

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Parts 383, 384, and 385**

[Docket No. FMCSA-2007-27659]

RIN 2126-AB02

Commercial Driver's License Testing and Commercial Learner's Permit Standards**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Motor Carrier Safety Administration (FMCSA) proposes to revise the commercial driver's license (CDL) knowledge and skills testing standards, and to require new Federal minimum standards for States to issue commercial learner's permits (CLPs). FMCSA also proposes that a CLP holder meet virtually the same requirements as those for a CDL holder. This means that a driver holding a CLP would be subject to the same driver disqualification offenses as apply to a CDL holder. This NPRM responds to section 4019 of the Transportation Equity Act for the 21st Century (TEA-21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act). The purpose of this proposal is to enhance safety by ensuring that only qualified drivers are allowed to operate commercial motor vehicles on our nation's highways.

DATES: Please submit comments regarding this NPRM by June 9, 2008.**ADDRESSES:** Please submit comments by only one of the following methods—Internet, facsimile, regular mail, or hand-deliver. Please do not submit the same comments multiple times or by more than one method. The Federal eRulemaking portal is the preferred method for submitting comments, and we urge you to use it.

- *Federal eRulemaking Portal:* Search the Federal Docket Management System (FDMS) Web site at <http://www.regulations.gov>. In the *Comment or Submission* section, type Docket ID Number "FMCSA-2007-27659", select "Go", and then click on "Send a Comment or Submission." You will receive a tracking number when you submit a comment.

- *Mail, Courier, or Hand-Deliver:* U.S. Department of Transportation, Docket

Operations (M-30), West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590. Office hours are between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays.

- *Telefax:* (202) 493-2251.

- *Docket:* To read all comments and background material in the docket, go to <http://www.regulations.gov> and type "FMCSA-2007-27659".

Privacy Act: Regardless of the method used for submitting comments, all comments will be posted without change to the Federal Docket Management System (FDMS) at <http://www.regulations.gov>. Anyone can search the electronic form of all our dockets in FDMS, by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). The DOT's complete Privacy Act Statement was published in the **Federal Register** on April 11, 2000 (65 FR 19476), and can be viewed at the URL <http://docketsinfo.dot.gov>.

FOR FURTHER INFORMATION CONTACT:

Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366-5014 or e-mail robert.redmond@dot.gov. Office hours are from 8 a.m. to 4:30 p.m.

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I. Legal Basis for the Rulemaking

This rulemaking is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, 100 Stat. 3207-170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, 49 U.S.C. 31502). It is also based on section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, at 1734, 49 U.S.C. 31302, 31308, and 31309); and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347, 120 Stat. 1884, at 1944).

The CMVSA required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of commercial driver's licenses (CDLs) by the States and for information to be contained on each such license (49 U.S.C. 31305, 31308). The CMVSA also authorized the Secretary to adopt regulations for a learner's permit (49 U.S.C. 31305(b)(2)). Paragraph (c) of 49 CFR 383.23 addresses the learner's permit by ratifying the States' regulations on this subject, provided they comply with certain Federal requirements. This NPRM is proposing a Federal requirement for a commercial learner's permit (CLP) as a pre-condition for issuing a CDL and proposing various other changes to enhance the CDL program. A summary of the proposed changes organized by section number appears below in the Section-by-Section Discussion of the Proposals.

The MCSA conferred authority to regulate drivers, motor carriers, and commercial motor vehicles (CMVs). It required the Secretary of Transportation to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of

commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators" (49 U.S.C. 31136(a)).

This NPRM, like the CDL regulations, is based in part on the requirements of 49 U.S.C. 31136(a)(1) and (2) that CMVs be "operated safely" and that "the responsibilities imposed on [CMV drivers] do not impair their ability to operate the vehicles safely." The changes to part 383 proposed in this rule would help to ensure that drivers who operate CMVs are legally licensed to do so and that they do not operate CMVs without having passed the requisite tests.

The MCA authorized the Secretary of Transportation to prescribe requirements for the "qualifications * * * of employees" of for-hire and private motor carriers (49 U.S.C. 31502(b)). This NPRM, like the CDL regulations, is based in part on that authority and is intended to enhance the qualifications of CMV drivers by ensuring that they obtain a CLP before applying for a CDL.

Section 4122 of SAFETEA-LU required the Department of Transportation (DOT) to prescribe regulations on minimum uniform standards for the issuance of CLPs, as it has already done for CDLs (49 U.S.C. 31308(2)). More specifically, section 4122 provided that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time; that the CLP document must have the same information and security features as the CDL; and that the data on each CLP holder must be added to the driver's record in the Commercial Driver's License Information System (CDLIS).¹ This NPRM includes each of those requirements, as explained later in this preamble.

Section 703(a) of the SAFE Port Act required the Secretary of Transportation to issue regulations implementing the recommendations in a memorandum issued by the DOT's Office of the Inspector General (OIG) on June 4, 2004, concerning verification of the legal status of commercial drivers. Section 703(b) required the Secretary, in

cooperation with the Department of Homeland Security, to issue a regulation to implement the recommendations in a report issued by the OIG on February 7, 2006 ["Oversight of the Commercial Driver's License Program"] dealing with steps needed to improve anti-fraud measures in the CDL program. In a 2002 CDL audit report, the OIG recommended that FMCSA require testing protocols and performance oriented requirements for English language proficiency. This regulatory proposal incorporates all of the OIG's recommendations which are discussed in more detail later in the preamble. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

In addition to the specific legal authorities discussed above, FMCSA is required, before prescribing regulations, to consider the "costs and benefits" of any proposal (49 U.S.C. 31136(c)(2)(A), 31502(d)). The Regulatory Flexibility Analysis prepared for this proposed rule discusses those issues later in the preamble and more comprehensively in a separate document filed in the docket.

II. Background

A. Summary of This NPRM

The Notice of Proposed Rulemaking (NPRM) proposes the following revisions to the CDL knowledge and skills testing standards in response to the statutory mandates and OIG recommendations:

(1) Knowledge and Skills Testing Requirements

Successful completion of the knowledge test, currently a prerequisite for the CDL, would be required before issuance of the CLP. The NPRM would incorporate by reference the latest American Association of Motor Vehicle Administrators' (AAMVA) Model Test package for knowledge and skill standards. It would include a prohibition on use of foreign language interpreters in the administration of the knowledge and skills tests, to reduce the potential for fraud.

(2) Issuance of and Standards for CLPs and CDLs

The NPRM would specifically require that each applicant obtain a CLP and hold it for a minimum of 30 days before applying for a CDL. It would establish a minimum age of 18 for issuance of a CLP. The CLP would have to be a separate document from the CDL or non-commercial driver's license (non-

¹ CDLIS is an information system to exchange commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

CDL²), would have to be tamperproof to the extent possible, and would have to include the same information as the CDL. The only endorsement allowed on the CLP would be a restricted passenger (P) endorsement. Each State would be required to create a CDLIS record for each CLP it issues.

Before issuing a CLP to a driver, the issuing State would be required to perform a check of the driver's previous driving record using both CDLIS and the Problem Driver Pointer System (PDPS) to ensure the driver is not subject to the sanctions of § 383.51, based on previous motor vehicle violations. Discovery of such sanctions would result in the State's refusal to issue a CLP to the driver.

The NPRM would strengthen the legal presence requirements and increase documentation required for CLP and CDL applicants to demonstrate their legal presence in the United States, as discussed under section III.1, below. For example, State driver's license agencies would be required to verify the applicant's Social Security Number with the Social Security Administration (SSA). The NPRM would also address applicants who wish to attend a driver training school in a State other than the applicant's State of domicile. States would be required to recognize CLPs issued by other States for training purposes. The NPRM would limit the initial and renewal periods for both CLPs and CDLs. It would clarify under what circumstances an applicant must surrender the CLP, CDL, or non-CDL. It would also require all States to use standardized endorsement and restriction codes on CDLs.

Many of the program areas and issues dealt with in this NPRM are also addressed in the Department of Homeland Security's (DHS) final rule implementing the REAL ID Act ("Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes," 73 FR 5272, January 29, 2008, codified in 6 CFR part 37). Although FMCSA and DHS have coordinated efforts to write regulations that neither overlap nor conflict, the statutes underlying these two rules serve different purposes and apply to distinct kinds of licenses and driver populations. FMCSA welcomes suggestions for clarifying both the commonalities between this rule and the REAL ID rule and the differences between them. For example, we recognize that certain REAL ID

requirements exceed those proposed in this rule and that a State in compliance with the former would automatically comply with the latter. In this situation, one alternative would be to adopt the REAL ID requirements, either verbatim or by reference, into the FMCSRs.

FMCSA recognizes that further harmonization with the REAL ID rule may be needed before adopting a final rule. We welcome all suggestions consistent with the requirements of the CDL program which would help us achieve that goal. We are especially interested in comments from the States, which have the primary responsibility for complying with the FMCSA and DHS requirements and the greatest expertise in managing licensing programs. Their views on the possibility of adopting the language of the REAL ID rule for various requirements in this regulation would be valuable.

(3) Measures for Prevention of Fraud

The NPRM would include proposed requirements intended to improve the ability of States to detect and prevent fraudulent testing and licensing activity in the CDL program. These measures would include the following:

- Requiring verification of social security numbers.
- Requiring CLP and CDL applicants to prove legal presence in the United States.
- Requiring that a digitized photo of the driver be preserved by the State driver licensing agency.
- Requiring computer system controls to allow overrides by supervisory personnel only.
- Requiring background checks and formal training for all test driving examiners.
- Requiring the establishment of oversight systems for all examiners and testers (including third-party).
- Disallowing the use of language interpreters for the knowledge and skills tests.

In addition proposed amendments to part 384 would require these items to be reviewed whenever FMCSA conducts a CDL compliance review of the State program. States found in substantial non-compliance with these fraud control measures, as well as the other requirements of part 384, would be subject to the loss of Federal-aid highway funds.

(4) Other Regulatory Changes

The proposed rule would specifically prohibit a motor carrier from using a driver to operate a CMV who does not hold a current and appropriate CLP or CDL or to operate a vehicle in violation of the restrictions on the CLP or CDL.

Also, it would incorporate into the regulations current FMCSA guidance (available on the Agency's Web site, under "Guidance for Regulations," at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.htm>), related to issues addressed by this rulemaking. Finally, there would be numerous minor editorial corrections and updates.

B. History

The CDL program was established by the Commercial Motor Vehicle Safety Act of 1986. Parts 383 and 384 of Title 49, Code of Federal Regulations, implement the CMVSA requirements. The CMVSA prohibits any person who does not hold a valid CDL or learner's permit issued by his or her State of domicile from operating a CMV that requires a driver with a CDL. The prohibition further affects driver training activities by limiting trainees to their State of domicile to (1) receive training and behind-the-wheel experience, and (2) take the knowledge and skills tests necessary to be issued a CDL. This outcome creates problems because commercial driver training facilities and the type of training needed are not equally available in all States.

To address this and other issues, such as a lack of uniformity in the duration of learner's permits, associated driver history recordkeeping, and test reciprocity among States, the Federal Highway Administration (FHWA) published an NPRM on August 22, 1990 (55 FR 34478). (Note: In the discussion below, the responsible agency is referred to as the FMCSA, regardless of whether the action described occurred before or after the transfer of responsibility from FHWA to FMCSA in January 2000.)

Since the 1990 NPRM, major changes have occurred in the CDL program through other rulemakings, regulatory guidance, legislation, and policy decisions. For example, the September 11, 2001, terrorist attacks prompted Congress and FMCSA to expand the scope of the CDL program to include issues related to fraud and security. The issuance of CDLs to unqualified persons and persons with false identities significantly complicated detection and prevention of fraud. All of these major changes made the 1990 proposal obsolete. Thus, FMCSA withdrew the 1990 NPRM on February 23, 2006 (71 FR 42741). The current rulemaking effort revisits these issues and proposes regulatory changes to implement section 4019 of TEA-21, section 4122 of SAFETEA-LU, and section 703 of the SAFE Port Act.

² A "non-CDL" is any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

III. General Discussion of the Issues and Proposals

FMCSA identified 17 issues to be addressed in the NPRM. This section includes a description of each issue, alternatives considered to address the issue, and FMCSA's proposed solution. This section also identifies the sections in 49 CFR parts 383 and 384 that would be amended. A summary of the regulatory changes organized by section number appears below in the Section-By-Section Discussion of the Proposals.

1. Strengthen Legal Presence Requirement

Virtually all States currently issue CLPs and CDLs to U.S. citizens and persons with permanent legal presence in the country who may not be domiciled (i.e., permanent home and principal residence) in their State. CLPs and CDLs are also being issued to persons who have temporary legal presence in the country and are, therefore, domiciled in a foreign country.

On June 4, 2004, the DOT OIG issued a Management Advisory on the need for FMCSA to establish a legal presence requirement for obtaining a CDL. The OIG recommended, at a minimum, requiring proof of citizenship, or permanent residency or legal presence in the United States before a State issues a CDL. The OIG recommended that this requirement be made part of the licensing regulations, and FMCSA proposes in the NPRM to require an applicant for a CLP to make a similar demonstration.

Although "domicile" is not defined in parts 383 or 384, "State of domicile" is defined in § 383.5 to mean that State "where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent." If a State requires proof of domicile as a prerequisite for a learner's permit, then those applicants who can demonstrate that they permanently live in the State, i.e., U.S. citizens and lawful permanent residents, would be successful.

A related issue is the documentation that would be acceptable as proof of domicile. Presumably, the States recognize their own non-CDLs or other evidence of a home or residence in the State, for example, a utility bill. While many States take precautions to check an applicant's record, such as conducting Social Security Number (SSN) verification, this demonstration of domicile can be made by an applicant who does not qualify. In some cases, both U.S. and non-U.S. citizens might

be able to meet residency requirements using a driver's license or showing of residence that masks lack of domicile and/or citizenship or legal status. Currently, levels of documentation for residency are not uniform or stringent enough to meet the OIG's standards of legal presence.

The list of acceptable documents to show proof of citizenship or immigration status for obtaining a hazardous materials endorsement (Table 1 to § 383.71) could be adopted for all issuances of a CLP and CDL. An additional method for proving identity and reducing fraud is verifying applicants' SSNs with the Social Security Administration (SSA), which is discussed under Issue 2.

The NPRM proposes to reinforce "State of domicile," as currently defined in the regulations, as the basis for the States' actions to issue CLPs and CDLs. The NPRM revises the regulations to specify that a State may only issue a CLP or CDL to an applicant who is a U.S. citizen or a lawful permanent resident of the United States. Applicants domiciled in a foreign country, other than Canada and Mexico, who have temporary or indefinite legal presence in the country may be issued a Nonresident CLP or Nonresident CDL (regulations preclude issuing Nonresident licenses to Canada and Mexico). The NPRM also requires an applicant to demonstrate legal domicile (not just prove legal presence), and to present certain documentation to obtain a Nonresident CLP and CDL. To accomplish this goal, FMCSA adopts OIG recommendations for document verification for all CLP and CDL drivers, that is, the same document verification process as is required for hazardous materials (hazmat) endorsements under § 383.71(a)(9).

These requirements for verification, along with other OIG recommendation for verifying Social Security Numbers, would help to reduce the incidence of fraud in the CDL program. FMCSA proposes to revise §§ 383.71 and 383.73 to address this issue.

2. Social Security Number Verification Before Issuing CLP or CDL

When a CLP or CDL is issued to an applicant, it is important to verify that the information provided on the application form is accurate, and that the person submitting the application is who he or she claims to be. FMCSA has provided CDL grant funds to encourage States to verify social security numbers (SSNs) when issuing CDLs. Currently, 45 States perform at least limited verification of SSN, name, and date of

birth with the Social Security Administration (SSA).

FMCSA considered two alternatives for SSN verification. First, take no action.

Second, the CLP and CDL issuance procedures should require States to verify certain identifying information (e.g., name, date of birth, and SSN) submitted on the license application with the information on file with the SSA. The States would be prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the SSA database does not match the data provided by the applicant. This should provide an effective safeguard against issuing CLPs or CDLs to applicants who apply for a CLP or CDL based on fraud.

FMCSA proposes the second alternative because approximately 45 States currently conduct SSN verification for CDL applicants. Thus, requiring SSN verification for both CLPs and CDLs would appear to impose no additional burden on the majority of States; nor would it appear to be an unreasonable burden on those States that do not currently subject CLP or CDL applicants to SSN verification.

Verification of SSN can be accomplished electronically through both individual and batch methods with minimum administrative cost or burden to States. The SSN verification would only have to be performed once on a CLP or CDL applicant if a notation is placed on the driver record that the verification had been done and the results matched information provided by the applicant.

The OIG mentioned fingerprinting as an alternative to a more thorough verification of SSNs, rather than as a program that should be undertaken in parallel with SSN verification. FMCSA is not proposing to require States to perform fingerprinting of CLP or CDL applicants at this time because the cost of fingerprinting is significantly higher than the cost of electronic verification of SSNs. Furthermore, the incremental benefits in terms of security do not appear to justify the cost in terms of equipment, training, and staffing, necessary to develop a fingerprinting program for each State. Thus, FMCSA proposes to add a provision to § 383.73. FMCSA believes that its proposed revision adequately addresses OIG concerns.

3. Surrender of CLP, CDL, and Non-CDL Documents

Currently, §§ 383.71 and 383.73 require the surrender of an existing license only when a CDL is being issued and the license it is replacing is either a non-CDL or a CDL from out of State.

There is no requirement in the current regulations that requires a driver to surrender (1) his or her license when being issued a CDL, if the license is from the same State that is issuing the CDL, (2) his or her CLP when it is being renewed or upgraded or a CDL is issued, or (3) an old CDL when the CDL is renewed or upgraded to add a new endorsement or class of license to the new CDL. Although some States do require the surrender of the old CDL when it is renewed or upgraded, sometimes the old CDL is returned to the driver with a corner cut off or a hole punched in it as indication of invalidating the old document. In some cases, the hole is punched on the expiration date making it impossible for law enforcement to determine whether it is a valid license. Better stewardship requirements are needed for the surrender of all non-CDLs, CLPs, and previously issued CDLs when a new CDL is issued.

FMCSA proposes to amend §§ 383.71, 383.73, and 384.211, and to add proposed § 383.25, to expand the current surrender requirements to include any transaction where a CLP is being upgraded or a CDL is being initially issued, upgraded, or transferred. FMCSA also proposes to incorporate into its regulations, the regulatory guidance posted on the Agency's Web site for § 383.73 question 11 and § 384.211 question 1 on stewardship requirements for surrendered CDLs and to apply it to all of the above-mentioned transactions. This guidance allows licensing jurisdictions to meet the stewardship requirements for surrendered licenses by physically marking the license in some way as not valid and returning it to a driver. The document must be perforated with the word "VOID" or with holes large enough to make it easily identifiable to a casual observer as an invalid document. Punching a hole through the expiration date is not sufficient. Thus, in the case of renewed CDLs, if a State requires the surrender of the old CDL, the stewardship requirements must be followed.

4. CDL Testing Requirements for Out-of-State Driver Training School Students

Current regulations (§§ 383.23(a)(2) and 384.212) allow a jurisdiction to license a driver only if the driver is "domiciled" in that jurisdiction. Drivers who temporarily go to another jurisdiction to receive driver training cannot legally obtain either a CLP or a CDL from the jurisdiction in which the training occurs because they are not "domiciled" in that jurisdiction. Further, some States do not recognize an

out-of-State CLP for on-the-road training.

Motor carriers and driver training schools advertise that they will assist drivers in obtaining CDLs upon completion of their training programs. Many training entities provide their students with a representative CMV for use in taking the skills test, and a driver with a CDL to accompany the student to the skills test location. Generally, these organizations can provide such a representative vehicle only within the jurisdiction in which the carrier's training facility or the school is located, i.e., the jurisdiction where the training is given. The driver holding a CLP who has left his/her State of domicile and licensure to obtain training then must return to his or her State of domicile and licensure to complete the skills testing. This presents the challenge of finding a vehicle that represents the type a driver expects to operate and finding a driver with a currently valid CDL to accompany the driver to the skills test location. Further, the costs associated with obtaining the vehicle and accompanying driver can be considerable, estimated at \$150 to \$200 per day. Finally, the applicant for a CLP or CDL must also meet the insurance requirements for using the representative vehicle when that cost is not borne by the employing motor carrier or a training school.

Another problem with the existing system is the perceived inconsistency of State approaches to issuing CLPs or accepting knowledge or skills testing from other jurisdictions.

FMCSA considered two alternatives based on issuance of a CLP after a demonstration of the applicant's State of domicile. First, after successful completion of a *knowledge test*, a person who holds a non-CDL in his or her State of domicile (or who holds a CDL that he/she wishes to upgrade) could obtain a CLP from that State of domicile and receive skills training in any State. The CLP would be recognized in all States in the same manner as CDLs. Upon successful completion of a *skills test* out of State, the driver could surrender both the CLP and the underlying CDL³ or non-CDL to the State of training and receive a temporary, non-renewable, Nonresident CDL which would expire in 60 or 90 days. During this 60- to 90-day period the driver would return to his or her State of domicile to obtain a permanent CDL. The temporary

Nonresident CDL would be recognized by the State of domicile.

However, this alternative is dependent upon whether the State in which the training is provided has the desire and authority to issue a Nonresident CDL. Other new CLP requirements in the NPRM would decrease the vulnerability to fraudulent licensing practices under this alternative. FMCSA would maintain the "one-driver, one-license, one-record concept" by proposing to link an underlying non-CDL to the issuance of a CLP and require both from the driver's State of domicile. Also, when the CLP and non-CDL are surrendered, the State of training temporarily becomes the State of licensure because the driver's records are transferred to that State.

Under the second alternative, a person who holds a CDL or non-CDL in his or her State of domicile could obtain a CLP from that State and obtain training in any State. A person would take the skills test in the State where the training was conducted. The State of training would send the skills test results to the State of domicile. The State of domicile would accept the results of the skills test and issue a CDL when the student returns to his or her State of domicile. This alternative is based upon a driver's State of domicile accepting the results of a CDL skills test taken out-of-State. The problem with this alternative results from the States' perceived lack of standardization of skills testing and potential for fraudulent testing. Consequently, some States might be reluctant to accept the liability of issuing a CDL based on the results of an out-of-State CDL skills test. This alternative involves reciprocity of skills testing results. FMCSA is confident that the new proposed skills test standards would provide the States with a basis for accepting another State's test results.

FMCSA proposes to revise § 383.23(c) to reflect the second alternative. Current paragraph (c) and other issues that are exclusive to the CLP would be redesignated as new § 383.25. FMCSA believes that the proposed revisions to the minimum standards for knowledge testing in subparts G and H of Part 383 would provide a basis for a State to accept another State's knowledge testing and CLP for the purpose of allowing the driver to participate in skills training out-of-State.

5. State Reciprocity for CLPs

Currently, Federal CDL regulations are silent on whether a CLP must be recognized by other States. This situation has caused some States to recognize an out-of-State CLP when the

³ Assuming the driver already has a CDL, but is training to upgrade his/her CDL to a higher class (i.e. Group C to B) or to add an endorsement that requires skills testing (i.e. passenger endorsement).

holder is taking commercial driver training in their State, while other States have said the student can only take commercial driver training if the CLP is also from that State. Some States, even though they do not recognize a CLP from another State for training purposes, will issue an out-of-State student a CLP and establish a driver record, but allow the student to maintain his or her base license and driving record from his/her State of domicile.

FMCSA proposes to amend § 383.73(h), which would be redesignated as § 383.73(l), by adding a new requirement for CLP reciprocity. In order to maintain the "one driver, one license, one driving record concept" of the CDL program and to establish uniformity in the issuance of CLPs, the CLPs would only be issued by the State of domicile; but the CLP must be recognized for training purposes by all other States in the same manner as CDLs are recognized under § 383.73(h).

6. Minimum Uniform Standards for Issuing a CLP

a. Passing the General Knowledge Test To Obtain a CLP

Currently, some States do not require a knowledge test as a prerequisite to issuing a CLP. In its May 2002 audit report "Improving Testing and Licensing of Commercial Drivers," the OIG recommended that FMCSA require applicants to pass a knowledge test to obtain a CLP. Section 4122 of SAFETEA-LU mandates CLP applicants pass a written test before the CLP is issued.

FMCSA proposes that every commercial driver-trainee be required to successfully complete the CDL knowledge tests before being issued a CLP. A driver who holds a valid non-CDL in his or her State of domicile would obtain a CLP from the State of domicile upon successful completion of a general CDL knowledge test. The proposal to require knowledge testing for all persons applying for a CLP is addressed in § 383.25 and proposed amendments to §§ 383.71 and 383.73. This requirement would provide for a safer driving environment by ensuring that a student demonstrates basic knowledge of operating a CMV before he or she gets behind the wheel.

b. Requiring the CLP To Be a Separate Document From the CDL or Non-CDL

States vary in the type of document that serves as a commercial learner's permit and the relationship of the commercial learner's permit to a CDL or non-CDL. In extreme cases, a non-CDL serves as the CLP and, once the driver

passes the skills test, as a temporary CDL. Standardizing the CLP is a key component of this NPRM.

FMCSA proposes to establish the central requirement that the CLP be a separate document from the CDL or non-CDL. The CLP document would have to meet much the same requirements as a CDL document, but with the words "Commercial Learner's Permit" or "CLP" displayed prominently at the top. FMCSA also proposes that the restriction codes, vehicle group, and endorsement for which the driver has passed knowledge tests should be printed on the CLP document, as well as the license number of the underlying CDL or non-CDL. FMCSA also proposes that the CLP document include the statement that the permit is not valid for driving a CMV unless the driver also has on his/her possession the underlying CDL or non-CDL and only drives when accompanied by a valid CDL holder. More information about the proposal that the CLP be a separate document, but tied to the underlying CDL or non-CDL, is addressed in proposed § 383.25 and amendments to §§ 383.151 and 383.153.

c. CLP Document Should Be Tamperproof

The States permit a variety of documents to serve as CLPs. Some States issue paper documents that would be easy targets for tampering. To narrow the range of documents that serve this purpose and to improve security, section 4122 of SAFETEA-LU requires that the CLP be tamperproof and the content of the CLP document be the same as the content of the CDL document. The CLP would state that without the underlying State CDL or non-CDL the CLP is invalid. The license number of the underlying CDL or non-CDL would be displayed on the CLP.

FMCSA proposes to add a definition for "CLP" and "Nonresident CLP" to § 383.5 (Definitions). Substantive information requirements for the CLP would be analogous to the information required for a CDL and Nonresident CDL; and the term "Commercial Learner's Permit" or "CLP" must be prominently displayed on the document. If the person being issued a CLP is domiciled in a foreign jurisdiction, other than Canada or Mexico, the word "Nonresident" must also appear on the CLP.

FMCSA also proposes that a photograph or digitized image of the driver, the appropriate vehicle group, endorsement, and restriction codes must be shown on the CLP document. The proposed §§ 383.153 and 383.155 reflect these changes.

d. Recording the CLP in CDLIS

Current State policies make it possible for a driver to obtain a CLP from more than one State, because only about half the States create a CLP driver record in CDLIS. To address this problem, the OIG recommended that, the CLP be recorded in the CDLIS, and section 703 of the SAFE Port Act required the Agency to implement the report that included the recommendation. In addition, section 4122 of SAFETEA-LU requires the inclusion of the CLP in CDLIS.

Because the CLP together with an underlying non-CDL is a form of CDL for training when the driver is accompanied by a CDL holder, it is important that the CLP be subject to the same recordkeeping requirements as a CDL (49 CFR 383.23(c)). Moreover, these recordkeeping provisions would aid in the administration of nationwide CLP reciprocity and ensure uniform application of disqualifications to CLP holders. FMCSA has determined that the CDLIS has the capacity to handle the additional entries that are anticipated as a result of this proposal. Finally, the provision fulfills the OIG recommendation and SAFETEA-LU requirement that CDLIS be notified of all CLPs issued.

FMCSA proposes to amend §§ 383.71, 383.73, 384.205, 384.206, 284.207, and 384.225 to create a CDLIS record for a CLP and to require posting all CLP transactions to CDLIS.

7. Maximum Initial Validity and Renewal Periods for CLP and CDL

a. Initial Validity and Renewal Periods for CLP

The general principle behind limiting the duration of a CLP and restricting the number of times it can be renewed without retaking the general CDL knowledge and endorsement tests is public safety on the highway. Every CLP holder is expected to demonstrate the minimum level of requisite skills in a test situation and obtain a CDL within a reasonable period of time (§ 383.25(d)). If the CLP holder does not obtain the CDL within a reasonable period of time, it could be an indication that the CLP holder is having difficulty developing the required skills to handle a CMV safely. Consequently, a protracted learning period for a CLP holder could pose a safety hazard on the nation's public roads and highways. Therefore, it is important to closely monitor CLP holders to determine if they might be experiencing any safety problems. Such monitoring could be accomplished by checking the driver

record prior to granting a renewal of the CLP.

Some States, such as Alabama, are considering issuing CLPs for the same period as licenses, 5 years. When a CLP is issued for a lengthy period of time, it has been used illegally in some cases as a CDL in a co-driver situation, while the CDL holder is in the sleeper berth.

FMCSA considered two alternatives for limiting the initial issuance and renewal periods for CLPs.

First, a commercial driver training program including classroom and behind the wheel training usually takes 6 to 8 weeks. Considering that some students may need additional behind the wheel experience before taking the skills test for a CDL, a CLP valid for 90 days would be reasonable. Likewise, some driver-students may not pass the skills test on the first attempt and scheduling a retest may take several weeks. In that situation, the students would be allowed to renew their CLP for an additional 90 days without having to retake the general and endorsement knowledge tests.

Under the second alternative, FMCSA recognizes that not all CLP holders take formal training at a commercial driving school. They may need more time (e.g., 180 days) to pass the skills test because they are not training and practicing behind-the-wheel skills on a full time basis as they would in a formal training program. Therefore, FMCSA could propose a CLP be valid for 180 days. Again, some driver-students may not pass the skills test on the first attempt and scheduling a retest may take several weeks, so the students could be allowed to renew their CLP for an additional 90 days without having to retake the general and endorsement knowledge tests.

FMCSA believes public safety demands a limitation on the time allowed for a student to obtain a CDL without having to start the process over by retaking the general and endorsement knowledge tests. There is also concern that limiting initial validity to a short period of time (e.g., 90 days) puts an undue burden on both the driver and the State licensing agency in processing more renewals. Therefore, FMCSA proposes the second alternative and proposes to add new § 383.25 and to amend §§ 383.71 and 383.73.

b. Initial Validity and Renewal Periods for a CDL

The States vary in their initial duration and renewal periods for CDLs. The trend has been to expand the time periods in order to handle more drivers with the same staff and budget. In New York, for example, the renewal period

for a driver's license, including CDLs, has gone from 5 years to 8 years. In Arizona, for example, all driver's licenses, including CDLs, do not have to be renewed until the driver turns 65 years old.

The ever increasing length of initial and renewal periods for CDLs is defeating the purpose of renewal. The renewal process allows the driver to update information on the license and the State to update this information on the electronic driving record, place a new photograph on the license, check the driving record (i.e. current State of licensure, CDLIS, and Problem Driver Pointer System (PDPS)), and, in the case of the hazardous materials endorsement, require the driver to retake the test required by § 383.71.

FMCSA considered two alternatives for limiting the initial term and renewal periods for CDLs.

Under the first alternative, the current average validity period for a license in the United States is slightly under 5 years. Some States use periods as low as 2 years and others use 8 years; a few licenses remain valid to age 65. Since the hazardous materials endorsement threat assessment must be performed at least every 5 years in accordance with a Transportation Security Administration interim rule, the initial and renewal periods could be set at a maximum of 5 years to bring the CDL renewal and threat assessment cycles into agreement. This would promote uniformity among the States and limit the escalating length of validity periods. However, FMCSA recognizes that States with periods over 5 years may object because they could not handle more frequent transactions with current staffing and budget levels.

Under the second alternative, while the current average validity period for a license in the United States is just under 5 years, the number of drivers is increasing. Therefore, States would need some flexibility to extend the validity periods to accommodate the increase with current staffing and budget levels. Except for Arizona and Georgia, we know of no State that currently has an initial and renewal period greater than 8 years. An 8-year period is also the renewal period DHS has adopted in its final rule to implement the REAL ID Act. By proposing an 8-year maximum renewal period, FMCSA agrees with the DHS requirements for all drivers' licenses. An 8-year period would provide most States the flexibility to expand beyond 5 years. At the same time, it would still promote highway safety by placing a cap on the maximum validity periods and preventing more States from

following Arizona's lead by eliminating any renewal until age 65. At least once every eight years, the driver would update information on the license and the State would update this information on the electronic driving record, place a new photograph on the license, and check the driving record.

FMCSA proposes the second alternative, and §§ 383.71 and 383.73 would be modified.

8. Establish a Minimum Age for CLP

An individual is not eligible to operate a CMV in intrastate commerce before age 18 (49 CFR 350.341(f)), and in interstate commerce before 21 years (49 CFR 391.11(b)(1)), except for those persons either excepted or exempted under 49 CFR 390.3(f), 391.2 and subpart G of part 391. Despite this fact, some States are currently issuing CLPs to applicants younger than 18 years of age. As a result, an individual who cannot operate a CMV in intrastate or interstate commerce is allowed to train and obtain behind-the-wheel experience in a CMV under the age of 18.

FMCSA considered two alternatives for setting a minimum age for issuing a CLP. First, to avoid the inconsistency between States for setting the minimum age for operating a CMV with a CLP, FMCSA could recommend that an applicant for a CLP be at least 18 years old. The age limit is especially important if a CLP holder, as proposed, would be granted reciprocity to drive in another State while training.

The second alternative is the same as the first alternative. However, the exceptions and exemptions to the 21 years of age requirement for interstate commerce under 49 CFR 390.3(f), 391.2, and subpart G of part 391 would also be recognized for the issuance of a CLP.

FMCSA proposes the second alternative to be consistent with the exceptions and exemptions from age requirements granted in Parts 390 and 391 to operate in interstate commerce and, if adopted by the State, in intrastate commerce. A provision would be added to new § 383.25 and to § 383.71 to specify a minimum age requirement with limited exceptions.

9. Preconditions To Taking the CDL Skills Test

Currently, issuance of a CLP is not a precondition for issuance of a CDL. Therefore, a CDL applicant could legally obtain behind-the-wheel training on any public or private road without a CLP. Also, there is the issue of applicants without a CLP getting less than two weeks training at so called "CDL mills" rather than 6 to 8 weeks of training that

teaches them to properly operate a CMV.

In addition, the CLP holder should not be eligible to take the CDL skills test in the first 30 days after initial issuance of the CLP, because it affords the applicant an opportunity to obtain skills training and to practice what he or she is taught. This 30-day prohibition on taking the skills test may also have an effect on the training period and thoroughness of the curriculum being taught at the CDL mills, because of the interval between the general training to pass the knowledge test for a CLP and the point at which the driver is eligible to take the skills test.

FMCSA proposes to add these conditions in § 383.25 and to amend part 383, subpart H. The Agency has published a NPRM (72 FR 73226, December 26, 2007) that would require that applicants for a CDL obtain training that meets specific curriculum requirements. The entry level driver training requirement (RIN 2126-AB06) would work together with the requirements in this rulemaking to ensure that applicants for a CDL have received adequate training and have had adequate opportunity to learn safe driving skills behind the wheel of a CMV. The comment period for the Agency's entry-level driver training rule expires on May 23, 2008 (73 FR 15471, March 24, 2008).

10. Limit Endorsements on CLP to Passenger (P) Only

This rule proposes that persons who are learning to drive a CMV with a CLP should not operate specialized vehicles (e.g., double/triple trailers or tank vehicles) or carry dangerous or high-value cargo (such as hazardous materials or passengers) before they acquire basic knowledge and skills.

However, some States issue endorsements on their CLPs, or allow drivers to train on CMVs that require an endorsement without the need for the endorsement on the CLP or CDL. Section 383.93 requires a driver to pass the general knowledge and skills test for a CDL before being eligible to add endorsements for double/triple trailers, passenger vehicles, tank vehicles, vehicles used to transport hazardous materials, and school buses. While all endorsements require a knowledge test specific to the endorsement, only the passenger (P) endorsement under § 383.93(c)(2) and the school bus (S) endorsement under § 383.93(c)(5) require successful completion of both a knowledge and skills test. Thus, only the P and S endorsements require the applicant to obtain behind-the-wheel

experience to prepare to pass the skills test.

FMCSA proposes that only the P endorsement be allowed on the CLP after the driver successfully passes the endorsement knowledge test. We further propose that the CLP holder with the P endorsement be prohibited from driving a CMV carrying passengers. While the S endorsement requires skills training to pass the skills test, it is only needed when the driver is actually transporting students. Thus, there is no need to have the S endorsement on the CLP when training for the CDL because it would not be a safe practice to allow driver trainees to transport students. If the applicant is training on a school bus, the endorsement knowledge test must be passed and noted on the driver's record.

FMCSA also proposes that the P endorsement on the CLP be class specific. The driver can only undergo skills testing in a class of passenger vehicles or school bus for which he or she has passed knowledge training. This requirement is similar to what is required for P or S endorsements as CDL upgrades. The CLP holder must also be accompanied and directly supervised by a driver qualified for such a vehicle type.

No other endorsements should be allowed on a CLP for safety reasons. The hazardous materials (H) endorsement is currently prohibited for security reasons. FMCSA sees no justification for allowing CLP holders to train on double/triple vehicles, tank vehicles, and vehicles carrying hazardous materials. Drivers wishing to develop skills on these vehicles must first obtain a CDL and then seek additional training needed for an endorsement.

FMCSA proposes to add § 383.25 and to amend §§ 383.71, 383.73, 383.93, and 383.153. These proposed requirements and restrictions for the P and S endorsements on the CLP would apply whether the CLP holder has only a non-CDL, or already has a CDL and is seeking an upgrade by adding the P or S endorsements.

11. Methods of Administering CDL Tests

State and Federal investigations have revealed applicant and examiner fraud in the use of interpreters during knowledge and skills testing. The OIG has issued recommendations on this issue. The agency has issued Regulatory Guidance on 49 CFR Part 383 concerning the use of interpreters and written, verbal, and automated foreign language tests. The use of interpreters during knowledge testing has resulted in fraud; questions are sometimes answered by the interpreter, not the applicant. The use of interpreters during

skills testing could pose a serious safety hazard to the driver, the examiner, the CMV and the general public on the highway. For example, if would be dangerous if a testing official gave the driver a command based on an observed hazard or situation, but the driver did not immediately comprehend the command.

The OIG also recommended in its 2002 CDL audit report that FMCSA require testing protocols and performance oriented requirements for English language proficiency.

FMCSA proposes to amend § 383.133. The fraud and safety concerns identified over the past few years lead FMCSA to conclude that the rules should provide clear guidance on test administration. The NPRM would propose to eliminate the use of interpreters in both the knowledge and the skills testing. There are alternate ways to conduct knowledge tests in foreign languages through the use of written, recorded and automated testing. With regard to skills testing, interpreters are a safety issue, not a language accommodation issue. While a foreign speaking applicant may have difficulty comprehending long questions and multiple choice responses in English, immediate response to verbal commands and instructions in English by a skills test examiner is vital to public safety. This proposed rule attempts to strike a balance between accommodation of applicants for whom English is their second language and who undergo CDL testing, while preserving the necessary protections against fraud and safety risks to drivers, skills test examiners, and the general public on highways.

12. Update Federal Knowledge and Skills Test Standards

Section 4019 of TEA-21 required FMCSA to complete a review of the current system of CDL knowledge and skills testing, and determine if it is an accurate measure of an individual's knowledge and skills as an operator of a CMV. Section 4019 further required FMCSA to issue regulations reflecting the results of the review. This mandate was addressed by the American Association of Motor Vehicle Administrators (AAMVA) and the FMCSA jointly. The recently updated versions of AAMVA's model CDL knowledge and skills tests, and driver and examiner manuals were released to the States in January 2006. The updated model test package (Version 2005) meets a higher standard of knowledge and skills testing than the current Federal standards in part 383, subparts G and H. While some States are voluntarily adopting the updated model test

package (tests and manuals), the majority of the States will not fully adopt them until the Federal testing standards are raised to meet the model test standards.

FMCSA considered two alternatives for updating the Federal knowledge and skills testing standards.

Under the first alternative, FMCSA would incorporate the AAMVA model test package (Version 2005) by reference into the Federal regulation for CDL knowledge and skills standards. This is justified because AAMVA's 2005 model testing package was developed with major input by representatives from the industry that would be affected by the new testing standards, and as a way of promoting uniformity among the States.

Some modifications to part 383, subparts G and H, would be needed to match the knowledge standards in the model testing package. These modifications would address: (1) The number of questions that are required on the general and endorsement knowledge tests; (2) the number of knowledge categories (domains) that must be represented with questions on the general and endorsement knowledge tests; and (3) the adoption of the AAMVA 2005 Requirements Document algorithm for creating multiple versions of the knowledge test.

In addition, modifications to part 383, subparts G and H, would be needed to: (1) Make the entire pre-trip inspection (not just the air brake inspection) part of the skills standard, rather than the current knowledge standard; (2) prohibit the banking of parts of the skills test (for example, an applicant who passes the pre-trip and off-road maneuvers, but fails the on-road part of test must retake all three parts of the skills test); (3) adopt the expanded definition of CMV in section 4011(a) of TEA-21 to include both "gross vehicle weight rating and gross vehicle weight" and "gross combination weight rating and gross combination weight," "whichever is greater."⁴ (4) eliminate § 383.77, since the substitute for a driving skills test was intended only for the initial testing cycle prior to April 1, 1992; and (5) adopt the OIG recommendation to require covert monitoring of State and third party skills test examiners.

The second alternative is the same as the first alternative, except that the AAMVA model testing package would not be adopted by reference. Only the major aspects of the model testing package would be incorporated into the

Federal knowledge and skills testing standards, similar to what is in the current testing standards in part 383, Subparts G and H.

FMCSA proposes the first alternative in order to promote more uniformity among the States. FMCSA proposes to amend § 383.5 and part 383, subparts G and H, and to add § 384.229.

13. *New Standardized Endorsements and Restriction Codes*

Currently, uniform codes are not required for all endorsements and restrictions on a CDL. For example, unlike the standardized CDL codes for the double/triple trailer (T), hazardous materials (H), tank vehicle (N), passenger vehicle (P) and school bus (S) endorsements, the air brake restriction has no standardized code. The fact that States are using five different codes causes enforcement problems. In one State a "K" restriction means an air brake restriction while in another State it means an intrastate-only restriction.

Several issues have been raised by motor carriers and State driver licensing skills examiners in regard to CMVs with (1) automatic transmissions or manual transmissions; (2) air over hydraulic versus air brakes; and (3) non-fifth wheel (e.g., pintle hook) versus fifth wheel combination vehicles. Motor carriers are concerned when they hire drivers with a CDL who (1) cannot operate manual transmission vehicles; (2) cannot test or operate a full air brake system; and/or (3) cannot hook up a fifth wheel power unit with a semi-trailer. State examiners are concerned when they cannot test the applicant on (1) a full air brake system; (2) a manual transmission; and/or (3) fifth wheel combination hookup because the vehicle brought to the test is not so. However, there is no current Federal requirement that the test vehicles be outfitted with these features. A number of States have imposed restrictions on CDLs for drivers who take the skills test in a CMV that is missing one or more of these features, but there are no standardized codes for these restrictions.

Another issue related to endorsements is the confusing definition of "tank vehicle" under § 383.5 because of the reference to the definition of "cargo tank" in 49 CFR part 171. The definition in Part 383 implies that a driver needs a tank endorsement to operate a vehicle with a permanently attached tank that has a rated capacity greater than 119.5 gallons. In the case of a portable tank temporarily attached to the vehicle, a tank endorsement is needed only if the portable tank has a rated capacity of 1,000 gallons or more.

FMCSA proposes to amend §§ 383.5, 383.93, 383.95, and 383.153. FMCSA believes that Federal restrictions should be developed for applicants who use a vehicle in the skills test that is equipped with (1) an automatic transmission; (2) air over hydraulic brakes; or (3) a non-fifth wheel (pintle hook). All three restrictions would be assigned standardized restriction codes, along with a standardized code for the current air brake restriction.

The disparity in minimum rated capacity between permanently attached tanks (119 gallons) and temporarily attached portable tanks (1000 gallons) for the tank vehicle endorsement makes no sense. As FMCSA has no reports of any problems with drivers transporting portable tanks with a rated capacity under 1,000 gallons, the NPRM proposes a rated capacity threshold of 1,000 or more gallons for all tanks before a driver would need a tank endorsement. This would also eliminate the controversy over whether the driver of a ready mix concrete truck equipped with a small water tank to clean the mixer drum or a truck transporting generators with small fuel tanks needs a tank vehicle endorsement.

14. *Previous Driving Offenses by CLP Holders and CLP Applicants*

a. Holders of a CLP

FMCSA does not currently subject a CLP holder to the basic rules of the CDL program. The question has been raised whether a CLP holder is subject to the disqualifying offenses in § 383.51 for major offenses under Table 1 and minor offenses under Table 2, including those that occur when operating a non-CMV. In other words, is a CLP holder "a CDL holder" for purpose of being disqualified? Under current § 383.51, the answer is no.

FMCSA considered two alternatives for dealing with disqualifying offenses of a CLP holder. Under the first alternative, FMCSA could leave the regulations unchanged and not apply the disqualifications to CLP holders. This would allow some CLP holders who are convicted of disqualifying offenses while operating a non-CMV to continue avoiding license sanctions. In the second alternative, FMCSA could subject the holder of the CLP to the same rules as a driver who holds a CDL. This would ensure that drivers who have been convicted of the violations described in § 383.51, whether they occurred in a CMV or non-CMV, would not operate CDL vehicles on our nation's highways until the end of the full disqualification period for the offense in the non-CMV.

⁴ The expanded definition should be limited to roadside enforcement and not used for skills testing in order to maintain the representative vehicle concept.

FMCSA proposes the second alternative because of the increased level of safety that would result from higher qualification standards for CMV drivers. FMCSA also proposes to amend §§ 383.5, 383.51(b) and (c), 383.71, and 383.73.

b. Applicants for a CLP

Applicants for a CLP are not currently subject to the basic rules of the CDL program. An applicant who has been disqualified from driving an automobile can nevertheless obtain and use a CLP, even during the disqualification period. This driver would then be able to upgrade to a CDL later, potentially resulting in an unsafe driver behind the wheel of a CMV on the highway.

FMCSA considered two alternatives for dealing with disqualifying offenses of a CLP applicant. First, FMCSA could leave the current regulations as they are currently written and not apply the disqualifications to CLP applicants. This would allow an applicant for a CLP to remain exempt from the disqualifying offenses of § 383.51.

Second, FMCSA could subject the applicant for the CLP to the same rules that exist today for a CDL applicant. Before issuing a CLP to a driver, the issuing State would be required to perform a check into the driver's current driving record at the current State of licensure, and using both CDLIS and the Problem Driver Pointer System (PDPS) to ensure the driver is not subject to the sanctions of § 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. Discovery of such sanctions would result in the State's refusal to issue a CLP until the end of the full disqualification period for the offense. This would ensure that drivers who have been convicted of the unsafe driving violations described in § 383.51 prior to applying for a CLP, regardless if they occurred in a CMV or non-CMV, would not operate CMVs on our nation's highways while disqualified.

This NPRM proposes the second alternative because of the increased level of safety that would result from higher qualification standards for CMV drivers. FMCSA proposes to amend §§ 383.5, 383.51(b)-(c), 383.71, and 383.73 accordingly.

15. Motor Carrier Prohibitions

Current § 383.37 prohibits employers from allowing disqualified drivers to operate a CMV. However it does not include a prohibition on using a driver who simply does not have a current CLP or CDL or who does not have a CDL

with the proper class or endorsements, or using a driver to operate a CMV that violates a restriction on the driver's CDL. This omission makes it difficult for FMCSA to properly cite and take enforcement action against a motor carrier.

FMCSA proposes to include a specific prohibition against motor carriers using drivers who do not have a current CLP or CDL or who do not have a CDL with the proper class or endorsements, or using a driver to operate a CMV in violation of a restriction on the driver's CDL. FMCSA proposes to amend § 383.37 and Appendix B to Part 385.

16. Incorporate CLP-Related Regulatory Guidance Into Regulatory Text

Over the past several years, FMCSA has published a number of interpretations in response to requests for clarification of regulations applicable to CLPs and driver testing. While these interpretations do not have the force of regulation, they nonetheless guide Agency enforcement. (The current interpretations are available on the FMCSA Web site under "Guidance for Regulations" at <http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.htm>. The interpretations are listed under the applicable 49 CFR part.) However, the parties who requested the interpretations had no opportunity to question them or to amplify the inquiry, and other parties might be unaware of the Agency's position. Regulatory Guidance, once issued, should therefore be incorporated into regulatory text, as needed.

FMCSA proposes to codify regulatory guidance related to this rulemaking by subjecting it to public notice and comment. Regulatory guidance made obsolete by the changes in this rulemaking would be eliminated. This would include regulatory guidance under § 383.23 (CLP), questions 1, 2, and 4; part 383, Subparts G and H, all questions (knowledge and skills testing); and § 383.153, questions 1-7 (CLP and CDL document). FMCSA proposes to amend §§ 383.25, 383.73, 383.77, 383.95, 383.113, 383.131, 383.133 and 383.153.

17. Incorporate SAFE Port Act Provisions

On October 13, 2006, the President signed into law the Security and Accountability For Every Port Act of 2006 (SAFE Port Act), Public Law 109-347. Section 703, Trucking Security, requires FMCSA to implement requirements from two Office of Inspector General (OIG) reports:

(a) *June 4, 2004 Memorandum: Need to Establish a Legal Presence Requirement for Obtaining a Commercial Driver's License* (Control No. 2004-054). This 2004 OIG report recommended that FMCSA establish a legal presence requirement for obtaining a CDL. The report said that all CDL applicants should demonstrate either citizenship or lawful permanent residence in the United States before a State may issue a CDL. FMCSA has addressed this recommendation in this NPRM.

(b) *February 7, 2006 Memorandum: Report on Federal Motor Carrier Safety Administration Oversight of Commercial Driver's License Program* (Report Number MH-2006-037). This 2006 OIG report contains three broad recommendations to detect and prevent fraudulent testing and licensing activity in the CDL program:

(1) Direct the States to report on the final disposition of all suspect drivers identified by the States. These disposition reports should emphasize but not necessarily be limited to instances where there is specific or direct evidence that the driver participated in a fraudulent activity to obtain the CDL.

(2) Determine that State CDL programs are out of compliance, under Federal regulations, if the State fails to impose adequate internal controls to prevent fraud or fails to take or propose necessary corrective action.

(3) Impose sanctions, under Federal regulations, against those States that fail to establish adequate fraud control measures for their CDL programs.

The first recommendation in the 2006 OIG report was based on a February 24, 2005, OIG memorandum to FMCSA on data collected from the States, which identified 15,032 CDL holders suspected of fraudulent activities. The States took action against 8,293 of these drivers, including removing CDL privileges. The status of the remaining 6,739 suspect drivers was not determined at that time because the drivers had moved from their original State of record. FMCSA said that it would ask the States to determine the final disposition of these drivers, but the Agency does not have legal authority under parts 383 or 384 to require the States to make such a report.

As a short term solution to this problem, FMCSA addressed this recommendation by contacting the States and requesting that they report the final disposition of the 6,739 suspect CDL holders. As a long term solution, FMCSA proposes to require States to invalidate CDLs issued as the result of examiner fraud and to retest the driver. However, if a driver was convicted of

fraudulent activities related to the issuance of a CDL, the issuing State would be required to withdraw the driver's CDL and post this information on his/her CDLIS record. The driver would not be allowed to reapply for a new CDL for one year.

With regard to the second recommendation in the 2006 OIG report, FMCSA proposes new requirements to combat fraud (prohibiting interpreters, requiring social security number verification, checking legal presence, etc.). This NPRM proposes to require that:

- A digitized photo of the driver be kept on file by the State licensing agency.

- The State establish computer system controls that prevent changes to records of transactions, unless they are done by supervisory personnel only and are documented.

- Background checks and formal training be mandatory for all driving test examiners.

- The States establish oversight systems for all examiners, including third-party examiners.

Regarding the OIG's third recommendation in the OIG 2006 report, FMCSA proposes that the measures described above be added to the requirements of part 384, thus requiring these items to be reviewed for compliance whenever a State undergoes a CDL compliance review by FMCSA. States found in substantial non-compliance with these fraud control measures, as well as the other requirements of part 384, would be subject to the loss of Federal-aid highway funding. FMCSA proposes to amend §§ 383.73 and 383.75, and to add §§ 384.227, 384.228, and 384.229.

IV. Section-By-Section Discussion of the Proposals

This section includes a summary of the regulatory changes proposed for 49 CFR parts 383, 384, and 385 organized by section number.

A. Proposed Changes to Part 383

Part 383, Commercial Driver's License Standards; Requirements and penalties, contains the requirements for CDLs and CLPs. With certain exceptions, the rules in this part apply to every person who operates a commercial motor vehicle (CMV) in interstate, foreign, or intrastate commerce, to all employers of such persons, and to all States.

1. Section 383.5, Definitions

FMCSA proposes to add a definition of "CDL driver" to clarify that the requirements that apply to CDL driver also apply to anyone required to hold a

CDL, even if the person does not currently hold a CDL. This change would facilitate enforcement of the rules against those who do not properly obtain a CDL.

FMCSA proposes to add a definition of "commercial learner's permit" to specify that a CLP, in combination with an underlying license, provides authority to operate a CMV on public highways for the purpose of behind the wheel training when accompanied by a qualified CDL holder. FMCSA also proposes to adopt the expanded definition of CMV in section 4011(a) of TEA-21 to include both "gross vehicle weight rating and gross vehicle weight" and "gross combination weight rating and gross combination weight," "whichever is greater." The expanded definition is proposed to be limited to roadside enforcement of the CDL requirements to cite drivers who are trying to avoid the need for a CDL by operating a vehicle that has a gross vehicle weight rating (GVWR) or a gross combination weight rating (GCWR) under 26,001 pounds, but then overload the vehicle so the gross vehicle weight (GVW) or gross combination weight (GCW) is over 26,000 pounds. As currently specified in § 383.91(b), only the GVWR or GCWR of the vehicle is used for skills testing because overloading a vehicle to obtain a GVW or GCW over 26,000 pounds is both unsafe and not a representative vehicle for demonstrating driving skills for a CDL.

The definition of "imminent hazard" would be amended to add one phrase. Under 49 U.S.C. 31310(f), FMCSA is authorized to disqualify a CDL holder who is determined to constitute "an imminent hazard (as such term is defined in section 5102)." Section 383.52 implements that authority, and section 383.5 defines "imminent hazard" in the same terms as 49 U.S.C. 5102. This amendment is necessary because section 7102(4) of SAFETEA-LU amended the definition in section 5102 to say that imminent hazard "means the existence of a condition relating to hazardous materials that presents a substantial likelihood that death * * *" Since this definition governs FMCSA's authority under § 383.52, the corresponding definition in § 383.5 must be changed. The effect of the change is to narrow somewhat the scope of § 383.52.

The definition of "serious traffic violation" would be removed because the substance of the definition was previously incorporated into § 383.51 and the definition is no longer necessary.

The definition of "tank vehicle" would be revised to clarify that only tanks with a rated capacity of 1,000 gallons or more come under the definition.

FMCSA proposes to add definitions of "third party skills test examiner" and "third party tester" to clarify to whom the new requirements on third party testers proposed for part 384 would apply.

References to "CLP" are proposed to be added in the definitions of "disqualification," "driver applicant," "endorsement," and "non-resident CDL."

In addition, editorial changes are proposed for the definitions of "commercial driver's license" and "United States."

2. Section 383.9, Matter Incorporated by Reference

Subpart H of part 383 currently has general language describing the CDL knowledge and skills testing procedures, testing methods, and passing scores. In order to promote more uniformity among the States, more specific language on administering the tests is needed. Therefore, FMCSA is proposing to incorporate by reference the current edition of AAMVA's "2005 CDL Test System."

FMCSA is providing the public an opportunity to comment on the incorporation by reference of this AAMVA "2005 CDL Test System," and would provide similar opportunity before incorporating any updates to the 2005 edition.

Incorporating the AAMVA CDL test system by reference complies with the requirements in 5 U.S.C. 552, which allows agencies 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.

3. Section 383.23, Commercial Driver's License

FMCSA proposes to amend § 383.23 by moving current paragraph (c) on learner's permits to a new § 383.25 that would contain expanded requirements for CLPs. A new paragraph (b)(3) adds operating with a CLP to the list of exceptions to the requirement to hold a

CDL, if the CLP is properly issued under the requirements of proposed § 393.25.

4. Section 383.25, Commercial Learner's Permit

FMCSA proposes to add a new § 383.25 for the expanded requirements for CLPs. Under the proposed rules, a driver would have to obtain a CLP and hold it for at least 30 days before becoming eligible for a CDL. Section 383.25 would also contain specific requirements for the CDL holder who must accompany the CLP holder and would specify the eligibility requirements for the CLP applicant, such as age and knowledge and skills tests. Section 383.25 would also specify that the CLP must be separate from the CDL and that it may be valid for no more than 180 days, with one 90 day renewal.

5. Section 383.37, Employer's Responsibilities

FMCSA proposes to amend § 383.37 to specify that an employer may not allow a driver to operate a CMV without or in violation of a current CLP or CDL with the proper class or endorsements. Although it is obvious that a driver must have a proper license to legally operate a CMV, adding the specific prohibition to § 383.37 would facilitate enforcement actions against negligent employers.

6. Section 383.51, Disqualification of Drivers

FMCSA proposes to add references to CLPs throughout § 383.51 to make a person with a CLP subject to the same disqualifying offenses that apply to a CDL holder in § 383.51, Tables 1 and 2, including those that occur when operating a non-CMV.

7. Section 383.71, Driver Application Procedures

Section 383.71 would be completely revised to add specific application procedures for CLPs and to amend the application procedures for CDLs by updating the requirements for providing information on the applicant's actual address or domicile and for surrendering previously issued licenses.

8. Section 383.72, Implied Consent to Alcohol Testing

Section 383.72 would be revised to apply the section to CLP holders as well as CDL holders.

9. Section 383.73, State Procedures

Section 383.73 would be revised to impose specific requirements for how States may issue CLPs. Also, the requirements on State procedures for processing CDL applications would be

amended to update the requirements for providing information on citizenship and the applicant's actual address or domicile; for completing the Social Security Number verification; for surrendering previously issued licenses; and to limit CDLs to a maximum term of 8 years before renewal is required. Also, to control against use of false addresses, the State would be required to mail the initial CLP or CDL to the address provided on the application form. Three other fraud control measures would be added: A requirement that the State have at least two persons check and verify all documents involved in the licensing process; a requirement that the State establish computer system controls that prevent changes to records of transactions, unless they are done by supervisory personnel only and are documented; and a requirement that the State cancel or revoke a CDL if the holder has been convicted of fraud related to the CDL application or testing process.

10. Section 383.75, Third Party Testing

Section 383.75 would be revised to add new requirements to ensure that third party testers use the same materials and procedures as State testers, to enhance State oversight, and to facilitate the prevention of fraud.

Specifically, the third party tester would be required to use the same test scoring sheets, written instructions for applicants, and skills tests as the State uses. Also, the third party tester would be required to use designated road test routes that have been approved by the State.

Enhanced oversight measures would include the following:

- The State would be required to conduct an annual on-site inspection of the test sites.

- The third party tester and individual examiners employed by the tester would be required to apply for a skills testing certificate. To qualify for the certificate, the individual examiners would have to successfully complete a formal skills test examiner training course.

- The third party tester would have to submit a weekly schedule of skills test appointments for the following week. This would allow State inspectors to plan visits to the testing sites on days when tests will be administered.

- The third party tester would have to maintain copies of records showing compliance with these rules at its principal place of business.

- The third party tester would have to conduct at least 50 skills tests annually and each individual examiner employed

by the tester would have to conduct at least 10 skills test annually. These minimums would ensure that the costs of oversight do not exceed the benefits to the State that accrue from having the third party tester. In addition, the minimums would ensure that each tester and examiner is conducting enough tests to maintain his/her expertise. However, FMCSA is aware that some States have approved motor carriers as third party testers to conduct tests for their own employees. FMCSA specifically requests comments on whether the requirements for minimum numbers of tests per year would adversely affect such motor carriers.

Measures intended to ensure the integrity of the test process would include the following:

- At least annually, State employees would be required to co-score actual skills tests along with the third party tester to compare pass/fail results.

- The results of any test conducted by a third party examiner would have to be transmitted to the State through a secure electronic means.

- The third party tester would be required to maintain a bond in an amount specified by the State. In cases where a third party examiner has been involved in fraudulent activities, the State may decide that all or some of the drivers that had been tested by that examiner should be retested to ensure that they are qualified to hold a CDL. The bond would be used to reimburse the State for the expense of retesting these drivers.

11. Section 383.77, Substitute for Driving Skills Test

FMCSA proposes to remove and reserve § 383.77 because this section was originally intended to be used only for the initial testing cycle prior to April 1, 1992, when the CDL program was initiated. It is no longer needed.

12. Section 383.79, Skills Testing of Out-of-State Students

Section 383.79 would be added to prescribe how a State must handle the administration of skills tests to applicants who have taken driver training in that State, but are domiciled in a different State.

13. Section 383.93, Endorsements

Section 383.93 would be amended to add the requirement that the only endorsement allowed on a CLP is a passenger endorsement, which allows a CLP holder to only drive an empty bus, accompanied by a CDL holder, for training purposes. The States would also be required to use the codes listed in § 383.153 on the CLP or CDL to show

the endorsements for which that driver has qualified.

14. Section 383.95, Air Brake Restrictions

FMCSA proposes to broaden the scope of this section to address other types of restrictions, such as the automatic transmission, non-fifth wheel, and passenger vehicle restrictions.

15. Section 383.110, General Requirement

FMCSA proposes to update the requirements in § 383.110 and the other sections in subpart G to require States to use the knowledge and skills testing standards developed jointly by AAMVA and FMCSA. The current requirements are general and do not mandate that all States follow the same specific requirements for designing the knowledge and skills tests.

16. Section 383.111, Required Knowledge

Section 383.111 would be revised to add more details to the lists of topics that must be included in the knowledge tests. The new requirements include 20 general areas of knowledge.

17. Section 383.113, Required Skills

Section 383.113 would be revised to add more details to the lists of skills that must be demonstrated in the skills tests. The new items include requirements relating to pre-trip vehicle inspections, basic vehicle control, and safe on-road driving skills.

18. Sections 383.115, Requirements for Double/Triple Trailers Endorsement, 383.117, Requirements for Passenger Endorsement, 383.119, Requirements for Tank Vehicle Endorsement, 383.121, Requirements for Hazardous Materials Endorsement, and 383.123, Requirements for a School Bus Endorsement

FMCSA proposes to amend §§ 383.115–383.123 to add general operating practices and procedures to the list of topics applicants must know for each of these endorsements. This new category covers questions in the tests that do not fit into the other categories, but address important safety issues. In addition, § 383.123(a)(1) would be amended to clarify that applicants for a school bus endorsement must also obtain a passenger vehicle endorsement, that is, both a “P” and an “S” endorsement to qualify to operate a school bus.

19. Appendix to Subpart G

FMCSA proposes to remove the appendix to subpart G of part 383. It

contains sample guidelines for States to use in choosing topics to include in the knowledge and skills tests that they administer to CDL applicants. The appendix would not be needed because FMCSA proposes to incorporate by reference the AAMVA 2005 Requirements Document as the Federal knowledge and skills testing standard. (See proposed § 383.9.) The AAMVA test package contains the specific tests and manuals that States would be required to use.

20. Section 383.131, Test Manuals

FMCSA proposes to revise paragraphs (a) and (b) of § 383.131 to require States to use the current 2005 edition of AAMVA’s “Model Commercial Driver Manual” and “Model CDL Examiner’s Manual” that are components of AAMVA’s “2005 CDL Test System” and are to be incorporated by reference under proposed § 383.9.

FMCSA also proposes to add a new paragraph (c) to § 383.131 to require States to record and retain the knowledge and skills test scores for each applicant. As part of a fraud detection and prevention program, the test scores will be verified before the issuance of a CLP or CDL.

21. Section 383.133, Test Methods

FMCSA proposes to revise § 383.133 to require States to use the current edition of AAMVA’s “2005 CDL Test System” that would be incorporated by reference under proposed § 383.9 to develop, administer, and score the knowledge and skills tests for each vehicle group and endorsements.

FMCSA also proposes to add language to § 383.133 to specify in what form the knowledge test may be administered. These changes would incorporate the current guidance on the testing methods to be used by States.

22. Section 383.135, Passing knowledge and Skills Tests

FMCSA proposes to change the title of § 383.135 to better reflect the content of the proposed revisions to the section. The revisions would include a clarification as to what restrictions must be placed on a CLP or CDL when an applicant fails the air brake and/or combination vehicle knowledge tests or performs the skills tests in a vehicle that is not equipped with full air brakes, air over hydraulic brakes, manual transmission, and/or in a combination vehicle without a fifth wheel trailer connection. The revision also proposes to clarify that an applicant does not have to take the complete set of skills tests to remove one or more of the restrictions. It is also proposed that the

current 2005 edition of AAMVA’s “2005 CDL Test System” be used by the States in scoring the skills tests.

23. Subpart J, Commercial Driver’s License Document

Subpart J of part 383, including §§ 383.151 and 383.153, would be expanded in scope to address the document requirements for CLPs as well as for CDLs.

24. Section 383.155, Tamperproofing Requirements

Section 383.155 would be revised to apply the requirements for tamperproofing to CLPs, as well as CDLs.

B. Proposed Changes to Part 384

The purpose of part 384, State Compliance With Commercial Driver’s License Program, is to ensure that the States comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)). Part 384 includes the minimum standards for the actions States must take to be in substantial compliance with each of the 21 requirements of 49 U.S.C. 31311(a), establishes procedures for FMCSA determinations of State compliance, and specifies the consequences of State noncompliance.

1. Sections 384.105, Definitions; 384.204, CDL Issuance and Information; 384.205, CDLIS Information; 384.207, Notification of Licensing; 384.208, Notification of Disqualification; 384.209, Notification of Traffic Violations; 384.210, Limitations on Licensing; 384.212, Domicile Requirement; Section 384.214, Reciprocity; 384.220, Problem Driver Pointer System Information; 384.225, Record of Violation; 384.226, Prohibition on Masking Convictions; 384.231, Satisfaction of State Disqualification Requirement; and 384.405, Decertification of State CDL Program

These sections would be amended to apply the requirements for State issuance of CDLs to the issuance of CLPs as well. In addition, § 384.220 would be revised to refer to the Problem Driver Pointer System instead of the National Driver Register.

2. Section 384.206, State Record Checks

This section would be revised to apply the requirements for State issuance of CDLs to the issuance of CLPs as well. The proposal would also add specific required actions that States must take as a result of receiving

adverse information about an applicant or CLP/CDL holder.

3. Section 384.211, Surrender of Old Licenses

This section would be revised to specify that previously issued licenses, including a CLP or non-CDL, must be surrendered not only when a CDL is initially issued, but also when a CDL is upgraded or transferred.

4. Section 384.217, Drug Offenses

Section 384.217 would be revised to add commission of certain felonies committed by CDL holders in non-CMV's to the list of offenses for which the States must disqualify persons from operating CMV's. This change corrects an omission in the current regulations. Current § 384.217 fails to require the State to enforce § 383.51(b) for offenses in both CMV's and non-CMV's.

5. Section 384.227, Record of Digital Image or Photograph

Section 384.227 would be added to require States to include a digitized color photograph in the driver history records and to review the photograph when replacement licenses are issued. This requirement would prevent a different individual from obtaining a license by falsely claiming that a CDL had been lost or stolen.

6. Section 384.228, Examiner Training and Record Checks

Section 384.228 would be added to impose new training requirements and background checks for examiners. This section would apply to all examiners, both those employed by the State and those employed by third party testers. The State would be required to establish initial and refresher training that meets or exceeds the requirements established in this section. The established requirements for the examiner and refresher training are based on the December 2006 edition developed by AAMVA, titled "International Certified Commercial Certification Program." This program which supplements AAMVA's "2005 CDL Test System," was developed by AAMVA in cooperation with FMCSA. Therefore, a test examiner certified under this program who maintains the certification will meet these proposed training requirements.

All examiners would have to successfully complete the CDL test examiner training course and pass an examination before the State may certify them to administer CDL tests.

The State would also have to conduct initial and annual criminal background checks of all test examiners. The State

would also be required to maintain records of the training and certification of the examiners and the results of the criminal background checks. The State would be required to rescind the examiner's certification if he/she does not successfully complete the refresher training or fails the annual criminal background check.

7. Section 384.229, Skills Test Examiner Auditing and Monitoring

Section 384.229 would be added to require States to audit and monitor both State and third party examiners who work for third party testers to ensure that the CDL program is working as intended. States would be required to conduct unannounced annual on-site inspections of third party tester and examiner records to compare the results of the tests of applicants who receive CDL's with the scoring sheets for the tests. States would also be required to conduct both covert and overt monitoring of both State and third party skills test examiners. The State would have to establish and maintain databases that contain information on each examiner, information on the tests administered by each examiner, and the results of audits and monitoring, including the pass/fail rates of individual examiners. This would enable the State to identify examiners who have unusually high pass or failure rates.

8. Section 384.301, Substantial Compliance—General Requirements

Section 384.301 would be amended by adding a new paragraph (c). FMCSA has always given the States 3 years after the effective date of any new rule to come into substantial compliance with new CDL requirements. This allows the States time to pass any necessary new legislation and modify State systems to comply with the new requirements, including CDLIS. New paragraph (c) would specify the 3 year compliance date for States.

C. Proposed Changes to Part 385

One of the purposes of part 385, Safety Fitness Procedures, is to establish the FMCSA's procedures to determine the safety fitness of motor carriers, to assign safety ratings, to direct motor carriers to take remedial action when required, and to prohibit motor carriers receiving a safety rating of "unsatisfactory" from operating a CMV. FMCSA proposes to add § 383.37(a) as an acute violation in appendix B of part 385. Allowing a driver to operate a CMV without a CLP or CDL, or without the appropriate endorsement, is a serious

matter warranting classification as acute.

V. Regulatory Analyses and Notices

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

FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as amended by E.O. 13258 and E.O. 13422, and the meaning of Department of Transportation regulatory policies and procedures because of public and Congressional interest in CMV licensing issues. However, we expect the costs of the proposed rule to be fairly low. The Agency has prepared a preliminary regulatory analysis analyzing the costs and benefits of this undertaking, summarized below. A copy of the complete preliminary analysis document is included in the docket referenced at the beginning of this notice.

Many of the provisions of this rule would not impose significant costs on the States or industry either because most States are already complying with the proposed requirements or because other regulations have already brought the States or industry into compliance with these rules (for instance, the minimum age requirement for CLP's would not have any costs associated with it because drivers under 18 are banned by current regulations from operating CMV's in commerce). Those provisions estimated to be of minimal economic significance include: strengthening the legal presence requirements; Social Security number verification; surrender of CLP, CDL, and non-CDL documents; maximum issuance and renewal periods for CLP's and CDL's; establishing a minimum age for a CLP; limiting endorsements on the CLP to passenger only; methods of administering the CDL test; new standardized endorsement and restriction codes; motor carrier prohibitions; and incorporating regulatory guidance into text. Other provisions in this rule do have some cost implications, and include minimum standards for issuing a CLP; checking for previous driving offenses by a CLP holder; CDL testing requirements for out-of-State training schools; State reciprocity for CLP's; updating Federal knowledge and skills test standards; and incorporating certain of the SAFE Port Act provisions.

Of the proposed rule changes that have potential cost implications, many affect the States by requiring extra steps in processing CLP's and CDL's. These include recording CLP's on CDLIS and

making the CLP a tamper-proof document (under minimum uniform standards for issuing CLPs); checking for previous driving offenses by CLP/CDL holders (which would require an additional PDPS record check); and implementing section 703a of the SAFE Port Act. We estimate that these provisions, taken together, would add 5 minutes to the amount of time it takes a State to process a license document. In addition, an extra \$1.40 per CLP issued would be incurred to make the CLP tamper-proof, and a \$1 cost would be incurred for each CLP placed on CDLIS that is not eventually converted into a CDL. States are charged \$1 for each record on CDLIS. Since both CDLs and CLPs count as a record, each CLP recorded on CDLIS that is not converted to a CDL costs States an extra \$1 per year when compared to the status quo, in which States only have to record CDLs on CDLIS. Converting a CLP to a CDL does not result in an additional record on CDLIS, so the CLP holders who successfully convert to CDLIS would be added to the system anyway and would therefore not result in an extra cost to the States. Taking all of these costs together, the estimated cost of these provisions is \$1.76 million annually.

The SAFE Port Act provisions would result in additional costs to the States. These provisions would require the States to enhance training programs for CDL skills test examiners, and to conduct additional oversight of these examiners to ensure that they are properly conducting skills tests and to deter fraud. All States currently have training programs for skills test examiners, but these programs vary widely. It is estimated that the requirements of this rule would result in the need for States to add an additional day to their current training program for skills test examiners. In addition, there is a continuing or refresher training requirement incorporated into these provisions, and it is estimated that this continuing education requirement would necessitate 16 hours of additional training for skills test examiners every 4 years. The cost of these training requirements is \$280,000 for the

additional day of initial training, and \$560,000 for the continuing education requirement, which would be incurred every 4th year after the year of implementation. It is assumed that this training would facilitate the States' adoption of the new knowledge and skills testing standards, and that, therefore, no additional costs would be incurred for adoption of these standards.

In addition to improved training, this rule would require States to enhance monitoring of skills test examiners. These measures would include an annual review of each skills test examiner location, and overt and covert monitoring of the skills test examiners at each location, to protect against fraud and ensure that examiners are conducting the test properly. States are currently required to conduct reviews of third party testers annually, and to overtly monitor third party testers in one of two ways. Some States monitor third party examiners by re-testing a portion of the drivers the third party tested, to ensure that those drivers have the skills to pass the test. In other States, a State representative takes the CDL skills test from examiners at each location as if the State employee were a driver taking the test. The intent of both of these measures is to ensure that the skills test examiners at each third party testing organization are properly conducting tests.

Some States are already conducting both covert and overt monitoring of skills test examiners, but others provide much less oversight. However, all States should be conducting annual reviews of all third party testers and conducting some monitoring of the examiners to ensure that they are conducting the test properly, and to protect against fraud. This rule would require the States with less rigorous oversight to track the performance and record of all skills test examiners, and invest in enhanced enforcement, which may mean hiring or re-designating a certain number of enforcement personnel to engage in covert and overt monitoring of CDL examiners.

The Agency has personnel who also conduct reviews and overt and covert

monitoring of skills test examiners. These reviews typically take one day for both overt and covert monitoring. This analysis will assume that each State is currently conducting overt reviews/audits of skills test examiners and overt monitoring of skills test examiners as required by current regulations. Each State would, therefore, have to add the covert monitoring piece to its oversight program, and covert reviews would take approximately half a day to conduct. The Agency estimates that there are somewhere between 500 and 1,800 skills test locations in the United States. Taking a rough midpoint between these two figures yields an estimated 1,200 skills testing sites. Halving this number to account for the half day covert review of each site yields an estimated 600 monitoring days each year. Assuming each examiner works 250 days a year, an additional 2.4 full time equivalent examiners would be required nationwide to conduct monitoring of skills testing sites. According to the United States Bureau of Labor Statistics, detectives and criminal investigators make an annual salary of \$58,750. We inflate this figure by 30 percent to account for the value of non-monetary benefits earned by people in this occupation, for a total annual compensation of \$76,375. The cost associated with the additional 2.4 full time equivalent examiners is \$183,000. This would be the annual cost of the enhanced monitoring of skills test examiners.

Table 1 below presents the total cost of these provisions over 10 years. In addition to the cost of specific provisions contained in this rule, FMCSA estimated \$200,000 per State for the minor IT upgrades that may be needed to comply with these requirements. These costs are presented in the IT Upgrades row. Years 6–10 mimic years 2–5 with respect to cost, and are therefore lumped together in one column. As can be seen, the total cost of these provisions vary between \$1.9 and \$12 million per year. The estimated 10 year cost of this rule would be approximately \$26 million.

TABLE 1.—COSTS OF RULE

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
CDL Processing	\$1,759,850	\$1,759,850	\$1,759,850	\$1,759,850	\$1,759,850	\$8,799,250	\$17,598,500
Skills Test Training	280,000	0	0	0	560,000	560,000	1,400,000
Covert Monitoring	183,300	183,300	183,300	183,300	183,300	916,500	1,833,000
IT Upgrades	10,200,000	0	0	0	0	0	10,200,000
Total	12,423,150	1,943,150	1,943,150	1,943,150	2,503,150	10,275,750	31,031,500

TABLE 1.—COSTS OF RULE—Continued

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6–10	Total
Total, 7 percent discount	12,423,150	1,816,028	1,697,222	1,586,189	1,909,641	6,404,139	25,836,370

Two other provisions of this rule have cost implications. CLP reciprocity and CDL testing requirements for out-of-State driver training school students would serve to reduce costs compared to current practices. Two alternatives to the status quo were considered by the Agency. Both alternatives require State reciprocity in recognizing CLPs issued by other States. One alternative would then allow the State in which training and testing occurs to issue a temporary CDL to out-of-State students who pass that State's skills test. These students would then return to their State of domicile and convert the temporary CDL into a CDL. The other alternative would require States to recognize the results of skills tests conducted in any other State. Under this alternative, the driver would train and test in another State, and then his or her State of domicile would issue a permanent CDL based on the other State's skills test results. The baseline scenario will be referred to as Alternative 1, the temporary CDL scenario will be referred to as Alternative 2, and the skills test scenario will be referred to as Alternative 3.

For those who go out of their State of domicile to train, the options differ regarding the number of licenses (and hence fees) that trainees must obtain.

Currently, drivers who go out of State to train do so in violation of the domicile requirement. Those drivers must obtain a driver's license and a CLP

from the State in which they are trained (in addition to, or to replace, the driver's license from their State of domicile). They can either return to their home State to be tested (and they must find a vehicle to be tested in); or, they can be skills tested in the State of training (in which case the training school will usually provide a vehicle for the skills test).

CDL costs, on average, \$45.15, although the fees States charge for a driver's license vary widely. The costs of the alternatives being considered here will, therefore, vary widely depending on the State where drivers train and their State of domicile. This analysis will use national average figures to estimate the costs of the rule for the "average" driver. The average cost of a CLP is \$16.88, and \$22.10 for a driver's license. For the purposes of this analysis, it will be assumed that all applicants for a learner's permit already have a driver's license from their State of domicile. The total cost of Alternative 1, which requires drivers to obtain both a new driver's license in the training State (\$22.10), a CLP in the training State (\$16.88), a CDL in the training State (\$45.15), and a CDL transfer to their State of domicile (\$45.15), will average \$129.28 per out-of-State trainee.

For Alternative 2, driver trainees must get a CLP from their State of domicile, attend training and be tested out of State, be issued an out-of-State temporary CDL, and return to their

home State to convert the temporary CDL into a CDL from their home State. While the average cost of a regular CDL is known, FMCSA has no information on what States might charge for issuing a temporary out-of-State CDL. It will be assumed here that the cost of the temporary CDL is the same as the cost of a CLP, as both are temporary documents. Given this assumption, the cost to the driver of this alternative would be \$78.91, consisting of the cost of a CLP, a temporary CDL, and a permanent CDL in the driver's State of domicile. The driver would not have to obtain a new base license from the training State because, due to CLP reciprocity, the driver would be able to use his current driver's license from his State of domicile to train in another State.

The final alternative would be to require States of domicile to accept skills test results from a training facility in another State. Under this scenario, the driver would incur the cost of one CLP, issued by his or her State of domicile, and one CDL, also issued by the State of domicile. The total cost to the driver of this alternative would therefore be \$62.03. This alternative obviously minimizes costs for driver trainees. The driver-related costs of the three alternatives are summarized in Table 2 below. As can be seen, Alternative 2 cuts the fees associated with getting a CDL by more than 50 percent for out-of-State driver trainees.

TABLE 2.—COST PER DRIVER OF OUT-OF-STATE TRAINING ALTERNATIVES

	Status quo (with out-of-State training)	Alternative 1 (temporary CDL)	Alternative 2 (skills test score acceptance)
Driver's License Costs	\$22.10	N/A	N/A
Learner's Permit Costs	16.88	\$16.88	\$16.88
CDL Costs	90.30	62.03	45.15
Total Cost to Driver	129.28	78.91	62.03

Table 3 below presents the total cost savings of Alternatives 2 and 3 in comparison to Alternative 1. These cost figures are based on an estimated 610,000 CLPs issued per year. It is assumed that approximately 20 percent of CDL trainees currently attend out-of-State training schools, so the total cost is based on 122,000 out-of-State drivers

training in other States, and the licensing cost implications. Related to the licensing costs described for these three Alternatives are costs to CDL applicants for obtaining a license. CDL applicants must pay licensing fees, but also lose time at a State driver licensing agency (SDLA) office every time they must obtain a new license or permit.

Drivers must apply in person for a CDL, CLP, or to transfer a CDL from one State to another. Since each of the alternatives described here differs in the number of licenses or permits the driver must obtain, they vary in respect to the amount of time drivers must spend at SDLA offices. All of the alternatives are equivalent to one another for drivers

who train in his/her State of domicile. Only drivers who train out of State are affected. For these drivers, Alternative 1 (the status quo) requires 4 license transactions (regular operator's license from the training State, CLP from the training State, CDL from the training State, and a license transfer back to the State of domicile); Alternative 2 requires 3 licensing transactions (CLP from State of domicile, temporary CDL from training State, and permanent CDL from State of domicile); and Alternative 3 requires 2 licensing transactions (CLP from State of domicile, and CDL from State of domicile).

We assume that each license transaction will take approximately 30 minutes of time, and that a trip to the SDLA will take, on average, 30 minutes round trip (15 minutes each way), for a total of an hour per licensing transaction. We value this time at the average wage for production (manufacturing) workers, which is \$14.37. We inflate this figure by 30 percent to account for the value of benefits to \$18.68. The cost for each Alternative can then be calculated by multiplying the number of licensing transactions by the hourly compensation rate. For Alternative 1,

this cost is $4 \times \$18.68 = \74.72 . Alternative 2 has a per trainee cost of \$56.04. Alternative 3 has a per trainee cost of \$37.36. Given the estimated 475,000 licenses issued per year and the assumption that 20 percent of trainees go out-of-State for driver training, we apply the costs for each alternative to 122,000 drivers-in-training. Table 3 summarizes these costs. The final row of this table, cost savings over baseline, provides the estimated benefits of accommodating out-of-State training under both alternatives to the current situation.

TABLE 3.—TOTAL COST SAVINGS FOR ALTERNATIVES

	Alternative 1	Alternative 2	Alternative 3
Number of licensing transactions	4	3	2
Total Licensing fees (122,000 drivers)	\$15,772,160	\$9,627,020	\$7,567,660
Lost time cost	9,115,840	6,836,880	4,557,920
Total	24,888,000	16,463,900	12,125,580
Cost Savings over baseline	NA	8,424,100	12,762,420

Table 4 below presents a comparison of the benefits and costs of this rule over 10 years, including the costs discussed above for CDL processing, skills test examiner training, etc. Costs for

Alternative 1, the baseline scenario, are not presented because they are analogous to the costs as presented in Table 1. The annual benefits presented for Alternatives 2 and 3 are the annual

cost savings that accrue to drivers due to accommodating out-of-State training. As can be seen, both alternatives have positive net benefits. This NPRM proposes to adopt Alternative 3.

TABLE 4.—COMPARISON OF TOTAL BENEFITS AND COSTS

	Alternative 2	Alternative 3
10 Year Total Cost, from Table 1 (7 percent discount)	\$25,836,370	\$25,836,370
Total Benefit	63,309,068	95,912,550
Net Benefit	37,472,698	70,076,180

Safety Benefits

Most of the provisions of the NPRM are intended to have positive safety benefits, including the minimum age requirement for CLPs, requiring that the general knowledge and P endorsement knowledge tests be passed prior to issuing a CLP or P endorsement on a CLP, and the standardization of CDL knowledge and skills testing. Although the new tests may be somewhat more rigorous than the current versions being used by the States, it is unclear whether the new test models would be so rigorous as to lower pass rates for applicants or significantly improve driver safety. However, this rule should improve detection and deterrence of fraud, and significant safety benefits may result from preventing unqualified drivers from fraudulently obtaining CDLs.

It is reasonable to argue that drivers who cannot develop the skills necessary to pass either the skills or knowledge test would pose an increased safety risk. Most States allow drivers multiple chances to pass both the knowledge and skills test, and with proper training, most drivers should be able to develop the skills necessary to pass. Those who cannot have demonstrated that they are incapable of meeting a safe minimum standard for controlling their vehicle and, therefore, pose an increased risk to the public.

The average number of large CMV crashes over the past 5 years for which statistics are available is 420,000 per year, rounded to the nearest 1,000. On average, a large truck crash is valued at \$91,112 per crash (including property-damage-only crashes). A non fatal injury crash has an estimated cost of \$195,258, and a fatal crash has an estimated cost of \$3,604,518. The costs of this rule are

estimated at \$6.5 million in the most expensive years (those in which continuing education is required of skills test examiners), \$5 million in the initial year, and \$3.7 million in other years. We have estimated the discounted safety benefits of this rule at approximately \$75 million over 10 years. Adding the \$75 million in total 10 year net benefits due to crash reduction to the estimated \$70 million in 10 year net benefits associated with improved driver training opportunities, this rule has a potential 10 year net benefit of \$145 million.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, as amended, (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small entities and determined that this proposed rule would not have a significant impact on a substantial

number of small entities, as defined by the U.S. Small Business Administration's Office of Size Standards. This rulemaking proposal would primarily affect drivers rather than motor carriers, and most of the provisions apply primarily to new drivers rather than drivers who have CDLs. The exception would be drivers who have a class B or C CDL and are applying to move up to a Group A, or drivers seeking specialized endorsements which require a skills test, such as a P endorsement. Since this rule applies to drivers rather than motor carriers, owner-operator motor carriers would be the only small entities directly affected by this rule. We estimate that there are roughly 300,000 owner-operators currently operating in the United States. The drivers of these vehicles may be affected by these regulations if they want to change classes or gain new endorsements on their CDL. For the most part, this proposal has a positive impact on CDL drivers or driver-applicants because it facilitates the ability of these drivers to obtain the lowest cost or most convenient training for their CDL, CDL upgrade, or endorsement skills test.

The other type of entity affected by this rule would be third party skills test examiners. These examiners would undergo periodic covert monitoring, but assuming they are administering the skills test properly, this monitoring would be at no cost to them. In addition, the employees who conduct skills testing may have to participate in additional training in order to remain eligible to conduct skills test examinations. The Agency estimates that there are approximately 1,200 third party skills testing organizations currently in operation in the United States. Information on these organizations is difficult to obtain, but some are affiliated with larger motor carriers. Others would qualify as small businesses, but the Agency is currently unsure of how many might fall into the small business category. We estimate that half, or 600, skills testing organizations are small businesses. These organizations would have to bear the cost of enhanced training of the examiners they employ. These costs were estimated in the Regulatory Impact Analysis at \$200 per examiner per day of training, at an average of one-half day of training every year. The cost to these entities would, therefore, be approximately \$100 per year per skills test examiner employed. Most skills testers are trucking firms, educational organizations, or municipal organizations that do not derive their

primary income from skills testing. Based on Census Bureau data, we estimate that trucking firms have an annual average profit margin of \$149,000 per year. The industry as a whole has approximately \$15 to \$19 billion in annual profits. The Agency believes that each skills test examiner organization would have between 1 and 2 skills testers. This rule would, therefore, cost these entities a maximum of 600 entities \times 1.5 skills test examiners \times \$100 = \$90,000 per year. Given these costs, the Agency does not believe that this rule has a significant impact on a substantial number of small businesses.

Unfunded Mandates Reform Act of 1995

This rulemaking would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$128 million or more in any 1 year.⁵ The Unfunded Mandates Reform Act requires new Federal regulations to be accompanied by an analysis of their fiscal impacts on State, local, and tribal governments and on private industry. Although the attached regulatory evaluation provides much of this information, it will be summarized here, with an emphasis on effects on State and local governments, since this proposed rule does not have any major effects on private industry. Many of the provisions in this proposed rule would impact the States, but the size of this impact would be relatively small. The total annual cost of the rule is estimated at between \$1.96 million and \$12 million per year. These costs would primarily be imposed upon the States, who would bear the cost of processing driver's licenses, training and monitoring skills test examiners, and making any changes to computer systems required to implement these changes.

The quantified benefits of this rule are the reduced cost to driver-applicants that would be realized by implementing either of the two alternatives for accommodating out-of-State driver training. These benefits would accrue primarily to driver-applicants who choose to obtain driver training in a State other than their State of domicile. Streamlining the out-of-State training process would enable these drivers to avoid the licensing fees associated with obtaining a license in the State in which

⁵ The unfunded mandate threshold was established in 1995 at \$100 million in costs to State or local governments, or private industry, in any one year. This figure has been adjusted using the Consumer Price Index to 2005 dollars.

they attend training. These benefits have been estimated at approximately \$6.6 million per year for Alternative 2, and \$10 million per year for Alternative 3. These benefits outweigh the costs to the States. The reduction in the number of license transactions a driver must complete reduces the number of license transactions States must process.

It has been assumed in this analysis that the price of each license transaction represents the cost to the State for processing that transaction. However, in some States this may not be the case—their license fees are set by the State legislature, and may be below or above the processing costs incurred. For States in which the licensing fee charged is above the cost of processing the license, a reduction in the number of processed licenses may negatively impact State revenues. Those States for which the fee is below processing costs would experience a net reduction in operating costs that exceeds this loss in revenue. On average, the reduction in licensing fees collected would average slightly less than \$120,000 per year per State for Alternative 2, and \$161,000 per year per State for Alternative 3. Given the modest cost of this rule, the Agency finds that it would not have a significant impact on the States or local governments, as defined by an annual cost of \$128 million in any one year.

Executive Order 12988 (Civil Justice Reform)

This proposed action would meet 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)

FMCSA has analyzed this proposed action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined preliminarily that this rulemaking would not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

FMCSA has analyzed this proposed rule in accordance with the principles and criteria of Executive Order 13132, "Federalism," and has determined that it does not have federalism implications.

The Federalism Order applies to "policies that have federalism implications," which it defines as regulations and other actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Sec. 1(a). The key concept here is "substantial direct effects on the States." Sec. 3(b) of the Federalism Order provides that "[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance."

The proposed rule would amend the commercial driver's license (CDL) program authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so would result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule would make only small, though numerous, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it would not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Nonetheless, FMCSA recognizes that this rule would have an impact on the States and their commercial driver licensing operations. Most significantly, it will require all participating States to implement a commercial learner's permit (CLP) and prohibit the issuance of a CDL unless the applicant has first obtained a CLP and held it for a minimum of 30 days. The Agency hopes drivers will use this interval to obtain formal training. States will also be required to use the American Association of Motor Vehicle Administrators' "2005 CDL Test System" to administer knowledge and skills tests. Over the years, FMCSA and

the States have identified CDL program deficiencies that need to be addressed. The Department's Office of Inspector General has focused attention on measures to prevent licensing fraud. Measures to address these issues, and others included in this NPRM, would improve the effectiveness of the CDL program, but would also require participating States to change their programs in a variety of ways. In recognition of this fact, the Agency has notified the National Governor's Association (NGA) of these proposed regulatory changes by letter to ensure that State and local governments will be able to raise Federalism issues during the comment period for the NPRM.

Privacy Impact Assessment

Section 522 of the FY 2005 Omnibus Appropriations Act, enacted December 8, 2004, (Note to 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking would require new minimum Federal standards for States to issue commercial learner's permits (CLPs) as a pre-condition for a commercial driver's license (CDL). It would require that an applicant for a CLP must first pass a knowledge test which complies with prescribed minimum standards and may have only one CLP at a time; and that the data on each CLP holder must be added to the driver's record in the Commercial Driver License Information System (CDLIS). Therefore, the information will be held to the same level of security as CDLIS.

Although each State would be required to create a CDLIS record for each CLP it issues, the Privacy Act applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The Commercial Driver License Information System (CDLIS) records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this proposed rule would not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

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. This rulemaking would affect a currently-approved information collection covered by the OMB Control No. 2126-0011 titled, "Commercial Driver Licensing and Testing Standards." This information collection has an annual burden of 1,391,456 hours, and will expire on February 28, 2011.

This NPRM would update and provide more uniform procedures for ensuring that the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle. It would also establish the minimum information that must be on the CLP document and the electronic driver's record in CDLIS, make it a tamperproof document, and establish maximum issuance and renewal periods for the CLP and CDL. The FMCSA believes this proposal would result in a significant increase in the annual burden hours for this information collection. The major increase in annual burden hours will probably result from the implementation of the new CLP requirements.

National Environmental Policy Act

The agency analyzed this proposed rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under Paragraph 4.s of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations concerning requirements for drivers to have a single commercial motor vehicle driver's license. In addition, the agency believes that the action includes no extraordinary circumstances that would have any effect on the quality of the environment. Thus, the action does not require an environmental assessment or an environmental impact statement.

We have also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's General conformity requirement since it since it involves rulemaking and policy development and issuance.

Executive Order 13211 (Energy Effects)

We have analyzed this proposed action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. We have determined preliminarily that it would not be a "significant energy action" under that Executive Order because it would not be economically significant and would not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Safety fitness procedures.

For the reasons explained in the preamble, FMCSA proposes to amend parts 383, 384, and 385 of title 49 of the Code of Federal Regulations as set forth below:

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

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

2. Amend § 383.5 by removing the definition for *serious traffic violation* in its entirety; by revising the definitions for *commercial driver's license*, *commercial motor vehicle*, *disqualification*, *driver applicant*, *endorsement*, *imminent hazard*, *nonresident CDL*, *tank vehicle*, and *United States*; and adding new definitions for *CDL driver*, *commercial learner's permit*, *third party skills test examiner*, and *third party tester* to read as follows:

§ 383.5 Definitions.

* * * * *

CDL driver means a person holding a CDL or a person required to hold a CDL.

Commercial driver's license (CDL) means a license issued to an individual by a State or other jurisdiction, in

accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.

* * * * *

Commercial learner's permit (CLP) means a permit issued to an individual by a State or other jurisdiction, in accordance with the standards contained in this part, that, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle, when accompanied by a holder of a valid CDL, for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Is designed to transport 16 or more passengers, including the driver; or

(4) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

Disqualification means any of the following three actions:

(1) The suspension, revocation, or cancellation of a CLP or CDL by the State or jurisdiction 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 not qualified to operate a commercial motor vehicle under part 391 of this subchapter.

Driver applicant means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL or to obtain or renew a CLP.

* * * * *

Endorsement means an authorization to an individual's CLP or CDL required

to permit the individual to operate certain types of commercial motor vehicles.

* * * * *

Imminent hazard means the existence of a condition relating to hazardous material 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 CLP or Nonresident CDL means a CLP or CDL, respectively, issued by a State under either of the following two conditions:

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

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

* * * * *

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank having an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.

Third party skills test examiner means a person employed by a third party tester who is authorized by the State to administer the CDL skills tests specified in subparts G and H of this part.

Third party tester means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency, or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

United States means the 50 States and the District of Columbia.

* * * * *

3. Add § 383.9 to subpart A to read as follows:

§ 383.9 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 is 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 American Association of Motor Vehicle Administrators' (AAMVA's) "2005 CDL Test System," incorporated by reference for subpart H of this part, includes the following individual documents:

- (1) "Model Commercial Driver License Manual";
- (2) "Model CDL Examiner's Manual";
- (3) "2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests"; and
- (4) "2005 Test Item Summary Forms" for CDL General Knowledge, Air Brakes, Combination Vehicles, Doubles/Triples, Hazardous Materials, Passenger Transport, School Bus, and Tank Vehicle knowledge tests.

(c) *Addresses.* (1) All of the materials incorporated by reference except the "2005 Test Item Summary Forms" are available for inspection at:

- (i) The Department of Transportation Library, 1200 New Jersey Avenue, SE., Washington, DC 20590. 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 except the "2005 Test Item Summary Forms" may be obtained by writing to: American Association of Motor Vehicle Administrators, Inc., 4301 Wilson Blvd., Suite 400, Arlington, VA 22203.

4. Revise § 383.23 to read as follows:

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) No person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(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 CLP or 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 CLP or 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.

(3) If an individual possesses a commercial learner's permit (CLP), as defined in § 383.5, the individual is authorized to operate a class of CMV as provided by the CLP in accordance with § 383.25.

5. Add § 383.25 to read as follows:

§ 383.25 Commercial learner's permit (CLP).

(a) A CLP is considered a valid commercial driver's license for purposes of behind-the-wheel training on public roads or highways, if all of the following minimum conditions are met:

(1) The CLP holder is at all times accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder, or directly behind the driver in the case of a passenger vehicle, and must have the CLP holder under observation and direct supervision.

¹ Effective December 29, 1988, the Administrator determined that commercial driver's licenses 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.

(2) The CLP holder holds a valid driver's license issued by the same jurisdiction.

(3) The CLP holder must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(4) The CLP holder must be 18 years of age or older.

(5) A CLP holder with a passenger (P) endorsement must have taken and passed the P endorsement knowledge test. A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers. The P endorsement must be class specific. All other Federal endorsements are prohibited on a CLP.

(6) The CLP holder does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) The CLP must be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 90 days without requiring the CLP holder to retake the general and endorsement knowledge tests.

(d) The issuance of a CLP is a precondition to the issuance or upgrade of a CDL. The CLP holder is not eligible to take the CDL skills test in the first 30 days after initial issuance of the CLP.

6. Revise § 383.37 to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV that violates any restriction on the driver's CLP or CDL.

(b) During any period in which the driver has a CLP or CDL suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.

(c) During any period in which the driver has more than one CDL.

(d) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order.

(e) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

7. In § 383.51:

A. Revise paragraph (a);

B. Revise paragraph (b) introductory text and the headings for Table 1;

C. Revise paragraph (c) introductory text and the headings for Table 2;

D. Revise paragraph (d) introductory text and the headings for Table 3; and

E. Revise paragraph (e) introductory text and the headings for Table 4 to read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A person required to have a CLP or 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 holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of

this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

(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) The disqualification period must be in addition to any other previous periods of disqualification.

(6) 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 person who is required to have a CLP or CDL is 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 CLP or CDL and a CLP or 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 CLP or 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 CLP or CDL and a CLP or 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 CLP or CDL and a CLP or 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 CLP or CDL holder must be disqualified from operating a CMV for . . .
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(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains a list of the offenses and the periods for

which a person who is required to have a CLP or CDL is 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 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 CLP or CDL and a CLP or 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 CLP or 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 CLP or CDL and a CLP or 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 CLP or CDL holder must be disqualified from operating a CMV for . . .
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(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 person who is required to have a CLP

or CDL is 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 CLP or CDL and a CLP or 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 CLP or CDL and a CLP or 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 CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .
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(e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51

contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is

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 CLP or CDL and a CLP or 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 CLP or CDL and a CLP or 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 CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for . . .
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8. Revise § 383.71 to read as follows:

§ 383.71 Driver application procedures.

(a) *Commercial Learner's Permit.* Prior to obtaining a CLP, a person must meet all of the following requirements:

(1) The person must be 18 years of age or older and provide proof of his/her age.

(2) The person must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle group that person operates or expects to operate.

(3) The person must 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.

(4) The person must provide to the State of issuance the information required to be included on the CLP as specified in subpart J of this part.

(5) The person must provide to the State proof of citizenship or immigration status as specified in Table 1 of this section or obtain a non-resident CLP as specified in paragraph (f) of this section.

(6) The person must provide proof that the State to which application is made is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(7) The person must provide the names of all States where the applicant has been licensed to drive any type of motor vehicle during the previous 10 years.

(8) A person seeking a passenger (P) endorsement must have taken and passed the endorsement knowledge test.

(9) A person who operates or expects to operate in interstate commerce, or is otherwise subject to part 391 of this subchapter, must certify that he/she meets the qualification requirements contained in part 391 of this subchapter. A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under § 390.3(f) or an exemption under § 391.2, must certify that he/she is not subject to part 391. A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(b) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet all of the following requirements:

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to part 391 of this subchapter, must certify that he/she meets the qualification requirements contained in part 391 of this subchapter. A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under § 390.3(f) or an exemption under § 391.2, must

certify that he/she is not subject to part 391. A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(2) The person must pass a driving or skills test in accordance with the standards contained in subparts F, G, and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party.

(3) The person must certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate.

(4) The person must provide the State the information required to be included on the CDL as specified in subpart J of this part.

(5) The person must 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.

(6) The person must surrender his/her non-CDL driver's licenses and CLP to the State.

(7) The person must 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.

(8) If the person is applying for a hazardous materials endorsement, he/she must comply with Transportation Security Administration requirements codified in 49 CFR part 1572. A lawful

permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his or her Bureau of Citizenship and Immigration services (BCIS) Alien registration number.

(9) The person must provide proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

TABLE 1 TO § 383.71.—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR IMMIGRATION

Status	Proof of status
U.S. Citizen	<ul style="list-style-type: none"> • U.S. Passport. • Certificate of birth that bears an official seal and was issued by a State, county, municipal authority, or outlying possession of the United States. • Certification of Birth abroad issued by the U.S. Department of State (Form FS-545 or DS 1350). • Certificate of Naturalization (Form N-550 or N-570). • Certificate of U.S. Citizenship (Form N-560 or N-561).
Lawful Permanent Resident	<ul style="list-style-type: none"> • Permanent Resident Card, Alien Registration Receipt Card (Form I-551). • Temporary I-551 stamp in foreign passport. • Temporary I-551 stamp on Form I-94, Arrival/Departure Record, with photograph of the bearer. • Reentry Permit (Form I-327).

(10) The person must provide proof that the State to which application is made is his or her State of domicile, as the term is defined in § 383.5.

Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(c) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State of domicile, an applicant must apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant must:

- (1) Provide to the new State of domicile the certifications contained in paragraph (b) of this section;
- (2) Provide to the new State of domicile updated information as specified in subpart J of this part;
- (3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and State requirements as specified in § 383.73(c)(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.
- (6) Provide to the State proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.
- (7) Provide proof to the State that this is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(d) *License renewal.* When applying for a renewal of a CDL, all applicants must:

- (1) Provide to the State certifications contained in paragraph (b) of this section;
- (2) Provide to the State updated information as specified in subpart J of this part; and
- (3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and pass the test specified in § 383.121 for such endorsement.
- (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.
- (5) Provide to the State proof of citizenship or immigration status as specified in Table 1 of this section, or be registered under paragraph (f) of this section.
- (6) Provide proof to the State that this is his or her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.
- (e) *License upgrades.* When applying for a CDL or an endorsement authorizing the operation of a CMV not covered by the current CDL, all applicants must:
 - (1) Provide the certifications specified in paragraph (b) of this section;
 - (2) Pass all the knowledge tests in accordance with the standards contained in subparts F, G, and H of this part and all the skills tests specified in paragraph (b)(2) of this section for the new vehicle group and/or different endorsements;

(3) To obtain a hazardous materials endorsement, comply with the requirements specified in paragraph (b)(8) of this section; and

- (4) Surrender the previous CDL.
- (f) *Nonresident CDL.* (1) A person must obtain a Nonresident CDL:
 - (i) If the applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, and the Administrator has not determined whether the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of this part.
 - (ii) If the applicant is domiciled in a State that is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter. That person 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.
- (2) An applicant for a nonresident CDL must do both of the following:
 - (i) Complete the requirements to obtain a CDL contained in paragraph (b) of this section. *Exception:* An applicant domiciled in a foreign jurisdiction must provide a foreign issued passport or U.S. issued immigration document granting temporary or indefinite legal status in the U.S. No proof of domicile is required.
 - (ii) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions include but are not be limited to license suspension or revocation, or disqualification from operating a

commercial motor vehicle for the convictions described in § 383.51. Notifications must be made within the time periods specified in § 383.33.

(3) An applicant for a Nonresident CDL is not required to surrender a previous foreign license.

9. Revise § 383.72 to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of §§ 383.51(b), Table 1, item (4) and 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

10. Revise § 383.73 to read as follows:

§ 383.73 State procedures.

(a) *Commercial Learner's Permit.* Prior to issuing a CLP to a person, a State must:

(1) Require the applicant to make the certifications, pass the tests, and provide the information as described in § 383.71(a);

(2) Initiate and complete a check of the applicant's driving record as described in paragraph (b)(3) of this section.

(3) Make a CLP valid for no more than 180 days from the date of issuance and provide for renewal of a CLP only for an additional 90 days without the CLP holder having to retake the general and endorsement knowledge tests;

(4) Allow only a group-specific passenger (P) endorsement on a CLP, provided the applicant has taken and passed the endorsement knowledge test. All other Federal endorsements are prohibited on a CLP; and

(5) Complete the Social Security Number verification required by paragraph (g) of this section.

(6) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(a)(5) and proof of State of domicile specified in § 383.71(a)(6).

(b) *Initial CDL.* Prior to issuing a CDL to a person, a State must:

(1) Require the driver applicant to certify, pass tests, and provide information as described in § 383.71(b);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(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 Problem Driver Pointer System (PDPS) 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 49 U.S.C. 30304(a)(3);

(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 request for the complete driving record specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or 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 has been made and noting the date it was done;

(4) Require the driver applicant to surrender his/her non-CDL driver's license and CLP;

(5) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is only required to check the proof of citizenship or immigration status specified in this paragraph for initial issuance of a CLP or Nonresident CDL, transfer of CDL from another State or for drivers renewing a CDL or Nonresident CDL for the first time after [effective date of final rulemaking], provided a notation is made on the driver's record confirming that the proof of citizenship or immigration status check required by this paragraph has been made and noting the date it was done;

(6) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(7) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in §§ 383.71(b)(8) and 383.141; and

(8) Make the CDL valid for no more than 8 years from the date of issuance.

(c) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(6) Require the applicant to surrender the CDL issued by the applicant's previous State of domicile.

(7) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is only required to check the proof of citizenship or immigration status specified in this paragraph for initial issuance of a CLP or Nonresident CDL, transfer of CDL from another State or for drivers renewing a CDL or Nonresident CDL for the first time after [effective date of final rule], provided a notation is made on the driver's record confirming that the proof of citizenship or immigration status check required by this paragraph has been made and noting the date it was done.

(d) *License Renewals.* Prior to renewing any CDL a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in § 383.121 and comply with the standards specified in §§ 383.71(b)(8) and 383.141 for such endorsement;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(6) Make the renewal of the CDL valid for no more than 8 years from the date of issuance.

(7) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10).

(e) *License upgrades.* Prior to issuing an upgrade of a CDL, a State must:

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in § 383.71(e);

(2) Complete a check of the driver applicant's record as described in paragraph (b)(3) of this section;

(3) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section; and

(4) Require the driver applicant to surrender his/her previous CDL.

(5) Require compliance with the standards for providing proof of citizenship or immigration status specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10).

(f) *Nonresident CDL.* (1) A State may only issue a Nonresident CDL to a person who meets one of the circumstances described in § 383.71(f)(1).

(2) State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS must at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(i) If the applicant is requesting a transfer of his/her Nonresident CDL, the State must obtain the Nonresident CDL currently held by the applicant and issued by another State;

(ii) The State must add the word "Nonresident" to the face of the CDL, in accordance with § 383.153(b); and

(iii) The State must have established, prior to issuing any Nonresident CDL,

the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a person domiciled in the State.

(3) The State must require compliance with the standards for providing proof of immigration status specified in § 383.71(b)(9) and § 383.71(f)(2)(i).

(g) *Social Security Number verification.* (1) Prior to issuing a CLP or a CDL to a person the State must verify the name, date of birth, and Social Security Number provided by the applicant with the information on file with the Social Security Administration. The State is prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the Social Security Administration database does not match the applicant-provided data.

(2) *Exception:* A State is only required to perform the Social Security Number verification specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after [effective date of final rulemaking] who have not previously had their Social Security Number information verified, provided a notation is made on the driver's record confirming that the verification required by this paragraph has been made and noting the date it was done.

(h) *License issuance.* After the State has completed the procedures described in paragraphs (a) through (g) of this section, it may issue a CLP or CDL to the driver applicant. The State must:

(1) Mail the initial CLP or CDL to the address provided on the application form; and

(2) Notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(i) *Surrender procedure.* A State may return a surrendered license to a driver after physically marking it so that it cannot be mistaken for a valid document. Simply punching a hole in the expiration date of the document is insufficient. A document perforated with the word "VOID" is considered invalidated.

(j) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CLP or CDL, or at any time after the CLP or CDL is issued, that the applicant has falsified information contained in subpart J of this part or any of the certifications required in § 383.71(b), the State must at a minimum suspend, cancel, or revoke

the person's CLP or CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(k) *Drivers convicted of fraud related to the testing and issuance of a CLP or CDL.* (1) The State must have policies in effect which result, at a minimum, in the cancellation or revocation of the CLP or CDL of a person who has been convicted of fraud related to the issuance of that CLP or CDL. The application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained CLP or CDL must also, at a minimum, be canceled or revoked. The State must record any such withdrawal in the person's driving record. The person may not reapply for a new CDL for at least 1 year.

(2) If a State receives credible information that a CLP- or CDL-holder is suspected, but has not been convicted, of fraud related to the issuance of his or her CLP or CDL, the State must require the driver to be re-tested within 30 days both for knowledge and skills. The driver's CLP or CDL must be withdrawn after 30 days pending the results of re-testing.

(l) *Reciprocity.* A State must allow any person who has a valid CLP, CDL, Nonresident CLP, or Nonresident CDL and who is not disqualified from operating a CMV, to operate a CMV in the State.

(m) *Document verification.* The State must require at least two persons within the driver licensing agency to check and verify all documents involved in the licensing process for the initial issuance, renewal, upgrade, or transfer of a CLP or CDL. The documents being checked and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores.

(n) *Computer system controls.* The State must establish computer system controls that would:

(1) Prevent the issuance of an initial, renewed, upgraded, or transferred CLP or CDL when the results of transactions indicate the applicant is unqualified. These controls, at a minimum, must be established for the following transactions: State, CDLIS, and PDPS driver record checks; Social Security Number verification; and knowledge and skills test scores verification.

(2) Ensure that only supervisory level personnel may continue the issuance process whenever State, CDLIS, and/or PDPS driver record checks return suspect results. The supervisor must ensure these results are not connected to

a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation). In addition, both the name of the person authorizing the issuance and the justification for the authorization must be documented by the State.

11. Revise § 383.75 to read as follows:

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a third-party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;

(2) The State must conduct an on-site inspection of each third party test site at least annually, with focus on examiners with unusually high or low pass or fail rates;

(3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.

(4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed by the State;

(5) The State must, at least on an annual basis, do one of the following for each third party examiner:

(i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;

(6) The State must take prompt and appropriate remedial action against a third-party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract; and

(7) The State has an agreement with the third party containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third party examiners meet the qualification and training standards of § 384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third party;

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third-party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract;

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

(vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third party tester to use designated road test routes that have been approved by the State;

(viii) Require the third party tester to submit a weekly schedule of CDL skills testing appointments to the State no later than the last business day of the prior week; and

(ix) Require the third party tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third party agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(E) A copy of the third party tester's State-approved road test route(s); and

(F) A copy of each third party examiner's training record.

(b) *Proof of testing by a third party.* The third party tester must notify the

State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.

(c) *Minimum number of tests conducted.* (1) The State must cancel the third party agreement of any third party tester that does not conduct at least 50 skills test examinations per calendar year.

(2) The State must revoke the skills testing certification of any examiner who does not conduct at least 10 skills test examinations per calendar year.

§ 383.77 [Removed]

12. Remove § 383.77.

13. Add new § 383.79 to read as follows:

§ 383.79 Skills testing of out-of-State students.

(a) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (i.e., his/her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(b) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

14. Amend § 383.93 by revising paragraph (a) to read as follows:

§ 383.93 Endorsements.

(a) *General.* (1) In addition to passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section must pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(2) The only endorsement allowed on a CLP is a Passenger endorsement.

(3) The State must use the codes listed in § 383.153 when placing endorsements on a CLP or CDL.

* * * * *

15. Revise § 383.95 to read as follows:

§ 383.95 Restrictions.

(a) *Air brake.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the

CLP or CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(2) For the purposes of the skills test and the restriction, air brakes include any braking system operating fully or partially on the air brake principle.

(b) *Full air brake.* (1) If an applicant performs the skills test in a vehicle equipped with air over hydraulic brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with any braking system operating fully on the air brake principle.

(2) For the purposes of the skills test and the restriction, air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

(c) *Manual transmission.* (1) If an applicant performs the skills test in a vehicle equipped with an automatic transmission, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with a manual transmission.

(2) For the purposes of the skills test and the restriction, an automatic transmission includes any transmission not operating fully on the gear shift and clutch principle.

(d) *Tractor-trailer.* If an applicant performs the skills test in a combination vehicle for a Group A CDL with the power unit and towed unit connected with a pintle hook or other non-fifth wheel connection, the State must indicate on the CDL, if issued, that the person is restricted from operating a tractor-trailer combination connected by a fifth wheel that requires a Group A CDL.

(e) *Group A passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group B CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A CDL.

(f) *Group A and B passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group C CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A or B CDL.

(g) *CLP Passenger Vehicle.* If an applicant is applying for a passenger endorsement on a CLP, the State must indicate on the CLP, if issued, that the person is restricted from operating a passenger vehicle carrying passengers, except for the CDL holder who is required to accompany the CLP holder.

16. Revise § 383.110 to read as follows:

§ 383.110 General requirement.

All drivers of commercial motor vehicles (CMVs) must have knowledge and skills necessary to operate a CMV safely as contained in this subpart. The specific types of items, which a State must include in the knowledge and skills tests that it administers to CDL applicants, are included in this subpart.

17. Revise § 383.111 to read as follows:

§ 383.111 Required knowledge.

(a) All CMV operators must have knowledge of the following 20 general areas:

(1) *Safe operations regulations.* Driver-related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 of this subchapter, such as:

- (i) Motor vehicle inspection, repair, and maintenance requirements;
- (ii) Procedures for safe vehicle operations;
- (iii) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation;
- (iv) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this subchapter; and
- (v) The effects of alcohol and drug use upon safe commercial motor vehicle operations.

(2) *CMV safety control systems.* (i) Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

(ii) CMV drivers must have knowledge of the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(3) *Safe vehicle control systems.* The purpose and function of the controls and instruments commonly found on CMVs.

(4) *Basic control.* The proper procedures for performing various basic maneuvers, including:

- (i) Starting, warming up, and shutting down the engine;
- (ii) Putting the vehicle in motion and stopping;
- (iii) Backing in a straight line; and
- (iv) Turning the vehicle, e.g., basic rules, off tracking, right/left turns and right curves.

(5) *Shifting.* The basic shifting rules and terms, as well as shift patterns and

procedures for common transmissions, including:

- (i) Key elements of shifting, e.g., controls, when to shift, and double clutching;
- (ii) Shift patterns and procedures; and
- (iii) Consequences of improper shifting.

(6) *Backing.* The procedures and rules for various backing maneuvers, including:

- (i) Backing principles and rules; and
- (ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(7) *Visual search.* The importance of proper visual search, and proper visual search methods, including:

- (i) Seeing ahead and to the sides;
- (ii) Use of mirrors; and
- (iii) Seeing to the rear.

(8) *Communication.* The principles and procedures for proper communications and the hazards of failure to signal properly, including:

- (i) Signaling intent, e.g., signaling when changing direction in traffic;
- (ii) Communicating presence, e.g., using horn or lights to signal presence; and
- (iii) Misuse of communications.

(9) *Speed management.* The importance of understanding the effects of speed, including:

- (i) Speed and stopping distance;
- (ii) Speed and surface conditions;
- (iii) Speed and the shape of the road;
- (iv) Speed and visibility; and
- (v) Speed and traffic flow.

(10) *Space management.* The procedures and techniques for controlling the space around the vehicle, including:

- (i) The importance of space management;
- (ii) Space cushions, e.g., controlling space ahead/to the rear;
- (iii) Space to the sides; and
- (iv) Space for traffic gaps.

(11) *Night operation.* Preparations and procedures for night driving, including:

- (i) Night driving factors, e.g., driver factors (vision, glare, fatigue, inexperience);
- (ii) Roadway factors (low illumination, variation in illumination, unfamiliarity with roads, other road users, especially drivers exhibiting erratic or improper driving); and
- (iii) Vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors).

(12) *Extreme driving conditions.* The basic information on operating in extreme driving conditions and the hazards encountered in such conditions, including:

- (i) Bad weather, e.g., snow, ice, sleet, high wind;

(ii) Hot weather; and
 (iii) Mountain driving.

(13) *Hazard perceptions*. The basic information on hazard perception and clues for recognition of hazards, including:

- (i) Road characteristics; and
- (ii) Road user activities.

(14) *Emergency maneuvers*. The basic information concerning when and how to make emergency maneuvers, including:

- (i) Evasive steering;
- (ii) Emergency stop;
- (iii) Off road recovery;
- (iv) Brake failure; and
- (v) Blowouts.

(15) *Skid control and recovery*. The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(16) *Relationship of cargo to vehicle control*. The principles and procedures for the proper handling of cargo, including:

- (i) Consequences of improperly secured cargo, drivers' responsibilities, and Federal/State and local regulations;
- (ii) Principles of weight distribution; and
- (iii) Principles and methods of cargo securement.

(17) *Vehicle inspections*. The objectives and proper procedures for performing vehicle safety inspections, as follows:

- (i) The importance of periodic inspection and repair to vehicle safety.
- (ii) The effect of undiscovered malfunctions upon safety.
- (iii) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.
- (iv) Pre-trip/en route/post-trip inspection procedures.
- (v) Reporting findings.

(18) *Hazardous materials*. Knowledge of the following:

- (i) What constitutes hazardous material requiring an endorsement to transport;
- (ii) Classes of hazardous materials;
- (iii) Labeling/placarding requirements; and
- (iv) Need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(19) *Mountain driving*. Practices that are important when driving upgrade and downgrade, including:

- (i) Selecting a safe speed;
- (ii) Selecting the right gear; and
- (iii) Proper braking techniques.

(20) *Fatigue and awareness*. Practices that are important to staying alert and safe while driving, including:

- (i) Being prepared to drive;
 - (ii) What to do when driving;
 - (iii) What to do when sleepy while driving; and
 - (iv) Becoming ill while driving.
- (b) *Air brakes*. All CMV drivers operating vehicles equipped with air brakes must have knowledge of the following 7 areas:
- (1) General air brake system nomenclature;
 - (2) The dangers of contaminated air supply (dirt, moisture, and oil);
 - (3) Implications of severed or disconnected air lines between the power unit and the trailer(s);
 - (4) Implications of low air pressure readings;
 - (5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:
 - (i) Automatic fail-safe devices;
 - (ii) System monitoring devices; and
 - (iii) Low pressure warning alarms.
 - (6) Procedures for conducting en route and post-trip inspections of air actuated brake systems, including:
 - (i) Ability to detect defects which may cause the system to fail;
 - (ii) Tests that indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and
 - (iii) Tests that indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.
 - (7) General operating practices and procedures, including:
 - (i) Proper braking techniques;
 - (ii) Antilock brakes;
 - (iii) Emergency stops; and
 - (iv) Parking brake.

(c) *Combination vehicles*. All CMV drivers operating combination vehicles must have knowledge of the following 3 areas:

- (1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to a semi-trailer;
- (2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles; and
- (3) General operating practices and procedures, including:
 - (i) Safely operating combination vehicles; and
 - (ii) Air brakes.

18. Revise § 383.113 to read as follows:

§ 383.113 Required skills.

(a) *Pre-trip vehicle inspection skills*. Applicants for a CDL must possess the

following basic pre-trip vehicle inspection skills for the vehicle class that the driver operates or expects to operate:

- (1) *All test vehicles*. Applicants must be able to identify each safety-related part on the vehicle and explain what needs to be inspected to make sure the part is in a safe condition, including:
 - (i) Engine compartment;
 - (ii) Cab/engine start;
 - (iii) Steering;
 - (iv) Suspension;
 - (v) Brakes;
 - (vi) Wheels;
 - (vii) Side of vehicle;
 - (viii) Rear of vehicle; and
 - (ix) Special features of tractor trailer, school bus, or coach/transit bus, if this type of vehicle is being used for the test.

(2) *Air brake equipped test vehicles*.

- Applicants must demonstrate the following skills with respect to inspection and operation of air brakes:
- (i) Locate and verbally identify air brake operating controls and monitoring devices;
 - (ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;
 - (iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;
 - (iv) With the engine running, make sure that the system maintains an adequate supply of compressed air;
 - (v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and
 - (vi) Operationally check the brake system for proper performance.

(b) *Basic vehicle control skills*. All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for the vehicle class that the driver operates or expects to operate:

- (1) Ability to start, warm up, and shut down the engine;
- (2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;
- (3) Ability to bring the motor vehicle to a smooth stop;
- (4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;
- (5) Ability to position the motor vehicle to negotiate and then make left and right turns;
- (6) Ability to shift as required and select appropriate gear for speed and highway conditions; and
- (7) Ability to back along a curved path.

(c) *Safe on-road driving skills.* All applicants for a CDL must possess and demonstrate the following safe on-road driving skills for their vehicle class:

(1) Ability to use proper visual search methods;

(2) Ability to signal appropriately when changing direction in traffic;

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicles, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight;

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes, and following distance to maintain control; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

19. Revise § 383.115 to read as follows:

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a double/triple trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, and yaw stability in steady turns;

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles

on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement; and

(e) Operating practices and procedures not otherwise specified.

20. Revise § 383.117 to read as follows:

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad-highway grade crossings and drawbridges;

(5) Proper braking procedures; and

(6) Operating practices and procedures not otherwise specified.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle class, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that vehicle group as defined in § 383.91.

21. Revise § 383.119 to read as follows:

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a tank vehicle endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full, and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled, and empty tanks;

(g) Proper use of emergency systems;

(h) For drivers of DOT specification tank vehicles, retest and marking requirements; and

(i) Operating practices and procedures not otherwise specified.

22. Revise § 383.121 to read as follows:

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a hazardous material endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions and preparation;

(8) Other regulated material (e.g., ORM-D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

(1) Forbidden materials and packages;

(2) Loading and unloading materials;

(3) Cargo segregation;

(4) Passenger carrying buses and hazardous materials;

(5) Attendance of motor vehicles;

(6) Parking;

(7) Routes;

(8) Cargo tanks; and

(9) "Safe havens."

(c) Operation of emergency equipment including:

(1) Use of equipment to protect the public;

(2) Special precautions for equipment to be used in fires;

(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

(1) Special care and precautions for different types of accidents;

(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class A and B explosives.

(e) Operating practices and procedures not otherwise specified.

23. Revise § 383.123 to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for the 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 the following 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 railroad-highway grade crossings; and

(iv) Operating practices and procedures not otherwise specified.

(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) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (a)(3) of this section.

Appendix to Subpart G [Removed]

24. Remove the appendix to subpart G of part 383.

25. Revise § 383.131 to read as follows:

§ 383.131 Test manuals.

(a) *Driver information manual.* (1) A State must provide to a CLP or CDL applicant a copy of the driver information manual that conforms to the requirements in the December 2005 edition of the American Association of Motor Vehicle Administrators' (AAMVA's) "Model Commercial Driver Manual" (Incorporated by reference, see § 383.9). These requirements include:

(i) Information on how to obtain a CDL and endorsements;

(ii) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in § 383.72, the procedures and penalties, contained in § 383.51(b) to which a CLP or CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(iii) Information on vehicle groups and endorsements as specified in subpart F of this part;

(iv) The substance of the knowledge and skills which drivers must have as outlined in subpart G of this part for the

different vehicle groups and endorsements; and

(v) Details of testing procedures, including the purpose of the tests, how to respond, and directions for taking the tests.

(2) A State may include any additional State-specific information related to the CDL testing and licensing process.

(b) *Examiner information manual.* (1) A State must provide to all knowledge and skills test examiners a copy of the examiner information manual that conforms to the requirements in the December 2005 edition of AAMVA's "Model CDL Examiner's Manual" (Incorporated by reference, see § 383.9). These requirements include:

(i) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(ii) Details on information which must be given to the applicant;

(iii) Details on how to conduct the knowledge and skills tests;

(iv) Scoring procedures and minimum passing scores for the knowledge and skills tests;

(v) Information for selecting driving test routes for the skills tests;

(vi) List of the skills to be tested;

(vii) Instructions on where and how the skills will be tested;

(viii) How performance of the skills will be scored;

(ix) Causes for automatic failure of skills tests;

(x) Standardized scoring sheets for the skills tests; and

(xi) Standardized driving instructions for the applicants.

(2) A State may include any additional State-specific information related to the CDL testing process.

(c) *State recordkeeping.* States must record and retain the knowledge and skills test scores of tests taken by driver applicants. The test scores must either be made part of the driver history record or be linked to the driver history record in a separate file.

26. Revise § 383.133 to read as follows:

§ 383.133 Test methods.

(a) All tests must be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) *Knowledge tests:* (1) States must use the pool of test questions that conform to the requirements in the December 2005 edition of AAMVA's

"2005 Test Item Summary Forms" (Incorporated by reference, see § 383.9) to develop knowledge tests for each vehicle group and endorsement.

(2) Each version of the knowledge test must conform to the requirements in the December 2005 edition of AAMVA's "2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests" (Incorporated by reference, see § 383.9). These requirements include:

(i) The total difficulty level of the questions used in each version of a test must fall within a set range;

(ii) Twenty-five percent of the questions on a test must be new questions that were not contained in the previous version of the test;

(iii) Identical questions from the previous version of the test must be in a different location on the test and the three possible responses to the questions must be in a different order; and

(iv) Each test must contain a set number of questions with a prescribed number of questions from each of the knowledge areas.

(3) Each knowledge test must be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111. The knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

(4) A State must use a different version of the test when an applicant retakes a previously failed test.

(c) *Skills tests:* (1) A State must develop, administer and score the skills tests based solely on the information and standards contained in the driver and examiner manuals referred to in § 383.131(a) and (b).

(2) A State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in § 383.131(b).

(3) An applicant must complete the skills tests in a representative vehicle to ensure that the applicant possess the skills required under § 383.113. In determining whether the vehicle is a representative vehicle for the skills test and the group of CDL the applicant is applying for, the vehicle's gross vehicle weight rating or gross combination weight rating must be used, not the vehicle's actual gross vehicle weight or gross combination weight.

(4) Skills tests must be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(5) Interpreters are prohibited during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner.

(6) The pre-trip inspection and the basic vehicle control tests must be administered prior to the on-road portion of the skills test. If an applicant fails one of these tests, the applicant can not continue to the next skills test. An applicant who has failed a skills test must retake all three tests.

(d) A State may utilize simulators to perform skills testing, except that simulator testing may not be substituted for the required testing in on-street conditions.

(e) Passing scores for the knowledge and skills tests must meet those standards contained in § 383.135.

27. Revise § 383.135 to read as follows:

§ 383.135 Passing knowledge and skills tests.

(a) *Knowledge tests.* (1) To achieve a passing score on each of the knowledge tests, a driver applicant must correctly answer at least 80 percent of the questions.

(2) If a driver applicant who fails the air brake knowledge test (scores less than 80 percent correct) is issued a CLP or CDL, an air brake restriction must be indicated on the license as required in § 383.95(a).

(3) A driver applicant who fails the combination vehicle knowledge test (scores less than 80 percent correct) must not be issued a Group A CLP or CDL.

(b) *Skills Tests.* (1) To achieve a passing score on each of the three skills tests, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113 and attain the scores listed in Appendix A of the examiner manual referred to in § 383.131(b) for the type of vehicle being used in the test.

(2) A driver applicant who does not obey traffic laws, causes an accident during the test, or commits any other offense listed as an automatic failure in AAMVA's "2005 CDL Test System" must automatically fail the test.

(3) If a driver applicant who performs the skills test in a vehicle not equipped with any type of air brake system is issued a CDL, an air brake restriction must be indicated on the license as required in § 383.95(a).

(4) If a driver applicant who performs the skills test in a vehicle equipped with air over hydraulic brakes is issued a CDL, a full air brake restriction must be

indicated on the license as required in § 383.95(b).

(5) If a driver applicant who performs the skills test in a vehicle equipped with an automatic transmission is issued a CDL, a manual transmission restriction must be indicated on the license as required in § 383.95(c).

(6) If a driver applicant who performs the skills test in a combination vehicle requiring a Group A CDL equipped with any non-fifth wheel connection is issued a CDL, a tractor-trailer restriction must be indicated on the license as required in § 383.95(d).

(7) If a driver applicant wants to remove any of the restrictions in paragraphs (b)(3) through (b)(5) of this section, the applicant does not have to retake the complete set of skills tests. The State may administer a modified set of skills tests that demonstrates that the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, and/or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must also successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.

(8) If a driver applicant wants to remove the tractor-trailer restriction in paragraph (b)(6) of this section, the applicant must retake all three skills tests in a representative tractor-trailer.

Subpart J—[Amended]

28. Revise the heading for subpart J to read as follows:

Subpart J—Commercial Learner's Permit and Commercial Driver's License Documents

29. Revise § 383.151 to read as follows:

§ 383.151 General.

(a) The CDL must be a document that is easy to recognize as a CDL.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) At a minimum, the CDL and the CLP must contain the information specified in § 383.153.

30. Revise § 383.153 to read as follows:

§ 383.153 Information on the CLP and CDL documents and applications.

(a) Commercial Driver's License. All CDLs must contain all of the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in paragraph (c) of this section.

(2) The full name, signature, and mailing or residential address in the

licensing State of the person to whom such license is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph or digitized color image of the driver. The State may issue a temporary CDL without a photo or image, if it is valid for no more than 60 days.

(5) The driver's State license number.

(6) The name of the State which issued the license.

(7) The date of issuance and the date of expiration of the license.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(i) T for double/triple trailers;

(ii) P for passenger;

(iii) N for tank vehicle;

(iv) H for hazardous materials;

(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.

(10) The restriction(s) placed on the driver from operating certain equipment or vehicles, if any, indicated as follows:

(i) L for Air brake.

(ii) Z for Full air brake.

(iii) E for Manual transmission.

(iv) O for Tractor-trailer.

(v) M for Group A passenger vehicle.

(vi) N for Group A and B passenger vehicle.

(vii) K for Intrastate only.

(viii) Y for a driver who operates or expects to operate in interstate commerce, but is not subject to part 391 of this subchapter due to an exception under § 390.3(f) of this subchapter or an exemption under § 391.2.

(ix) At the discretion of the State, additional codes for additional restrictions, as long as each such restriction code is fully explained on the front or back of the CDL document.

(b) Commercial Learner's Permit. All CLPs must contain all of the following information:

(1) The prominent statement that the permit is a "Commercial Learner's Permit" or "CLP," except as specified in paragraph (c) of this section, and that it is invalid unless accompanied by the

underlying driver's license issued by the same jurisdiction.

(2) The full name, signature, and mailing or residential address in the permitting State of the person to whom the permit is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph or digitized color image of the driver.

(5) The driver's State license number.

(6) The name of the State which issued the permit.

(7) The date of issuance and the date of expiration of the permit.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(i) A for Combination Vehicle;

(ii) B for Heavy Straight Vehicle; and

(iii) C for Small Vehicle.

(9) The P (for passenger) endorsement, if the driver has qualified for that endorsement.

(10) The P restriction placed on the driver from carrying passengers, if the driver has qualified for the passenger (P) endorsement.

(11) Any additional jurisdictional restrictions that apply to the CLP driving privilege.

(c) If the CLP or CDL is a Nonresident CLP or CDL, it must contain the prominent statement that the license or permit is a "Nonresident Commercial Driver's License," "Nonresident CDL," "Nonresident Commercial Learner's Permit," or "Nonresident CLP," as appropriate. The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License," "CDL," "Commercial Learner's Permit," or "CLP."

(d) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the CLP or CDL.

(e) Except in the case of a Nonresident CLP or CDL holder who is domiciled in a foreign jurisdiction:

(1) A driver applicant must provide his/her Social Security Number on the application of a CLP or CDL.

(2) The State must provide the Social Security Number to the CDLIS.

(3) The State is not required to include the Social Security Number on the CLP or CDL.

(f) The State may issue a multipart CDL provided—

(1) Each document is explicitly tied to the other document(s) and to a single driver's record.

(2) The multipart license document includes all of the data elements specified in this section.

(g) CLP Passenger Vehicle. If an applicant is applying for a passenger endorsement on a CLP, the State must indicate on the CLP, if issued, that the person is restricted from operating a passenger vehicle carrying passengers, except for the CDL holder who is required to accompany the CLP holder.

31. Revise § 383.155 to read as follows:

§ 383.155 Tamperproofing requirements.

States must make the CLP or CDL tamperproof to the maximum extent practicable. At a minimum, a State must use the same tamperproof method used for noncommercial drivers' licenses.

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

32. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; sec. 103 of Pub. L. 106–159, 113 Stat. 1753, 1767; sec. 4140 of Pub. L. 109–59, 119 Stat. 1144; and 49 CFR 1.73.

33. Amend § 384.105(b) by revising the definition of *issue and issuance* to read as follows:

* * * * *

§ 384.105 Definitions.

* * * * *

(b) * * *

Issue and issuance mean initial issuance, transfer, renewal, or upgrade of a CLP or CDL and Nonresident CLP or CDL, as described in § 383.73 of this subchapter.

* * * * *

34. Revise § 384.204 to read as follows:

§ 384.204 CLP or CDL issuance and information.

(a) *General rule.* The State shall authorize a person to operate a CMV only by issuance of a CLP or CDL, unless an exception in § 383.3(c) or (d) applies, which contains, at a minimum, the information specified in part 383, subpart J, of this subchapter.

(b) *Exceptions—(1) Training.* The State may authorize a person, who does not hold a CDL valid for the type of vehicle in which training occurs, to undergo behind-the-wheel training in a CMV only by means of a CLP issued and used in accordance with § 383.25 of this subchapter.

(2) *Confiscation of CLP or CDL pending enforcement.* A State may allow a CLP or CDL holder whose CLP or CDL is held in trust by that State or

any other State in the course of enforcement of the motor vehicle traffic code, but who has not been convicted of a disqualifying offense under § 383.51 of this subchapter based on such enforcement, to drive a CMV while holding a dated receipt for such CLP or CDL.

35. Revise § 384.205 to read as follows:

§ 384.205 CDLIS information.

Before issuing a CLP or a CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(b)(3)(ii) of this subchapter, and, based on that information, shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

36. Revise § 384.206 to read as follows:

§ 384.206 State record checks.

(a) *Issuing State's records.* (1) Before issuing a CLP or CDL to any person, the State must, within the period of time specified in § 384.232, check its own driving record for such person in accordance with § 383.73(b)(3) of this subchapter.

(2) Based on the findings of its own State record check, the State shall issue the license, or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

(b) *Other States' records.* (1) Before the initial or transfer issuance of a CLP or CDL to a person, and before renewing or upgrading a CLP or 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 during the previous 10 years.

(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.

(2) 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.

(3) Based on the findings of the other State record checks, the issuing State must, in the case of adverse information, promptly implement the

disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

37. Amend § 384.207 by revising the introductory text and paragraph (a) to read as follows:

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(h) of this subchapter, the State must:

(a) Notify the operator of the CDLIS of each CLP or CDL issuance;

* * * * *

38. Amend § 384.208 by revising paragraph (a) to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or revoking, suspending, or canceling an out-of-State CLP or 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.

* * * * *

39. Amend § 384.209 by revising paragraph (a) to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CLP or CDL holders.* Whenever a person who holds a CLP or 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.

* * * * *

40. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CLP, 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 in § 383.5 of this subchapter, or under the provisions of § 383.73(j) or § 384.231(b)(2) of this subchapter;

(b) The CLP or 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).

41. Revise § 384.211 to read as follows:

§ 384.211 Surrender of old licenses.

The State may not initially issue, upgrade, or transfer a CDL to a person unless such person first surrenders any previously issued driver's license and CLP.

42. Revise § 384.212 to read as follows:

§ 384.212 Domicile requirement.

(a) The State may issue CDLs or CLPs only to those persons for whom such State is the State of domicile as defined in § 383.5 of this subchapter; except that the State may issue a nonresident CLP or CDL under the conditions specified in §§ 383.23(b), 383.71(f), and 383.73(f) of this subchapter.

(b) The State must require any person holding a CLP or CDL issued by another State to apply for a transfer CLP or CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(c) of this subchapter.

43. Revise § 384.214 to read as follows:

§ 384.214 Reciprocity.

The State must allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CLP or CDL that is—

(a) Issued to him or her by his or her State or jurisdiction of domicile in accordance with part 383 of this subchapter;

(b) Not suspended, revoked, or canceled; and

(c) Valid, under the terms of part 383, subpart F, of this subchapter, for the type of vehicle being driven.

44. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life any 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 (or, in the case of a CDL holder, a non-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.

45. Revise § 384.220 to read as follows:

§ 384.220 Problem Driver Pointer System information.

Before issuing a CLP or CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Problem Driver Pointer System in accordance with § 383.73(b)(3)(iii) of this subchapter, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

46. Amend § 384.225 by revising paragraphs (a) and (b) to read as follows:

§ 384.225 Record of violations.

* * * * *

(a) *CLP or 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 CLP or 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.

* * * * *

47. Revise § 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 CLP or 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.

48. Add § 384.227 to read as follows:

§ 384.227 Record of digital color image or photograph.

The State must:

(a) Record the digital color image or photograph that is captured as part of the application process and placed on the licensing document of every person who is issued a CLP or CDL, as required under § 383.153. The digital color image or photograph must either be made part of the driver history or be linked to the driver history in a separate file.

(b) Check the digital color image or photograph on record whenever the CLP or CDL is renewed, upgraded, or transferred and when a duplicate CLP or CDL is issued.

49. Add § 384.228 to read as follows:

§ 384.228 Examiner training and record checks.

For all State and third party CDL test examiners, the State must meet the following 8 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests. The training course must cover at least the following six units of instruction:

(1) Introduction to CDL Licensing System:

- (i) The Commercial Motor Vehicle Safety Act of 1986.
- (ii) Drivers covered by CDL program.
- (iii) CDL vehicle classification.
- (iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:

- (i) CDL test, classifications, and endorsements.
- (ii) Different examinations.
- (iii) Representative vehicles.
- (iv) Validity and reliability.
- (v) Test maintenance.

(3) Knowledge tests:

- (i) General knowledge tests.
- (ii) Specialized knowledge tests.
- (iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.

(4) Vehicle inspection test:

- (i) Test overview.
 - (ii) Description of safety rules.
 - (iii) Test scoring procedures.
 - (iv) Scoring standards.
 - (v) Calculating final score.
- (5) Basic control skills testing:
- (i) Setting up the basic control skills course.
 - (ii) Description of safety rules.
 - (iii) General scoring procedures.
 - (iv) Administering the test.
 - (v) Calculating the score.

(6) Road test:

- (i) Setting up the road test.
- (ii) Required maneuvers.
- (iii) Administering the road test.
- (iv) Calculating the score.

(c) Require all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the six units of instruction in paragraph (b) of this section.

(d) Require State and third party CDL test examiners to successfully complete a refresher training course and examination every four years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

(1) The six units of training described in paragraph (b) of this section.

(2) Any State specific material and information related to administering CDL knowledge and skills tests.

(3) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.

(e) Complete criminal background checks of all skills test examiners prior to certifying them to administer CDL skills tests.

(f) Complete an annual criminal background check of all test examiners.

(g) Maintain a record of the results of criminal background checks and CDL examiner test training and certification of all CDL test examiners.

(h) Rescind the certification to administer CDL tests of all test examiners who:

- (1) Do not successfully complete the required annual refresher training; or
- (2) Do not pass annual criminal background checks. Criteria for not passing the criminal background check must include at least the following:

- (i) Any felony conviction within the last 10 years; or
- (ii) Any conviction involving fraudulent activities.

(j) The six units of training described in paragraph (b) of this section may be supplemented with State specific material and information related to administering CDL knowledge and skills tests.

50. Add § 384.229 to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

To ensure the integrity of the CDL skills testing program, the State must:

(a) At least annually, conduct unannounced on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of CDL applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files;

(b) At least annually, conduct covert and overt monitoring of examinations

performed by State and third party CDL skills test examiners;

(c) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(d) Establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number each third party CDL skills test examiner;

(e) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(f) Establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number.

51. Amend § 384.231 by revising paragraph (b) to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

* * * * *

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

(2) *A person required to have a CLP or CDL.* A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CLP or 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 CLP or CDL from any State during the applicable disqualification period(s) specified in this subpart.

* * * * *

52. Amend § 384.301 by revising paragraph (c) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(c) A State must come into substantial compliance with the requirements of

subpart B of this part in effect as of [effective date of final rule] as soon as practical but, unless otherwise specifically provided in this part, not later than [3 years after effective date of final rule].

53. Revise § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

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

- (1) Initial issuance.
- (2) Renewal.
- (3) Transfer.
- (4) Upgrade.

(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 Registry Problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing, transferring, or upgrading a CLP or CDL.

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

PART 385—SAFETY FITNESS PROCEDURES

54. The authority citation for part 385 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

55. Amend appendix B to part 385, section VII, List of Acute and Critical Regulations, by redesignating the entries for §§ 383.37(a) and 383.37(b) as §§ 383.37(b) and 383.37(c) and adding a new entry for § 383.37(a) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. LIST OF ACUTE AND CRITICAL REGULATIONS

* * * * *

§ 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

* * * * *

Issued on: March 31, 2008.

John H. Hill,
Administrator.

[FR Doc. E8–7070 Filed 4–8–08; 8:45 am]

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