TECHNICAL ASSISTANCE NOTE

No. T-03-06

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Department of Education
Charlie Crist, Commissioner

DATE: **December 19, 2002**

TO: **Transportation Directors**

FROM: **Ronnie H. McCallister, Program Director**
Operations, Audits, and Safety Subsection

SUBJECT: **Final Rule Revising Commercial Driver's License Program**

Recently our office has received calls about the Final Rule, issued by the Federal Motor Carrier Safety Administration (FMCSA), revising the Commercial Driver's License (CDL) Program. The rule, when implemented by each state, will create a new license endorsement for drivers to operate a school bus. It also contains other provisions, discussed below.

In order to obtain a CDL with a school bus endorsement, applicants would need to document the following (effective upon adoption of the federal requirements into Florida law and rule):

1. Pass the written and skills test for a passenger vehicle endorsement;
2. Demonstrate knowledge of at least the following three topics:
   - Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by state or federal law or regulation;
   - Emergency exits and procedures for safely evacuating passengers in an emergency; and
   - State and federal laws and regulations related to safely traversing highway rail grade crossings.
3. Pass a driving skills test in a school bus of the same type that the applicant would drive.

The rule grants states the authority to waive the skills test for any applicant who is currently licensed to operate a school bus and who has the specified experience and a good driving record. This waiver will only be valid until September 30, 2005. Drivers to be "grandfathered" will have to certify to the state that during the two-year period immediately prior to applying for the school bus endorsement they have met the following criteria:

- Has held a valid CDL with a passenger endorsement to operate a school bus representative of the group he or she will drive;

- Has not had his or her CDL suspended, revoked, or canceled or been disqualified from operating a commercial vehicle;
- Has not been convicted of any of the disqualifying offenses defined under Section 383.51(b) of the Federal Motor Carrier Safety Regulations (FMCSRs) while operating any type of motor vehicle (see rule for clarification);
- Has not had more than one conviction of any of the serious traffic violations defined in Section 383.5 of the FMCSRs while operating any type of motor vehicle;
- Has not had any conviction for a violation of state or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;
- Has been regularly employed as a school bus driver and operated a school bus representative of the group the applicant will drive, and provides evidence of such employment.

In addition to the CDL school bus specific endorsement, the rule adds two new disqualifying offenses: 1) driving a commercial motor vehicle (CMV) after the driver's CDL was revoked, suspended, or canceled for violations while operating a CMV; and, 2) causing a fatality through the negligent or criminal operation of a CMV. The rule also specifies certain disqualifying offenses while driving non-CMVs. Drivers who have been convicted for certain traffic offenses or for committing drug or alcohol-related offenses while operating a non-CMV will have their licenses canceled, revoked, or suspended. A copy of the Final Rule, including Section 383.51, Disqualification of Drivers, is attached for your information.

The Department of Highway Safety and Motor Vehicles will be working on recommended revisions to state statutes and rules necessary to implement these revised FMCSRs in Florida. States have until September 30, 2005, to implement the new rule. It is anticipated that new tests and procedures for implementing the school bus endorsement will be developed during the interim period prior to full implementation of this rule.

If you have any questions or concerns, please email Kay Kanupp at kay.kanupp@fldoe.org or call her at (850) 488-4405.

RHM/lkk

Attachment: FMCSA Final Rule

Cc: Cathy Wooley-Brown
Jennifer Rippner
Skip Hood

Federal Register

Wednesday,
July 31, 2002

Part II

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 350, et al.

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 383, 384 and 390

[Docket Nos. FMCSA–2001–9709 and FMCSA–00–7382]

RIN 2126–AA60 and RIN 2126–AA55

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements and Noncommercial Motor Vehicle Violations

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

ACTION: Final rule.

SUMMARY: The FMCSA revises its Commercial Driver's License (CDL) Program. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandates these revisions. They are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways by ensuring that only safe drivers operate CMVs.

EFFECTIVE DATE: September 30, 2002. The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of September 30, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–5014, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION

Regulatory Information

The FMCSA published two Notices of Proposed Rulemaking (NPRMs) [66 FR 22499 on May 4, 2001 and 66 FR 39248 on July 27, 2001] to amend various provisions of parts 350, 383, 384 and 390 of Title 49 Code of Federal Regulations (CFR) to implement congressionally mandated changes. Nearly 200 comments were received in response to these two NPRMs. Both NPRMs are being finalized in this action.

This rule uses plain language so that individuals unfamiliar with FMCSA regulations will find it easier to follow. We are making the text clearer, standardizing terms, changing to the active voice, reorganizing material for added clarity, inserting or revising headings to reflect content accurately, and correcting typographical, punctuation, and grammatical errors. The FMCSA is also revising the disqualification sanctions found in§ 383.51 by organizing them into an if-then table format that we believe is easier to understand than the current regulatory text.

Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) [Public Law 99–570, Title XII, 100 Stat. 3207–170, 49 U.S.C. chapter 313] established the Commercial Driver's License (CDL) Program and the Commercial Driver's License Information System (CDLIS) to serve as a clearinghouse and repository of commercial driver licensing and conviction data. The CMVSA also requires States to ensure that drivers convicted of certain serious traffic violations be prohibited from operating a CMV. The Secretary of Transportation was directed to monitor the States' compliance with the standards established under the CMVSA. The goal of the CMVSA is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

In 1994, the agency initiated a study to evaluate the effectiveness of the CDL program. The final report, submitted to Congress in 1999, documented vulnerabilities within the CDL program and provided recommendations to correct them.

Responding in part to the findings of this report, Congress passed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) [Public Law 106–159,113 Stat. 1748]. The MCSIA amended numerous provisions of title 49 of the United States Code relating to the licensing and sanctioning of CMV drivers required to hold a CDL, and directed the Department of Transportation (DOT) to amend its regulations to correct specific weaknesses in the CDL program.

This rule also clarifies the FMCSA relationship to the Commercial Driver's License Information System (CDLIS). Section 12007 of the CMVSA, codified as 49 U.S.C. 31309, requires the Secretary of Transportation to establish or designate an information system to serve as the clearinghouse and depository of information about any person who operates CMVs, including his/her identification, licensing history, and disqualification history. This system, known as CDLIS, also includes information about a person required to have a CDL who has been convicted of any of the disqualifying offenses listed in 49 CFR 383.51.

In 1988, the Federal Highway Administration (FHWA) entered into an agreement pursuant to 49 U.S.C. 31309 with the American Association of Motor Vehicle Administrators and its former affiliate AAMVAnet, Inc.[1] (AAMVAnet), to establish a communications network to implement the CDLIS. The agreement designated AAMVAnet the CDLIS operator. Section 106(b) of MCSIA, transferred the agreement from the FHWA to the FMCSA where it remains in effect until the FMCSA modifies or terminates it. A copy of the 1988 agreement is in the public docket.

Because States regularly utilize AAMVAnet to access the CDLIS to obtain and transmit information on CDL drivers, the AAMVAnet agreement and CDLIS operational procedures are being incorporated by reference into this rulemaking.

The following commentary will analyze the content of the regulations and address significant issues raised in comments received in response to the NPRMs.

Section-by-Section Discussion of Comments with FMCSA Response

Section 350.217—What Are the Consequences for a State With a CDL Program Not in Substantial Compliance With 49 CFR Part 384, Subpart B?

Section 103(e) of the MCSIA requires the FMCSA to withhold all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under Section 103(b)(1) of MCSIA from States not in substantial compliance with 49 CFR part 384, subpart B. This new sanction is added to the one currently contained in 49 CFR part 384, subpart D requiring the agency to withhold five percent of some of a State's Federal-aid highway funds following the first year of noncompliance and 10 percent of such funds following the second and subsequent years of noncompliance.

Fifteen States and State affiliated associations commenting on this provision oppose the withholding of MCSAP funds from States not in substantial compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). Of particular concern was the fact that the agencies facing the potential loss of MCSAP funds, primarily law enforcement agencies, have no direct control over compliance by other State agencies, particularly the courts. Compliance with the proposed 10-day conviction reporting requirement of 49 CFR 384.209 is the issue which raises the greatest concerns. One agency also proposes that the withholding of MCSAP funding requirement be

[1] On May 31, 2002, AAMVAnet, Inc. was merged into AAMVA. AAMVAnet, Inc. no longer exists as a separate corporation.

amended to adopt the same formula used to withhold highway funding from States in substantial noncompliance.

The FMCSA understands these concerns, but is bound by statutory language of the MCSIA requiring the withholding of MCSAP funds from those States found to be in substantial noncompliance with 49 CFR part 384, subpart B. The FMCSA urges each State's chief executive to coordinate the efforts of all State agencies—including the judiciary—to ensure their compliance with these requirements.

Section 383.5—Definitions.

Section 383.5 will add four new definitions and change four existing definitions of terms used in 49 CFR parts 383 and 384 to implement provisions of the MCSIA. The new definitions include ''fatality,'' ''imminent hazard,'' ''non-CMV,'' and ''school bus.'' The revised definitions include ''disqualification,'' ''driving a commercial motor vehicle while under the influence of alcohol,'' ''nonresident CDL,'' and ''serious traffic violation.'' The term ''serious traffic violation'' is being amended to add three new offenses to the existing list of offenses warranting disqualification of a CDL holder.

The FMCSA has added a new definition for the term ''non-CMV'' to identify the vehicles types in which—if a driver is convicted of committing a serious traffic offense other than those specifically limited to commercial vehicles—he/she is subject to disqualification.

One commenter suggested that the definition of ''fatality'' be revised to be consistent with current Federal definitions, without providing an example of the preferred definition(s). FMCSA notes that the 49 CFR 390.5 fatality definition— '' * * * any injury which results in the death of a person at the time of the motor vehicle accident *or within 30 days of the accident*'' (emphasis added)—is primarily used within the context of fatality reporting. Because the new 49 CFR part 383 definition is to be used within the context of driver sanctions, FMCSA has deleted the reference to a 30-day time period. Otherwise a driver involved in an accident which results in a death more than 30 days after the accident could possibly avoid sanctions. Such an effect is both inconsistent with the objective of CDL sanctioning requirements and contrary to general principles of common law under which any death occurring within one year of the event may be charged criminally. FMCSA recognizes, of course that a death which occurs long after an accident may have a proximate cause or causes other than the injuries sustained in the accident. Therefore, the deletion of the ''30-day'' reference is in no way intended to weaken the causal link necessary to qualify as a fatality.

Seven commenters proposed revisions to the definition of ''school bus.'' Three proposed that the FMCSA use the National Highway Traffic Safety Administration (NHTSA) definition or that the term only include vehicles that transport 16 or more passengers including the driver; while two proposed that the passenger capacity be lowered to 10 or more passengers. Two other commenters objected to the proposed definition, but offered less specific comments. The FMCSA has reviewed the NHTSA definition and believes that the proposed definition is consistent with it, except for using the term CMV. The term CMV was included in the ''school bus'' definition because only vehicles meeting the CMV definition are subject to the CDL licensing requirements of 49 CFR part 383, including the new school bus endorsement. As with other CDL requirements in 49 CFR part 383, the school bus definition is intended to establish a minimum standard. A State is free to establish more stringent standards for CDL drivers. Allowable variations to the school bus definition include lowering the vehicle passenger capacity threshold for which a school bus endorsement is required. For these reasons, the FMCSA has included the ''school bus'' definition proposed in the NPRM to this final rule.

The commentary to § 383.23 discusses comments concerning the definition of ''nonresident CDL.''

One commenter questioned the different terminology proposed in the NPRM for one of the serious traffic violations described in Sec. 201(c) of MCSIA. New 49 U.S.C. 31301(12)(F) reads:

> ''(F) Driving a commercial motor vehicle when the individual has not met the minimum testing standards—
>
> (i) Under section 31305(a)(3) for the specific class of vehicle the individual is operating; or
>
> (ii) Under section 31305(a)(5) for the type of cargo the vehicle is carrying; and.''

Paragraph (h) under the § 383.5 definition for ''serious traffic violation'' reads ''Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.'' The FMCSA believes that the revised language more clearly conveys congressional intent that only those drivers who are fully qualified to operate a specific vehicle be allowed to operate it. The evidence that a driver has met the minimum CDL testing standards is that he/she has been issued a CDL and all required endorsements for the class and specific type of CMV he/she intends to operate.

Section 383.7—Validity of CDL Issued by Decertified State.

Sec. 383.7 is a new provision to clarify that a CDL issued by a State subsequently prohibited from issuing CDLs under 49 CFR 384.405 remains valid until expiration. Based upon the fact that FMCSA received no opposing comments and a single supporting comment on this provision, it is included in the final rule as proposed.

Section 383.23—Commercial Driver's License.

Section 383.23 has been amended to allow a driver who is domiciled in a State that has been prohibited (under the decertification provisions found in § 384.405) from issuing CDLs, to apply for a nonresident CDL from any other State that is both in compliance with such decertification provisions and elects to issue nonresident CDLs. References to the date ''April 1, 1992'' have also been deleted from this section because the date referred to a compliance deadline which is no longer relevant.

Six States expressed concern that the proposed new language in this section would require them to issue nonresident CDLs to drivers living in States that had been decertified. The intent of this new language *was to authorize, but not require* States to issue nonresident CDLs to such drivers. The FMCSA has added language to the final rule to clarify this issue.

A State objected that allowing States to issue nonresident CDLs to drivers domiciled in other States would result in confusion over State-specific endorsements. Because the agency anticipates that the sanction under § 384.405 will rarely be invoked, the FMCSA believes that State-specific endorsements will not pose a significant problem to States issuing nonresident CDLs or States taking enforcement action against drivers possessing nonresident CDLs.

Section 383.51—Disqualification of Drivers.

Section 383.51 has been revised to incorporate requirements of Section 201 of the MCSIA. These revisions include: imposing a disqualification on CDL drivers who have been convicted of traffic offenses while operating a non-CMV which result in their license being

canceled, revoked or suspended; or of committing drug or alcohol related offenses while driving a non-CMV; and adding two new disqualifying offenses: driving a CMV after the driver's CDL was revoked, suspended or canceled for violations while operating a CMV and causing a fatality through the negligent or criminal operation of a CMV. As discussed in the commentary to § 383.5, three new offenses are being added to the serious traffic violations for which a driver can be disqualified if convicted two or more times within a three-year period. These three new offenses are: (1) Driving a CMV when the driver has not obtained a CDL, (2) driving a CMV without a CDL in the driver's possession, and (3) driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle. This section is also being amended to specify the disqualification period for first-time and subsequent offenders.

The CMVSA originally required the disqualification of drivers only for offenses committed while operating a CMV (49 U.S.C. 31310). The MCSIA made additional offenses disqualifying, even if they were committed while operating a non-CMV. For these offenses, the Secretary of Transportation is required to specify the disqualification periods to be imposed by the States.

In addition, the FMCSA is clarifying that any person who operates a CMV must first obtain a CDL and that these drivers are subject to the same disqualification period as a CDL holder. While the MCSIA addresses the type of offenses that must result in a disqualification if committed in a non-CMV, it is silent regarding the length of the CMV disqualification, requiring only that the disqualification period be no longer than the disqualification period for the same or similar offenses committed while operating a CMV. Based on this language, the FMCSA has added language to this section clarifying that CDL holders convicted of serious traffic violations and other offenses in either a non-CMV or a CMV serve the same period of disqualification.

The revised § 383.51 lists both the CMV convictions of CDL holders for the original offenses under the CMVSA and the non-CMV convictions for other offenses added in subsequent statutory amendments. A clarification is also provided in § 383.51(a)(4) that both CMV and non'CMV convictions for disqualifying offenses will be used in determining first and subsequent violations. The entire section is being revised to incorporate an easy to understand ''if-then'' table format.

Five commenters expressed their view that the if-then table format was confusing or did not clearly indicate the circumstances that triggered the stated disqualification period for offenses listed in the various headings and columns. Based on these comments, the FMCSA has reviewed the tables and has made a few minor changes to clarify their intended meaning. The agency believes that after users become familiar with the new format, they will find it easier to locate the appropriate disqualification period for all of the disqualifying offenses.

The FMCSA received a total of 96 comments on the May 4, 2001 NPRM concerning ''Noncommercial Motor Vehicle Violations.'' While most comments expressed general support for the concept of CDL holders being held accountable for offenses committed in both CMVs and non-CMVs, many comments offered suggestions for revisions to the final rule. Some comments specifically mentioned that the tables listing the offenses and the period for which a driver is disqualified were a great improvement over narrative explanations of these disqualifying offenses. Other comments suggested that changes to other areas of the rule may need to be made. The following discussion addresses these comments.

Ten comments indicated that no other profession prevents a person from making a living based on driving convictions that occurred while operating a private automobile or other noncommercial vehicle. CDL holders are, unlike most licensed passenger car drivers, professional drivers. They earn their living by operating large, heavy vehicles and/or transporting passengers. Given their status as professionals, CDL holders are held to a higher standard. CDL holders should not engage in risky, unsafe behavior while pursuing their profession—driving. The Congress has chosen, in the interest of safety, not to distinguish between risk-taking behavior in a passenger car or a CMV. Section 201(b) of the MCSIA specifically directed the Secretary of Transportation to issue regulations requiring the disqualification of CDL holders convicted of serious offense while operating a non-CMV.

Twenty commenters fully support the concept of CDL drivers being held to a higher standard by being accountable for both CMV and non-CMV convictions, while seven other commenters supported this concept in regard to alcohol and drug related offenses, but do not believe that convictions for serious traffic violations in a non-CMV for excessive speed and following too closely should be included. Seven comments oppose holding CDL drivers accountable for non-CMV convictions and describe it as an unnecessary burden and a double standard. The FMCSA believes that all serious traffic violations by a CDL holder should be counted when operating a non-CMV because these types of violations have consistently contributed to crashes and fatalities.

Ten comments suggest that if CDL holders are going to be held to higher standards and penalties when operating a non-CMV than drivers with an automobile license, then everyone who drives a vehicle should be liable for these higher penalties when operating their private automobiles. This suggestion falls outside the scope of this rulemaking and the authority of the agency. The FMCSA does not have authority to set standards and penalties for drivers licensed to operate only non-CMVs.

Fourteen comments recommended that penalties for a conviction in a non-CMV should be less than in a CMV, at a higher threshold as far as the number of convictions that would cause the driver to be disqualified or that the FMCSA should let each State decide the length of the penalties. These comments argue that if Congress wanted the same penalties for both types of offenses, it would have been specifically addressed in Federal law. The FMCSA has the authority to set the same penalties for both types of offenses; Congress simply said that penalties in a non-CMV may not be greater than the penalties for the same offense in a CMV. The FMCSA believes that by setting the minimum penalties for all offenses rather than leaving non-CMV penalties to the States, there will be greater national uniformity and consistency in the administration of the CDL program.

Ten comments object to railroad-highway grade crossing offenses being included in non-CMV offenses, either as currently worded because these types of offenses do not apply to non-CMVs, or because the inclusion of these offenses goes beyond the intent of Congress. The FMCSA agrees that the wording of these types of offenses specifically addresses actions that only apply to CDL holders while operating a CMV. Therefore the non-CMV railroad-highway grade crossing offenses have been eliminated from the final rule.

Five comments request a clarification of the relationship between alcohol related ''convictions,'' ''administrative per se suspensions'' and ''refusal to be tested'' in Table 1 to § 383.51. They express confusion over what action is to

be taken against a driver's CDL under these three actions, particularly for non-CMV offenses. The FMCSA has modified Table 1 to § 383.51 to clarify what actions must be taken for alcohol related ''convictions'' and ''refusal to be tested.'' The relationship between ''convictions'' and ''administrative per se suspensions'' is discussed in current regulatory text under § 383.51(f) and is being moved to § 384.203 to make it more visible.

Concerning the relationship between ''convictions'' and ''administrative per se suspensions,'' the FMCSA offers the following background information. The CMVSA required that CDL drivers convicted of operating a CMV with an alcohol concentration of 0.04 or greater be subject to being disqualified from operating a CMV for a period of one to three years for a first conviction, depending on the cargo being transported. This sanction does not apply to CDL drivers operating a non-CMV at this alcohol concentration. Table 1 to § 383.51 has been revised to clarify this fact. The § 383.5 definition of ''conviction'' includes guilty findings by ''an authorized administrative tribunal.'' This definition was intended to encompass any type of administrative determination of guilt including State administrative per se DWI laws. Accordingly, a CDL driver found guilty of operating a CMV with an alcohol concentration of 0.04 or greater or of violating a State's DWI laws as a result of an administrative hearing, while operating a CMV or non-CMV, would be subject to being disqualified under the requirements of § 383.51.

One comment asks whether the definition of ''non-CMV'' includes recreational vehicles used in an off road environment (e.g. snowmobiles, watercraft, all terrain vehicles, etc.). The regulations define the term ''motor vehicle'' in § 383.5 as a vehicle '' * * * used on highway * * *'' It does not include recreational vehicles designed for off road use.

Four comments ask whether conviction in a non-CMV prior to applying for a CDL will prevent the issuance of the CDL. The Act clearly states that penalties for offenses committed by a CDL holder in a non-CMV shall be counted. Therefore, only non-CMV convictions for offenses committed after a person obtains a CDL can be counted against his or her driving record.

Seven comments ask if a State must include non-CMV convictions that occurred prior to enactment of MCSIA. The FMCSA can only take action on offenses that occur after the effective date of the final rule and a State only has to take action upon the effective date of its State law or regulation.

Three comments state that the new disqualification requirements are complex and difficult to understand in the tables. While the FMCSA developed these tables in keeping with guidelines for using plain language and if/then tables for Federal regulations, we have made some revisions to help clarify the intent of the new requirements. There were also several comments that indicate that the tables make it easier to understand the requirements.

Eight comments indicate that 49 U.S.C. 31310(g) refers to operators of CMVs who are convicted of drug or alcohol related offenses in a non-CMV, and that only convictions for serious offenses in a non-CMV which result in State revocation, suspension or cancellation of a driver's non-CMV privileges shall result in the disqualification from operating a CMV. The comments argue that by naming specific offenses and penalty periods the FMCSA has exceeded its authority. The language of Section 31310(g), enacted by Sec. 201 of MCSIA gives the FMCSA ample authority to specify what constitutes a ''serious offense,'' although the violation will not be disqualifying unless the State also finds that the circumstances of the offense warrant ''revocation, cancellation, or suspension of the individual's license.'' Section 31310(g)(2) specifically authorizes the FMCSA to ''establish the minimum periods for which the disqualification shall be in effect * * *'' That is exactly what the agency has done in § 383.51 in order to promote safety and uniformity among the States. The FMCSA further believes that Congress, in using the term ''serious offense'' in Section 31310(g)(1)(A), was referring to the ''serious traffic violations'' already specified in §§ 383.5 and 383.51(c). Violations are not listed as disqualifying in § 383.51 unless they are demonstrably significant, i.e., contribute to crashes and fatalities.

Three comments state that the FMCSA should not give the States the option of using .04-alcohol concentration as a disqualifying offense for a non-CMV conviction. The FMCSA only has the authority to establish a minimum alcohol concentration disqualification standard for CDL drivers. As with other minimum standards, however, individual States are free to impose more stringent standards, including establishing a lower alcohol concentration, for both CDL and non-CDL drivers licensed by their State.

One comment proposed revisions to permit a driver to operate while a CMV conviction is under judicial appeal. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court judgment does not become a final conviction for a certain period of time to allow a defendant to appeal the verdict, the driver may continue to operate until that time or if an appeal is filed, until the appellate court renders judgment. However, if a conviction is entered as final, the penalty provisions of this regulation apply.

One comment recommends that the rule require States to record the number of miles per hour by which the driver of a non-CMV exceeds the posted speed limits. The only disqualifying offense for speeding in a CMV or non-CMV is excessive speeding, i.e., 15 miles per hour or more over the posted speed limit. A code already exists in the CDLIS for this offense when it is committed in a CMV. The code will be revised to include CMV and non-CMV.

Three comments suggest that both the May 4 and July 27 NPRMs be given the same effective date because many provisions are tied together. The FMCSA agrees. We decided to merge both MCSIA proposals into one final rule with a single effective date for all provisions.

Three comments ask if the State of licensure can disqualify CMV drivers for failure to pay child support. Each State has the authority to set additional disqualification requirements for drivers licensed in their State, including failure to pay child support. This rule only sets the minimum disqualification requirements for a State to remain in substantial compliance with the Federal requirements.

One comment questions whether the costs of the rule on non-CMV violations constitute an unfunded mandate under the Federal regulations when considered with other CDL-related MCSIA requirements. Based on the agency's economic analysis of this issue discussed in the Rulemaking Analyses and Notices section of this rulemaking, the FMCSA does not believe that this requirement imposes an unfunded mandate on the States.

One comment requested clarification of the use of a non-CMV in the commission of a felony involving a controlled substance. The FMCSA believes that this is self-explanatory. If the vehicle is used in the manufacturing, distributing, or dispensing of a ''controlled substance'' as defined in 49 CFR 383.5, it is a CDL felony offense.

One comment suggests that the FMCSA also provide a narrative text describing the offenses and

disqualification penalty in Tables 1 through 4 to § 383.51. Such a narrative would defeat the purpose of the tables: to provide a more easily understandable description of the offenses and penalties. Each State is, however, free to use a narrative form of the tables in its own legislation or regulations. A narrative form can be easily developed from the tables.

One comment asks why hazardous materials drivers are being penalized differently from other CDL drivers for violations that occur in a non-CMV that is not carrying hazardous materials. The commenter appears to have misread the § 383.51 table, which only requires that enhanced penalties be imposed against drivers who are actually carrying hazardous materials in a CMV at the time of the offense.

One comment states that proposed §§ 383.51, 384.218 and 384.219 are drafted in a style completely different from § 384.224. The commenter suggests either that all sections cross-reference § 383.51 or that each section require disqualification for particular offenses. All the sections mentioned by the comment relate to compliance with § 383.51. The styles in which they are written are different because there are separate State substantial compliance requirements for second and third serious traffic violations while there is only one specific requirement for non-CMV violations.

Two comments request the FMCSA to develop a definition of the term ''authorized agents.'' The FMCSA believes that this term is sufficiently defined under individual State statute, regulation or case law, and need not be included in this rulemaking.

One comment asks why the NPRM does not address how the new regulations on non-CMV violations of a CDL holder will apply to Mexican, Canadian and other foreign drivers. Mexican and Canadian CDL drivers may operate in the U.S. on a license issued by their home jurisdiction in accordance with reciprocity agreements between the U. S. and Canada and Mexico as noted in the footnote to 49 CFR 383.23(b). These drivers are subject to all of the U.S. CDL requirements while operating in the U.S., including disqualification for convictions while operating a non-CMV in the U.S. The Department will initiate discussions with Mexico and Canada on the issue of non-CMV offenses by these drivers while operating in their home country. All other foreign CDL drivers must obtain a nonresident CDL to legally operate in the U.S. The issuance of the nonresident CDL subjects these drivers to the same requirements as other CDL holders while operating in the U.S.

Thirteen comments challenge the accuracy of our cost data analysis. This issue is being addressed in the economic analysis area of this rulemaking.

One commenter requests that the rule explicitly state that the disqualification action must be based on a conviction of the listed offenses. FMCSA has amended Table 1, 2, 3 and 4 to § 383.51 to clarify this issue.

One commenter asks if the two new disqualifying offenses being added to Table 1 to § 383.51 are subject to the 10-year reinstatement provision of § 383.51(a)(5). The answer is yes, and the text of this section has been amended to reflect this fact.

A few additional comments point out typographical errors in the Tables. These errors have been corrected in the final rule.

Four commenters noted that the FMCSA omitted certain qualifying language enacted by Sec. 201(a) of the MCSIA. Specifically, 49 U.S.C. 31310(b)(1)(D) and (c)(1)(D) require a 1-year disqualification the first time a driver is convicted of driving a CMV when his/her CDL is revoked, suspended, or canceled, or when he/she is disqualified from driving a CMV, *providing* the revocation, suspension, cancellation or disqualification was ''based on the individual's operation of a commercial motor vehicle''. In other words, the 1-year disqualification is not required if the driver's CDL was revoked, suspended, or canceled, or he/she was disqualified, for violations that occurred in a non-CMV. The commenters are correct. Also, in the situation where more than one conviction is required to be disqualified, all convictions must have occurred while operating a CMV. The FMCSA has added this qualifying language to the final rule.

One commenter proposed that the FMCSA establish standards for notifying drivers that their CDL had been suspended or revoked or that they had been disqualified from operating a CMV. The FMCSA believes that each State has laws or procedures addressing this issue. Establishing such standards for States to provide notice of the loss of a driving privilege is beyond the scope of this rulemaking.

Thirteen comments raise issues related to the language in the NPRM used to describe the new disqualifying offense of causing a fatality through the negligent or criminal operation of a CMV. To address concerns raised in these comments, the FMCSA has added language to the final rule to clarify the type of offense of which a driver must be convicted to be subject to this disqualification.

One of the proposed serious traffic violation disqualifications that received several comments was ''driving a CMV without a CDL in the driver's possession.'' Ten commenters expressed concern that a driver could be disqualified for not having a CDL with them on a particular day because they may have lost it or had their wallet stolen. The MCSIA addresses this situation in 49 U.S.C. 31301(12)(E): ''Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.'' Although this language was included in the 49 CFR 383.5 definition of this new serious traffic violation, it was inadvertently omitted from Table 2 to § 383.51. To clarify this issue, the FMCSA has added this language in a footnote to Table 2 to § 383.51.

Section 383.52—Disqualification of Drivers Determined To Constitute an Imminent Hazard.

Section 383.52 establishes FMCSA authority for imposing an emergency disqualification of CDL drivers posing an imminent hazard required by Section 201(b) of the MCSIA (49 U.S.C. 31310(f)).

Seven commenters raised questions concerning proposed procedures for imposing an emergency disqualification, many requesting the agency to provide greater detail on how the disqualification determination would be made and asking that various procedural safeguards be included in the rule. The FMCSA believes that the statutory mandate, as reflected in this regulation, together with existing agency administrative procedures, provide sufficient guidance for the agency to make this determination in accordance with accepted due process standards.

Eight comments questioned the proposed criteria to be used by the FMCSA in making a determination of whether or not an emergency disqualification should be imposed on a driver. Based on a review of the comments, the FMCSA has decided not to include in the final rule the six factors proposed in the NPRM to be considered by the agency in making its determination of whether a driver constitutes an imminent hazard. The agency believes that the definition of ''imminent hazard'' which the MCSIA requires the Department to use in making this determination provides

sufficient guidance for making this decision.

Although no comments were received on the issue, the agency has decided to delegate the authority for making the imminent hazard determination to the Assistant Administrator, who is also the Chief Safety Officer, rather than the Associate Administrator for Enforcement. This delegation is consistent with current practice, since the authority to impose civil penalties, hear ratings appeals, and make other similar decisions is already delegated to that officer.

One commenter noted that the MCSIA requires the disqualification of a driver determined to constitute an imminent hazard. The FMCSA agrees with this statement, and has accordingly amended the final rule to state that a driver must be disqualified where the Assistant Administrator finds the driver's continued operation of a CMV poses an imminent hazard.

Nine comments focus on the question of who should be notified that a driver has received an emergency disqualification. The statute does not require the FMCSA to notify a driver's State of licensure of an emergency disqualification, and one State objects to being required to maintain this information on a driver's record. Nonetheless, the FMCSA believes requiring a notification to the State of licensure of a driver's emergency disqualification and requiring such information to become a part of the driver's permanent record is a logical extension of imposing the emergency disqualification.

Three commenters requested the FMCSA to specifically describe how this information will be transmitted to the driver's home State. The FMCSA does not believe such details should be included in this rulemaking. The agency is working closely with AAMVAnet to develop a new code to identify a Federal CDL disqualification. Once such a code has been developed, it should facilitate the electronic transmission of this information to the State where the disqualified driver is licensed, and make this information readily available to State law enforcement and licensing agencies checking the CDLIS on a CDL driver's status.

Section 383.71—Driver Application Procedures.

Section 383.71 is being amended to require applicants for an initial CDL, and those transferring or renewing a CDL to provide the State with the name of all States where they have previously been licensed to drive any type of motor vehicle so that the State may obtain the applicant's complete driving record in accordance with Section 202(a) of the MCSIA (49 U.S.C. 31311(a)(6)). Section 383.71(a)(6) is also being amended to clarify that the term ''disqualification'' applies only to sanctions under § 383.51 and that the other licensing sanctions are based on actions taken under State law. The comments received addressing this new requirement, which falls mainly on the States, will be discussed in the commentary to the next section and § 384.206.

Section 383.73—State Procedures.

Section 383.73 is being amended to require the State to request the complete driving record of applicants for an initial license, renewal or transfer of a CDL from all States where the applicant has previously been licensed to drive any type of motor vehicle. Eight comments strongly support the expanded driver records check, while an additional 11 point out potential problems and propose a few changes. Comments on the time period that driver records must be retained by a State are discussed in the commentary for § 384.206.

One commenter asked why the new driver license check of all States in which a driver held any type of driver's license had to be performed on drivers who had already received a CDL. The FMCSA believes that Congress expanded the record check to all CDL drivers, both those already licensed as well as new CDL applicants, to be sure that the issuing State obtains a complete driving record for every CDL driver it licenses. In analyzing the comments received in response to this provision, the FMCSA agrees that once this record check of all States where a driver held any type of driver's license has been conducted for every CDL driver, and in light of the fact that the Federal regulations require all future convictions to be forwarded to and recorded on the driver record of the State where a CDL driver is licensed, requiring the States to conduct this expanded State record check after the initial CDL renewal would serve no useful purpose. Accordingly, the FMCSA is amending § 383.73(a)(3)(iv) of the final rule to limit this record check to CDL drivers renewing their license for the first time after the effective date of this rulemaking, provided that a notation is made on the driver's record that this expanded driver record check has been made and the date it was done.

Section 383.93—Endorsements.

Section 383.93 is being amended to add a new paragraph for the school bus endorsement mandated by Section 214 of the MCSIA and specifying that applicants must pass both a knowledge and a skills test to obtain this endorsement. Comments related to the proposed school bus endorsement are discussed in the next section.

Section 383.123—Requirements for a School Bus Endorsement.

Section 214 of the MCSIA requires the FMCSA to create a new endorsement that CDL holders must obtain to operate a school bus. To implement this new endorsement, the FMCSA has added definitions of ''school bus'' and ''fatality'' to 49 CFR 383.5; amended other provisions of part 383 to recognize the new school bus endorsement; added a license code for the endorsement; and specified that applicants must pass both a knowledge and a skills test to obtain the endorsement. This section establishes the minimum knowledge and skills test requirements for this new endorsement.

Seven of the comments support, while two oppose, the new school bus endorsement. An issue raised by three commenters is whether States such as California, which already have a comprehensive school bus licensing or certification program in place, need to comply with the requirements of this rulemaking. As with other CDL requirements found in 49 CFR part 383, the new school bus testing standards are intended to establish a minimum standard. States are free to establish more stringent standards for CDL drivers they license. States with a school bus licensing program that meets or exceeds the FMCSA requirements in 49 CFR 383.123(a) may, therefore, continue to license school bus drivers in accordance with that program. For the sake of national uniformity and consistency, they must, however, comply with the school bus endorsement requirements of 49 CFR 383.153(a)(9)(vi).

Nine commenters, primarily those representing school transportation agencies and affiliated associations, expressed their belief that the school bus endorsement should be a stand-alone endorsement, encompassing all current requirements of a passenger vehicle endorsement. The practical effect of adopting this recommendation would be to restrict those drivers who obtain a school bus endorsement from operating any other type of passenger-carrying CMV without taking additional knowledge and skills tests. The argument in support of this proposition is that companies and government entities hiring school bus drivers often pay the cost of training drivers, only to have them leave for other employment

after receiving this training and obtaining their passenger endorsement. While this may be a practical economic issue, the FMCSA believes that Congress established the school bus endorsement to promote the safe operation of school buses, not to restrict a driver's future employment opportunities. Issues related to restricting the future employment of such drivers should be addressed through agreements between the parties. Based upon this analysis, the FMCSA declines to incorporate the passenger endorsement requirements into the school bus endorsement.

In the July 22 NPRM, the FMCSA proposed including a provision in § 383.123 giving States the option of not requiring applicants for the school bus endorsement to take the skills test where the applicant had past experience driving a school bus and met the safety criteria established in that section. The agency believes that such a ''grandfather clause,'' which proved successful during the implementation of the CMVSA, incorporates appropriate experience and safety requirements to accomplish the objective of the MCSIA without imposing an undue burden on the States.

Thirteen comments received expressed strong support for grandfathering experienced drivers, although there were a few suggestions for changes to these proposed requirements. Based on the comments, the FMCSA has amended the text to clarify these criteria in the final rule.

Section 383.153—Information on the Document and Application.

Section 383.153 adds a license code for the proposed school bus endorsement. One State and the American Association of Motor Vehicle Administrators express concern that some States already use an ''S'' endorsement and asked the FMCSA to select another designation for the new school bus endorsement. Based on the fact that only two commenters raised this issue, the FMCSA does not believe adopting an ''S'' endorsement will impose an undue burden on those few States that may already use it for some other purpose. Since States use a wide variety of letters for various other non-Federal endorsements or purposes, there is also a likelihood that any alternative letter designation proposed by the FMCSA for the school bus endorsement would already be used by one or more States. For these reasons, the FMCSA will include the ''S'' endorsement for school bus drivers in the final rule.

Section 384.107—Matter Incorporated by Reference.

The FMCSA is incorporating by reference the AAMVAnet publication *CDLIS State Procedures Manual* cited in 49 CFR 384.231(d) Recordkeeping requirements. A discussion of the analysis for this action, a complete description of the document, and the reasons for its incorporation can be found in the commentary to § 384.231.

One comment seeks clarification on whether the reference to CDLIS in the May 4 NPRM preamble discussion of the ''Number of CDL citations'' means the central site or the overall system. The reference to CDLIS in the NPRM is to the overall system.

Another comment asks whether the FMCSA would consider comments on the AAMVAnet State Procedures Manual, which is being incorporated by reference into the Code of Federal Regulations. The FMCSA received no comments on the Manual, but would not have considered comments on this document because no changes to it were being proposed.

Section 384.203—Driving While Under the Influence.

The FMCSA has removed a provision titled ''Substantial Compliance by States,'' from 49 CFR 383.51(f) and added it to this section, where it more appropriately belongs. It is designated 49 CFR 384.203(b) and (c).

Section 384.206—State Record Checks.

As previously discussed in the commentary to 49 CFR 383.73, Section 202(a) of the MCSIA requires States to request the applicant's driving record from each State that issued him or her any kind of driver's license [49 U.S.C. 31311(a)(6)] before issuing or renewing a CDL. The FMCSA is amending §§ 383.71, 383.73 and 384.206 to incorporate these new requirements.

Five commenters asked how far back this record check should extend. After reviewing the issue and noting that National Driver Register (NDR) guidelines require numerous offenses to remain on a driver's record for a period of 10 years, the FMCSA has amended § 384.206 to limit this expanded record check to the 10 years preceding the date of the driver's license application.

Section 384.208—Notification of Disqualification.

Section 384.208 has been amended to comply with Section 202(b) of the MCSIA, which amended 49 U.S.C. 31311(a)(8) to require that States include and record the violation that resulted in the driver's disqualification, or the revocation, suspension or cancellation of his or her CDL, as part of the notification they were previously required to make under this statutory provision. This notification must be made no later than 10 days after the driver is disqualified.

Because the only comment addressing this issue was favorable, the FMCSA is incorporating it into the final rule as proposed.

Section 384.209—Notification of Traffic Violations.

Section 202(c) of the MCSIA clarifies a State's responsibility for notifying the State where an out-of-state CDL driver is licensed whenever such a driver is convicted of violating any State or local law relating to motor vehicle traffic control (other than a parking violation), even if the driver was operating a non-CMV when the offense was committed [49 U.S.C. 31311(a)(9)]. The MCSIA also requires the State where the offense was committed to notify the State where the driver is licensed if the offense was committed in a CMV, even if the driver did not have a CDL at the time. The MCSIA further requires that this notification be made no later than ten days after the driver's conviction. This section implements these requirements.

Eighteen commenters expressed their views on this provision, with industry and safety groups generally supporting the proposed 10-day conviction reporting period and States raising numerous concerns associated with implementing this requirement. Much of the States' concerns focused on the fact that driver licensing and law enforcement agencies are held accountable for actions of the State courts to meet the 10-day conviction-reporting requirement.

The FMCSA first notes that this 10-day reporting requirement is not new. Its origins are rooted in the CMVSA itself. In the final rule establishing the standards States must meet to be in compliance with that Act, published in the **Federal Register** on May 18, 1994 at 59 FR 26029, the FHWA recognized that it would be difficult for many States to meet this 10-day reporting standard, and accordingly delayed implementation of the requirement. The agency cautioned in that rulemaking, however, that this important issue would be the subject of future rulemaking.

Three other commenters object to the proposed extended implementation period for States to comply with the conviction reporting requirements of this section. As the agency stated in the July 27 NPRM, based on its current knowledge of State capabilities to obtain and transmit driver conviction information, the FMCSA believes that to

immediately impose a ten-day time period would place an unreasonable burden on the States. Accordingly, the NPRM proposed that this 10-day time limitation be phased in over six years according to the following time schedule. Within three years of the effective date of the final rule, notification would be required within 30 days of the conviction. Within six years, notification would be required within ten days. States are encouraged to move as quickly as possible to meet the 10-day requirement and should seek to do so wherever possible. After considering the comments, the FMCSA has decided to adopt the phase-in proposal.

In light of the importance of States obtaining timely conviction information on CDL drivers who are convicted of offenses while driving in other States, it is critical that States make every effort to meet the compliance schedule established in this rulemaking. The FMCSA urges all State agencies to work together to accomplish this objective.

One commenter also asked whether the 10-day notification period began when the verdict was rendered or at the time the conviction became final. The FMCSA defers to State law and procedure to determine this issue. If, as is the case in many jurisdictions, a trial court verdict does not become a final conviction for a stated period after the verdict to allow a defendant time to appeal, the conviction information must be transmitted 10 days after the appeal window closes, or if an appeal is filed, after the conviction is upheld.

Section 384.210—Limitation on Licensing-Prohibition on State Issuing Hardship Licenses.

Section 384.210 is being amended in accordance with provisions of Section 202(d) of the MCSIA (49 U.S.C. 31311(a)(10)(B)) to prohibit a State from issuing a special commercial driver's license or permit (including a provisional or temporary license) to any CDL driver who is disqualified or who has his or her non-commercial driver's license or driving privilege revoked, suspended or canceled.

Of the ten comments addressing this issue, a few State licensing and law enforcement agencies point out the difficulty of getting any legislation passed and the fact that they do not control court actions in issuing such licenses. While cognizant of the need for coordination between judicial, executive, and legislative branches that implementing and complying with this provision may impose on the States, the FMCSA notes that this action is required by the MCSIA and urges all States to take appropriate action to bring their laws, regulations and ajudicatory procedures into compliance with this new requirement for identifying and removing drivers whose violations warrant such action. The statute anticipates and FMCSA believes that the branches of government can work cooperatively to address this public safety issue.

Section 384.225—Record of Violations.

Section 202(f) of the MCSIA requires the States to maintain a driver history record for CDL drivers of all convictions of State or local motor vehicle traffic control laws while operating any type of motor vehicle [49 U.S.C. 31311(a)(18)]. It also specifies that this information must be made available to authorized CDLIS users including the Secretary of Transportation, States, drivers, employing motor carrier and prospective employing motor carriers, as part of normal operating practices. While the MCSIA does not specify a retention period for information on these convictions and other licensing actions, a minimum retention period of three years is included in this rule to promote uniformity among the States. Although Section 31311(a)(18) requires a driver history record only for CDL drivers, Section 31311(a)(9) goes beyond that. When an out-of-State driver commits a violation, paragraph (a)(9) requires the State where the violation occurred to notify the State that issued his/her driver's license. This rule applies both to CDL holders and to drivers operating a CMV (illegally) without a CDL. Because a State could not provide notification of a violation by a CMV driver who did not have a CDL without first entering the conviction in the driver information system, the FMCSA has concluded that this requirement is implicit in paragraph (a)(9) despite the fact that no such requirement is included in paragraph (a)(18). Stated alternatively, § 384.225(a) (''CDL holders'') is based on 49 U.S.C. 31311(a)(18), while § 384.225(b) (''Non-CDL holders'') is based on 49 U.S.C. 31311(a)(9).

Seven comments support the requirement for States to enter all traffic convictions on driver records; however, three States questioned which driving records should be maintained and proposed alternative retention periods. Paragraph (d) of § 384.231 requires States to maintain driver records for CDL drivers on the CDLIS for the time periods the FMCSA finds necessary to enforce the disqualifications called for in §§ 384.215 through 384.219 and §§ 384.221 through 384.224. These time periods range from a minimum of 3 years for serious traffic violations and railroad-highway grade crossing violations to life for major alcohol, drug and felony offenses. Since the minimum retention period for a disqualifying offense is currently set at 3 years, the FMCSA believes that a minimum record retention period of 3 years for all other offenses in a CMV and non-CMV is reasonable. It is a good balance between allowing authorized users to see the current driving record of a CDL driver without placing an undue burden on the States to carry convictions on a driving record that will not affect any future driver disqualification action. The more serious the offense, the longer the conviction will remain on the driving record for review by authorized users of CDLIS. Based upon the fact that the CDLIS driver record retention standards are well known and adhered to by all States, the FMCSA does not believe any additional record retention period needs to be included in this rulemaking.

Another issue raised in four of the comments was that the authorized agents of people and entities designated in the MCSIA as having access to driver record information should also be allowed to obtain this information. The FMCSA agrees that the MCSIA permits access to these records by agents, and has amended the final rule to reflect this fact.

One State asked whether they will be allowed to charge motor carriers for providing driver history information. The FMCSA believes this is a decision for each State to make consistent with the object of this rulemaking. Accordingly, it has not been addressed in this rulemaking.

Section 384.226—Prohibition on Masking Convictions.

Section 202(g) of the MCSIA prohibits the practice of masking convictions required to be maintained by or transmitted to the State where the driver is licensed [49 U.S.C. 31311(a)(19)]. A Joint Explanatory Statement issued by Congress in conjunction with the MCSIA (145 Cong. Rec. H12870–12874 (daily ed. Nov. 18, 1999; 145 Cong. Rec. S15207–15211 (daily ed. Nov. 19, 1999)) makes clear that this new provision is intended to prohibit States not only from masking convictions, but also from using diversion programs or any other disposition that would defer the listing of a guilty verdict on a CDL driver's record. This provision also requires that records of such conviction information be made available to all authorized parties and government entities. The FMCSA urges State Executive Branch agencies to work with the State Judicial Branch to eliminate the practice of

masking. This practice allows unsafe drivers to continue to pose a risk to other motorists by allowing their continued operation on the nation's highways.

Section 384.231—Satisfaction of State Disqualification Requirements.

All paragraphs are amended to replace the word ''shall'' with the word ''must.''

The FMCSA is amending paragraph (a) to include cross references to the disqualifications resulting from railroad-highway grade crossing violations added as 49 CFR 384.223 by a final rule published on September 2, 1999 (64 FR 48104), and new §§ 384.222 and 384.224 promulgated by this final rule.

Paragraph (b)(2) is being amended to remove the May 18, 1997, compliance date from the heading of the paragraph because that date has passed and the rule now applies to all non-CDL holders. The FMCSA is also replacing the undefined term ''non-CDL holder'' with ''a person required to have a CDL'' within the heading and body of paragraph (b)(2) because the term ''non-CDL holder'' could include a person who is not even required to have a CDL. The intent of this paragraph is to require each State to disqualify any person required to have a CDL who was convicted of a disqualifying offense in a CMV under § 383.51.

Paragraph (d) is being amended to incorporate by reference the current version of the AAMVAnet State Procedures Manual. Each State-licensing agency has a copy of the most recent version of the CDLIS State Procedures Manual. A copy of this CDLIS State Procedures Manual is also in the public docket.

Section 384.401—Withholding of Funds Based on Noncompliance.

In order to avoid the withholding of certain Federal aid highway funds, States must be in substantial compliance, as defined in 49 CFR 384.301, with the standards set forth in Subpart B of part 384. Section 103(e) of the MCSIA also requires the FMCSA to withhold Motor Carrier Safety Assistance Program (MCSAP) funds from States that fail to be in substantial compliance with these standards. This section incorporates this new sanctioning requirement. A discussion of the comments on this requirement can be found in the commentary to § 350.217.

Section 384.405—Decertification of State CDL Program.

Section 203 of the MCSIA requires the FMCSA to prohibit a State from issuing, renewing, transferring, or upgrading CDLs if the agency has determined that the State is in substantial noncompliance with the requirements of Section 31311 of title 49 U.S.C. (49 CFR part 384, subpart B). Because of the severity of this new sanction and the potential effect on drivers and motor carriers located in States found to be in noncompliance, it is envisioned that this penalty will be used only after other attempts to bring the State into substantial compliance with CDL requirements have failed. As noted in the commentary to § 383.23, the FMCSA envisions this sanction being invoked only in rare situations.

To mitigate the impact on drivers and motor carriers in States that have been decertified, the MCSIA is adding a provision to 49 CFR 383.7 and 384.405(h) allowing drivers licensed before a State was decertified to continue to operate CMVs, as long as their licenses remain valid. The FMCSA has also included language in 49 CFR 383.23(b)(2) authorizing States that are in substantial compliance to issue nonresident CDLs to drivers living in States that have been decertified.

In response to one comment raised concerning how other States will know that a State has been decertified, the FMCSA will notify all States whenever a State has been decertified or recertified.

Section 384.407—Emergency CDL Grants.

Section 384.407 implements Section 103(d) of the MCSIA (49 U.S.C. 31107(c)) by authorizing the FMCSA to provide emergency CDL grants to assist States whose CDL programs may fail to meet the compliance requirements of 49 U.S.C. 31311(a) [49 CFR part 384, subpart B]. These grants of up to $1,000,000 per State are subject to the annual appropriation of funds by Congress for information system grants.

Two comments to the NPRM addressed this issue. One proposed that only States making a good faith effort to comply with the CDL requirements be eligible to receive these grant funds and the other proposed that the traditional 20% State grant-matching requirement be waived. The FMCSA agrees with the first of these suggestions and has added language to the final rule clarifying that only States making a good faith effort to comply with the CDL requirements are eligible to receive these grants. As for the second comment, these discretionary grants do not require a State matching contribution and § 384.407 includes no such implication.

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 not a significant regulatory action within the meaning of Executive Order 12866, and is not significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has not been reviewed by the Office of Management and Budget. Nonetheless, the FMCSA prepared a regulatory evaluation of this rule. This section summarizes the regulatory evaluation. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES.**

The regulatory evaluation addresses seven of the provisions contained in this rule, primarily those provisions that FMCSA expected would have economic costs to State government agencies and the motor carrier industry. These provisions include:

- *Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality.* This provision creates two new Federal disqualifying offenses: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. *
- *Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard.*
- *Sections 201(b) and 202(h) of MCSIA—Disqualification for Violations Committed while Driving a Non-CMV.*
- *Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations.*
- *Section 202(a) of MCSIA—Expanded State Driver Record Check.*
- *Section 202(c) of MCSIA—New Notification Requirements.* This section requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days and the reason for the action.
- *Section 202(g) of MCSIA—Masking Prohibition.* This section of MCSIA prohibits the practice of masking convictions and thereby requires the record to be maintained or transmitted to the State where the driver is licensed.

As stated, the regulatory evaluation addresses seven ''major'' provisions of the rule. Although the remaining nine provisions were initially examined,

FMCSA determined through a preliminary evaluation that these nine would not impose significant economic costs on State government agencies or the motor carrier industry.

FMCSA derived benefits estimates for this rule by examining the number of truck-related crashes, using average costs for various types (e.g. fatal, injury, and property-damage-only) that must be avoided during the analysis period (2003–2011) for this rule to be cost effective. Note that no crash reduction is assumed to occur during the first year of implementation (2002). Results of this analysis are contained in Table 1 below.

TABLE 1.—SUMMARY OF FINAL RULE COSTS AND OTHER RELEVANT FACTORS

Net Present Value of Costs, 2002–2011	$373 million	
Net Present Value of Benefits if 700 Truck-Related Crashes are Avoided Annually between 2003–2011	$404 million	
Type of truck-related crash	Average cost per crash[1]	Annual Reduction Required[2]
Fatal Crashes involving 7 ''Large Trucks''	$3,419,202	7
Injury-Related ''Large Truck'' Crashes	217,000	147
Property-Damage-Only ''Large Truck'' Crashes	11,300	546

[1] From ''Cost of Large-Truck and Bus-Involved Crashes, Final Report for the Federal Motor Carrier Safety Administration, Zaloshnja, Miller, & Spicer, 2000.

[2] For discounted benefits of the rule to exceed discounted costs, a total of 700 truck-related crashes (e.g., fatal, injury, & PDO combined) must be avoided annually during the last nine years of the analysis period (2003–2011). This reduction represents about 0.15 percent of the total number of reported truck-related crashes annually. The reductions are proportional to the frequencies found by ''Trends in Motor Vehicle Crashes'' (FMCSA, December 2000).

Costs

The total discounted costs from each provision's implementation are included in Table 2 below.

TABLE 2.—TOTAL DISCOUNTED COSTS, BY MCSIA SECTION AND TITLE

MCSIA section	Final rule section title	Total discounted costs (millions of discounted dollars)
201(a)	''* * * Driving While Suspended * * *	$89.1
201(b)	''* * * Imminent Hazard''	8.3
201(b) & 202(h)	''Disqualifications for non-CMV Offenses''	169.7
201(c)	''Expanded Definition of Serious Traffic Violations''	43.3
202(a)	''Expanded Driver Record Check''	42.5
202(c)	''New Notification Requirements''	3.8
202(g)	''Masking Prohibition''	16.3
Total	All Seven Provisions	373

While the costs associated with each provision are somewhat unique, the types of costs generally fall into one of two categories: start-up costs (Table 3) or ongoing costs (Table 4).

TABLE 3.—TOTAL ''FIRST-YEAR'' COSTS OF FINAL RULE PROVISIONS, BY MCSIA SECTION

MCSIA section	Final rule section title	Total first-year costs (millions of discounted dollars)
201(a)	''* * *Driving While Suspended* * *''	$1.61
201(b)	''* * *Imminent Hazard''	2.15
201(b) & 202(h)	''Disqualifications for non-CMV Offenses''	1.73
201(c)	''Expanded Definition of Serious Traffic Violations''	1.41
202(a)	''Expanded Driver Record Check''	1.46[1]
202(c)	''New Notification Requirements''	0.58[1]
202(g)	''Masking Prohibition''	2.42
Total		11.4

[1] Information system implementation costs were spread over three calendar years.

TABLE 4.—TOTAL ''LATER-YEAR'' COSTS OF FINAL RULE, BY MCSIA SECTION

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(a)	''* * *Driving While Suspended * * *''	$87.5
201(b)	''* * *Imminent Hazard''	6.2

TABLE 4.—TOTAL ''LATER-YEAR'' COSTS OF FINAL RULE, BY MCSIA SECTION—Continued

MCSIA section	Final rule section title	Total later-year costs (millions of discounted dollars)
201(b) & 202(h)	''Disqualifications for non-CMV Offenses''	168.0
201(c)	''Expanded Definition of Serious Traffic Violations''	41.9
202(a)	''Expanded Driver Record Check''	41.0
202(c)	''New Notification Requirements''	3.2
202(g)	''Masking Prohibition''	13.9
Total		361.7

Each of the seven major provisions examined is analyzed separately here, since many of the annual or ongoing costs of the provisions are somewhat unique (e.g., effects on driver suspensions and disqualifications).

Section 201(a) of MCSIA—Disqualification for Driving While Suspended, Disqualified and Causing a Fatality—creates two new disqualifying offenses under the FMCSRs. They are: (1) Driving a CMV while revoked, suspended, or cancelled, or while the driver is disqualified based upon the driver's operation of a CMV; and (2) causing a fatality through the negligent or criminal operation of a CMV. First-year information system development and implementation costs average $36,234 per State. Extrapolating to all fifty States and the District of Columbia results in total system development and implementation costs of $1.61 million when discounted to the year 2002. Annual costs thereafter include additional data entry by State government staff and new driver disqualifications resulting from new FMCSR offenses. The FMCSA assumes 10 percent of CDL drivers with suspended licenses (or 3,864) will violate the new provision and will subsequently receive disqualifications of one year on average (or 2,080 working hours) and that these drivers will secure alternative employment at a 10 percent wage reduction.

We expect 4,296 new CDL drivers to be disqualified annually either for being convicted of driving while suspended or for causing a fatality through negligent or criminal operation of a CMV, for an average of one year each, and that each accepts alternative employment at a 10 percent wage reduction. Additionally, the FMCSA included the costs for data entry and for each CDL driver's record to be checked by a patrolman, costing about $450,000 (undiscounted, combined) annually for the period 2005 through 2011. The present value of total costs for this section is $89.1 million.

Section 201(b) of MCSIA—Emergency Disqualification of Drivers Posing an Imminent Hazard—authorizes the Secretary to impose an emergency disqualification on drivers whose continued operation of a CMV the Secretary determines would constitute an imminent hazard. In cases where the Secretary proposes emergency disqualification beyond 30 days, the driver must be notified of the proposed action and provided the opportunity for a hearing. We assume that all such drivers would request a hearing and include: (a) Costs to review CDL drivers' records for IH designation; (b) costs to hold hearings for each driver when an IH designation is assigned to a CDL driver; (c) costs to CDL drivers who are given the IH designation; and (d) data entry costs for State employees where the IH designation is applied. These discounted ''later year'' costs (using OMB-prescribed seven percent discount rate) total $6.2 million, for the period 2004 through 2011. Therefore, with the $2.15 million set-up costs, the present value of costs of Section 201(b) of MCSIA total $8.3 million.

Sections 201(b) and 202(h) of MCSIA—Disqualification for non-CMV Violations'prohibits the holder of a CDL from operating a CMV if the CDL holder commits certain offenses while operating a non-CMV. First-year costs for this rule should total approximately $1.73 million (present value); most of these are for information system developments and modifications by State agencies. Annual costs are estimated at $168.7 million (present value) and include wages lost by an average of 9,661 CDL holders who would be suspended or disqualified because of this rule. FMCSA estimates that those CDL holders who would be disqualified because of this rule would find alternative work at a 10 percent reduction in hourly wages, for an average of 317 days, over the 10-year analysis period. The total cost of this provision is approximately $170.4 million (present value) over the ten-year analysis period for 2004 through 2013, using a discount rate of 7 percent.

Section 201(c) of MCSIA—Expanded Definition of Serious Traffic Violations—adds three new offenses to the FMCSR definition of serious traffic violations. These new violations include: (1) Driving a CMV when the driver has not obtained a CDL; (2) driving a CMV without a CDL in the driver's possession; and (3) driving a CMV without the driver having met the minimum testing standards for the specific class of CMV being operated, or for the type of cargo being transported in the vehicle. This increases the total number of serious traffic violations, as defined in Part 383 of the FMCSRs, from five to eight. System development and implementation costs include hardware, software, and personnel costs to implement this provision and average $29,643 per State. Extrapolating these results to all fifty States and the District of Columbia results in a discounted cost of $1.41 million. Annual, or ongoing, costs for this provision include: (a) Costs to patrolmen to write the convictions for 3 new serious traffic violation offenses; (b) costs to input the new conviction data into CDL drivers' records and report disqualifying information to CDLIS; and (c) costs to CDL drivers who will be disqualified as a result of the 3 new serious traffic violations. The present value of these annual costs is $41.9 million. That brings the total cost for this section to $43.3 million.

Section 202(a) of MCSIA—Expanded Driver Record Check—first-year costs equal approximately $1.46 million (present value) for all fifty States and Washington, DC. Discounted ''later year'' costs total $41.0 million for the period 2004 through 2011. Therefore, present values costs of Section 202(a) of MCSIA total $42.5 million.

Section 202(c) of MCSIA—New Notification Requirements—requires States to notify CDLIS and the State that issued the CDL no later than 10 days after disqualifying a CDL holder from operating a CMV (or revoking, suspending, or canceling a CDL) for at least 60 days. Information system

development and implementation costs include hardware, software, and personnel costs and average $34,339 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of Section 202(c) of MCSIA of $1.75 million. This regulation allows these costs to be spread over three years, so the first-year costs are just less than $0.6 million. Annual, or ongoing, costs begin in 2005 and include the on-going costs to State government agencies to ensure that CDL convictions are consistently transferred within the 10-day window and for States to transmit specific conviction information with each driver disqualification record. FMCSA assumes that this provision would not result in any new disqualifications, since it primarily addresses the amount of CDL holder information transmitted. Discounted later year costs total $3.2 million for the remaining two years of the implementation and the period 2005 through 2011 combined. Therefore, present value costs for Section 202(b) of MCSIA total $3.8 million.

Section 202(g) of MCSIA—Masking Prohibition—prohibits the practice of masking convictions and thereby requires the CDL record to be maintained or transmitted to the State where the driver is licensed and be made available to all authorized parties and government entities. Information system development and implementation costs include hardware, software, and personnel costs and average $47,393 per State. Extrapolating these results to all fifty States and the District of Columbia results in total system development and implementation costs of $2.42 million. Annual, or ongoing, costs begin in 2002 and are primarily comprised of wage reduction costs to those CDL holders who will be disqualified because conviction information is being transmitted to their home State licensing agency. Assuming that States that mask convictions are similar to States that do not mask, and that States mask all convictions if they mask at all, the maximum number of FMCSR-required withdrawal convictions that could be unmasked would be 5,173 as a result of this provision's implementation. That would result in wage reductions of approximately $4.3 million annually. Since it is unrealistic to assume that all convictions are masked or that no convictions are masked, we assume that half are masked. The present value of costs from the ''Masking Prohibition'' total $16.3.

Benefits: Crashes Avoided for the Final Rule To Be Cost Effective

The primary societal benefits expected from this rule are the truck-related crashes that one would expect to be avoided due to the additional CMV operators (mainly CDL holders) who will be suspended or disqualified for violations of the new disqualifying offenses and serious traffic violations. It was not possible to estimate the specific number of truck-related crashes that would be avoided from implementing each provision of this rule, given that FMCSA has no data directly linking these specific FMCSR-defined offenses and truck-related crashes. However, FMCSA did use cost data on truck-related crashes from Zaloshnja, Miller, and Spicer (''The Costs of Large Truck- and Bus-Involved Crashes,'' 2000) to derive an estimate of the total number of truck-related crashes that would have to be avoided per year (during the analysis period) for this rule to be cost effective (i.e. for discounted benefits to equal/exceed discounted costs). Those benefits are found in Tables 1 through 4 above.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement and Fairness Act (SBREFA), 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. We do not believe that these proposals meet the threshold values for requiring an RFA analysis, since the anticipated impact is fairly small. Nonetheless, because of the public interest in these proposals, the FMCSA has prepared this RFA analysis.

(1) *A description of the reasons why action by the agency is being considered.* The CDL program has been in operation since 1986. Since that time, potential process improvements to enhance car safety have been identified. This rule implements some of those changes.

(2) *A succinct statement of the objectives of, and the legal basis for, the proposed rule.* In 1999, Congress passed the Motor Carrier Safety Improvement Act (MCSIA). Sections of that Act direct changes in the CDL program. The changes in procedures are a direct response to this legislation. FMCSA hopes that these changes will make the CDL program more effective in preventing dangerous drivers from continuing to drive and will result in improved safety by improving the performance of drivers and removing unsafe drivers from the road.

(3) *A description and, where feasible, an estimate of the number of small entities to which the rule will apply.* In the trucking industry, there are a few large firms with many employees and many very small firms with only a handful of employees. To the extent which the rule imposes costs on firms, these small firms will endure the largest portion of that burden. The incidence of driver disqualification is not likely to be different among firms, however large firms are better able to spread the risk of having a driver disqualified.

(4) *A description of the proposed 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.* Although these small entities will have to keep records on all of their employees' status regarding the CDL, there is no additional administrative cost borne by them because they already have to maintain those records under the current system. The avenue through which these small businesses might be adversely affected is a reduction in the number of available drivers who can qualify under the stricter rules. If that number is significantly reduced, employers may find that they have to pay drivers a premium wage in order to continue to provide their level of service.

(5) *Identification, to the extent practicable, of all relevant Federal rules which may duplicate, overlap or conflict with the proposed rule.* The FMCSA is not aware of any other rules or procedures that duplicate or conflict with this rule.

(6) *Significant Alternatives Available.* Allowing differences in compliance or reporting for small entities would be contrary to the intent of Congress in issuing this mandate. The purpose of MCSIA is to strengthen and standardize the CDL program. Another key component of the CDL program is national uniformity and consistency in its administration. This promotes effective enforcement.

We certify that the rule will not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation,

eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under E.O. 13045, ''Protection of Children from Environmental Health Risks and Safety Risks.'' This rule is not economically significant and does not involve an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will 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)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does not have substantial direct Federalism implications that would limit the policymaking discretion of the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions, and any additional administrative cost borne by the States should be negligible.

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), a Federal agency must obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations. An analysis of this rule has been made by the FMCSA, and it has been determined that it will affect the information collection burden associated with the currently-approved information collection covered by OMB Control No. 2126–0011, titled ''Commercial Driver Licensing and Test Standards.'' The OMB approved the most recent update of this information collection on October 3, 2001, at 620,802 burden hours. The approval period runs through October 31, 2004.

The implementation of this final rule will require the State DMVs to enter additional information into CDLIS—whether the CDL holder committed the violation in a CMV or a non-CMV. We estimate the time required to complete this additional information in CDLIS to be approximately 2 seconds per applicant. The currently-approved estimate for completing a CDLIS entry is 2 minutes. We believe the 2 additional seconds can be folded into the 2 minutes and that the 2-minute estimate is still accurate. Therefore, there is no increase in burden hours from this provision.

The currently-approved estimate of the number of violations is 1 violation every 3 years for the 10,000,000 CDL holders. We estimate that with the additional violations, approximately one-quarter of the 10,000,000 CDL holders (2,500,000) will receive an additional violation over the 3-year period. This would be 833,333 additional violations. The currently-approved estimate of staff time to input the new violations into State systems and transfer to CDLIS is 2 minutes. Therefore, the additional burden created by this final rule is 27,778 burden hours [833,333 x 2 minutes/60 minutes].

Start-up costs include information system, or computer, costs incurred by State government agencies to implement the new CDL program provisions under MCSIA. Specific examples include costs required to establish or modify computer systems within each State to log, review, and transfer the new serious traffic violations identified under MCSIA. Additionally, these costs include information systems costs to implement the new notification requirements for States under MCSIA. Such costs include hardware, software, and personnel costs to establish or modify computer systems within each State. Estimates of the combined start-up, or first-year, costs for the 50 States and the District of Columbia are shown below.

Final rule section title	Total first-year costs (in millions)
''* * * Driving While Suspended * * *''	$1.61
''* * * Imminent Hazard''	$2.15
''Disqualifications for non-CMV Offenses''	1.73
''Expanded Definition of Serious Traffic Violations''	1.41
''Expanded Driver Record Check''	1.46
''New Notification Requirements''	0.58
''Masking Prohibition''	2.42
Total	11.4

At NPRM stage, we requested comments on the information collection aspects of this rule. No comments regarding the information collection burden hours were received. You may submit any additional comments on the *information collection burden* addressed by this final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by August 30, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration is a new administration within the Department of Transportation. We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Executive Order 13211 (Energy Supply, Distribution, or Use)

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. This action is not a significant energy action within the meaning of section 4(b) of the Executive Order because it is not economically significant and not likely to have a significant adverse effect on the supply, distribution, or use of energy. Additionally, the Administrator of the Office of Information and Regulatory Affairs has not designated this rule as a

significant energy action. For these reasons, a Statement of Energy Effects under Executive Order 13211 is not required.

Unfunded Mandates Reform Act of 1995

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*)

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Commercial driver's license, Commercial motor vehicles, Drug abuse, Highway safety, Incorporation by reference, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 390

Highway safety, Intermodal transportation, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, Chapter III, parts 350, 383, 384, and 390 as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

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

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31312, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

2. Add § 350.217 to subpart B to read as follows:

§ 350.217 What are the consequences for a State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B?

(a) A State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B, as required by 49 CFR part 384, subpart C, is subject to the loss of all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under sec. 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 [Pub. L. 106–159, 113 Stat. 1748] and loss of certain Federal-aid highway funds, as specified in 49 CFR part 384, subpart D.

(b) Withheld MCSAP grant funds will be restored to the State if the State meets the conditions of § 384.403(b) of this subchapter.

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

3. Revise the authority citation for part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1766; and 49 CFR 1.73.

4. Revise § 383.3(f)(3)(i)(C) to read as follows:

§ 383.3 Applicability

* * * * *

(f) * * *

(3) * * *

(i) * * *

(C) Has not had *any* conviction for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

5. Amend § 383.5 to revise the definitions of the terms ''disqualification,'' ''driving a commercial motor vehicle while under the influence of alcohol,'' ''non-resident CDL'' and ''serious traffic violation'' and to add the definitions of the terms ''fatality,'' ''imminent hazard,'' ''non-CMV,'' and ''school bus'' in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Disqualification means any of the following three actions:

(a) The suspension, revocation, or cancellation of a CDL by the State or jurisdiction of issuance.

(b) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(c) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this chapter.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV—

(a) Driving a CMV while the person's alcohol concentration is 0.04 or more;

(b) Driving under the influence of alcohol, as prescribed by State law; or

(c) Refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Fatality means the death of a person as a result of a motor vehicle accident.

* * * * *

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

* * * * *

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

(a) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(b) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).

* * * * *

Non-CMV means a motor vehicle or combination of motor vehicles not defined by the term ''commercial motor vehicle (CMV)'' in this section.

* * * * *

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school-sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction of any of the following offenses when operating a CMV, except weight, defect and parking violations:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control;

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense; or

(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

* * * * *

6. Add § 383.7 to subpart A to read as follows:

§ 383.7 Validity of CDL issued by decertified State.

A CDL issued by a State prior to the date the State is notified by the Administrator, in accordance with the provisions of § 384.405 of this subchapter, that the State is prohibited from issuing CDLs, will remain valid until its stated expiration date.

7. Amend § 383.23 to revise paragraphs (a)(2) and (b) to read as follows:

§ 383.23 Commercial driver's license.

(a) * * *

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.[1]

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State that elects to issue a Nonresident CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

* * * * *

8. Revise § 383.51 to read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A driver or holder of a CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A driver is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder of a CDL drives a CMV or non-CMV and is convicted of the violations.

(4) Determining first and subsequent violations. For purposes of determining first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) Reinstatement after lifetime disqualification. A State may reinstate any driver disqualified for life for offenses described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) after 10 years if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(1) Being under the influence of alcohol as prescribed by State law * * *.	1 year	1 year	3 years	Life	Life.
(2) Being under the influence of a controlled substance * * *.	1 year	1 year	3 years	Life	Life.

[1] Effective December 29, 1988, the Administrator determined that commercial drivers' licensees issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining nonresident CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for . . .
(3) Having an alcohol concentration of 0.04 or greater while operating a CMV * * *.	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refusing to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72 of this part * * *.	1 year	1 year	3 years	Life	Life.
(5) Leaving the scene of an accident * * *	1 year	1 year	3 years	Life	Life.
(6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this table * * *.	1 year	1 year	3 years	Life	Life.
(7) Driving a CMV when, as a result of prior violations committed operating a CMV, the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable.
(8) Causing a fatality through the negligent operation of a CMV, including but not limited to the crimes of motor vehicle manslaughter, homicide by motor vehicle and negligent homicide.	1 year	Not applicable	3 years	Life	Not applicable.
(9) Using the vehicle in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance * * *.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement.	Life-not eligible for 10-year reinstatement

(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(1) Speeding excessively, involving any speed of 24.1 kmph (15 mph) or more above the posted speed limit * * *.	60 days	60 days	120 days	120 days.

TABLE 2 TO § 383.51—Continued

If the driver operates a motor and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for...	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for...
(2) Driving recklessly, as defined by State or local law or regulation, including but, not limited to, offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property * * *.	60 days	60 days	120 days	120 days.
(3) Making improper or erratic traffic lane changes * * *.	60 days	60 days	120 days	120 days.
(4) Following the vehicle ahead too closely * * *.	60 days	60 days	120 days	120 days.
(5) Violating State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with a fatal accident * * *.	60 days	60 days	120 days	120 days.
(6) Driving a CMV without obtaining a CDL	60 days	Not applicable	120 days	Not applicable.
(7) Driving a CMV without a CDL in the driver's possession [1].	60 days	Not applicable	120 days	Not applicable.
(8) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	Not applicable	120 days	Not applicable.

[1] Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the date the citation was issued, shall not be guilty of this offense.

(d) *Disqualification for railroad-highway grade crossing offenses.* Table 3 to § 383.51 contains a list of the offenses and the periods for which a driver must be disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) The driver is not required to always stop, but fails to slow down and check that tracks are clear of an approaching train * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(2) The driver is not required to always stop, but fails to stop before reaching the crossing, if the tracks are not clear * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(3) The driver is always required to stop, but fails to stop before driving onto the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(4) The driver fails to have sufficient space to drive completely through the crossing without stopping * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

TABLE 3 TO § 383.51—Continued

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because . . .	For a first conviction a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(5) The driver fails to obey a traffic control device or the directions of an enforcement official at the crossing * * *.	No less than 60 days	No less than 120 days	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient undercarriage clearance * * *.	No less than 60 days	No less than 120 days	No less than 1 year.

(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51 contains a list of the offenses and periods for which a driver must be disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of . . .	For a first conviction while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for . . .
(1) Violating a driver or vehicle out-of-service order while transporting nonhazardous materials . . .	No less than 90 days or more than 1 year.	No less than 1 year or more than 5 years.	No less than 3 years or more than 5 years.
(2) Violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title, or while operating a vehicle designed to transport 16 or more passengers, including the driver . . .	No less than 180 days or more than 2 years.	No less than 3 years or more than 5 years.	No less than 3 years or more than 5 years.

9. Add § 383.52 to read as follows:

§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Assistant Administrator or his/her designee must disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) The period of the disqualification may not exceed 30 days unless the FMCSA complies with the provisions of paragraph (c) of this section.

(c) The Assistant Administrator or his/her delegate may provide the driver an opportunity for a hearing after issuing a disqualification for a period of 30 days or less. The Assistant Administrator or his/her delegate must provide the driver notice of a proposed disqualification period of more than 30 days and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this paragraph may not exceed one year in duration. The driver, or a representative on his/her behalf, may file an appeal of the disqualification issued by the Assistant Administrator's delegate with the Assistant Administrator, Adjudications Counsel, Federal Motor Carrier Safety Administration (Room 8217), 400 Seventh Street, SW., Washington, DC 20590.

(d) Any disqualification imposed in accordance with the provisions of this section must be transmitted by the FMCSA to the jurisdiction where the driver is licensed and must become a part of the driver's record maintained by that jurisdiction.

(e) A driver who is simultaneously disqualified under this section and under other provisions of this subpart, or under State law or regulation, shall serve those disqualification periods concurrently.

10. Revise § 383.53(b)(1) to read as follows:

§ 383.53 Penalties.

* * * * *

(b) *Special penalties pertaining to violation of out-of-service orders*—(1) *Driver violations.* A driver who is convicted of violating an out-of-service order shall be subject to a civil penalty of not less than $1,100 nor more than $2,750, in addition to disqualification under § 383.51(e).

* * * * *

11. Amend § 383.71 to revise paragraphs (a)(6), (a)(7), (b)(3), (b)(4), and (c)(3); and to add new paragraphs (a)(8), (b)(5), and (c)(4) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(6) Certify that he/she is not subject to any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law, and that he/she does not have a driver's license from more than one State or jurisdiction;

(7) Surrender the applicant's non-CDL driver's licenses to the State; and

(8) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(b) * * *

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(c) * * *

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121; and

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

* * * * *

12. Revise § 383.73(a)(3) to read as follows:

§ 383.73 State procedures.

(a) * * *

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

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

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

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Driver Register Act of 1982 (23 U.S.C. 401 note); and

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the driving record check specified in this paragraph (a)(3) for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph (a)(3) has been made and noting the date it was done; and

* * * * *

13. Revise § 383.77(a)(3) to read follows:

§ 383.77 Substitute for driving skills tests.

* * * * *

(a) * * *

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

* * * * *

14. Amend § 383.93 to revise paragraphs (b)(3), (b)(4), (c)(3), and (c)(4); and to add new paragraphs (b)(5) and (c)(5) to read as follows:

§ 383.93 Endorsements.

* * * * *

(b) * * *

(3) Tank vehicles;

(4) Required to be placarded for hazardous materials; or

(5) School buses.

(c) * * *

(3) *Tank vehicle*—a knowledge test;

(4) *Hazardous Materials*—a knowledge test; and

(5) *School bus*—a knowledge and a skills test.

15. Add § 383.123 to subpart G to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) Qualify for passenger vehicle endorsement. Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) Knowledge test. Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) Skills test. Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(2) of this section.

(2) An applicant must certify and the State must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in § 383.51(b) while operating a CMV or of any offense in a non-CMV that would be disqualifying under § 383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in § 383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has not been convicted of any motor vehicle traffic violation that resulted in an accident; and

(vii) Has been regularly employed as a school bus driver, has operated a school bus representative of the group the applicant seeks to drive, and provides evidence of such employment.

(3) After September 30, 2005 the provisions in paragraph (b) of this section do not apply.

16. Amend § 383.153 to revise paragraph (a)(9)(v), redesignate paragraph (a)(9)(vi) as paragraph (a)(9)(vii) and add new paragraph (a)(9)(vi) to read as follows:

§ 383.153 Information on the document and application.

(a) * * *

(9) * * *

(v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and

(vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

* * * * *

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

17. Revise the authority citation for part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

18. Add § 384.107 to subpart A to read as follows:

§ 384.107 Matter incorporated by reference.

(a) *Incorporation by reference.* This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the **Federal Register**.

(b) *Materials incorporated.* The AAMVAnet, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures,'' Version 2.0, October 1998, IBR approved for §384.231(d).

(c) *Addresses.* (1) All of the materials incorporated by reference are available for inspection at:

(i) The Department of Transportation Library, 400 Seventh Street, SW, Washington, DC 20590 in Room 2200. These documents are also available for inspection and copying as provided in 49 CFR part 7.

(ii) The Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(2) Information and copies of all of the materials incorporated by reference may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd, Suite 400, Arlington, VA 22203.

19. Revise § 384.203 to read as follows:

§ 384.203 Driving while under the influence.

(a) The State must have in effect and enforce through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration.

(b) Nothing in this section shall be construed to require a State to apply its criminal or other sanctions for driving under the influence to a person found to have operated a CMV with an alcohol concentration of 0.04, except licensing sanctions including suspension, revocation, or cancellation.

(c) A State that enacts and enforces through licensing sanctions the disqualifications prescribed in § 383.51(b) of this subchapter for driving a CMV with a 0.04 alcohol concentration and gives full faith and credit to the disqualification of CMV drivers by other States shall be deemed in substantial compliance with section 12009(a)(3) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)(3)).

20. Amend § 384.206 to revise paragraph (a)(2) to read as follows:

§ 384.206 State record checks.

(a) * * *

(2) *Other States' records.* Before the initial or transfer issuance of a CDL to a person, and before renewing a CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle.

(ii) Within the time period specified in § 384.232, request the complete driving record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(iii) States receiving a request for the driving record of a person currently or previously licensed by the State must provide the information within 30 days.

* * * * *

21. Add § 384.208 to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

22. Revise § 384.209 to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* Whenever a person who holds a CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(b) *Required notification with respect to non-CDL holders.* Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(c) *Time period for notification of traffic violations.* (1) Beginning on September 30, 2005, the notification must be made within 30 days of the conviction.

(2) Beginning on September 30, 2008, the notification must be made within 10 days of the conviction.

23. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CDL or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined by § 383.5 of this subchapter, or under the provisions of § 383.73(g) or § 384.231(b)(2) of this subchapter;

(b) The CDL holder's noncommercial driving privilege has been revoked, suspended, or canceled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

24. Revise § 384.213 to read as follows:

§ 384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the

penalties prescribed under part 383, subpart D, of this subchapter.

25. Revise § 384.215(a) to read as follows:

§ 384.215 First offenses.

(a) *General rule.* The State must disqualify from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a disqualifying offense specified in items (1) through (8) of Table 1 to § 383.51 of this subchapter, for no less than one year.

* * * * *

26. Revise § 384.216 to read as follows:

§ 384.216 Second offenses.

(a) *General rule.* The State must disqualify for life from operating a CMV each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction, of a subsequent offense as described in Table 1 to § 383.51 of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* A driver disqualified for life under Table 1 to § 383.51 may be reinstated after 10 years by the driver's State of residence if the requirements of § 383.51(a)(5) have been met.

27. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life each person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction of a first offense, of using a CMV in the commission of a felony described in item (9) of Table 1 to § 383.51 of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to § 383.51 of this subchapter.

28. Revise § 384.218 to read as follows:

§ 384.218 Second serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 60 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of two serious traffic violations as specified in Table 2 to § 383.51.

29. Revise § 384.219 to read as follows:

§ 384.219 Third serious traffic violation.

The State must disqualify from operating a CMV for a period of not less than 120 days each person who, in a three-year period, is convicted, as defined in § 383.5 of this subchapter, in any State(s) or jurisdiction(s), of three serious traffic violations as specified in Table 2 to § 383.51. This disqualification period must be in addition to any other previous period of disqualification.

30. Add § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(c), Table 4 to 383.51, and 383.53(b) of this subchapter.

31. Revise § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of §§ 383.37(d), Table 3 to 383.51, and 383.53(c) of this subchapter.

32. Add § 384.224 to read as follows:

§ 384.224 Noncommercial motor vehicle violations.

The State must have and enforce laws and/or regulations applicable to drivers of non-CMVs, as defined in § 383.5 of this subchapter, which meet the minimum requirements of Tables 1 and 2 to § 383.51 of this subchapter.

33. Add § 384.225 to read as follows:

§ 384.225 Record of violations.

The State must:

(a) *CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *A person required to have a CDL.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the users designated in paragraph (e) of this section, or to their authorized agent, within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d).

(e) Only the following users or their authorized agents may receive the designated information:

(1) *States*—All information on all driver records.

(2) *Secretary of Transportation*—All information on all driver records.

(3) *Driver*—Only information related to that driver's record.

(4) *Motor Carrier or Prospective Motor Carrier*—After notification to a driver, all information related to that driver's, or prospective driver's, record.

34. Add § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation) from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

35. Revise § 384.231 to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

(a) *Applicability.* The provisions of §§ 384.203, 384.206(b), 384.210, 384.213, 384.215 through 384.219, 384.221 through 384.224, and 384.231 of this part apply to the State of licensure of the person affected by the provision. The provisions of § 384.210 of this part also apply to any State to which a person makes application for a transfer CDL.

(b) *Required action.* (1) *CDL holders.* A State must satisfy the requirement of this part that the State disqualify a person who holds a CDL by, at a minimum, suspending, revoking, or canceling the person's CDL for the applicable period of disqualification.

(2) *A person required to have a CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the

limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

(c) *Required timing.* The State must disqualify a driver as expeditiously as possible.

(d) Recordkeeping requirements. The State must conform to the requirements of the October 1998 edition of the AAMVAnet, Inc.'s ''Commercial Driver License Information System (CDLIS) State Procedures,'' Version 2.0. (Incorporated by reference, see § 384.107.) These requirements include the maintenance of such driver records and driver identification data on the CDLIS as the FMCSA finds are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219, and 384.221 through 384.224 of this part.

36. Revise § 384.301 to read as follows:

§ 384.301 Substantial compliance-general requirements

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) A State shall come into substantial compliance with the requirements of subpart B of this part in effect as of September 30, 2002 as soon as practical, but, unless otherwise specifically provided in this part, not later than three years after September 30, 2002.

37. Revise § 384.307 to read as follows:

§ 384.307 FMCSA program reviews of State compliance.

(a) FMCSA Program Reviews. Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State must cooperate with the review and provide any information requested by the FMCSA.

(b) *Preliminary FMCSA determination and State response.* If, after review, a preliminary determination is made either that the State has not submitted the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) *Reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA preliminary determination is incorrect. The State must provide documentation of corrective action as required by the agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by the agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) *Final FMCSA determination.* If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination, the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

38. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.

(b) *Following second and subsequent year(s) of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (b)(3), and (b)(4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1753) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

39. Revise § 384.403 to read as follows.

§ 384.403 Availability of funds withheld for noncompliance.

(a) Federal-aid highway funds withheld from a State under § 384.401(a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under § 384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If before June 30 the State submits a document signed by the Governor or his or her delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30, unrestored funds shall lapse and be allocated in accordance with § 350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

40. Add § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CDL licensing activities.* The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following four licensing transactions:

(1) Issuance of initial CDLs.

(2) Renewal of CDLs.

(3) Transfer of out-of-State CDLs to the State.

(4) Upgrade of CDLs.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL

program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Register (NDR) as required by § 383.73 of this subchapter when processing CDL applicants, drivers transferring a CDL issued by another State, CDL renewals and/or upgrades.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in § 384.405(b), among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CDLs.* A CDL issued by a State prior to the date the State is prohibited from issuing CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

41. Add § 384.407 to read as follows:

§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to $1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part, but which are determined by the FMCSA to be making a good faith effort to comply with these requirements.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

42. The authority citation for part 390 is revised to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 217, Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.73.

43. Amend § 390.5 to revise the definition for ''Driving a commercial motor vehicle while under the influence of alcohol'' to read as follows:

§ 390.5 Definitions.

* * * * *

Driving a commercial motor vehicle while under the influence of alcohol means committing any one or more of the following acts in a CMV: Driving a CMV while the person's alcohol concentration is 0.04 or more; driving under the influence of alcohol, as prescribed by State law; or refusal to undergo such testing as is required by any State or jurisdiction in the enforcement of Table 1 to § 383.51 or § 392.5(a)(2) of this subchapter.

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Issued on: June 30, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–18457 Filed 7–30–02; 8:45 am]

BILLING CODE 4910–EX–P