E. Scott Pruitt,
Administrator,

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is proposed to be amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

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


2. Section 63.691 is amended by revising paragraph (c)(3) introductory text to read as follows:

§ 63.691 Standards: Equipment leaks.

(3) Pressure release management.

Except as provided in paragraph (c)(4) of this section, emissions of HAP listed in Table 1 of this subpart may not be discharged directly to the atmosphere from pressure relief devices in off-site material service, and according to the date an affected source commenced construction or reconstruction and the date an affected source receives off-site material for the first time, as established in § 63.680(e)(i) through (iii), the owner or operator must comply with the requirements specified in paragraphs (c)(3)(i) and (ii) of this section for all pressure relief devices in off-site material service, except that containers are not subject to the obligations in (c)(3)(i) of this section.

[FR Doc. 2017-16494 Filed 8-4-17; 8:45 a.m.]
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–2016–0341, 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., 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 section 5202 of the FAST Act (Pub. L. 114–94, 129 Stat. 1312, 1534, December 4, 2015; 49 U.S.C. 31136(g)), if a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM), or proceed with a negotiated rulemaking, unless the Agency finds good cause that both would be impracticable, unnecessary, or contrary to the public interest. As today’s NPRM is not proposing any requirements regarding commercial motor vehicle safety and would not lead to promulgation of a major rule, FMCSA finds that publication of an ANPRM or proceeding with a negotiated rulemaking are unnecessary and contrary to the public interest in this case.

II. Legal Basis for the Rulemaking

The FAST Act requires FMCSA to address its rulemaking and petitions procedures. Specifically, section 5202 provides requirements for the Agency to follow regarding the development of proposed rulemakings (49 U.S.C. 31136(f)–(h)). Section 5204 also directs the Agency to be more transparent to the public regarding how FMCSA prioritizes and defines petitions.

The APA (5 U.S.C. 551–706) established procedures for all Federal agencies to use in developing rules and regulations. It also established the standards that allow the public to participate in a rulemaking as well as the opportunity to petition the Federal government for the issuance, amendment, or repeal of a rule. The APA authorizes those proposed changes to Part 389, beyond what is required by the FAST Act.

III. Discussion of Proposed Rulemaking

FMCSA proposes several changes to the regulatory procedural requirements found in 49 CFR part 389. These changes fall into the three general categories outlined below, and are explained in further detail in the section-by-section analysis.

A. Advance Rulemaking Procedures Required

FMCSA proposes new rulemaking provisions required by the FAST Act where the Agency must consider undertaking a negotiated rulemaking or an ANPRM for all major rules regarding commercial motor vehicle safety. However, the FAST Act allows the Administrator to waive this requirement in instances where those tools would be impracticable, unnecessary, or contrary to the public interest. Additionally, the NPRM proposes a definition of a “major rule” as defined in the Congressional Review Act (5 U.S.C. 801). FMCSA would use this definition to determine whether an ANPRM or negotiated rulemaking process is necessary.

B. Definition and Processing of a Petition

Under the current FMCSA regulations (49 CFR part 389) for submitting petitions, there is no regulatory definition of a petition. However, section 5204 of the FAST Act clearly defines the term “petition.” It includes requests for: A new regulation; a regulatory interpretation or clarification; or a determination by FMCSA that a regulation should be modified or eliminated for one of several enumerated reasons prescribed in section 5204. FMCSA proposes to include this definition in part 389.

Additionally, under this proposal, part 389 would be revised to include a new process for filing and addressing petitions. These changes are being proposed in order to clarify FMCSA’s procedures for rulemaking, and to make editorial changes.

Finally, FMCSA proposes to define what “written or in writing” means to include electronic documentation.

C. Direct Final Rulemaking Procedures

Under FMCSA’s current direct final rulemaking (DFR) procedures, if the Agency receives a notice of intent (NOI) to file an adverse comment, the DFR will be withdrawn, even if the comment that is eventually filed does not meet the definition of an adverse comment found in 49 CFR 389.39(b). FMCSA proposes to change this requirement. Upon receiving an NOI to file an adverse comment, the Agency would extend the comment period rather than withdraw the DFR, allowing the commenter additional time to file. Once FMCSA receives the comment, the Agency would determine whether it is adverse. If it is an adverse comment, FMCSA would withdraw the DFR; however, if it does not meet the definition in § 389.39(b), the Agency would move forward with the DFR. If the same or another commenter submits an NOI at the end of the extended comment period, FMCSA will determine, on a case-by-case basis, whether to extend the comment period again, withdraw the DFR, or proceed with the DFR using only the comments already received.

IV. International Impacts

The FMCSR, and any exceptions to the FMCSR, 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 that they operate in, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences amongst nations.

V. Section-by-Section Analysis

Throughout part 389, FMCSA would change the term “rule making” to “rulemaking” for consistency.

Section 389.3 Definitions

FMCSA would add new definitions of “major rule,” “petitions,” and “written or in writing” to § 389.3.

Section 389.13 Initiation of Rulemaking

In § 389.13, FMCSA would redesignate the existing text into paragraph (a) and would add paragraphs (b)(1) through (b)(3).

Proposed paragraph (b) of section 389.13 and its subparagraphs include the advanced public participation requirements from section 5202 of the FAST Act.
Section 389.15 Contents of Notices of Proposed Rulemaking

The title of § 389.15 is changed by removing the word "section" and replacing it with "rulemaking policy." The meaning of DOT regulatory policies is included in this section.

Section 389.21 Submission of Written Comments

FMCSA proposes revising § 389.21 to incorporate reference to how comments should be submitted. The Agency would remove the word "secured" from the reference by reference, as it is not relevant to the topic of comment submission. FMCSA also proposes removing the section heading to "Submission of written comments" to reflect this change.

Section 389.29 Adoption of Final Rules

In § 389.29, FMCSA makes minor changes to the text to clarify the procedure followed when the Agency finalizes a rule.

Section 389.31 Petitions for Rulemaking

In § 389.31(a) the word "repeal" would be replaced with "withdraw" to more accurately describe the removal of a regulation. In paragraph (b)(1) the word "duplicate" would be replaced with "writing" to make use of and follow the definition of this term, proposed in § 389.3. This proposed change would also reflect that the Agency no longer requires duplicate submissions.

Section 389.39 Direct Final Rulemaking Procedures

In § 389.39, FMCSA would remove language regarding the withdrawal of a DFR if the Agency receives an NOI to submit an adverse comment. Upon receipt of an NOI, the Agency would extend the comment period to give the submitter additional time to file the comment. Once submitted, the comment would be reviewed to determine if it is an adverse comment, and proceed according to the results of that analysis (either to withdraw the DFR if the comment is adverse, or to move forward with the DFR if it is not).

VI. Regulatory Analyses

A. E.O. 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 8321, January 21, 2011), and is also not significant within the meaning of DOT regulatory policies.

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 (1-888-734-7347). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

B. Regulatory Flexibility Act (Small Entities)

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.) 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 50,000.1 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 does not expect this NPRM to have a significant economic impact on a substantial number of small entities. Consequently, I certify that the action would not have a significant economic impact on a substantial number of small entities. FMCSA invites comment from members of the public who believe there will be a significant impact either on small businesses or on governmental jurisdictions with a population of less than 50,000.

C. 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 NPRM so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the NPRM 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. Bivan Patnaik, listed in the FOR FURTHER INFORMATION CONTACT section of this NPRM.

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

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

FMCSA has analyzed this NPRM 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 it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211. 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.

M. E.O. 13175 (Indian Tribal Governments)

This NPRM 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.

N. 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 and adopted by voluntary consensus standards bodies. This NPRM does not use technical standards. Therefore, FMCSA did not consider the use of voluntary consensus standards.

O. Environment (NEPA, CAA, Environmental Justice)

FMCSA analyzed this rule for the purpose of 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 5810.1 (69 FR 9680, March 1, 2004). Appendix 2, paragraph 6.x. The Categorical Exclusion (CE) in paragraph 6.x. addresses regulations implementing procedures for the issuance, amendment, revision and rescission of Federal motor carrier regulations (e.g., the establishment of procedural rules that would provide general guidance on how the agency manages its notice-and-comment rulemaking proceedings, including the handling of petitions for rulemakings, waivers, exemptions, and reconsiderations, and how it manages delegations of authority to carry out certain rulemaking functions.). The content in this rule is covered by this CE and the proposed action would not have any effect on the quality of the environment. The CE determination is available for inspection or copying in the Federal eRulemaking Portal: http://www.regulations.gov.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 et seq.), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA’s general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

List of Subjects in 49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.
In consideration of the foregoing, FMCSA proposes to amend 49 CFR chapter III, part 389 to read as follows:

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

1. The authority citation for part 389 is revised to read as follows:


2. Amend §389.3 by adding definitions of Major rule, Petition, and Written or in writing in alphabetical order to read as follows:

§389.3 Definitions.

* * * * *

Major rule means:

(1) Any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget finds has resulted in or is likely to result in:
(i) An annual effect on the economy of $100,000,000 or more;
(ii) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
(iii) 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.

(2) The term does not include any rule promulgated under the Telecommunications Act of 1996 and the amendments made by that Act.

Petition means a request for:

(1) A new regulation;
(2) A regulatory interpretation or clarification; or
(3) A determination made by the Administrator that a regulation should be modified or eliminated because it is:
(i) No longer:
(A) Consistent and clear;
(B) Current with the operational realities of the motor carrier industry; or
(C) Uniformly enforced.
(ii) Ineffective; or
(iii) Overly burdensome.

Written or in writing means printed, handwritten, typewritten either on paper or other tangible medium, or by any method of electronic documentation such as electronic mail.

§389.7 [Amended]

3. Amend §389.7 by removing the term “rule making” and add the term “rulemaking” in its place.

§389.13 Initiation of rulemaking

(a) The Administrator initiates rulemaking on his/her own motion. However, in so doing, he/she may, in his/her discretion, consider the recommendations of his/her staff or other agencies of the United States or of other interested persons.

(b) If a proposed rule regarding commercial motor vehicle safety is likely to lead to the promulgation of a major rule, the Administrator, before publishing such proposed rule, shall—
(1) Issue an advance notice of proposed rulemaking that:
(i) Identifies the need for a potential regulatory action;
(ii) Identifies and requests public comment on the best available science or technical information relevant to analyzing potential regulatory alternatives;
(iii) Requests public comment on the available data and costs with respect to regulatory alternatives reasonably likely to be considered as part of the rulemaking; and
(iv) Requests public comment on available alternatives to regulation; or
(2) Proceed with a negotiated rulemaking.

(3) This paragraph does not apply to a proposed rule if the Administrator, for good cause, finds (and incorporates the finding and a brief statement of reasons for such finding in the proposed or final rule) that an advance notice of proposed rulemaking is impracticable, unnecessary, or contrary to the public interest.

§389.15 [Amended]

5. In §389.15, paragraph (a), remove the term “rule making” and add the term “rulemaking” in its place.

6. Revise §389.21 to read as follows:

§389.21 Submission of written comments.

(a) You may submit comments identified by the docket number provided in the rulemaking document using any of the following methods. To avoid duplication, please use only one of these four methods.


(2) 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.

(3) 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.


(b) All written comments must be submitted in English and include copies of any material that the commenter refers to within the comment.

7. Revise §389.29 to read as follows:

§389.29 Adoption of final rules.

Final rules are prepared by representatives from all relevant offices of FMCSA. The final rule is then submitted to the Administrator for his/her consideration. If the Administrator adopts the rule, and once approved by the Office of the Management and Budget, if necessary, the final rule is published in the Federal Register, unless all persons subject to the final rule are named and personally served with a copy of it.

8. Revise §389.31 to read as follows:

§389.31 Petitions for rulemaking.

(a) Any interested person may petition the Administrator to establish, amend, or withdraw a rule.

(b) Each petition filed under this section must:

(1) Be submitted in writing to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590–0001;

(2) Set forth the text or substance of the rule or amendment proposed, or specify the rule that the petitioner seeks to have repealed, as the case may be;

(3) Explain the interest of the petitioner in the action requested;

(4) Contain any information, data, research studies, and arguments available to the petitioner to support the action sought.

9. In §389.39, redesignate paragraphs (c) and (d) as paragraphs (d) and (e), respectively, add new paragraph (c), and revise newly redesignated paragraphs (d) and (e) to read as follows:

§389.39 Direct final rulemaking procedures.

* * * * *

(c) Extension of comment period. FMCSA will extend the comment period for a direct final rule if it receives a notice of intent to submit an adverse comment. Upon receipt of the comment, FMCSA will determine if it is an adverse comment or not.

(d) Confirmation of effective date. FMCSA will publish a confirmation rule document in the Federal Register, if it has not received an adverse comment by the specified date in the direct final rule or any comment extension document. The confirmation rule document tells the public the effective date of the rule.

(e) Withdrawal of a direct final rule.

(1) If FMCSA receives an adverse
DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

RIN 0648–BG85

International Fisheries; Pacific Tuna Fisheries; Restrictions on Fishing for Sharks in the Eastern Pacific Ocean

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations under the Tuna Conventions Act to implement Resolution C–16–05 (Resolution on the Management of Shark Species) of the Inter-American Tropical Tuna Commission (IATTC) adopted in July 2016. Per the Resolution, this proposed rule would require purse seine vessel owners, operators, and crew to follow specified release requirements for sharks in the eastern Pacific Ocean (EPO). The rule would also prohibit longline vessels targeting tuna or swordfish in the EPO from using “shark lines” (a type of fishing gear used on longline vessels to target sharks). This proposed rule is necessary for the United States to satisfy its obligations as a member of the IATTC.

DATES: Comments on the proposed rule and supporting documents must be submitted in writing by September 6, 2017.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2017–0068, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to http://www.regulations.gov/#!docketDetail;D=NOAA–NMFS–2017–0068, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.


Instructions: Comments must be submitted by one of the above methods to ensure they are received, documented, and considered by NMFS. 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. 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, etc.) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the draft Regulatory Impact Review and other supporting documents are available via the Federal eRulemaking Portal: http://www.regulations.gov, docket NOAA–NMFS–2017–0068, or by contacting the Regional Administrator, Barry A. Thom, NMFS West Coast Region, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232–1274, or RegionalAdministrator.WCRHMS@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Daniel Studt, NMFS, West Coast Region, 562–980–4073.

SUPPLEMENTARY INFORMATION:

Background on the IATTC


The IATTC consists of 21 member nations and four cooperating non-member nations and facilitates scientific research into, as well as the conservation and management of, tuna and tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N. latitude, 150° W. longitude, and 50° S. latitude. The IATTC maintains a scientific research and fishery monitoring program and regularly assesses the status of tuna, shark, and billfish stocks in the EPO to determine appropriate catch limits and other measures deemed necessary to promote sustainable fisheries and prevent the overexploitation of these stocks.

International Obligations of the United States under the Antigua Convention

As a Party to the Antigua Convention and a member of the IATTC, the United States is legally bound to implement certain decisions of the IATTC. The Tuna Conventions Act (16 U.S.C. 951 et seq.), as amended on November 5, 2015, by Title II of Public Law 114–81, directs that the Secretary of Commerce, in consultation with the Secretary of State and, with respect to enforcement measures, the Secretary of Homeland Security, may promulgate such regulations as may be necessary to carry out the United States’ international obligations under the Antigua Convention, including recommendations and decisions adopted by the IATTC. The Secretary of Commerce’s authority to promulgate such regulations has been delegated to NMFS.

Resolution on the Management of Shark Species

The IATTC adopted Resolution C–16–05 by consensus at its 90th meeting in July 2016 in response to the IATTC scientific staff’s conservation recommendations to adopt release requirements for sharks caught by purse seine vessels and to prohibit the use of shark lines by longline vessels. The main objective of Resolution C–16–05 is to promote the conservation of shark species in the EPO by reducing incidental catch mortalities in IATTC fisheries. Although U.S. commercial fishing vessels in the EPO do not target sharks, some are caught incidentally. The resolution includes release requirements for sharks caught on purse seine vessels, which is expected to...