDL applicants. In accordance with § 380.721(a)(5), CDL skills test passage rate anomolies may be a basis for the training provider's removal from the TPR.

Given these multiple means of detecting and preventing fraud in CDL skills testing, FMCSA believes that the proposed removal of the prohibition currently imposed by § 383.75(a)(7) would have no impact on safety; [7] the

[3] 78 FR 17875, 17877 (Mar. 25, 2013).

[4] *Id.*

[5] This comment is available at: *https://www.regulations.gov/document?D=DOT-OST-2017-0069-2671.*

[6] This information is captured in FMCSA's States Compliance Records Enterprise (SCORE) program database, the Agency's primary tool for tracking States' compliance with parts 383 and 384.

[7] FMCSA is aware of a recent occurrence in a midwestern State, in which several CDL applicants passed the skills test administered by the same individual who trained them (in violation of § 383.75(a)(7)), but failed upon re-testing conducted pursuant to § 383.75. However, in that situation it is unclear whether the failed re-testing resulted from examiner fraud or bias, or from the fact that the individual may not have been properly qualified as a third party examiner. In any event, FMCSA discovered discrepancies in the course of an annual program review of the State's testing program, which subsequently resulted in re-testing

Agency invites comments on this issue. In its comments to the October 2017 Regulatory Review document, SAGE contends that the current prohibition contributes to CDL testing delays and, consequently, CMV driver shortages. Although FMCSA understands the reasoning underlying SAGE's conclusion that there is a link between the current prohibition and skills testing delays, the Agency cannot independently confirm this assertion. The Agency specifically requests comment, including qualitative or quantitative data, addressing the impact of the current prohibition on CDL skills testing delays and the availability of CDL-credentialed drivers.

VII. Section-by-Section Analysis

Section 383.75(a)(7)

FMCSA would revise the current text of § 383.75(a)(7) to provide that the State may allow a skills test examiner who is also a skills instructor, either as part of a school, training program or otherwise, to administer a skills test to an applicant who received skills training by that skills test examiner.

VIII. Regulatory Analyses

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

Under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, this proposed rule does not require an assessment of potential costs and benefits under section 6(a)(4) of that Order. This proposed rule is also not significant within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 (May 22, 1980); 44 FR 11034 (Feb. 26, 1979)). Accordingly, the Office of Management and Budget has not reviewed it under these Orders.

This proposed rule would permit States that use third party testers to allow third party skills test examiners to administer the CDL skills test for students they instructed. This practice is currently prohibited by § 383.75(a)(7).

As discussed above, FMCSA believes the proposed change may increase the efficiency of CDL skills testing while maintaining an equivalent level of safety. The NPRM would affect States, third party testers and CDL applicants.

States

There are currently 33 SDLAs that administer the CDL skills test and also allow third party testers to do so. An additional ten SDLAs rely exclusively on third party testers. The remaining seven States and the District of Columbia do not permit third party testing.[8] Under the proposed rule, the decision by an SDLA to permit third party examiners to skills test CDL applicants they also trained would be discretionary, and FMCSA is therefore unable to predict how many of the 43 SDLAs that allow or rely solely upon third party testing would adopt that approach. Similarly, the Agency does not know if the proposed change would result in additional training providers being approved by SDLAs as third party testers. The Agency also has no basis on which to predict whether any of the seven States and the District of Columbia that currently do not permit third party testing would initiate third party testing that permits skills examiners to test students they have also trained. FMCSA invites comment on the extent to which SDLAs would utitlize the flexibility afforded by this NPRM.

Third Party Testers

In the regulatory impact analysis (RIA) for the ELDT final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators,'' [9] FMCSA estimated that 5,150 organizations (including CDL training schools, motor carriers, public transit agencies, school districts, et al.) provide CDL skills training across 6,350 locations.[10] At this time FMCSA is unable to estimate the number of CDL skills training providers that are also third party testers. However, as noted above, the Agency will have access to that information after the ELDT TPR becomes operational, and thus will be able to identify these entities for monitoring and enforcement purposes.

CDL Skills Test Applicants

A CDL applicant must hold a CLP in order to take the CDL skills test. FMCSA estimates that approximately 476,000 CLPs are issued annually nationwide. This estimate is based primarily on information from the Commercial Driver's License Information System (CDLIS), a nationwide computer system, administered by AAMVA, that enables SDLAs to ensure that each commercial driver has only one driver's license and one complete driver record. According to AAMVA, approximately 476,000 new Master Pointer Records (MPRs) were added annually to CDLIS during calendar years 2013 through 2015. An MPR is typically added to CDLIS within 10 days of issuing a CLP to a driver who is believed to have never held one previously, and is therefore a reasonable proxy for estimating the number of CDL skills test applicants.

FMCSA notes that because the Agency cannot estimate the number of States that would choose to permit third party examiners to train and test the same individual, the extent to which this population would be affected by the proposed rule is unknown.

Costs, Benefits and Transfer Payments

Costs

FMCSA did not identify any new costs to SDLAs, third party testers, or CDL applicants (*i.e.,* CLP holders) that would arise from the proposed rule. FMCSA invites comment, including qualitative or quantitative data, addressing whether the proposed rule may result in new costs.

The proposed change could conceivably result in cost savings by reducing wait times for CDL skills testing, thereby alleviating testing delays, and improving how quickly a driver may be hired. The monetized value of the reduced wait times would constitute cost savings to CDL applicants and to motor carriers that seek to employ them by avoiding opportunity costs. For example, CDL applicants could become wage-earning drivers more quickly, and carriers would be able to engage the new CDL holders in economically productive activities that much sooner. Again, due to the fact that the Agency has no basis to estimate the number of States which would allow skills testing currently

the affected drivers. This process illustrates one of the existing means of detecting fraud or bias in CDL skills testing. The Agency recently reviewed the State Compliance Records Enterprise (SCORE) database, containing records related to States' compliance with 49 CFR parts 383 and 384, and found no additional instances of non-compliance with § 383.75(a)(7).

[8] A General Accounting Office (GAO) report published in 2015 found that 29 States use both State testers and third party testers and that 10 States use third party testers only. Since publication of the GAO report, Massachusetts, Montana, New York and Texas adopted legislation permitting third party testing. The New Jersey Motor Vehicles Commission is currently operating a pilot program for third party testing pursuant to legislation enacted in 2016. The remaining seven States and Washington, DC use State testers only. See *https://www.gao.gov/products/GAO-15-607* (Accessed June 19, 2018).

[9] *See,* ''Regulatory Evaluation of Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators, Final Rule,'' *https://www.regulations.gov/docketBrowser?rpp=25&so=DESC&sb=commentDueDate&po=0&dct=SR%2BO&D=FMCSA-2007-27748*

[10] Other training providers that might also be third party testers include Public Transit Agencies (1,820), School Districts (9,410), Private School Bus Carriers (3,790), Other Passenger Carriers (30), and Other Carriers (300).

prohibited by § 383.75(a)(7), FMCSA is unable to quantify the amount of opportunity costs that would be avoided as result of the proposed change.

Cost savings may also accrue in the form of reduced travel costs to CDL applicants, who, as a result of the current prohibition, must travel to an alternative testing site (*e.g.,* another third party tester or an SDLA) rather than take the skills test at the site where they were trained. However, FMCSA has no basis to estimate how many CDL applicants currently confront that circumstance, the amount of time they spend travelling to an alternative testing site, or the extent to which such travel time would be eliminated as a result of the proposed change.The Agency requests comment addressing these factors, along with any additional cost savings of the proposed rule.

Benefits

As is discussed above, FMCSA believes that the proposed removal of the prohibition currently imposed by § 383.75(a)(7) would have no impact on safety, and would thus yield no positive or negative safety benefits. The Agency also has not identified any other positive or negative benefits to society that would result from this proposed rule.

Transfer Payments

There are also certain transfer payment effects that may occur if this proposed rule is finalized. Transfer payments are monetary payments from one group to another that do not affect total resources available to society, and therefore do not represent actual costs or benefits of the proposed rule.[11] Under the prohibition imposed on third party testers in 383.75(a)(7), CLP holders must presently arrange to a take skills test administrated by either an SDLA or another third party tester. These providers incur costs and receive fees to administer skills tests to these CLP holders. If a State chooses to allow third party examiners to administer the skills test to individuals they also trained, those CLP holders would no longer have to go elsewhere to take the skills test (unless the third party tester, as a training provider, does not employ a sufficient number of trainers who are also third party examiners). Provided that a third party skills tester who is also a training provider has adequate supply to meet demand for both training and testing, the cost of providing the skills test and the associated revenue for the provision of that service would be transferred to that skills tester (assuming the CLP holder chooses to receive skills testing from that provider, an assumption the Agency considers to be rational as it is expected to minimize costs to the CLP holder). These transfer payments would only occur in those States that choose to allow third party examiners to administer the skills test to applicants they have also trained, as proposed in the NPRM. The Agency is unable to predict how many of the 43 States that currently permit third party testing would also permit individual examiners to train and test the same CDL applicant, nor can the Agency predict whether additional training providers would become third party testers if this proposal is finalized. The Agency requests comments on the potential significance of transfer payments among third party testers,as a result of the proposed rule.

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

E.O. 13771 requires that for ''every one new [E.O. 13771 regulatory action] issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.'' 82 FR 9339 (Feb. 3, 2017). Implementation guida nce for E.O. 13771 issued by OMB (Memorandum M–17–21) on April 5, 2017, defines two different types of E.O. 13771 actions: an E.O. 13771 deregulatory action, and an E.O. 13771 regulatory action.

An E.O. 13771 deregulatory action is defined as ''an action that has been finalized and has total costs less than zero.'' This proposed rulemaking has total costs less than zero and therefore is an E.O. 13771 deregulatory action. Although, as previously noted, FMCSA cannot quantify the estimated cost savings of the rule, the potential cost savings are discussed qualitatively above.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601, *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121, 110 Stat. 857), requires Federal agencies to consider the impact of their regulatory proposals on small entities, analyze effective alternatives that minimize small entity impacts, and make their analyses available for public comment. The term ''small entities'' means 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 under 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these entities. FMCSA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FMCSA is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. We invite all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. We will consider all comments received in the public comment process when deciding in the Final Regulatory Flexibility Assessment.

An Initial Regulatory Flexibility Act (IRFA), which accompanies this NPRM, must include six components. See 5 U.S.C. 603(b) and (c). The Agency six components addressed in each section below require:

- A description of the reasons why the action by the agency is being considered;
- A succinct statement of the objective of, and legal basis for, the proposed rule;
- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;
- An identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

[11] OMB Circular A–4 requires Agencies to discuss the distributional effects of rulemakings. According to Circular A–4, ''distributional effects'' refer to ''. . . the impacts of a regulatory action across the population and economy, divided up in various ways (*e.g.,* income groups, race, sex, industrial sector, geography).'' This approach allows decision makers to properly consider the distributional effects of a regulatory action on economic efficiency. E.O. 12886 authorizes this approach. See *https://obamawhitehouse.archives.gov/omb/circulars_a004_a-4/ (Accessed June 26, 2018).*

Why the Action by the Agency Is Being Considered

FMCSA regulations define third party tester and third party skills test examiner (49 CFR 383.5). A third party tester is as a person (including but not limited to, another State, motor carrier private training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills test. A ''third party skills test examiner'' is defined as a person employed by a third party tester who is authorized by the State to administer the CDL skills test. Section 383.75(a)(7) prohibits a third party skills test examiner who is also a skills instructor from administering the CDL skills test to an applicant who received skills training from that examiner skills test examiner. The Agency's proposal to remove the skills testing restriction on third party examiners responds to public comment received in response to the DOT's Notification of Regulatory Review (82 FR 45750 (Oct. 2, 2017)).

The Objectives of and Legal Basis for the Proposed Rule

The objective of the NPRM is to provide States with the option to permit a third party skills test examiners to administer the Commercial Driver's License (CDL) skills test to applicants to whom the examiner has also provided skills training. The Agency believes that permitting this practice could reduce wait times for CDL skills testing and reduce the inconvience and cost for CDL applicants and third party testers. Recent surveys conducted by the Commercial Vehicle Training Association and FMCSA, based on 2016 data show that wait times for initial CDL skills testing and retesting vary by State. Providing the States the discretion to lift the prohibition on third party skills testers from administering the skills tests to applicants they instruct may reduce testing delays and improve how quickly motor carriers can hire new CDL holders. FMCSA believes the proposed change would not undermine the integrity or effectiveness of CDL skills training.

The NPRM is based primarily on the broad authority of the Commercial Motor Vehicle Safety Act of 1986, as amended (the 1986 Act) (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, codified at 49 U.S.C. chapter 313), which established the CDL program. The 1986 Act required the Secretary, after consultation with the States, to prescribe uniform minimum standards for the issuance of CDLs, including minimum standards for written and driving tests of an individual operating a commercial motor vehicle'' (49 U.S.C. 31305(a)(1)). The proposed rule would amend one of the current CDL testing requirements imposed on the States.

The NPRM is also consistent with the concurrent authorities of the Motor Carrier Safety Act of 1984, as amended (the 1984 Act) (Pub. L. 98–554, Title II, 98 Stat. 2832, codified at 49 U.S.C. 31136); and the Motor Carrier Act of 1935, as amended (the 1935 Act) (Chapter 498, codified at 49 U.S.C. 31502). A full explanation of the legal basis for this rulemaking is set forth in Section IV.

A Description of and, Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Will Apply

''Small entity'' is defined in 5 U.S.C. 601. Section 601(3) defines a ''small entity'' as having the same meaning as ''small business concern'' under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4), likewise includes within the definition of ''small entities'' not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, section 601(5) defines ''small entities'' as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

The proposed rule could affect training providers, some of which are already authorized third party testers in 43 States. In the regulatory impact analysis (RIA) for the ELDT final rule, ''Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators,'' FMCSA estimated that 5,150 organizations (including community colleges, proprietary CDL training schools, freight and property motor carriers and motocoach carriers) provide CDL skills training across 6,350 locations [12]. The RIA also estimated that there may be an additional 15,350 training providers, which theoretically could become third party testers. These entities include public school districts, private school bus carriers, public transit agencies and other passenger carriers.

The Agency lacks annual revenue data to determine how many of the training entities identified in the ELDT RIA are within the SBA size standards to qualify as small entities. Large motor carriers that have training programs for potential new hires and students that may seek employment elsewhere are not likely small entities. Many of the private, for profit CDL training providers are multi-disciplinary post-secondary institutions with branch campuses in multiple States. These training providers may exceed the SBA size standard based the combined revenue from CDL training programs and other programs. Some of the training providers identified in the ELDT RIA are not small entities because they are instrumentalities of the States or local government with population greater than 50,000. For example, community colleges that are chartered by State agencies such as State Boards of Higher Education. As instrumentalities of the States their population would exceed 50,000.

In 33 States, SDLAs augment their own administration of skills tests with third party testers. In another 10 States, SDLAs rely exclusively on third party testers to perform skills tests. Ten States and the District of Columbia do not permit third party testing. Of the 43 States that either allow third party testing or rely exclusively on third party testing, the Agency is unable to predict how many States would permit instructors employed by third party testers to be the skills test examiners for students they have instructed. The Agency specifically requests comment from SDLAs in these States whether they would permit instructors to also serve as skills test examiners for their students as a result of the proposed rule, and if so, how many third party testers within their State would be impacted by the proposed rule and what the magnitude of that impact would be. FMCSA also requests comments from SDLAs if this change would result in their approval of additional third party testers, beyond those currently approved, or what other factors or limitations SDLAs consider in determining how many third party testers are approved.

The Agency is unable to predict whether any of the 10 States that do not permit third party testing would choose to permit third party testing as a result of the proposed rule. As nothing currently prohibits these States from allowing third party testers, the Agency does not believe that position would be changed solely on the basis of this

[12] Of the 5,150 CDL training schools, 700 consist of proprietary training providers and community colleges. The remaining 1,500 represent an estimate of small entities training few students, most likely representing individuals who training a few students a year (*e.g.,* CDL holders training family members or friends).

proposal. The Agency requests comment from these 10 SDLAs concerning whether they would likely adopt third party testing and if they also would permit instructors to serve as skills test examiners for their students.

A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.

The proposed rule does not create or modify existing third party tester recordkeeping requirements.

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

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

A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

The proposed rule eliminates a mandatory prohibition required by a specific regulation. Because of this singular focus, there is no significant alternative to considered.

D. 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 proposed rule so that they can better evaluate its effects and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction, and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed 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 businesses. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). The DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.[13]

E. 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. In particular, the Act requires agencies to prepare a comprehensive written statement for any proposed or final rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $161 million (which is the value equivalent of $100,000,000 in 1995, adjusted for inflation to 2017 levels) or more in any one year. Because this proposed rule would not result in such an expenditure, a written statement is not required. However, FMCSA does discuss the costs and benefits of this proposed rule elsewhere in this preamble.

F. Paperwork Reduction Act

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

G. E.O. 13132 (Federalism)

A rule has implications for federalism under Section 1(a) of E.O. 13132 if it has ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' FMCSA determined that this proposal would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism Impact Statement.

H. E.O. 12988 (Civil Justice Reform)

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

I. E.O. 13045 (Protection of Children)

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 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. FMCSA determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, FMCSA does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

J. E.O. 12630 (Taking of Private Property)

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

K. Privacy

The Consolidated Appropriations Act, 2005, (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. Because this final rule does not require the collection of personally identifiable information (PII), the Agency is not required to conduct a PIA.

Section 208 of the E-Government Act of 2002 (44 U.S.C. 3501 note) requires Federal agencies to conduct a PIA for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a PIA.

L. 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.

M. E.O. 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a ''significant energy action'' under that order because it is not a ''significant regulatory action'' likely to have a significant adverse effect

[13] U.S. Department of Transportation (DOT). ''The Rights of Small Entities to Enforcement Fairness and Policy Against Retaliation.'' Available at: *https://www.transportation.gov/sites/dot.gov/files/docs/SBREFAnotice2.pdf (accessed December 1, 2017).*

on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

N. 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.

O. 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 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.

P. Environment (NEPA)

FMCSA analyzed this NPRM consistent with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680 (Mar. 1, 2004)), appendix 2, paragraph (6)(z). The Categorical Exclusion (CE) in paragraph (6)(z) covers (1) the minimum qualifications for persons who drive commercial motor vehicles as, for, or on behalf of motor carriers; and (2) the minimum duties of motor carriers with respect to the qualifications of their drivers. The proposed requirements in this rule are covered by this CE, there are no extraordinary circumstances present, and the proposed action does not have the potential to significantly affect the quality of the environment. The CE determination is available for inspection or copying in the *regulations.gov* website listed under **ADDRESSES**.

List of Subjects in 49 CFR Part 383

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

In consideration of the foregoing, FMCSA proposes to amend 49 CFR part 383 to read as follows:

PART 383—COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES

■ 1. The authority citation for part 383 is revised 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. 1766, 1767; sec. 1012(b) of Pub. L. 107– 56; 115 Stat. 397; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

■ 2. Revise § 383.75(a)(7) to read as follows:

§ 383.75 Third party testing.

(a) * * *

(7) The State may allow a skills test examiner who is also a skills instructor either as a part of a school, training program or otherwise, to administer a skills test to an applicant who received skills training by that skills test examiner; and

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: June 26, 2019.

Raymond P. Martinez,

Administrator.

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BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 180627584–9388–01]

RIN 0648–BI00

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Construction and Operation of the Liberty Drilling and Production Island, Beaufort Sea, Alaska; Reopening of Public Comment Period

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the National Marine Fisheries Service (NMFS), are reopening the public comment period on the proposed rule under the Marine Mammal Protection Act (MMPA) to authorize the taking of marine mammals, by mortality, serious injury, Level A harassment, and Level B harassment, incidental to the construction and operation of the Liberty Drilling and Production Island, Beaufort Sea, Alaska. The comment period for the proposed rule that published on May 29, 2019 closed on June 28, 2019. NMFS is reopening the public comment period until July 31, 2019, to provide the public with additional time to submit information and to comment on this proposed rule.

DATES: Written comments on the proposed rule must be received by July 31, 2019. Comments received between the close of the first comment period on June 28, 2019 (84 FR 24926), and the reopening of the comment period on July 9, 2019 will be considered timely received.

ADDRESSES: You may submit comments, information, or data on the proposed rule, identified by NOAA–2019–0053, by either of the following methods:

- *Electronic Submission:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-2019-0053,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Jolie Harrison, Division Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910, Attn: Hilcorp Liberty Proposed Rule.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. We will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.