

## Schedule 1 to Part 33—Approved Programs

The programs listed in this schedule have been approved for priorities and allocations support under this part by DoD, DOE, or DHS, in accordance with section 203 of Executive Order 13603. They have equal preferential status.

*Approved Program*—[Reserved]

*Program Identification Symbol*—[Reserved]

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**49 CFR Parts 303, 325, 350, 355, 356, 360, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 395, 396, 397, 398, and 399, and Appendices B and G of Subchapter B of Chapter III**

[Docket No. FMCSA–2012–0274]

RIN 2126–AB54

### Technical, Organizational, and Conforming Amendments to the Federal Motor Carrier Safety Regulations

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

**ACTION:** Final rule.

**SUMMARY:** This final rule makes technical corrections throughout title 49 CFR subtitle B, chapter III. The Agency is making minor editorial changes to add revised delegations of authority from the Secretary of Transportation (Secretary), correct errors and omissions, and improve clarity. This rule does not make any substantive changes to the affected parts of the Federal Motor Carrier Safety Regulations (FMCSRs).

**DATES:** Effective October 1, 2012. The incorporation by reference of a certain publication listed in the rule is approved by the Director of the **Federal Register** as of October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** Andrea Manka or Elaine Walls, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Regulatory Affairs Division, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone, for Ms. Manka at (202) 366–0975 or via email at [andrea.manka@dot.gov](mailto:andrea.manka@dot.gov); and for Ms. Walls at (202) 366–1394 or via email at [elaine.walls@dot.gov](mailto:elaine.walls@dot.gov). Office hours are from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

#### SUPPLEMENTARY INFORMATION:

##### I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to DOT the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. *See* 49 U.S.C. 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in chapter 315 of title 49 of the U.S. Code. The regulations issued under this authority became known as the FMCSRs, appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in chapter 5 of title 49 of the U.S. Code. The Secretary of DOT delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of FMCSA.

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Commercial Regulations, and provide both civil and criminal penalties for violations. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131–149.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within the DOT, effective January 1, 2000. The motor carrier safety staff and responsibilities

previously assigned to FHWA are now assigned to FMCSA. Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005), the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008), and the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, July 6, 2012).

Most of the provisions of the FMCSRs amended by this rule are based on the statutes detailed above. The legal authority for each of those provisions was explained when the requirement was originally adopted and is summarized at the beginning of each part in title 49 of the Code of Federal Regulations (CFR). No further analysis is required here. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

On August 17, 2012, the Secretary issued a final rule (77 FR 49964) to update the CFR sections that set forth the organizational structure of the Department and delegations of authority from the Secretary to other modal administrations—including the FMCSA. Because the Secretary revised part 1 of subtitle A of title 49, CFR, by moving FMCSA delegations from 49 CFR 1.73 to 49 CFR 1.87, FMCSA must also revise all of its delegations of authority citations in chapter III of subtitle B of title 49, CFR, to accommodate this change.

The Administrative Procedure Act (APA) (5 U.S.C. 553) specifically provides that exceptions to its notice and public comment rulemaking procedures are not required where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefor in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public procedures are impractical, unnecessary, or contrary to the public interest. (see 5 U.S.C. 553(b)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove obsolete references, and make minor editorial changes to improve clarity and consistency. The technical amendments do not impose any new requirements, nor do they make any substantive changes to the CFR. For these reasons, the FMCSA finds good cause that notice and public

comment are unnecessary. Further, the Agency finds good cause under 5 U.S.C. 553(b)(B) and 553(d)(3) to make the amendments effective upon publication.

## II. Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor editorial changes are set out below, in a section-by-section description of the changes. These amendments do not impose any new requirements, nor do they make substantive changes to the CFR. Notice and comment are unnecessary. See 5 U.S.C. 553(b).

## III. Section-by-Section Analysis

The changes throughout chapter III of title 49 CFR are occasioned by DOT's reorganizing its rules governing delegations of authority in 49 CFR chapter 1. Each of the revised authority citations is set out in the regulatory text, below, but will not be addressed separately in this section-by-section analysis.

*Section 350.105.* The definition for "Border Activity Funds" is removed from this section, as SAFETEA-LU mandated that these funds be removed from the Motor Carrier Safety Assistance Program (MCSAP) as ineligible for use in a border region.

*Section 350.205(a).* The phrase "Motor Carrier" is removed from this paragraph and the phrase "Division Administrator/" is inserted in front of "State Director." The head of each FMCSA State office is the Division Administrator. The Agency, however, has one remaining State Director, in the Puerto Rico Division.

*Section 350.213(o).* This paragraph is removed because the Agency no longer uses the MCSAP-1 form, and the following paragraph designations are changed accordingly.

*Section 350.313(b).* This paragraph is removed because the provision does not correctly state how grant funding can be provided. The Agency actually provides Motor Carrier Safety Assistance Program (MCSAP) grant funding for reimbursable items in paragraphs (a)(1) and (a)(2) of this section.

*Section 350.327(f).* This paragraph is removed, as all States participating in MCSAP also participate in SAFETYNET (a cooperative effort to share motor carrier safety information among States and FMCSA) and their data are uploaded electronically into FMCSA databases that can be accessed by FMCSA to determine each State's status in meeting the eligibility requirements. A separate certification requirement is,

therefore, redundant and no longer necessary.

*Section 350.329.* The phrase "or Border Activity" is removed from the heading, as Border Activity Enforcement Grants are not an eligible use under MCSAP.

*Section 350.331(b).* The phrase "Motor Carrier" is removed from this paragraph and the phrase "Division Administrator/" is inserted in front of "State Director." The head of each FMCSA State office is the Division Administrator. The Agency, however, has one remaining State Director, in the Puerto Rico Division.

*Section 350.335(e).* Paragraph (e) is amended by removing the words "Research and Special Programs Administration" and adding, in their place, the words "Pipeline and Hazardous Materials Safety Administration." This change is required to reflect the current name of the agency with the statutory authority to regulate the transportation of hazardous materials.

*Section 375.103.* This section is amended to provide a more up-to-date definition for the word "Advertisement."

*Section 375.209(b).* The paragraph is amended to reflect that there are three, not four, elements that must be included in a household goods motor carrier's procedure for handling complaints and inquiries.

*Part 379 Appendix A.* Appendix A to Part 379 is amended to remove references to "water carriage", which is outside of FMCSA's authority.

*Section 382.107.* Under the definition of "commercial motor vehicle," the phrase "or gross combination weight" is added in paragraph (1) following the phrase "gross combination weight rating". The phrase "whichever is greater" is added after the parenthetical "(26,001 pounds or more)". In paragraph (2); the phrase "or gross vehicle weight" is added after the phrase "gross vehicle weight rating", and the phrase "whichever is greater" is inserted following the parenthetical "(26,001 or more pounds)." These changes are intended to make the definition consistent with the definition of commercial motor vehicle in 49 U.S.C. 31301(4) and 49 CFR 383.5.

*Section 383.51.* In paragraph (b), the phrase "required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)" in the 4th column header in Table 1 is replaced with "as defined in § 383.5" to cover the expanded definition of "hazardous materials", contained in the USA PATRIOT Act, which now includes select agents and toxins under 42 CFR

part 73. In paragraph (c)(1), the phrase "regulated or" is inserted before "posted" in the first column because the current description in the table does not reflect the regulatory language. In paragraphs (b)(7), (c)(6), (c)(7), and (c)(8), the phrase "CLP or" is inserted before the abbreviation "CDL" to conform the column headers in Tables 1 and 2 to § 383.51. In paragraph (c)(9), the phrase "a CMV" is inserted after the word "driving" to conform to the wording in § 383.51(c)(10) and clarify that disqualification does not occur unless the offense is committed in a commercial motor vehicle (CMV).

In paragraph (e)(2), Table 4, the phrase "required to be placarded under part 172 subpart F of this title" is replaced with "as defined in § 383.5" to reflect the expanded definition of "hazardous materials" in the USA PATRIOT Act, which now includes select agents and toxins under 42 CFR part 73.

*Section 383.71.* Paragraph (b)(1)(i) is removed because it is now obsolete, and paragraph (b)(1)(ii) is redesignated as paragraph (b)(1). In paragraph (h)(2), the reference to § 383.73(j)(4) is changed to § 383.73(o)(4) to correct an inadvertent error in the Commercial Driver's License Testing and Commercial Learner's Permit Standards final rule (77 FR 26989; May 8, 2012).

*Section 383.91(a)(3).* The phrase "materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart E)" is replaced with "hazardous materials as defined in § 383.5" to reflect the expanded definition of "hazardous materials" in the USA PATRIOT Act, which now includes select agents and toxins under 42 CFR part 73.

*Section 383.141(a).* The phrase "Beginning on the date(s) listed in 49 CFR 1572.13(b)" is removed because the dates in the referenced paragraph have been removed.

*Section 384.215(b).* The phrase "required to be placarded under the Hazardous Materials Transportation Act (implementing regulations at 49 CFR 177.823)" is replaced with "as defined in § 383.5" to reflect the expanded definition of "hazardous materials" in the USA PATRIOT Act, which now includes select agents and toxins under 42 CFR part 73.

*Section 385.4.* Section 385.4 is revised to conform with Office of the Federal Register style. The address and telephone number for the Commercial Vehicle Safety Alliance (CVSA) are

updated and a cross reference to § 385.415(b)(1) is added.

*Section 385.19(b).* As authorized by sec. 32932 of MAP-21, both the phrase “Interstate Commerce Commission” and the acronym designation “(ICCMC)” are deleted.

*Section 385.403(d).* Paragraph (d) is revised to reference “A ‘material poisonous by inhalation,’ in ‘bulk packaging,’ both as defined in § 171.8 of this title, that meets the criteria for ‘hazard zone B,’ as specified in § 173.116(a) or § 173.133(a)”. This change takes into account the quantities for solids and gases contained in the “Bulk Packaging” definition.

*Section 385.407(c).* The reference to “Research and Special Programs Administration” is replaced with “Pipeline and Hazardous Materials Safety Administration” to reflect the name of the current modal administration with the responsibility to protect people and the environment from the risks inherent in the transportation of hazardous materials by pipeline and other modes of transportation.

*Section 385.415(b)(1).* Pursuant to an approval by the Director of the Office of the Federal Register, an incorporation by reference of the old edition (January 1, 2004 version) of the “North American Standard Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403” is amended by removing the edition date “January 1, 2004” and replacing it with the new edition date of “April 1, 2012”. The reference to materials incorporated by reference and the address of the Commercial Vehicle Safety Alliance are replaced with a reference to § 385.4 that reads: “(See § 385.4 for information on incorporation by reference and availability of this document.)”.

*Appendix B to Part 385.* Section II is changed to add approximately 180 of the part 172 and part 173 violation to ASPEN<sup>1</sup> and the Motor Carrier Management Information System (MCMIS).<sup>2</sup> This was done in those instances where the Agency observes

private carriers, because the parts 172/173 violations are shipper/offendor related.

*Section 386.5(f).* This paragraph is revised by reversing the references to § 386.6 and § 386.7 because § 386.6 refers to service and § 386.7 refers to filing.

*Section 386.82(a)(2).* The current citation to “§ 386.11(b)(3)” is changed to “§ 386.11(c)(3)” because the “notice to post” provision, provided for in 49 U.S.C. 521(b)(3), is contained in the latter paragraph.

*Section 387.303.* FMCSA amends § 387.303 by restoring a previously removed provision that established minimum public liability limits of \$300,000 for fleets that consist only of vehicles with Gross Vehicle Weight Ratings (GVWRs) of under 10,000 pounds, except that FMCSA revises 10,000 pounds to 10,001 pounds to be consistent with the statutory definition of CMV. The Agency removed former 49 CFR 387.303(b)(1)(i) in 2007 because section 4120 of SAFETEA-LU removed FMCSA’s commercial jurisdiction over for-hire transportation of property in motor vehicles that did not meet the definition of a CMV under 49 U.S.C. 31132. However, the SAFETEA-LU Technical Corrections Act of 2008 restored the Agency’s commercial jurisdiction over for-hire transportation of property in non-CMV, so the Agency reinstates this regulatory provision. This section is also revised to remove obsolete references to effective dates in the table in § 387.303(b)(2).

*Section 390.21(b)(5).* This paragraph is removed because the referenced compliance provisions are now unnecessary since they have all been satisfied.

*Section 390.27.* This section is revised to reflect the address change resulting from the recent move of the Midwestern Service Center. Also, because Texas is now included in the Western Service Center, note 2 has been revised to reflect that change.

*Section 390.42(b).* The reference to “§ 396.11(a)(2)” is revised to read “§ 396.11(b)(2)” to correct a typographical error.

*Section 393.17(b).* Paragraph (b) is changed to correct a typographical error.

*Section 393.52.* The source note for this section is revised to read, “67 FR 51777”, rather than “68 FR 51777”, to correct a typographical error.

*Section 393.77(b)(13).* The reference to “(c)(14)” is replaced with “(b)(14)” to correct an error.

*Section 395.8(a)(1).* The last sentence in the paragraph is deleted to remove a reference to obsolete forms.

*Section 396.11(b)(4).* This paragraph is revised to delete the phrase “including the original driver report, the certification of repairs on all intermodal equipment,” and replacing it with the phrase “including the original driver report and the certification of repairs on all intermodal equipment,” to correct a typographical error.

*Section 397.5(d)(3).* The word “in” is replaced with the word “is” to correct a typographical error.

*Section 397.19(a)(3).* The word “contracted” is replaced with the word “contacted” to correct a typographical error.

*Section 397.101.* In paragraphs (b) [introductory text], (b)(2), and (d), references to 49 CFR 173.403 are corrected to remove incorrect paragraph references.

*Section 398.5(d).* A space is inserted between the word “means” and the word “shall” in the fourth sentence to correct a typographical error.

*Appendix B to Subchapter B of Chapter III.* In Appendix B, references to “49 CFR 1.73” are changed to “49 CFR 1.87” to reflect the recent reorganization of 49 CFR part 1 by the DOT.

*Appendix G to Subchapter B of Chapter III.* When the new brake adjustment rule titled, “Parts and Accessories Necessary for Safe Operation; Brakes; Adjustment Limits” was published on August 6, 2012 (77 FR 46633, at 46640), the final sentence of paragraph 1(a)(5) that reads “Wedge Brake Data—Movement of the scribe mark on the lining shall not exceed 1/16 inch.” was inadvertently moved from the new section 1.a(5) and currently is set forth by itself below a set of tables. This change relocates the one-sentence provision to the final sentence in paragraph 1.a(5), thus ensuring its visibility.

#### IV. Rulemaking Analyses

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, January 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, February 26, 1979). The Office of Management and Budget (OMB) did not review this document. We expect the final rule will have minimal costs; therefore, a full regulatory evaluation is unnecessary.

##### *Regulatory Flexibility Act*

In compliance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–

<sup>1</sup> Aspen is an application that collects all the commercial driver/vehicle roadside inspection details. It utilizes several other applications that pulls data from remote sources—ISS, PIQ, CDLIS Access, and QC. It also includes communication features to electronically transfer inspection details to SAFER and/or SAFETYNET.

<sup>2</sup> MCMIS is an information system that captures data from field offices through SAFETYNET, CAPRI, and other sources. MCMIS utilizes an Oracle database with a web front-end access. It is a source for FMCSA inspection, crash, compliance review, safety audit, and registration data.

612), FMCSA has evaluated the effects of this rule on small entities. Because the rule only makes minor editorial corrections and places no new requirements on the regulated industry, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

#### *Unfunded Mandates Reform Act*

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$140.8 million (which is the value of \$100 million in 2009 after adjusting for inflation) or more in any 1 year.

#### *E.O. 13132 (Federalism)*

This rulemaking would not preempt or modify any provision of State law, impose substantial direct unreimbursed compliance costs on any State, or diminish the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

#### *E.O. 12372 (Intergovernmental Review)*

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

#### *Indian Tribal Governments*

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *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. FMCSA determined that no new information collection requirements are associated with this final rule.

#### *National Environmental Policy Act*

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined

under our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action would not have any effect on the quality of the environment. Therefore, this final rule is categorically excluded from further analysis and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor editorial corrections such as found in this rulemaking; therefore preparation of an environmental assessment or environmental impact statement is not necessary.

The FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it will have no effect on the environment.

#### *E.O. 12898 (Environmental Justice)*

This technical amendment final rule is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994). Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to make environmental justice part of their mission by identifying and addressing, as appropriate disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. FMCSA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of any of the FMCSRs.

#### *E.O. 13211 (Energy Effects)*

FMCSA has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a "significant energy action" under that Executive Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

#### *E.O. 13045 (Protection of Children)*

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing

"economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. As discussed previously, this rule is not economically significant. Therefore, no analysis of the impacts on children is required.

#### *E.O. 12988 (Civil Justice Reform)*

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

#### *E.O. 12630 (Taking of Private Property)*

This rule will not affect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

#### *National Technology Transfer and Advancement Act*

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

#### *Privacy Impact Assessment*

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

#### **List of Subjects**

##### *49 CFR Part 303*

Civil rights procedures and practices.

##### *49 CFR Part 325*

Motor carriers, Noise control.

##### *49 CFR Part 350*

Grant programs—transportation, Highway safety, Motor carriers, Motor

vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 355*

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 356*

Administrative practice and procedure, Freight forwarders, Highways and roads, Motor carriers.

*49 CFR Part 360*

Administrative practice and procedure, Insurance, Motor carriers.

*49 CFR Part 365*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

*49 CFR Part 366*

Brokers, Motor carriers.

*49 CFR Part 367*

Insurance, Intergovernmental relations, Motor carriers, Surety bonds.

*49 CFR Part 368*

Administrative practice and procedure, Mexico, Motor carriers.

*49 CFR Part 369*

Reporting and recordkeeping requirements.

*49 CFR Part 370*

Freight forwarders, Investigations, Motor carriers.

*49 CFR Part 371*

Brokers, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 372*

Agricultural commodities, Buses, Cooperatives, Freight forwarders, Motor carriers, Moving of household goods, Seafood.

*49 CFR Part 373*

Buses, Freight, Freight forwarders, Motor carriers, Moving of household goods.

*49 CFR Part 374*

Aged, Blind, Buses, Civil rights, Freight, Individuals with disabilities, Motor carriers, Smoking.

*49 CFR Part 375*

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

*49 CFR Part 376*

Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 377*

Credit, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

*49 CFR Part 378*

Freight forwarders, Investigations, Motor carriers, Moving of household goods.

*49 CFR Part 379*

Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

*49 CFR Part 380*

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

*49 CFR Part 381*

Motor carriers.

*49 CFR Part 382*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

*49 CFR Part 383*

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

*49 CFR Part 384*

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

*49 CFR Part 385*

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 386*

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Motor carriers, Motor vehicle safety, Penalties.

*49 CFR Part 387*

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

*49 CFR Part 388*

Highway safety, Intergovernmental relations, Motor carriers, Motor vehicle safety.

*49 CFR Part 389*

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

*49 CFR Part 390*

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

*49 CFR Part 391*

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

*49 CFR Part 392*

Alcohol abuse, Drug abuse, Highway safety, Motor carriers.

*49 CFR Part 393*

Highway safety, Motor carriers, Motor vehicle safety.

*49 CFR Part 395*

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

*49 CFR Part 396*

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

*49 CFR Part 397*

Administrative practice and procedure, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Tires.

*49 CFR Part 398*

Highway safety, Migrant labor, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

*49 CFR Part 399*

Motor carriers; Motor vehicle safety; Occupational safety and health.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, parts 303, 325, 350, 355, 356, 360, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 395, 396, 397, 398, and 399; and appendices B and G to subchapter B, as set forth below:

## **PART 303—CIVIL RIGHTS**

■ 1. The authority citation for part 303 is revised to read as follows:

**Authority:** Public Law 105–159, 113 Stat. 1748, Title I, sections 107(a) and 106 (Dec. 9, 1999) (49 U.S.C. 113); 42 U.S.C. 2000d, *et seq.*; and 49 CFR 1.87.

#### **PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS**

■ 2. The authority citation for part 325 is revised to read as follows:

**Authority:** 42 U.S.C. 4917; 49 U.S.C. 301; 49 CFR 1.87.

#### **PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM**

■ 3. The authority citation for part 350 is revised to read as follows:

**Authority:** 49 U.S.C. 13902, 31101–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.87.

##### **§ 350.105 [Amended]**

■ 4. Amend § 350.105 by removing the definition for “Border Activity Funds.”

##### **§ 350.205 [Amended]**

■ 5. Amend § 350.205(a) by removing the words “Motor Carrier” and adding, in their place, the words “Division Administrator/”.

##### **§ 350.213 [Amended]**

■ 6. Amend § 350.213 by removing paragraph (o) and redesignating paragraphs (p), (q), and (r) as paragraphs (o), (p), and (q), respectively.

##### **§ 350.313 [Amended]**

■ 7. Amend § 350.313 by removing paragraph (b) and redesignating paragraphs (c) and (d) as paragraphs (b) and (c), respectively.

##### **§ 350.327 [Amended]**

■ 8. Remove § 350.327(f).

■ 9. Revise the heading of § 350.329 to read as follows:

**§ 350.329 How may a State or local agency qualify for High Priority Funds?**

\* \* \* \* \*

##### **§ 350.331 [Amended]**

■ 10. Amend § 350.331(b) by removing the words “Motor Carrier” and adding, in their place, the words “Division Administrator/”.

##### **§ 350.335 [Amended]**

■ 11. Amend § 350.335(e) by removing the words “Research and Special Programs Administration” and adding, in their place, the words “Pipeline and Hazardous Materials Safety Administration”.

#### **PART 355—COMPATIBILITY OF STATE LAWS AND REGULATIONS AFFECTING INTERSTATE MOTOR CARRIER OPERATIONS**

■ 12. The authority citation for part 355 is revised to read as follows:

**Authority:** 49 U.S.C. 504 and 31101 *et seq.*; 49 CFR 1.87.

#### **PART 356—MOTOR CARRIER ROUTING REGULATIONS**

■ 13. The authority citation for part 356 is revised to read as follows:

**Authority:** 5 U.S.C. 553; 49 U.S.C. 13301 and 13902; and 49 CFR 1.87.

#### **PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE**

■ 14. The authority citation for part 360 is revised to read as follows:

**Authority:** 31 U.S.C. 9701; 49 U.S.C. 13908(c) and 14504(c)(2); and 49 CFR 1.87.

#### **PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY**

■ 15. The authority citation for part 365 is revised to read as follows:

**Authority:** 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 14708, 31138, and 31144; 49 CFR 1.87.

#### **PART 366—DESIGNATION OF PROCESS AGENT**

16. The authority citation for part 366 is revised to read as follows:

**Authority:** 49 U.S.C. 13303, 13304, and 14704; and 49 CFR 1.87.

#### **PART 367—STANDARDS FOR REGISTRATION WITH STATES**

■ 17. The authority citation for part 367 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

#### **PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES-MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES**

■ 18. The authority citation for part 368 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 13902; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.87.

#### **PART 369—REPORTS OF MOTOR CARRIERS**

■ 19. The authority citation for part 369 is revised to read as follows:

**Authority:** 49 U.S.C. 14123; 49 CFR 1.87.

#### **PART 370—PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE**

■ 20. The authority citation for part 370 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 14706; and 49 CFR 1.87.

#### **PART 371—BROKERS OF PROPERTY**

■ 21. The authority citation for part 371 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

#### **PART 372—EXEMPTIONS, COMMERCIAL ZONES, AND TERMINAL AREAS**

■ 22. The authority citation for part 372 is revised to read as follows:

**Authority:** 49 U.S.C. 13504 and 13506; and 49 CFR 1.87.

#### **PART 373—RECEIPTS AND BILLS**

■ 23. The authority citation for part 373 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13531 and 14706; and 49 CFR 1.87.

#### **PART 374—PASSENGER CARRIER REGULATIONS**

■ 24. The authority citation for part 374 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 14101; and 49 CFR 1.87.

#### **PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS**

■ 25. The authority citation for part 375 is revised to read as follows:

**Authority:** 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 26. Amend § 375.103 by revising the definition for “Advertisement” to read as follows:

**§ 375.103 What are the definitions of terms used in this part?**

\* \* \* \* \*

*Advertisement* means any communication to the public in

connection with an offer or sale of any interstate household goods transportation service. This includes written or electronic database listings of your name, address, and telephone number in an on-line database or displayed on an Internet web site. This excludes listings of your name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included in the definition.

\* \* \* \* \*

#### § 375.209 [Amended]

■ 27. Amend § 375.209(b) introductory text by removing the word “four” and replacing it with “three”.

■ 28. Amend Appendix A to Part 375 by revising the authority, which is the third phrase under the heading, to read as follows:

#### Appendix A to Part 375—Your Rights and Responsibilities When You Move

\* \* \* \* \*

**Authority:** 49 U.S.C. 13301, 13704, 13707, and 14104; 49 CFR 1.87.

\* \* \* \* \*

#### PART 376—LEASE AND INTERCHANGE OF VEHICLES

■ 29. The authority citation for part 376 is revised to read as follows:

**Authority:** 49 U.S.C. 13301 and 14102; and 49 CFR 1.87.

#### PART 377—PAYMENT OF TRANSPORTATION CHARGES

■ 30. The authority citation for part 377 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13701, 13702, 13706, 13707, and 14101; and 49 CFR 1.87.

#### PART 378—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

■ 31. The authority citation for part 378 is revised to read as follows:

**Authority:** 49 U.S.C. 13321, 14101, 14704 and 14705; and 49 CFR 1.87.

#### PART 379—PRESERVATION OF RECORDS

■ 32. The authority citation for part 379 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 14122 and 14123; and 49 CFR 1.87.

■ 33. Amend Appendix A to Part 379 as follows:

■ a. In the section under centerhead “A. Corporate and General,” revise number 3;

■ b. In the section under centerhead “I. Shipping and Agency Documents,” revise number 5;

■ c. Revise the section under the centerhead “J. Transportation;”

■ d. In the section under the centerhead “K. Supporting Data for Reports and Statistics,” revise number 2.

#### Appendix A to Part 379—Schedule of Records and Periods of Retention

| Item and category of records  |  |  |  |  |  | Retention period                  |
|---|--|--|--|--|--|-----------------------------------|
| <b>A. Corporate and General</b>   |  |  |  |  |  |                                   |
| * * * * *   |  |  |  |  |  |                                   |
| 3. Titles, franchises and authorities:  |  |  |  |  |  |                                   |
| (a) Certificates of public convenience and necessity issued by regulating bodies .....  |  |  |  |  |  | Until expiration or cancellation. |
| (b) Operating authorizations and exemptions to operate .....  |  |  |  |  |  | Until expiration or cancellation. |
| (c) Copies of formal orders of regulatory bodies served upon the company .....  |  |  |  |  |  | Note A.                           |
| (d) Deeds, charters, and other title papers .....   |  |  |  |  |  | Until disposition of property.    |
| * * * * *   |  |  |  |  |  |                                   |
| <b>I. Shipping and Agency Documents</b>   |  |  |  |  |  |                                   |
| * * * * *   |  |  |  |  |  |                                   |
| 5. Agency records:  |  |  |  |  |  |                                   |
| (a) Cash books .....  |  |  |  |  |  | 1 year.                           |
| (b) Remittance records, bank deposit slips and supporting papers .....  |  |  |  |  |  | 1 year.                           |
| (c) Balance sheets and supporting papers .....  |  |  |  |  |  | 1 year.                           |
| (d) Statements of corrections in agents' accounts .....   |  |  |  |  |  | 1 year.                           |
| (e) Other records and reports pertaining to ticket sales, baggage handled, miscellaneous collections, refunds, adjustments, etc.. |  |  |  |  |  | 1 year.                           |
| * * * * *   |  |  |  |  |  |                                   |
| <b>J. Transportation</b>  |  |  |  |  |  |                                   |
| 1. Records pertaining to transportation of household goods:   |  |  |  |  |  |                                   |
| (a) Estimate of charges .....   |  |  |  |  |  | 1 year.                           |
| (b) Order for service .....   |  |  |  |  |  | 1 year.                           |
| (c) Vehicle load manifest .....   |  |  |  |  |  | 1 year.                           |
| (d) Descriptive inventory .....   |  |  |  |  |  | 1 year.                           |
| 2. Dispatchers' sheets, registers, and other records pertaining to movement of transportation equipment .....                     |  |  |  |  |  | 3 years.                          |
| 3. Import and export records including bonded freight .....   |  |  |  |  |  | 2 years.                          |
| 4. Records, reports, orders and tickets pertaining to weighting of freight .....  |  |  |  |  |  | 3 years.                          |
| 5. Records of loading and unloading of transportation equipment .....   |  |  |  |  |  | 2 years.                          |
| 6. Records pertaining to the diversion or reconsignment of freight, including requests, tracers, and correspondence .....         |  |  |  |  |  | 2 years.                          |
| 7. Other .....  |  |  |  |  |  | Note A.                           |

## Item and category of records

## Retention period

## K. Supporting Data for Reports and Statistics

2. Supporting data for periodical reports of accidents, inspections, tests, hours of service, repairs, etc. .... 6 months.

### PART 380—SPECIAL TRAINING REQUIREMENTS

- 34. The authority citation for part 380 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31307, and 31502; sec. 4007(a) and (b) of Pub. L. 102–240 (105 Stat. 2151–2152); and 49 CFR 1.87.

### PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

- 35. The authority citation for part 381 is revised to read as follows:

**Authority:** 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

### PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

- 36. The authority citation for part 382 is revised to read as follows:

**Authority:** 49 U.S.C. 31133, 31136, 31301, *et seq.*, 31502; and 49 CFR 1.87.

- 37. Amend § 382.107 by revising the introductory text and paragraphs (1) and (2) of the definition of “commercial motor vehicle” to read as follows:

#### § 382.107 Definitions.

*Commercial motor vehicle* means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the 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 or more pounds), whichever is greater; or

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

- 38. The authority citation for part 383 is revised to read as follows:

**Authority:** 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 4140, Pub. L. 109–59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

#### § 383.51 [Amended]

- 39. Amend § 383.51 as follows:

■ a. Amend paragraph (b), Table 1, by removing the words “required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)” in the fourth column header and adding, in their place, the words “as defined in § 383.5”; and by adding the phrase “CLP or” before the word “CDL” to paragraph (b)(7) in the first column.

■ b. Amend paragraph (c), Table 2, by adding the phrase “regulated or” before the word “posted” in paragraph (c)(1) in the first column; by adding the phrase “CLP or” before the word “CDL” in paragraphs (c)(6), (c)(7), and (c)(8) in the first column; and by adding the phrase “a CMV” after the word “driving” in paragraph (c)(9) in the first column;

■ c. Amend paragraph (e)(2), Table 4, by removing the words “required to be placarded under part 172, subpart F of this title” in the first column and adding, in their place, the words “as defined in § 383.5.”

#### § 383.71 [Amended]

- 40. Amend § 383.71 as follows:

■ a. Remove paragraph (b)(1)(i) and redesignate paragraph (b)(1)(ii) as (b)(1). In redesignated paragraph (b)(1), further redesignate paragraphs (A) through (D) as (b)(1)(i) through (iv).

■ b. In paragraph (h)(2), remove the citation to “section 383.73(j)(4)” and add, in its place, the citation “§ 383.73(o)(4).”

#### § 383.91 [Amended]

- 41. Amend § 383.91(a)(3) by removing the words “materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to

be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F)” and add, in their place, the words “hazardous materials as defined in § 383.5”.

- 42. Revise § 383.141(a) to read as follows:

#### § 383.141 General

(a) *Applicability.* This section applies to State agencies responsible for issuing hazardous materials endorsements for a CDL, and applicants for such endorsements.

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

- 43. The authority citation for part 384 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31301, *et seq.*, and 31502; secs. 103 and 215, Pub. L. 106–159, 113 Stat. 1753, 1767; and 49 CFR 1.87.

#### § 384.215 [Amended]

- 44. Amend § 384.215(b) by removing the words “required to be placarded under the Hazardous Materials Transportation Act (implementing regulations at 49 CFR 177.823)” and adding, in their place, the words “as defined in § 383.5”.

### PART 385—SAFETY FITNESS PROCEDURES

- 45. The authority citation for part 385 is revised to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350, Pub. L. 107–87; and 49 CFR 1.87.

- 46. Revise § 385.4 to read as follows:

#### § 385.4 Matter incorporated by reference.

(a) *Incorporation by reference.* Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, FMCSA must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material is available for inspection at



Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave. SE., Washington, DC 20590-0001; Attention: Mr. Thomas Kelly at 202-366-1812, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to [http://www.archives.gov/federal\\_register/code\\_of\\_federal\\_regulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html).

(b) Commercial Vehicle Safety Alliance, 603 Ivy Lane, Suite 310, Greenbelt, Maryland 20770-6319. Phone number (301) 830-6143

(1) "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403," April 1, 2012; approved for § 385.415(b).

(2) [Reserved]

#### § 385.19 [Amended]

■ 47. Amend § 385.19(b) by removing the acronym designation "(ICCMC)."

■ 48. Revise § 385.403(d) to read as follows:

#### § 385.403 Who must hold a safety permit?

(d) A "material poisonous by inhalation," in a "bulk packaging," both as defined in § 171.8 of this title, that meets the criteria for "hazard zone B," as specified in § 173.116(a) or § 173.133(a);

■ 49. Revise § 385.407(c) to read as follows:

#### § 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

(c) *Registration with the Pipeline and Hazardous Materials Safety Administration (PHMSA).* The motor

carrier must be registered with PHMSA in accordance with part 107, subpart G of this title.

■ 50. Revise § 385.415(b)(1) to read as follows:

#### § 385.415 What operational requirements apply to the transportation of a hazardous material for which a permit is required?

\* \* \* \* \*

(b)(1) Inspection of vehicle transporting Class 7 (radioactive) materials. Before a motor carrier may transport a highway route controlled quantity of a Class 7 (radioactive) material, the motor carrier must have a pre-trip inspection performed on each motor vehicle to be used to transport a highway route controlled quantity of a Class 7 (radioactive) material, in accordance with the requirements of the "North American Standard Out-of-Service Criteria and Level VI Inspection Procedures and Out-of-Service Criteria for Commercial Highway Vehicles Transporting Transuranics and Highway Route Controlled Quantities of Radioactive Materials as defined in 49 CFR Part 173.403", (incorporated by reference, see § 385.4).

\* \* \* \* \*

■ 51. Amend Appendix B to part 385 by revising section II.(f) to read as follows:

#### Appendix B to Part 385—Explanation of Safety Rating Process

\* \* \* \* \*

II. \* \* \*

(f) The regulatory factors, evaluated on the basis of the adequacy of the carrier's safety management controls, are: (1) Parts 172 and 173; (2) Parts 387 and 390; (3) Parts 382, 383, and 391; (4) Parts 392 and 395; (5) Parts 393 and 396 when there are less than three vehicle inspections in the last 12 months to evaluate; and (6) Parts 397, 171, 177 and 180.

\* \* \* \* \*

#### PART 386—RULES OF PRACTICE FOR MOTOR CARRIER, INTERMODAL EQUIPMENT PROVIDER, BROKER, FREIGHT FORWARDER, AND HAZARDOUS MATERIALS PROCEEDINGS

■ 52. The authority citation for part 386 is revised to read as follows:

**Authority:** 49 U.S.C. 113, chapters 5, 51, 59, 131-141, 145-149, 311, 313, and 315; Sec. 204, Pub. L. 104-88, 109 Stat. 803, 941 (49 U.S.C. 701 note); Sec. 217, Pub. L. 105-159, 113 Stat. 1748, 1767; Sec. 206, Pub. L. 106-159, 113 Stat. 1763; subtitle B, title IV of Pub. L. 109-59; and 49 CFR 1.81 and 1.87.

■ 53. Amend § 386.5(f) by revising the next to last sentence to read as follows:

#### § 386.5 Form of filings and extensions of time.

\* \* \* \* \*

(f) \* \* \* Motions for extensions of time must be filed in accordance with § 386.7 and served in accordance with § 386.6. \* \* \*

#### § 386.82 [Amended]

■ 54. Amend § 386.82(a)(2) by removing the citation to "§ 386.11(b)(3)" and adding, in its place, the citation "§ 386.11(c)(3)."

#### PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

■ 55. The authority citation for part 387 is revised to read as follows:

**Authority:** 49 U.S.C. 13101, 13301, 13906, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

■ 56. Amend § 387.303 by revising paragraphs (b)(1) and (b)(2) to read as follows:

#### § 387.303 Security for the protection of the public: Minimum limits.

\* \* \* \* \*

(b)(1) Motor carriers subject to § 387.301(a)(1) are required to have security for the required minimum limits as follows:

(i) *Small freight vehicles:*

| Kind of equipment  | Transportation provided        | Minimum limits |
|--|--------------------------------|----------------|
| Fleet including only vehicles under 10,001 pounds (4,536 kilograms) GVWR ..... | Property (non-hazardous) ..... | \$300,000      |

(ii) *Passenger carriers.*

#### PASSENGER CARRIERS: KIND OF EQUIPMENT

| Vehicle seating capacity  | Minimum limits |
|---|----------------|
| (A) Any vehicle with a seating capacity of 16 passengers or more (including the driver) ..... | \$5,000,000    |

## PASSENGER CARRIERS: KIND OF EQUIPMENT—Continued

| Vehicle seating capacity  | Minimum limits |
|---|----------------|
| (B) Any vehicle designed or used to transport 15 passengers or less (including the driver) for compensation ..... | 1,500,000      |

(2) Motor carriers subject to § 387.301(a)(2) are required to have security for the required minimum limits as follows:

| Kind of equipment   | Commodity transported   | Minimum limits |
|---|---|----------------|
| (i) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR.   | Property (non-hazardous) .....  | \$750,000      |
| (ii) Freight vehicles of 10,001 (4,536 kilograms) pounds or more GVWR.  | Hazardous substances, as defined in § 171.8 of this title, transported in cargo tanks, portable tanks, or hopper-type vehicles with capacities in excess of 3,500 water gallons, or in bulk explosives Division 1.1, 1.2 and 1.3 materials. Division 2.3, Hazard Zone A material; in bulk Division 2.1 or 2.2; or highway route controlled quantities of a Class 7 material, as defined in § 173.403 of this title. | 5,000,000      |
| (iii) Freight vehicles of 10,001 pounds (4,536 kilograms) or more GVWR. | Oil listed in § 172.101 of this title; hazardous waste, hazardous materials and hazardous substances defined in § 171.8 of this title and listed in § 172.101 of this title, but not mentioned in (b) above or (d) below.   | 1,000,000      |
| (iv) Freight vehicles under 10,001 pounds (4,536 kilograms) GVWR.       | Any quantity of Division 1.1, 1.2, or 1.3 material; any quantity of a Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material; or highway route controlled quantities of Class 7 material as defined in § 173.455 of this title.  | 5,000,000      |

\* \* \* \* \*

**PART 388—COOPERATIVE AGREEMENTS WITH STATES**

■ 57. The authority citation for part 388 is revised to read as follows:

**Authority:** 49 U.S.C. 113 and 502; 49 CFR 1.87.

**PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS**

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

**Authority:** 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

**PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL**

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

**Authority:** 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151 and 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677–1678; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–

159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743–1744); sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; and 49 CFR 1.87.

**§ 390.21 [Amended]**

■ 60. Amend § 390.21 by removing paragraph (b)(5).

■ 61. Revise § 390.27 to read as follows:

**§ 390.27 Locations of motor carrier safety service centers.**

| Service center   | Territory included   | Location of office   |
|------------------|--|--|
| Eastern .....    | CT, DC, DE, MA, MD, ME, NJ, NH, NY, PA, PR, RI, VA, VT, Virgin Islands, WV.                            | 802 Cromwell Park Drive, Suite N, Glen Burnie, MD 21061.                               |
| Midwestern ..... | IA, IL, IN, KS, MI, MO, MN NE., OH, WI .....   | 4749 Lincoln Mall Drive, Suite 300A, Matteson, IL 60443.                               |
| Southern .....   | AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN .....   | 1800 Century Boulevard, Suite 1700, Atlanta, GA 30345–3220.                            |
| Western .....    | American Samoa, AK, AZ, CA, CO, Guam, HI, ID, Mariana Islands, MT, ND, NM, NV, OR, SD, TX, UT, WA, WY. | Golden Hills Office Centre, 12600 West Colfax Avenue, Suite B–300, Lakewood, CO 80215. |

Note 1: Canadian carriers, for information regarding proper service center, contact an FMCSA division (State) office in AK, ME, MI, MT, NY, ND, VT, or WA.

Note 2: Mexican carriers are handled through the four southern border divisions and the Western Service Center. For information regarding the proper service center, contact an FMCSA division (State) office in AZ, CA, NM, or TX.

**§ 390.42 [Amended]**

■ 62. Amend § 390.42(b) by removing the phrase “in § 396.11(a)(2)” and adding in its place “in § 396.11(b)(2).”

**PART 391—QUALIFICATIONS OF DRIVERS AND LONGER COMBINATION VEHICLE (LCV) DRIVER INSTRUCTORS**

■ 63. The authority citation for part 391 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 508, 31133, 31136, and 31502; sec. 4007(b) of Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106–159, 113 Stat. 1748, 1767; and 49 CFR 1.87.

**PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES**

■ 64. The authority citation for part 392 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 13902, 31136, 31151, 31502; and 49 CFR 1.87.

**PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION**

■ 65. The authority citation for part 393 is revised to read as follows:

**Authority:** 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

**§ 393.17 [Amended]**

■ 66. Amend § 393.17 in the introductory text of paragraph (b) by removing the phrase “including the towed vehicle or a tow-bar combination,” and adding in its place “including the towed vehicles of a tow-bar combination.”

**§ 393.77 [Amended]**

■ 67–68. Amend § 393.77–(b)(13) by removing the phrase “paragraph (c)(14)” in the first sentence and adding in its place the phrase “paragraph (b)(14).”

**PART 395—HOURS OF SERVICE OF DRIVERS**

■ 69. The authority citation for part 395 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110–432, 122 Stat. 4860–4866; and 49 CFR 1.87.

■ 70. Revise § 395.8(a)(1) to read as follows:

**§ 395.8 Driver's record of duty status.**

(a) \* \* \*

(1) Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company forms.

\* \* \* \* \*

**PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

■ 71. The authority citation for part 396 is revised to read as follows:

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, and 31502; and 49 CFR 1.87.

**§ 396.11 [Amended]**

■ 72. Amend § 396.11(b)(4) by removing the phrase “including the original driver

report, the certification of repairs on all intermodal equipment,” and adding in its place the phrase “including the original driver report and the certification of repairs on all intermodal equipment.”

**PART 397—TRANSPORTATION OF HAZARDOUS MATERIALS; DRIVING AND PARKING RULES**

■ 73. The authority citation for part 397 is revised to read as follows:

**Authority:** 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

■ 74. Revise § 397.5–(d)(3) to read as follows:

**§ 397.5 Attendance and surveillance of motor vehicles.**

\* \* \* \* \*

(d) \* \* \*

(3) A safe haven is an area specifically approved in writing by local, State, or Federal governmental authorities for the parking of unattended vehicles containing Division 1.1, 1.2, or 1.3 materials.

\* \* \* \* \*

**§ 397.19 [Amended]**

■ 75. Amend § 397.19(a)(3) by removing the word “contracted” in the second sentence and adding in its place the word “contacted.”

**§ 397.101 [Amended]**

■ 76. In the table below, for each paragraph of § 397.101 indicated in the left column, remove the words indicated in the middle column and add the words indicated in the right column in their place.

| Paragraph                            | Remove                                  | Add                            |
|--------------------------------------|---|--------------------------------|
| § 397.101(b) introductory text ..... | 49 CFR 173.403(l) .....                 | 49 CFR 173.403.                |
| § 397.101(b)(2) .....                | 49 CFR 173.403(l) and (y) .....         | 49 CFR 173.403.                |
| § 397.101(d) introductory text ..... | 49 CFR 173.403(l), shall prepared ..... | 49 CFR 173.403, shall prepare. |
| § 397.101(d) introductory text ..... | 49 CFR 173.403(i) .....                 | 49 CFR 173.403.                |

**PART 398—TRANSPORTATION OF MIGRANT WORKERS**

■ 77. The authority citation for part 398 is revised to read as follows:

**Authority:** 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, and 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941 (49 U.S.C. 701 note); sec. 212, Pub. L. 106–159, 113 Stat. 1748, 1766; and 49 CFR 1.87.

**§ 398.5 [Amended]**

■ 78. Amend § 398.5(d) by adding a space between the word “means” and the word “shall” in the fourth sentence following the paragraph heading.

**PART 399—EMPLOYEE SAFETY AND HEALTH STANDARDS**

■ 79. The authority citation for part 399 is revised to read as follows:

**Authority:** 49 U.S.C. 31502; and 49 CFR 1.87.

**Appendix B to Subchapter B of Chapter III [Amended]**

■ 80. Amend Appendix B to Subchapter B of Chapter III as follows:

■ a. Amend paragraph 3, Definition of Special Agent, by removing the citation to “49 CFR 1.73” and adding in its place the citation “49 CFR 1.87.”

■ b. Amend the authority citation for Appendix B to Subchapter B of Chapter III by removing the citation to “49 CFR 1.73” and adding in its place the citation “49 CFR 1.87.”

**Appendix G to Subchapter B of Chapter III [Amended]**

■ 81. Amend section 1.a(5) of Appendix G, Subchapter B of Chapter III by adding a paragraph to the end of paragraph a. *Service brakes* and before paragraph b. *Parking Brake System* to read as follows:

**Appendix G to Subchapter B of Chapter III—Minimum Periodic Inspection Standards**

\* \* \* \* \*

Wedge Brake Data—Movement of the scribe mark on the lining shall not exceed 1/16 inch.

\* \* \* \* \*

Issued on: September 10, 2012.

Anne S. Ferro,  
Administrator.

[FR Doc. 2012–23758 Filed 9–28–12; 8:45 am]

BILLING CODE 4910–EX–P

**DEPARTMENT OF TRANSPORTATION****National Highway Traffic Safety Administration****49 CFR Part 593**

[Docket No. NHTSA–2012–0120]

**List of Nonconforming Vehicles Decided To Be Eligible for Importation**

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), DOT.

**ACTION:** Final rule.

**SUMMARY:** This document revises the list of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards (FMVSS) that NHTSA has decided to be eligible for importation. This list is published in an appendix to the agency's regulations that prescribe procedures for import eligibility decisions. The list has been revised to add all vehicles that NHTSA has decided to be eligible for importation since October 1, 2010, and to remove all previously listed vehicles that are now more than 25 years old and need no longer comply with all applicable FMVSS to be lawfully imported. NHTSA is required by statute to publish this list annually in the **Federal Register**.

**DATES:** This rule is effective on October 1, 2012.

**FOR FURTHER INFORMATION CONTACT:** George Stevens, Office of Vehicle Safety Compliance, NHTSA, (202) 366–5308.

**SUPPLEMENTARY INFORMATION:** Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United

States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS. Where there is no substantially similar U.S.-certified motor vehicle, 49 U.S.C. 30141(a)(1)(B) permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being altered to comply with, all applicable FMVSS based on destructive test data or such other evidence as the Secretary of Transportation decides to be adequate.

Under 49 U.S.C. 30141(a)(1), import eligibility decisions may be made “on the initiative of the Secretary of Transportation or on petition of a manufacturer or importer registered under [49 U.S.C. 30141(c)].” The Secretary's authority to make these decisions has been delegated to NHTSA. The agency publishes notices of eligibility decisions as they are made.

Under 49 U.S.C. 30141(b)(2), a list of all vehicles for which import eligibility decisions have been made must be published annually in the **Federal Register**. On October 1, 1996, NHTSA added the list as an appendix to 49 CFR part 593, the regulations that establish procedures for import eligibility decisions (61 FR 51242). As described in the notice, NHTSA took that action to ensure that the list is more widely disseminated to government personnel who oversee vehicle imports and to interested members of the public. See 61 FR 51242–43. In the notice, NHTSA expressed its intention to annually revise the list as published in the appendix to include any additional vehicles decided by the agency to be eligible for importation since the list was last published. See 61 FR 51243. The agency stated that issuance of the document announcing these revisions will fulfill the annual publication requirements of 49 U.S.C. 30141(b)(2). *Ibid*.

**Regulatory Analyses and Notices****A. Executive Order 12866, Regulatory Planning and Review**

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993), provides for making determinations about whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive

Order. The Executive Order defines a “significant regulatory action” as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. This rule will not have any of these effects and was not reviewed under Executive Order 12866. It is not significant within the meaning of the DOT Regulatory Policies and Procedures. The effect of this rule is not to impose new requirements. Instead it provides a summary compilation of decisions on import eligibility that have already been made and does not involve new decisions. This rule will not impose any additional burden on any person. Accordingly, the agency believes that the preparation of a regulatory evaluation is not warranted for this rule.

**B. Environmental Impacts**

We have not conducted an evaluation of the impacts of this rule under the National Environmental Policy Act. This rule does not impose any change that would result in any impacts to the quality of the human environment. Accordingly, no environmental assessment is required.

**C. Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act, we have considered the impacts of this rule on small entities (5 U.S.C. 601 *et seq.*). I certify that this rule will not have a significant economic impact upon a substantial number of small entities within the context of the Regulatory Flexibility Act.

The following is our statement providing the factual basis for the certification (5 U.S.C. 605(b)). This rule will not have any significant economic impact on a substantial number of small businesses because the rule merely furnishes information by revising the list in the Code of Federal Regulations of vehicles for which import eligibility decisions have previously been made. Accordingly, we have not prepared a Final Regulatory Flexibility Analysis.