

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Washington is amended by removing Channel 245A at Naches and adding Channel 245C2 at Naches, and by removing Sunnyside, Channel 244A, and adding Benton City, Channel 244A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 01-1022; MM Docket No. 01-94; RM-10086]

Radio Broadcasting Services; Corinth, Scotia and Hudson Falls, New York

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition for rule making filed by Vox New York, LLC, licensee of Stations WHTR(FM), Corinth, New York, and WFFG-FM, Hudson Falls, New York, proposing the substitution of Channel 229A for Channel 228A at Corinth, New York, the reallocation of Channel 229A from Corinth to Scotia, New York, as the community's first local service, and the reallocation of Channel 296A from Hudson Falls, New York, to Corinth. Channel 229A is reallocated from Corinth to Scotia at a site 9.9 kilometers (6.2 miles) northwest of the community at coordinates 42-54-27 NL, and 74-00-57 WL. Channel 296A can be reallocated from Hudson Falls to Corinth at petitioner's licensed site 5 kilometers (3.1 miles) east of the community at coordinates 43-14-40 NL and 73-46-18 WL.

DATES: Comments must be filed on or before June 11, 2001, and reply comments on or before June 26, 2001.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Jonathan E. Allen, Rini, Coran, and Lancellotta, P.C., 1350 Connecticut Avenue, NW., Suite 900, Washington, DC 20036-0551 (Counsel to Petitioner).

FOR FURTHER INFORMATION CONTACT:

Victoria M. McCauley, Mass Media Bureau, at (202) 418-2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 01-94 adopted April 11, 2001 and released April 20, 2001. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857-3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New York, is amended by removing Channel 228A at Corinth and adding Channel 296A at Corinth, by removing Channel 296A at Hudson Falls, and by adding Scotia, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 01-11172 Filed 5-3-01; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384, and 390

[Docket No. FMCSA-00-7382]

RIN 2126-AA55

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

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

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: The FMCSA proposes disqualification regulations for drivers subject to the Commercial Motor Vehicle Safety Act of 1986 (CMVSA). Sections 201(b) and 202(h) of the Motor Carrier Safety Improvement Act of 1999 (MCSIA) amended the CMVSA by adding disqualification requirements for a commercial driver's license (CDL) holder convicted of committing violations while operating a noncommercial motor vehicle (non-CMV). Each State would be required to disqualify the CDL upon conviction by revoking, suspending, or canceling it. Each employer would be required to stop using a driver from driving a commercial motor vehicle (CMV) upon the State's disqualification. The purpose of this proposal is to enhance the safety of CMV operations on our nation's highways.

DATES: You must submit comments on or before August 2, 2001.

ADDRESSES: You can mail, hand deliver, fax, or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001; FAX: (202) 493-2251, online at <http://dmses.dot.gov/submit>.

Please include the docket number that appears in the heading of this document in your comment. You can examine and copy all comments from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays at the docket facility. You can also examine the docket on the Internet at <http://dms.dot.gov>. If you want us to notify you of receipt of your comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, (202) 366-9579, and

for legal issues, Mr. Charles Medalen, (202) 366-1354. Both individuals are at the FMCSA, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will consider all comments received before the close of business on the comment closing date indicated in the **DATES** section. We will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

This proposed rule uses plain language so those individuals unfamiliar with FMCSA regulations will find it easier to follow. We have made 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.

This NPRM focuses on changes to parts 383 and 384 that are required by the MCSIA (Public Law 106-159, December 9, 1999, 113 Stat. 1749). These parts relate to commercial driver licensing standards that affect States, employers, and employees. Part 391 addresses the qualifications that motor carriers must meet in selecting drivers to operate in interstate commerce. These three parts necessarily interact. The FMCSA is interested in any comments on possible changes to part 391 that it should consider in order to increase our stakeholders' understanding of the statutory and regulatory requirements imposed upon them.

Background

For the purposes of this document, the term CMV refers to the definition of a CMV in the CMVSA and codified at 49 U.S.C. 31301 *et seq.* Generally, a CMV is a motor vehicle used in commerce to transport passengers or property that meets any one of the following three conditions.

(1) The motor vehicle has a gross vehicle weight rating or gross vehicle weight (whichever is greater) of at least 26,001 pounds (11,794 kilograms).

(2) The motor vehicle is designed to transport at least 16 passengers including the driver.

(3) The motor vehicle is used to transport material required to be placarded under 49 CFR part 172 subpart F.

For the purposes of this document, the term non-CMV refers to vehicles not covered by this definition of CMV.

Noncommercial Motor Vehicle Violations

The CMVSA disqualifications section, codified at 49 U.S.C. 31310, has specified offenses related to operating a CMV requiring specific periods a State must disqualify a driver from operating a CMV. The MCSIA amended the CMVSA disqualifications at section 31310 by adding specific offenses related to operating a non-CMV. The Secretary may also specify disqualification periods the State must use when disqualifying a driver from operating a CMV.

For example, a CDL holder operates a non-CMV and refuses to take an alcohol test as required by a State's implied consent laws, as defined in 49 CFR 383.72. Under this proposal, a State must disqualify the CDL holder from operating a CMV for one year based on the first conviction for refusing to take an alcohol test after operating the non-CMV.

A second example would be if a CDL holder uses a non-CMV in the commission of a felony involving dispensing a controlled substance. Under this proposal, a State must disqualify the CDL holder from operating a CMV for life even though the conviction involved the operation of a non-CMV. The State may never reinstate the person's privilege to operate a CMV because the CMVSA does not provide reinstatement privileges for felonies related to dispensing controlled substances.

A third example would be a CDL holder who has been convicted of three serious traffic violations in a CMV within a 3-year period. The CDL holder makes erratic or improper traffic lane changes while operating a non-CMV. Under this proposal, a State must disqualify the CDL holder from operating a CMV for 120 days based on a fourth conviction in separate incidents within a 3-year period while operating either a CMV or non-CMV.

This document proposes to implement parts of Sec. 201(b) and all of Sec. 202(h) of the MCSIA. These sections amend 49 U.S.C. 31310 and 31311 to require the disqualifications of CDL holders for certain offenses committed in non-CMVs—typically private automobiles, motorcycles, and light-duty and medium-duty trucks.

Background of CDLIS

This proposed rule would also modify and clarify the FMCSA's Commercial Driver's License Information System

(CDLIS). The Secretary of Transportation must maintain an information system that serves as the clearinghouse and depository of information about any person who operates CMVs and his/her identification, licensing history, and disqualification history. 49 U.S.C. 31309. The CDLIS also includes information about a person required to have a CDL who has violated the requirement to obtain a CDL before operating a CMV.

In 1988, the Federal Highway Administration (FHWA) entered into an agreement under Sec. 31309(b) with the American Association of Motor Vehicle Administrators and its affiliate AAMVANet, Inc. (AAMVANet), to use its system as the CDLIS. The agreement made AAMVANet the CDLIS operator. Under Section 106(b) of MCSIA, the agreement transferred to the FMCSA and remains in effect until the FMCSA modifies or terminates it. A copy of the 1988 agreement is in the public docket.

The agreement states that AAMVANet will "cooperate fully with FHWA [FMCSA] with respect to the operation of CDLIS including, but not limited to, information content and the development of standards relating to access to CDLIS by States and various employers and employees." The FMCSA informs AAMVANet of the specific driver records and driver identification data necessary to the implementation and enforcement of the disqualifications called for in 49 CFR 383.51. In the State compliance regulations, § 384.231(d) *Recordkeeping requirements* requires each State to maintain driver records and cause driver identification data to be retained on the CDLIS which are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219. Cross-references in these sections refer to § 383.51 disqualifications.

CMV Offenses

Ensuring that only safe drivers are operating CMVs is an important part of the FMCSA's safety strategy. Section 383.51 specifies that a driver must be disqualified for specific periods for specific disqualifying offenses involving the operation of a CMV. The CMVSA, specifically 49 U.S.C. 31310(b), (c), (d), and (e), requires federally-mandated disqualifications for the following eight offenses:

1. Driving drunk in a CMV.
2. Leaving the scene of an accident in a CMV.
3. Committing general felonies in a CMV.

4. Committing controlled substance-related felonies in a CMV.

5. Speeding excessively in a CMV.

6. Driving recklessly in a CMV.

7. Violating motor vehicle traffic control laws in a CMV and causing an accident resulting in a fatality.

8. Violating other laws or regulations in a CMV that the FMCSA may specify by regulation as serious.

Section 4009 of the Motor Carrier Safety Act of 1991, codified at 49 U.S.C. 31310(i), requires CDL disqualifications for driver violations of out-of-service orders. Section 403 of the ICC Termination Act of 1995 (ICCTA) codified at 49 U.S.C. 31310(j) and 31311(a)(17)), requires CDL disqualifications for CMV drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings.

As part of this rulemaking, several amendments are also proposed to clarify our regulations in §§ 383.5, 383.71, and 383.73 about disqualifying offenses. In addition, an amendment to § 384.231(d) would add an incorporation by reference requiring States to conform to the recordkeeping requirements of AAMVANet's "Commercial Driver's License Information System (CDLIS) State Procedures," Version 2.0, October 1998. This amendment would also add cross-references to §§ 384.221 through 384.224.

Non-CMV Offenses

The MCSIA amendments proposed in this action prohibit the holder of a CDL from operating a CMV if the CDL holder commits certain offenses while operating a non-CMV. In addition, the amendment to Sec. 31311 requires each State to adopt and enforce the Federal sanctions prescribed by Sec. 31310(g).

The FMCSA believes that a record of convictions for serious traffic violations and other offenses while operating a non-CMV is just as important as a conviction in a CMV in determining whether a driver should retain his or her CDL. This is the essence of our proposal in § 383.51.

While a CDL holder repeatedly convicted of violations in non-CMVs usually does not have a record of similar convictions while operating CMVs, this does not necessarily mean that his/her driving habits in CMVs are superior. The FHWA conducted a study for Congress about the CDL program's effectiveness. The report is entitled "Commercial Driver's License Effectiveness Study," (Volume I, Executive Summary, NTIS# PB99-139792; Volume II, Technical Report, NTIS# PB99-139800; September 1998) (Study). The study documented that

many CDL holders receive citations for serious violations in CMVs. (See the docket for a copy of this study.) Many of these violations are not entered into their records as such, because they are either reduced through plea-bargaining and deferral programs or "masked" from public view on their record.

Furthermore, a high percentage of the convictions of CDL holders list the type of vehicle being driven at the time of a violation as "unknown" or "no." The "unknown" indicator is used when a State licensing agency cannot determine whether the conviction occurred in a CMV, based on the information provided to them with the conviction document. Some States, rather than list the vehicle type as "unknown," assume that an unknown vehicle is not a CMV and use the indicator "no" meaning "not in a CMV." This proposal and a subsequent proposal (RIN 2126-AA60) to be published in the **Federal Register** in the near future would attempt to solve 16 CDL-related problems, including:

1. Disqualifying drivers for non-CMV convictions.

2. Defining an imminent hazard.

3. Creating an emergency disqualification of drivers posing an imminent hazard.

4. Creating a new school bus endorsement.

5. Providing emergency grants to States in noncompliance with CDL requirements.

6. Withholding MCSAP funds from States in noncompliance with CDL requirements.

7. Upgrading disqualifications for driving while revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.

8. Upgrading disqualifications for committing homicide by motor vehicle, manslaughter, negligent homicide, or causing a fatality through the criminal operation of a CMV.

9. Creating three new serious traffic violations for driving a CMV when the driver has not obtained a CDL, driving a CMV without a CDL in the driver's possession, and 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 on the vehicle.

10. Expanding driver record checks.

11. Adding new State notifications between the licensing agency and the judicial system.

12. Prohibiting hardship licenses to a driver who loses his/her base license.

13. Adopting penalties for violating licensing requirements.

14. Maintaining records of all violations.

15. Prohibiting the masking of convictions.

16. Decertifying a State CDL program for noncompliance.

Non-CMV Alcohol Offenses

The National Highway Transportation Safety Administration (NHTSA) and the FHWA promote an alcohol standard of 0.08 for all non-CMV drivers at 23 CFR Part 1225. Most of the non-CMVs subject to the new MCSIA disqualification amendment in this proposal are motorcycles, cars, pickups, and sport utility vehicles also covered by 23 CFR Part 1225. Other non-CMVs covered by the new MCSIA disqualifications amendment in this proposal include commercial vehicles with a gross vehicle weight rating of 11,794 kilograms (26,000 pounds) or less, which are subject to the FMCSA's zero tolerance alcohol standard under 49 CFR 392.5.

The FMCSA is proposing one exception to the non-CMV alcohol-related disqualifying offenses listed under § 383.51. Current § 383.51(b)(2)(i)(A), requiring disqualification for an alcohol concentration of 0.04 or more, is not included in the proposed non-CMV alcohol offenses because it would be difficult to enforce in most States. While all States support the higher standard of 0.04 or more alcohol concentration ("under the influence") for all drivers operating large CMVs, their standard for non-CMV drivers is an alcohol concentration of 0.08 to 0.10 percent ("intoxication" or "impairment").

Requiring states to use two different alcohol standards for drivers of these vehicles—one for CDL holders, one for all other license holders—would be difficult to implement and enforce. CDL holders, virtually all of whom drive private cars or light trucks, constitute less than 5 percent of the total number of drivers licensed to operate non-CMVs. The FMCSA believes that safety, in this situation, would be better served by the strong enforcement of existing intoxication and impairment laws for all non-CMV drivers. Under the proposed requirements, if a CDL holder is convicted of "being under the influence," "intoxicated," or "impaired" while operating a non-CMV and his or her license is suspended, revoked, or canceled, the driver would also be disqualified from operating a CMV.

Non-CMV Railroad-Highway Grade Crossing Violations

The FMCSA proposes to designate a railroad-highway grade crossing violation in a non-CMV as a serious

offense, as permitted by MCSIA. Section 31310(g) of title 49 U.S.C. permits the Secretary of Transportation to disqualify from operating a CMV a person who has been convicted of "a serious offense involving a motor vehicle (other than a [CMV]) that has resulted in the revocation, cancellation, or suspension of the individual's license * * *" In its report on a predecessor bill which included a disqualification provision virtually identical to 49 U.S.C. 31310(g), as amended by MCSIA, the House Committee on Transportation and Infrastructure said "[t]he Committee expects the Department, in determining the appropriate disqualifying offenses by rulemaking, will focus on serious offenses, such as driving while intoxicated and reckless driving. The Committee does not intend for this rule to include minor traffic citations." H.R. Rep. No. 106-333, at 16 (1999). In section 403 of the ICCTA, codified at 49 U.S.C. 31310(j), Congress added railroad-highway grade crossing violations to the other disqualification offenses. The Conference Report on the ICCTA "directs the Secretary to issue regulations establishing sanctions and fines for operators of [CMVs] who violate railroad-highway crossing laws and regulations." H.R. Rep. No. 104-422, at 238 (1995), *reprinted in* 1995 U.S.C.C.A.N. 850, 923.

In considering the MCSIA, the House report states the Secretary is required to issue regulations establishing criteria for disqualifying from operating a CMV an individual who holds a CDL and who has been convicted of serious offenses involving a vehicle other than a CMV. The Congress, therefore, directed the Secretary to conduct a rulemaking to determine the appropriate non-CMV offenses and minimum periods for which a CDL holder should be disqualified. The statute, however, provided that in no case would the types of non-CMV offenses or the time periods for which CDL holders are disqualified for such offenses be more stringent than the offenses and disqualification periods involving a CMV. The FMCSA believes railroad-highway grade crossing violations in non-CMVs are serious offenses that can and do lead to fatalities, bodily injuries, and significant property damage.

The FMCSA is therefore proposing that CDL holders who violate railroad-highway grade crossing regulations in non-CMVs be disqualified from operating a CMV.

Number of CDL Citations

The FMCSA requires AAMVAnet to have in the CDLIS, and each State to maintain on each violation, information

on whether the vehicle being operated at the time of the violation was a CMV. Each State accomplishes this requirement by indicating on each traffic citation whether the vehicle being operated at the time of the violation is a CMV. Because of this proposed rule, AAMVAnet must modify the CDLIS and would add a requirement for each State to indicate for every violation whether the driver's license is a CDL. The FMCSA believes each State will accomplish this requirement by indicating on the citation whether the driver's license is a CDL. This proposed new requirement is necessary to identify a CDL holder when he or she is cited for a violation while operating a non-CMV because the violation may result in a serious traffic violation conviction and the revocation, suspension, or cancellation of the CDL.

Once the State records the conviction on the CDL record, the CDL holder would then be disqualified from operating a CMV during the period of suspension, revocation, or cancellation. Without this indicator, there is no way of identifying a CDL holder in CDLIS with any of the information currently captured on a citation. The FMCSA will later propose (in RIN 2126-AA60) a maximum period from violation and conviction to recording on the driver's record in the State of domicile.

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA must estimate the additional paperwork burden that would be required by this proposal to identify CDL holders on the citation. The FMCSA has a cooperative agreement with TML Services (TML) to perform certain commercial driver licensing functions. In its analysis conducted for the FMCSA, TML used a 1996 sample database of CDL holder records with conviction data from 1992 through 1996. This data was compiled for the Commercial Motor Vehicle Effectiveness Study (discussed earlier in this document). Using Study data, the FMCSA estimated that there were about 1.82 million convictions per year over the 4-year period. In 1996, 1.82 million convictions were tied to 8.3 million CDL records. The FMCSA does not know how many of the 1.82 million convictions were in CMVs and how many were in non-CMVs. Projecting an increase in the number of CDL records at a rate of 40,000 per month through the middle of 2004, the FMCSA estimates that 11.5 million CDL records

will generate 2.53 million convictions per year.

Based on the survey of States conducted as part of the Study, the FMCSA concluded that some States were not sending and/or posting all out-of-State convictions. TML assumed that 25 to 75 percent of roughly 600,000 out-of-State convictions were either not sent to the home State or not posted by the home State during the 1992 to 1996 period. If this assumption is correct, an increase in the projected number of convictions must be made. TML calculates that the projected 2.53 million convictions per year should be increased to 2.7 to 3.0 million per year by the year 2004.

The number of convictions is clearly smaller than the number of citations issued to CDL holders. The FMCSA asked AAMVAnet for help determining the conviction rate. The AAMVAnet asked its State members for help. Only Texas was able to provide us with needed information. Based on calendar years 1998 and 1999 data, Texas concluded that 95 percent of CDL holder citations issued in the State resulted in convictions. Using this rate, the FMCSA made national estimates that between 2.84 and 3.16 million citations would be issued in 2004.

Incorporation by Reference

Paragraph (d) of § 384.231 currently has ambiguous language stating that each " * * State shall maintain such driver records and cause such driver identification data to be retained on the CDLIS as the operator of the CDLIS specifies are necessary to the implementation and enforcement of the disqualifications called for in §§ 384.215 through 384.219." This implies that each State must conform their information collection and recordkeeping requirements to what the AAMVAnet specifies is necessary. The FMCSA, however, requires AAMVAnet, as the CDLIS operator under the 1988 designation agreement, to have certain information collected by States with respect to the operation of CDLIS. The numerous pieces of information collected include, but are not limited to, information content and the development of standards relating to access to CDLIS by each State, employer, and employee. Thus, AAMVAnet is acting as a third party in collecting information on behalf of the FMCSA by passing on to each State the information collection requirements specified by the FMCSA as necessary under the 1988 designation agreement.

The FMCSA believes AAMVAnet's CDLIS State Procedures manual should be incorporated by reference to ensure

each State uses it. The Version 2.0 published in October 1998 is the most recent version of the AAMVAnet manual. AAMVAnet plans to update this manual to implement MCSIA amendments to the CDL system. Incorporating the manual by reference, however, should ensure that each State complies with the specific version required by AAMVAnet and the FMCSA.

The FMCSA is providing the public an opportunity to comment on the incorporation by reference of this AAMVAnet manual. In addition, the FMCSA would provide additional opportunity for comment on updates to Version 2.0 before any State would be required to comply with any newer AAMVAnet manual in the future.

Incorporating the AAMVAnet standards by reference allows the FMCSA to comply with the requirements in 5 U.S.C. 552 to publish rules in the **Federal Register** by referring to materials already published elsewhere. Section 552 authorizes incorporation by reference with the approval of the Director of the Federal Register to reduce the volume of material published in the **Federal Register** and the CFR. The legal effect of incorporation by reference is that the material is treated as if it were published in the **Federal Register**. This material, like any other properly issued rule, would then have the force and effect of law.

Substantial Compliance

Each State must comply substantially with 24 specific requirements of the CDL program to avoid the withholding of a certain percentage of Federal highway funds otherwise apportioned for its Surface Transportation Program, National Highway System, and Interstate Maintenance System components. See 49 U.S.C. 31311 and 31314. Section 103(e) of the MCSIA added that if a State does not comply substantially with the 24 specific requirements of the CDL program, a State's entire allocation in supplemental funding which the MCSIA added to the Motor Carrier Safety Assistance Program (MCSAP) might be withheld by FMCSA. The requirement to adopt and enforce the disqualifications applicable to a CDL holder who is convicted of serious offenses in a non-CMV was added by section 202(h) of the MCSIA and codified at 49 U.S.C. 31311(a)(20). This requirement adds another condition necessary for states to achieve substantial compliance with the CMVSA of 1986. The FMCSA understands the complexity of revising State statutes and establishing

procedures to incorporate the new requirements into existing systems. The FMCSA, therefore, proposes to set a deadline of 3 years after the effective date of this rule for states to achieve substantial compliance with these requirements.

Section Analysis

Section 383.5 Definitions

The FMCSA proposes to revise the current definition of "Disqualification" in § 383.5 to clarify the original intent that disqualification of a CDL holder is only required for driver convictions related to motor vehicle traffic control offenses.

The FMCSA proposes to remove current paragraph (c) that automatically disqualifies a driver from operating a CMV upon conviction of any offense listed in § 383.51. The current paragraph (c) conflicts with standard adjudication practices in most states. Convicting and disqualifying a driver generally involves two separate processes administered by two separate agencies. In most cases, only a court has the authority to convict the driver, while the State licensing agency has the separate authority to suspend, revoke, or cancel the driver's license based upon the court conviction. In addition, a driver has the right to appeal a conviction. Pending the decision of the appellate court, the effect of the conviction is stayed. The conviction, therefore, is not posted by the State licensing agency and no disqualifying action is taken. This conflicts with paragraph (c) of the current definition of *Disqualification*. Moreover, disqualifying a driver who had filed an appeal, in defiance of a court order staying the conviction, would bring a State licensing agency into serious conflict with the judicial system. Appeals are not the only source of delay. A driver can be convicted of an offense listed in § 383.51—and thus automatically disqualified from driving a CMV for a certain period after that date—but the court may fail to notify the State licensing agency of that fact, usually because the court system and licensing agency have not perfected their electronic data transfer systems. "Diversion" programs are even more serious. In many States, courts suspend a conviction, seal or "mask" the driver's record, and purge the conviction completely within some period if no further violations occur. Therefore, the licensing agencies, and thus motor carriers, sometimes learn of a driver's conviction (if at all) only after the disqualification period automatically started by current paragraph (c) is completed. Removal of paragraph (c)

will correct some of these problems. As discussed earlier in this document under the heading "Non-CMV Offenses," the FMCSA will address related issues in an NPRM (RIN 2126-AA60) to be published in the **Federal Register** in the future.

The original intent of the CMVSA and its implementing regulations in parts 383 and 384 was to require the disqualification of a CDL holder only for convictions related to motor vehicle traffic control offenses. In fact, however, States have begun to suspend CDLs for failure to pay child support, failure to pay parking tickets, and other matters not directly related to unsafe or criminal behavior in a CMV. In order to restore the original intent of the CMVSA, new paragraph (b) in the definition of *Disqualification* would include "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)." The phrase "motor vehicle traffic control" is taken directly from the CMVSA. The FMCSA recognizes that driving while under the influence of alcohol or controlled substances may not be a "motor vehicle traffic control" offense in the same way as speeding or illegal lane changes, but Congress used that phrase in the CMVSA and clearly intended drug-and alcohol-related offenses to be covered by the CDL disqualification regulations.

This change would not prevent States from including in CDLIS or NHTSA's National Driver Register (NDR)—which also depends on a distributed database—driver convictions and disqualifications for offenses that are not related to motor vehicle traffic control, should they wish to do so.

We are proposing to add to § 383.5 a new definition for "non-CMV." A non-CMV would be any motor vehicle or combination of motor vehicles not covered by the definition of a CMV in Part 383.

Section 383.51 Disqualification of Drivers

The FMCSA would revise the entire section by using an if-then table format that we believe is more readily understandable than the current regulatory text. The FMCSA would also propose to reserve rows within the table for the proposal to be published in the **Federal Register** in the near future under RIN 2126-AA60.

The revised § 383.51 would combine the non-CMV and CMV convictions of CDL holders for the original offenses under the CMVSA and other offenses

added in subsequent statutory amendments. In addition, the FMCSA would clarify that a person who operates a CMV must obtain a CDL and is subject to the same disqualifications. This circumstance has always been clear to States and the FMCSA, but employers and drivers have frequently misunderstood this point.

While the MCSIA addresses the type of offenses that must result in a disqualification, it is silent regarding the length of the CMV disqualification. The Congress included both the type of offense and the length of the CMV disqualification in the CMVSA and each of the previous amendments before 1999. The MCSIA, however, only requires that the disqualification period be no longer than for the same or similar offenses that occur while operating a CMV. The FMCSA proposes 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 FMCSA invites the public to comment.

Although current regulations disqualify a CDL holder convicted of driving a CMV with an alcohol concentration of 0.04 percent or more [§ 383.51(b)(2)(i)(A)], that standard would not be included in the list of alcohol-related disqualifying offenses committed while operating a non-CMV. The reasons are explained earlier in the preamble section under the heading "Non-CMV Alcohol Offenses."

The FMCSA is also proposing to add railroad-highway grade crossing violations in a non-CMV as a serious traffic violation, as permitted by 49 U.S.C. 31301(12)(G) and 31310(g). See the discussion of the rationale for this proposal earlier in this preamble under the heading "Non-CMV Railroad-Highway Grade Crossing Violations."

Paragraph (f) would be recodified as § 384.203 paragraphs (b) and (c). The FMCSA would also make conforming amendments by correcting § 383.51 cross-references in §§ 383.3(f)(3)(i)(C), 383.53(b), 383.72, 383.77, 384.215, 384.217, 384.218, 384.219, 384.224, and cross references in the two definitions of the term "driving a CMV" in §§ 383.5 and 390.5.

Sections 383.71 Driver Application Procedures and 383.73 State Procedures

Section 383.71(a)(6) requires self-certification, and § 383.73(a)(3) requires each State to check, that a CDL applicant is not subject to any disqualification, revocation, or cancellation "as contained in § 383.51." The FMCSA regulatory interpretation for § 383.73, Question 3, published in

the **Federal Register** on April 4, 1997 (62 FR 16396) provides a question and answer that reads as follows:

To what does the phrase " * * * as contained in § 383.51" refer to in § 383.73(a)(3)?

Guidance: The phrase refers only to the word "disqualification." Thus the State must check the applicant's record to ensure that he/she is not subject to any suspensions, revocations, or cancellations for any reason, and is not subject to any disqualifications under § 383.51.

In the phrase "any disqualification, revocation, or cancellation as contained in § 383.51" the phrase "as contained in § 383.51" was intended to modify only the word "disqualification." The FMCSA has no authority to suspend, revoke, or cancel a driver's CDL. The agency therefore proposes to amend §§ 383.71(a)(6) and 383.73(a)(3) to refer to "any disqualification under § 383.51, or any license suspension, revocation, or cancellation under State law * * *"

Section 384.107 Matter Incorporated by Reference

The FMCSA is proposing to incorporate by reference the AAMVAnet publication under § 384.231(d) *Recordkeeping requirements*. See the section analysis for § 384.231 for a complete description of the document and the reasons the FMCSA is proposing its incorporation.

Section 384.203 Driving While Under the Influence

The FMCSA would amend this section to re-codify § 383.51(f) *Substantial compliance by States* at this location. Paragraph (f) fits more appropriately with § 384.203. Both concern the 0.04 alcohol concentration standard and the State substantial compliance issue.

Section 384.222 Violation of Out-of-Service Orders

This section would be added to require each State to have and enforce all necessary laws and regulations applicable to drivers of CMVs and their employers who violate out-of-service orders, which meet the minimum requirements of §§ 383.51(e), 383.37(c), and 383.53(b).

Part 384, State Compliance with Commercial Driver's License Program, was created by an FHWA final rule published on May 18, 1994 [59 FR 26029]. States were not required to disqualify drivers convicted of violating out-of-service (OOS) orders because, according to the preamble, the FHWA "has not yet issued a final rule" on that subject. However, § 384.222 was reserved for such a State requirement

when the rule prohibiting violation of OOS orders was completed. In fact, a second final rule which did exactly that was published the same day in the same issue of the **Federal Register** [May 18, 1994, 59 FR 26022] and codified at § 383.51(d). Because of this error, the State requirement to disqualify violators of OOS orders has never been added to § 384.222. The FMCSA is now proposing to correct that oversight.

Section 384.224 Noncommercial Motor Vehicle Violations

As required by section 202(h) of the MCSIA, the FMCSA proposes a new section that would require the States to adopt and enforce the sanctions that are applicable to holders of CDLs who are convicted of offenses in a non-CMV.

Section 384.231 Satisfaction of State Disqualification Requirements

All paragraphs would be amended by replacing the word "shall" with the word "must."

The FMCSA would amend paragraph (a) by including cross references to the disqualifications resulting from railroad-highway grade crossing violations added to § 384.223 by a final rule published in 64 FR 48104, September 2, 1999, and the proposed §§ 384.222 and 384.224 in this document.

Paragraph (b)(2) would be amended by removing the May 18, 1997, compliance date from the heading of the paragraph. The FMCSA also proposes replacing the undefined term "non-CDL holder" with "a person required to have a CDL" within the heading and body of paragraph (b)(2). The intent of this paragraph was to require each State to disqualify any person required to have a CDL who was convicted of a disqualifying offense under § 383.51. The term "non-CDL holder," however, could include a person who is not even required to have a CDL. The FMCSA would correct this potential problem. Paragraph (d) would be amended to incorporate by reference the AAMVAnet State Procedures Manual. This paragraph does not clearly state that the FMCSA imposes recordkeeping requirements upon AAMVAnet, its designated CDLIS operator, and that each State must conform its recordkeeping information systems to the AAMVAnet system manuals. Each State licensing agency has a copy of the most recent version of the CDLIS State Procedures Manual. A copy of the 1998 CDLIS State Procedures Manual is in the public docket.

Rulemaking Analyses and Notices

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

The FMCSA has determined that this regulatory action is not significant within the meaning of Executive Order 12866. The FMCSA has determined this proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

This regulatory action also is not significant under the regulatory policies and procedures of the DOT (44 FR 11034, February 26, 1979). The FMCSA believes a full Regulatory Evaluation is unnecessary under paragraph 10e of the regulatory policies and procedures of DOT, because the economic impact of this rule will be minimal.

Estimated Costs

The FMCSA believes the costs of this rule include the following:

1. Information system implementation, modification, and maintenance costs to state government agencies.
2. Labor costs to the state government agencies to handle new data collection and processing.
3. Wage losses (costs) to CDL holders who are suspended or disqualified for committing the new serious traffic violations and disqualifying offenses addressed under this proposed rule.

First-year costs for this proposed rule should total approximately \$1.73 million (present value); most of these are for information system developments and modifications by state government agencies. The FMCSA obtained these first-year cost estimates by extrapolating results of an AAMVAnet survey of State motor vehicle administrations on the potential implementation costs of MCSIA. AAMVAnet conducted the survey in 2000. AAMVAnet results are based on data from nine States. The FMCSA used the AAMVAnet survey estimates and calculated the costs to all fifty states and the District of Columbia. A copy of the AAMVAnet report is in the docket.

Total costs occurring between 2004 and 2013 are estimated at \$168.7 million (present value); most of these costs are wages lost by CDL holders who would be suspended or disqualified from this proposal's implementation. FMCSA estimates that an average of 9,661 CMV drivers would have their CDLs revoked, suspended, or canceled (withdrawals) annually because of this proposal. In an analysis conducted for

the FMCSA using data from the FHWA Study, TML estimated that in calendar year 2000 there were approximately 38,643 CDL withdrawals required by 49 U.S.C. 31310 and 49 CFR 383.51 (CMVSA-required withdrawals). Also, using sample data from the CDLIS for the Commercial Driver's License Effectiveness Study, TML estimated that of all the out-of-state CDL convictions logged, 49 percent noted that the CDL holder was either not operating a CMV at the time of the citation, or that the type of vehicle being driven was not known (e.g., not marked on the citation). For in-state CDL convictions, the ratio of CDL holders either not driving a CMV at the time of the citation, or having an "unknown" status, was even higher, at 88 percent.

For the purposes of estimating the number of "new" CDL withdrawals resulting from this proposal, the FMCSA used a conservative estimate. The FMCSA estimated that annual CMVSA-required withdrawals of CDL holders would increase by 25 percent (or by 9,661 CDL holders annually). The FMCSA conducted an analysis of CDLIS data from the Commercial Drivers License Effectiveness Study on the distribution of convictions for various serious traffic violations (e.g., excessive speeding) and disqualifying (e.g., alcohol-related) offenses and data on the disqualification periods defined for each under § 383.51. Based on this analysis, the FMCSA estimates that the average disqualification period per CDL holder would be 317 days.

The unemployment rate was 4.2 percent in January 2001 and the FMCSA estimates the driver shortage in the motor carrier industry to be 80,000. The FMCSA estimates that those CDL holders who would be disqualified because of this proposal would quickly find alternative work within the industry (or in closely-related industries), albeit at a 10-percent reduction in hourly wages. All the estimates discussed here were used to calculate the wage reduction costs to the 9,661 CDL holders annually disqualified, for an average of 317 days, over the 10-year analysis period.

The FMCSA estimates the total cost of this proposal to industry and government agencies to be approximately \$170.4 million (present value) over the ten-year analysis period from 2004 through 2013, using a discount rate of 7 percent.

Estimated Benefits

The primary societal benefits from this proposal are the CMV-related crashes expected to be avoided when high-risk CDL holders are disqualified.

Effectively, CDL holders who are convicted of serious traffic violations and disqualifying offenses (as defined under § 383.51) while operating a non-CMV will now have their CDL suspended or withdrawn or be disqualified because of this rule.

The FMCSA estimates conservatively that, on average, approximately 9,661 CDL holders are likely to be disqualified annually between the years 2004 and 2013 if this proposal is made effective. The FMCSA believes no disqualifications would occur in the first full year of implementation since no State would be held to the standard until 2004. Table VM-1 in the FHWA's Highway Statistics 1999 publication contains data on the number of combination trucks registered (e.g., those likely driven by CDL holders) in the United States and the vehicle-miles-traveled (VMT) by these vehicles in 1999. A copy of Table VM-1 is in the docket. A copy is also available on the Internet at: <http://www.fhwa.dot.gov/ohim/hs99/tables/vm1.pdf>.

The average distance traveled in 1999 per combination truck was 65,261 miles. The FMCSA estimated one driver per vehicle, an average of 9,661 CDL disqualifications each year, and an average disqualification period of close to one year (specifically, 317 working days within 365 calendar days). Using these conditions, the FMCSA estimated the total VMT foregone in combination trucks by these CDL holders would be 630.5 million miles in each year from 2004 through 2013. The involvement rate in police-reported crashes for combination unit trucks is 225.32 per 100 million VMT based on "The Dimensions of Motor Vehicle Crash Risk" by Wang, Knippling, and Blincoc (Journal of Transportation and Statistics, Volume 2, Number 1, BTS Journal, 1999). A copy is in the docket. A copy is also available on the Internet at: <http://www.bts.gov/jts/V2N1/3wang.pdf>. Using this data, the FMCSA estimates the initial crash reduction benefit of this proposal to be 1,422 CMV-related crashes per year (e.g., 630.5 million VMT times 225.32 crashes per 100 million VMT).

The FMCSA believes CMV operators who have been disqualified are likely to find alternative work within the motor carrier industry or closely related industries. Many of these drivers would switch to driving vehicles not specifically defined as CMVs in § 383.5 (and thus not requiring a CDL). Since many of these drivers will continue to face exposure to motor vehicle crashes, the FMCSA's initial crash reduction benefit estimate should be reduced. For the purposes of this analysis, the

FMCSA conservatively estimated that two-thirds of disqualified CDL holders would continue to drive as some part of their alternative employment, so that only one-third would eliminate their crash exposure during the 317-day disqualification period. The number of CMV-related crashes avoided resulting from this proposal would be about 474 per year (or one third of the original 1,422 CMV-combination-related crashes).

The FMCSA estimates no reduction in CMV-related crashes during the first year of implementation (2004). Therefore, the FMCSA expects that at least 474 CMV-related crashes will be avoided annually during the years 2004 through 2013 because of the additional CDL holder disqualifications. The FMCSA used a recent comprehensive study to estimate the costs of highway crashes involving large trucks and buses by severity. In Zaloshnja, E., Miller, T., and Spicer, R., "The Costs of Large Truck- and Bus-Involved Crashes," FMCSA, December 14, 2000, they estimated that the average cost of all police-reported crashes (i.e., fatal, injury, and property-damage-only (PDO) crashes) involving trucks with a gross weight rating of more than 10,000 pounds is \$75,637 (in 1999 dollars). A copy of the study by Zaloshnja, et al. is in the docket. A copy of the study is also available on the Internet at: <http://ai.volpe.dot.gov/CarrierResearchResults/CarrierResearchResults.asp?file=PDFs/CCTFinalReport.pdf>

The average cost per large truck crash involving a fatality is \$3.54 million, for crashes involving injuries \$217,000, and for those involving property damage only \$11,300. The FMCSA adjusted these average costs to year 2000 dollars using the Consumer Price Index to yield \$3.66 million per fatal crash, \$224,378 per injury-related crash, and \$11,684 per property-damage-only (PDO) crash. The Large Truck Crash Profile Study (1999) indicates that fatal crashes represented one percent of all truck-related crashes in 1999, injury-related crashes represented 21 percent, and PDO crashes represented the remaining 78 percent. A copy of a report entitled "Trends in Motor Vehicle Crashes; Fatal Crashes 1975–1999 Injury and Property-Damage-Only Crashes 1988–1999" (December 2000) is in the docket. It has the same data as the Large Truck Crash Profile Study. Using this information, the FMCSA estimates annual (unadjusted) crash reduction benefits from this proposal to be approximately \$44 million using 474 crashes avoided.

The FMCSA estimates total 2004 through 2013 CMV-related crash reduction benefits from this proposal to

equal \$268 million (present value), using a discount rate of 7 percent. Examining the total (present value) costs of this proposal, equal to \$170.4 million, this proposal's implementation yields a net benefit of \$97.6 million over the 10-year analysis period from 2004 through 2013.

The FMCSA invites you to submit comments to the docket about these cost and benefit estimates.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered whether this proposal would have a significant economic impact on a substantial number of small entities. We have determined that such entities would not be adversely affected by this rule, either in absolute terms or relative to larger carriers. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

In the motor carrier industry, the Small Business Administration (SBA) defines small entities as those firms earning less than \$18.5 million in gross receipts annually. The FMCSA examined U.S. Census Bureau data from the 1997 Economic Census, in particular the revenue size of firms in the "General Freight Trucking" sector (North American Industry Classification System Code 4841). The vast majority of firms represented in the sample fall below the SBA annual revenue threshold. While these small entities represent over 90 percent of the firms in the sample, they employ roughly 58 percent of the workers.

The primary focus of this proposal is to improve motor carrier safety by expanding the list of serious traffic violations and other offenses for which a CDL holder can be disqualified to those occurring in non-CMV. The proposal potentially affects all active CDL holders (estimated from 3.2 million to 8.3 million, with a midpoint of 5.75 million), since all would be subject to the proposal. The 3.2 million CDL holders comes from an estimate of "active" CDL holders reported for calendar year 1999 in the FMCSA's 1999 Drug & Alcohol Survey, OMB No. 2126–0012. This sample-based survey measures the percentage of CDL holders that test positive for controlled substances and/or alcohol, but in so doing, provides a count of CDL holders who have been employed as a driver and operated a CMV within the past year, and therefore provides an estimate

of the number of "active" CDL holders nationwide.

The *CDL Effectiveness Study* reported 8.3 million CDL holder records in the CDLIS. Please note that the number of "records" will not match the number of "current" or "active" CDL holders operating a CMV, since there are many CDL holders who have other jobs as their primary employment. Examples include those workers employed in non-driving positions within trucking companies, and those CDL holders, presumably owner-operators, who may suspend operation of CMV services and take alternative employment outside of the trucking industry. The CDLIS does not differentiate among these different types of CDL holders, so one must be cautious when examining this total number of CDL holders within CDLIS. The FMCSA invites the public to comment on whether the agency should use the median of 5.75 million active CDL holders this proposal will potentially affect.

The FMCSA does not currently have evidence that CDL holders employed by small entities are more likely to be disqualified under this rule than those employed by larger entities. Lastly, the number of new driver disqualifications expected annually from this proposal (approximately 9,661) represents only one-tenth to three-tenths of one percent of all active CDL holders (depending on the specific estimate of active CDL records used). Therefore, the number of CDL holders likely to be disqualified annually because of this proposal is very small and should keep it from adversely affecting any entity, large or small.

Therefore, the FMCSA, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), has considered the economic impacts of these requirements on small entities and certifies that this rule would not have a significant economic impact on a substantial number of small entities. Comments on this conclusion are welcome and should be submitted to the docket.

Unfunded Mandates Reform Act of 1995

This proposal would not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, taken together, or by the private sector, of \$100 million or more in any one year over the period analyzed. (2 U.S.C. 1531 *et seq.*)

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed

action is not economically significant and does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This proposed rule would not affect 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 proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255, August 10, 1999). The MCSIA requires this rulemaking action. Consultation with States is not required when a rule is required by statute. The FMCSA, however, has determined that this action would not have significant Federalism implications or limit the policymaking discretion of the States. Comments on this conclusion are welcome and should be submitted to the docket.

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 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 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. The FMCSA has determined that this action, if promulgated as a final rule, would have an impact upon an existing currently approved information collection.

The information collection requirements relating to Commercial Driver Licensing and Test Standards have been approved by OMB and assigned the OMB control number

2126–0011. This proposed action would require AAMVAnet to amend its state procedures manual to add one additional data element: whether the driver's license is a CDL.

Many States have implemented former AAMVAnet state procedure manual requirements by requiring police officers within those States to note on traffic citations whether a motor vehicle is a CMV. The FMCSA believes States would implement a similar requirement in response to an AAMVAnet amendment resulting from sections 201(b) and 202(h) of the MCSIA and this rulemaking.

The FMCSA estimates that between 2,840,000 and 3,160,000 traffic citations are issued annually to CDL holders. It would take an enforcement official approximately 2 seconds to record the additional data element. Adding the data element would increase the current time burden estimate by 1578 to 1756 hours [(2,840,000 to 3,160,000 citations) (2 seconds) = (5,680,000 to 6,320,000 sec.) / 3600 sec./hr. = 1578 to 1756 hr.], resulting in a revised estimated annual time burden of 691,877 to 692,055 hours.

OMB Control Number: 2126–0011.

Title: Commercial Driver Licensing and Test Standards.

Affected Public: Each State government, the District of Columbia government, and approximately 500,000 motor carriers using approximately 10 million drivers who operate CMVs in interstate and intrastate commerce.

Estimated Annual Hour Burden: 1,578 to 1,756 burden hours.

The FMCSA believes these proposed requirements meet the principles of the Paperwork Reduction Act of 1995 by ensuring—

(1) The information collection is the least burdensome necessary for the proper performance of the FMCSA's safety and licensing mandates.

(2) The information collection does not duplicate information collected by other agencies.

(3) The information collection has practical utility. The FMCSA has sought to minimize the cost to itself of collecting, processing, and using the information, but would not accomplish this by shifting disproportionate costs or burdens onto the public.

The FMCSA seeks public comment on this proposed information collection requirement. Interested parties are invited to send comments regarding any aspect of these information collection requirements, including, but not limited to:

(1) Evaluating whether the collection of information is necessary for the proper performance of the functions of

the agency, including whether the information will have a practical use;

(2) Evaluating the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhancing the quality, usefulness, and clarity of the information to be collected; and

(4) Minimizing the burden of collection of information on those who are to respond, including using appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, such as permitting electronic submission of responses.

National Environmental Policy Act

The agency has analyzed this proposal for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

List of Subjects

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, 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 proposes to amend title 49, Code of Federal Regulations, chapter III, parts 383, 384, and 390 as set forth below:

PART 383—[AMENDED]

1. Revise the authority citation for 49 CFR part 383 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.73.

2. Amend § 383.3(f)(3)(i)(C) by revising the cross-reference “§ 383.51(b)(2)” to read “§ 383.51”.

3. Amend § 383.5 to revise the definitions for “Disqualification” and “Driving a commercial motor vehicle

while under the influence of alcohol,” to add a definition for “Non-CMV,” and to place the definitions in alphabetical order, to read as follows:

§ 383.5 Definitions.

* * * * *

Disqualification means any of the following three actions:

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

(2) 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).

(3) A determination by the FMCSA that a person is no longer 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: 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 § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

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

* * * * *

4. Revise § 383.51 to read as follows:

§ 383.51 Disqualifications 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), (c), and (d) of this section, if the driver 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 each Table in 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)(6) of this section (Table 1) 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 who is subsequently convicted of a disqualifying offense described in paragraphs (b)(1) through (b)(6) of this section (Table 1) must not be reinstated.

(6) *Non-CMV enforcement.* A State may apply the disqualification sanctions required by paragraph (b)(3) of this section (Table 1) to convictions of a CDL holder who operates a non-CMV with an alcohol concentration of 0.04. Note, however, that the State is not required to do so.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 of this subpart contains a list of the offenses and period 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—	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 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 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 offense 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 offense in this Table while operating a CMV or a non-CMV, a CDL holder must be disqualified from operating a CMV for—
(1) Is under the influence of alcohol as prescribed by state law.	1 year	1 year	3 years	Life	Life.
(2) Is under the influence of a controlled substance.	1 year	1 year	3 years	Life	Life.
(3) Has an alcohol concentration of 0.04 or greater while operating a CMV.	1 year	Not applicable	3 years	Life	Not applicable.
(4) Refuses to take an alcohol test as required by a State or jurisdiction under its implied consent laws or regulations as defined in § 383.72.	1 year	1 year	3 years	Life	Life.
(5) Leaves the scene of an accident.	1 year	1 year	3 years	Life	Life.
(6) Uses the vehicle to commit a felony, other than a felony described in paragraph (b)(9) of this section.	1 year	1 year	3 years	Life	Life.

TABLE 1 TO § 383.51—Continued

If a driver operates a motor vehicle and—	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 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 offense 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 offense in this Table while operating a CMV or a non-CMV, a CDL holder must be disqualified from operating a CMV for—
(7) [Reserved].					
(8) [Reserved].					
(9) Uses 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 vehicle and—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—
(1) Speeds 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.
(2) Drives 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) Makes improper or erratic traffic lane changes.	60 days	60 days	120 days	120 days.
(4) Follows the vehicle ahead too closely.	60 days	60 days	120 days	120 days.
(5) Violates 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.

(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, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver operates a motor vehicle in violation of a federal, state or local law and—	For a first conviction while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a first conviction while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for—	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, 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 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	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 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	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 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	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 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(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 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	No less than 1 year.
(6) The driver fails to negotiate a crossing because of insufficient under-carriage clearance.	No less than 60 days	No less than 60 days	No less than 120 days ...	No less than 120 days ...	No less than 1 year	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—	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 operating a CMV, a person required to have a CDL and a 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) Violates a driver or vehicle out-of-service order while transporting non-hazardous 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) Violates a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under part 172, subpart F of this title.	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.
(3) Violates a driver or vehicle out-of-service order while operating a vehicle designed or used 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.

5. Amend § 383.53(b)(1) by revising the cross-reference “§ 383.51(d)” to read “§ 383.51(e)”.

6. Revise § 383.71(a)(6) 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. Amend § 383.72 by revising the cross-reference “§ 383.51(b)(2)(i)” to read “§ 383.51(b)”.

8. Revise the introductory text of paragraph (a)(3) in § 383.73 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 not be limited to the following:

* * * * *

9. Amend § 383.77(a)(3) by revising the cross-reference “§ 383.51(b)(2)” to read “§ 383.51(b)”.

PART 384—[AMENDED]

10. Revise the authority citation for 49 CFR part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.73.

11. 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 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 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’s License Information System (CDLIS) State Procedures,” Version 2.0, October 1998.

(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.

12. 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)).

13. 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 § 383.51(b)(1) through (6) of this subchapter, for no less than one year.

* * * * *

14. Revise § 384.216 to read as follows:

§ 384.216 Second 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 subsequent offense as described in § 383.51(b) of this subchapter.

(b) *Special rule for certain lifetime disqualifications.* The State where the disqualified driver resides after 10 years of disqualification have elapsed may reduce the lifetime disqualification of a person disqualified for life under § 383.51(b) of this subchapter, to a minimum of ten years in accordance with § 383.51(a)(5) of this subchapter.

15. 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 using a CMV in the commission of a felony described in § 383.51(b)(9) 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 § 383.51(b)(9) of this subchapter.

16. 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 involving a CMV operated by such person, as specified in § 383.51(c) of this subchapter.

17. 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 involving a CMV operated by such person, as specified in § 383.51(c) of this subchapter. This disqualification period must be in addition to any other previous period of disqualification.

18. 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 §§ 383.51(e), 383.37(c), and 383.53(b) of this subchapter.

19. 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), 383.51(d), and 383.53(c) of this subchapter.

20. 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 CMVs, as defined in § 383.5 of this subchapter, which meet the minimum requirements of § 383.51(b) through (d) of this chapter.

21. 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 apply to the State of licensure of the

person affected by the provision. The provisions of § 384.210 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's License Information System (CDLIS) State Procedures," Version 2.0. (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.

PART 390—[AMENDED]

22. The authority citation for 49 CFR part 390 continues 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); and 49 CFR 1.73.

23. 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 § 383.51(b) or § 392.5(a)(2) of this subchapter.

* * * * *

Issued on: April 23, 2001.

Brian M. McLaughlin,

Acting Deputy Administrator.

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