



This document is scheduled to be published in the Federal Register on 10/02/2014 and available online at <http://federalregister.gov/a/2014-23433>, and on FDsys.gov

DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 355, 365, 369, 383, 384, 385, 387, 390, 391, 392, 395, and 397

Docket No. FMCSA-2014-0262

RIN 2126-AB76

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

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

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout title 49 of the Code of Federal Regulations (CFR), subtitle B, chapter III. The Agency is making minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update references, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Alan Strasser, Federal Motor Carrier Safety Administration, Office of the Chief Counsel, Regulatory Affairs Division, 1200 New Jersey Avenue SE., Washington, DC 20590-0001, by telephone at (202) 366-

0286 or via email at alan.strasser@dot.gov. Office hours are from 8:00 a.m. to 5:30 p.m. e.t., Monday through Friday, except Federal holidays.

If you have questions on viewing the docket, please call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) 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 the Department 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 Federal Motor Carrier Safety Regulations, 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 the U.S. DOT (Secretary) delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of the FMCSA. The FMCSA

Administrator has been delegated authority under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

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 of these requirements. 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 responsibilities previously assigned to both the ICC and the 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, 126 Stat. 405, July 6, 2012).

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 noted at the beginning of each part in title 49 of the CFR. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

The Administrative Procedure Act (APA) (5 U.S.C. 551- 706) specifically provides exceptions to its notice and public comment rulemaking procedures where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore 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 (5 U.S.C. 553(b)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove or update obsolete references, and make minor 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 on this final rule is unnecessary; thus this rule will be effective on the date of publication in the Federal Register.

Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor revisions

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.

Section-by-Section Analysis

This section-by-section analysis describes the technical amendment provisions in numerical order.

Part 355

Appendix A to Part 355. Under the section for “Regulatory Review,” the paragraph titled “Hours of Service of Drivers” is revised to account for the final rules of December 27, 2011 (76 FR 81134) and October 28, 2013 (78 FR 64179). In addition, new text summarizing requirements for passenger carriers is added.

Part 365

Section 365.405. In paragraph (a)(1), the name of the office that receives filings of Form OP-FC-1 is changed from the former name “IT Operations Division (MC-RIO)” to “Office of Registration and Safety Information (MC-RS).”

Section 365.411. In paragraph (b), the name of the office that receives filings of protests and petitions for reconsideration is changed from the former “IT Operations Division (MC-RIO)” to “Office of Registration and Safety Information (MC-RS).”

Section 365.413. In paragraph (b), the name of the office that receives filings of protests and petitions for reconsideration is changed from the former “IT Operations Division (MC-RIO)” to “Office of Registration and Safety Information (MC-RS).”

Part 369

Section 369.6. The phrase “Office of Information Technology” (MC-RI) is removed and replaced with the phrase “Office of Registration and Safety Information (MC-RS)” to reflect the proper name of the office with such responsibilities.

Part 383

Section 383.3. The Interpretative rule referenced in Question 18 and responsive Guidance to § 383.3 is removed. Question 18 was published April 4, 1997 (65 FR 16394). FMCSA rescinds that interpretation and motor carriers should no longer rely on that guidance since it was made obsolete by the Hazardous Materials Transportation Uniform Safety Act of 1990 § 4, (Pub. L. 101-615, Nov. 16, 1990), which granted the Pipeline and Hazardous Materials Safety Administration jurisdiction over intrastate hazardous materials. The Hazardous Materials Regulations (HMRs) apply to the transport of hazardous materials requiring placarding, regardless of the type of vehicle utilized. Also note that this deletion ensures internal consistency with related guidance. Specifically, guidance to § 383.97, Question 7, clarifies that all drivers of vehicles required to be placarded need to have a Commercial Driver’s License (CDL) with an HM endorsement.

Section 383.5. First, under the definition for “Conviction,” the word “probated” is removed and replaced with the word “prorated” to correct an error. Second, the definition of commercial motor vehicle is amended to add the names of the three vehicle groups listed in 49 CFR 383.91(a): Combination Vehicle (Group A), Heavy Straight Vehicle (Group B), and those vehicles that meet neither the Group A nor Group B requirements

(Group C). This amendment does not change the applicability of the commercial driver's license (CDL) requirements in any way, but provides a practical means for the reader to understand how the four individual components of the definition in § 383.5 align with the three vehicle groups listed in § 383.91. As such, the amended definition provides a valuable reference tool for CDL applicants and holders, employers, and motor carrier enforcement personnel by eliminating the need to reference multiple sections within part 383.

Section 383.73. The March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875) made revisions to several provisions of parts 383 and 384 to include a prohibition on the transfer of Commercial Learner's Permits (CLPs) as provided in the Commercial Driver's License Information System (CDLIS) State Procedures Manual incorporated by reference in 49 CFR 384.107. The March 2013 final rule inadvertently omitted from paragraph (n)(1) conforming changes to reflect the CLP transfer prohibition. To correct this omission, first, in paragraph (n)(1), the phrase "or upgraded CLP, or an initial, renewed" is added after the word "renewed." Also, after the first instance of the word "upgraded" the phrase "or transferred CLP or" is removed. The other change in paragraph (n)(1) concerns knowledge and skills test scores verification before a transferred CDL is issued. Verification of test scores is not needed when a CDL is transferred to another State because the scores were previously verified when the CDL was initially issued in the former State of record. This change is consistent with the requirements in §§ 383.135(c) and 384.225 that exclude the test scores from being part of the CDLIS driver record (as defined by 49 CFR 383.5) that is required to be sent to the

new State of record upon transfer of a CDL. Therefore, States cannot and need not enforce the knowledge and skills test scores verification requirements for a CDL transferred to a new State of record under § 383.73(n)(1). This amendment addresses this issue by removing the requirement to verify knowledge and skills test scores when a CDL is transferred to a new State of record.

In paragraph (o)(4), after the third instance of the word “medical” the following phrase is added: “examiner’s certificate is voided or rescinded or a medical.” This clarifies statutory authority granted to FMCSA under 49 U.S.C. section 31149(c)(2) for FMCSA to void a medical examiner’s certificate for a CLP or CDL under certain circumstances.

Part 384

Section 384.107. The entire section was revised according to the incorporation by reference drafting requirements of the Office of the Federal Register. In paragraph (b), the incorporation by reference of the AAMVA “Commercial Driver's License Information System (CDLIS) State Procedures Manual,” Release 5.2.0, February 2011, is replaced by the updated version, Commercial Driver's License Information System (CDLIS) State Procedures Manual,” Release 5.3.2.1, August 2013. This change reflects a routine update of the referenced manual to include clarifications of procedures related to the medical examiner’s certification as part of the CDL, modification of procedures to reflect the Federal requirements in the CDL Testing and CLP Standards final rule and the renumbering of sections and cross-references. Paragraph (c) is deleted to address the

incorporation by reference drafting requirements of the Office of the Federal Register.

The scope of the incorporation by reference is otherwise unchanged.

Section 384.206. Paragraph (a)(1) is amended by clarifying that CLPs cannot be transferred from one State to another State. The March 25, 2013 CDL Testing and CLP standards final rule made revisions to several sections of 49 CFR parts 383 and 384 to include a prohibition on the transfer of CLPs, but conforming changes to this section were mistakenly omitted. This amendment addresses this omission.

Section 384.209. Paragraph (b)(2) is amended by adding the phrase “from a foreign country” after the phrase “a person” to implement MAP-21 section 32203(b) requiring reporting of convictions of a foreign commercial driver to the Federal Convictions and Withdrawal Database. The current language could be seen as applying to all commercial drivers from the United States, but that contradicts the plain language of the statute limiting application to a foreign commercial driver.

Section 384.212. In paragraph (b), the phrase “CLP or,” inadvertently appears twice. The March 25, 2013 CDL Testing and CLP Standards final rule made revisions to several sections of 49 CFR parts 383 and 384 to include a prohibition on the transfer of CLPs, but mistakenly omitted conforming changes to this section. This amendment addresses that omission.

Section 384.225. Paragraph (e) is amended to ensure the language properly correlates with the section’s lead in language “the state must,” and, thus, is grammatically correct. The word “allow” is inserted and the word “may” is replaced by the word “to” for clarity.

Paragraph (f) is amended by changing “The” to “Ensure the” at the beginning of the paragraph for grammatical precision. Also, the phrase regarding the National Law Enforcement Telecommunications System (NLETS) is removed, since NLETS is not maintaining the CDLIS system, but only has the ability to access CDLIS data.

Section 384.228. Paragraph (j)(2) is moved to paragraph (h)(3). Movement of this text reflects new requirements placed in paragraph (h)(1) as part of the March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875), which changed background checks from an annual requirement to a one-time event. This is a conforming amendment to retain existing requirements for such background checks and to place such requirements in the appropriate place within § 384.228.

Section 384.229. Paragraph (b) is amended by deleting the sentence beginning after “examiners,” which reads: “For third party testers and examiners who were granted the training and skills testing exception under § 383.75(a)(7), the covert and overt monitoring must be performed at least once every year;.” The March 25, 2013 CDL Testing and CLP Standards final rule (78 FR 17875) removed the exception under § 383.75(a)(7) referenced in § 384.229. This is a conforming amendment to clarify that the exception was deleted.

Section 384.305. In the final untitled paragraph, the phrase "Approved by the Office of Management and Budget under control number 2125-0542" is deleted for clarity. The reference to a specific OMB information collection is outdated and confusing in the context of the State certification requirements.

Part 385

Section 385.308. Paragraph (a)(1) is corrected by adding the word “motor” after “commercial” and before “vehicle” to provide the proper term “commercial motor vehicle,” as utilized in part 385 and defined in § 385.3.

Section VII of Part 385, Appendix B. In the “List of Acute and Critical Regulations” the following paragraph regarding § 397.101(d) is deleted: “Requiring or permitting the operation of a motor vehicle containing highway route-controlled quantity, as defined in §173.403, of radioactive materials that is not accompanied by a written route plan.” This provision was mistakenly added to part 385, Appendix B and will therefore be deleted.

Part 387

Section 387.15. The references to OMB numbers 2125-0074 and 2125-0075 are deleted for clarity in Illustrations I and II respectively. Such references to specific OMB information collection approvals are outdated, confusing, and superfluous in the context of the rules’ sample illustrations of insurance and surety bond forms.

Section 387.39. The reference to OMB approval under control number 2125-0518 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rules’ sample illustration of a motor carrier public liability surety bond.

Part 390

Section 390.5. First, under the definition of “Conviction,” the word “probated” is removed and replaced with the word “prorated” to correct an error. Second, a definition

of “Crash” that cross-references the existing definition of “Accident” in 49 CFR 390.5 is added to clarify that these terms are synonymous.

Section 390.19. In paragraph (d), the name of the office to file forms MCS-150, MCS-150B and MCS-150C is changed in the first sentence from “Office of Information Management” to “Office of Registration and Safety Information.” Also, in the first sentence after the word “with” the word “the” is inserted to correct the grammar. In the second sentence, the office to file forms with is changed from “Office of Information Management, MC-RIO” to “Office of Registration and Safety Information (MC-RS).”

Section 390.40. The cross-reference to § 386.72(b)(1) in paragraph (j) is an error and is replaced with the correct cross-reference to section 386.72(b)(3).

Part 391

Section 391.63. The reference to approval under OMB control number 2125-0081 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rules’ description of the obligations for motor carriers employing multiple-employer drivers.

Part 392

Section 392.5. In paragraph (a)(3), the word “and” is changed to “or” to correct an error.

Part 395

Section 395.8. The reference to OMB approval under control number 2125-0016 is deleted for clarity. This reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rule’s sample illustration of

regulations, which generally outline drivers' record of duty status obligations and provide a sample duty status graph grid.

Part 397

Section 397.69. Paragraph (b) is amended to reflect statutory changes under section 33013(b) of MAP-21, which amended 49 USC 5125(c)(1) to require publication of highway route designations in the Department's hazardous materials route registry under 49 USC 5112(c). The citation to section 105(b)(4) of the Hazardous Materials Transportation Act is deleted since it is now obsolete. Language regarding an effective date of November 14, 1996, is also deleted since it is also obsolete.

In paragraph (c), the phrase "of this subpart" is amended to read "of this part" to correct an inaccurate reference.

Section 397.73. In paragraph (a), footnote 2 is deleted and replaced by an internet link for convenience. Also, the reference to FMCSA is replaced by the "Federal Highway Administration (FHWA)," since that latter agency is the correct publisher of the "Manual on Uniform Traffic Control Devices for Streets and Highways."

In paragraph (b), additional text is added since section 33013(a) of MAP-21 amended 49 U.S.C. section 5112(c) to add State reporting requirements, which include the name of the responsible agency for hazmat materials highway route designations. In addition, the phrase "regarding designations existing on November 14, 1994" is deleted as obsolete. Also, based on a new requirement from section 33013(b) of MAP- 21, a State or Tribally-designated route is effective only after it is published in FMCSA's Hazardous Materials Route Registry. This requirement is added as new paragraph (c).

The reference to OMB approval under control number 2125-0554 at the end of the section is deleted for clarity. Such a reference to a specific OMB information collection approval is outdated, confusing, and superfluous in the context of the rule's public information and reporting requirements.

Section 397.103. Based on a new publication requirement from section 33013(b) of MAP-21, the following sentence will be added as a new paragraph (c)(3) to clarify when a new routing designation is effective for radioactive materials: “The route is published in FMCSA’s Hazardous Materials Route Registry.”

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). Thus, 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. 601–612), FMCSA has evaluated the effects of this rule on small entities. Because the rule makes only 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 \$141.9 million (which is the value of \$100 million in 2010 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.” FMCSA has determined that this rule will not have substantial direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes 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 titled, “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. In addition, 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. 42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

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 titled, "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 titled, “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 titled, “Civil Justice Reform,” to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630 titled, “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 355

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

49 CFR Part 365

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

49 CFR Part 369

Reporting and recordkeeping requirements.

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, Incorporation by reference, and 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 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 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

Driving of Commercial Motor Vehicles.

49 CFR Part 395

Highway safety, Motor carriers, 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.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, parts 355, 365, 369, 383, 384, 385, 387, 390, 391, 392, 395, and 397, as set forth below:

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

1. The authority citation for part 355 continues to read as follows:

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

2. Amend appendix A to part 355 by revising the paragraphs titled “Hours of Service of Drivers” to read as follows:

Appendix A to Part 355—Guidelines for the Regulatory Review

* * * * *

HOURS OF SERVICE OF DRIVERS

The following is a high-level summary of the hours-of-service regulations governing property and passenger carriers. The description below outlines only some of the major provisions, but does not capture all the detailed requirements. For the detailed provisions, which include rest breaks, sleeper berth, and records of duty status issues, see part 395 of this subchapter.

The hours-of-service regulations prohibit both property and passenger carriers from allowing or requiring any driver to drive as follows:

1. Property. More than 11 hours after 10 consecutive hours off duty within a consecutive 14-hour duty period, and more than 60/70 hours on duty in 7/8 consecutive

days. A driver may restart a 7/8 consecutive day period after taking 34 or more consecutive hours off duty, which includes two periods from 1 a.m. to 5 a.m., home terminal time. The restart may be used only once per week, or 168 hours, measured from the beginning of the previous restart.

2. Passenger. More than 10 hours after 8 consecutive hours off duty within a 15-hour duty period, and more than 60/70 hours on duty in 7/8 consecutive days.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

3. The authority citation for part 365 continues to read as follows:

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

§ 365.405 [Amended]

4. Amend § 365.405(a)(1) by removing the phrase “IT Operations Division (MC-RIO)” and adding in its place the phrase “Office of Registration and Safety Information (MC-RS)”.

§ 365.411 [Amended]

5. Amend § 365.411(b) by removing the phrase “IT Operations Division (MC-RIO)” and adding in its place the phrase “Office of Registration and Safety Information (MC-RS)”.

§ 365.413 [Amended]

6. Amend § 365.413(b) introductory text by removing the phrase “IT Operations Division (MC-RIO)” and adding in its place the phrase “Office of Registration and Safety Information (MC-RS)”.

PART 369—REPORTS OF MOTOR CARRIERS

7. The authority citation for part 369 continues to read as follows:

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

§ 369.6 [Amended]

8. Amend § 369.6 by removing the phrase “Office of Information Technology (MC-RI)” and adding in its place the phrase “Office of Registration and Safety Information (MC-RS)”.

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

9. The authority citation for part 383 continues to read as follows:

Authority. 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; and 49 CFR 1.87.

10. Amend § 383.5 by revising the definitions of “Commercial motor vehicle (CMV)” and “Conviction” to read as follows:

§ 383.5 Definitions.

* * * * *

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 is a—

(1) Combination Vehicle (Group A)—having 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) Heavy Straight Vehicle (Group B)—having 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) Small Vehicle (Group C)—(i) that does not meet Group A or B requirements; (ii) Is designed to transport 16 or more passengers, including the driver; or (iii) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

Conviction means an unvacated adjudication of guilt, or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction or by an authorized administrative tribunal, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, a plea of guilty or nolo contendere accepted by the court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or prorated.

* * * * *

11. Amend §383.73 by revising paragraphs (n)(1) and (o)(4)(i) introductory text to read as follows:

§383.73 State procedures.

* * * * *

(n) * * *

(1) Prevent the issuance of an initial, renewed or upgraded CLP or an initial, renewed, upgraded, or transferred 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; and Social Security Number verification. Knowledge and skills test scores verification controls must be established for an initial, renewed, or upgraded CDL.

* * * * *

(o) * * *

(4) * * * (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical examiner's certificate is voided or rescinded or a medical variance was removed or rescinded, the State must:

* * * * *

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

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

Authority: 49 U.S.C. 31136, 31301, et seq., and 31502; secs. 103 and 215 of Pub. L. 106-59, 113 Stat. 1753, 1767; and 49 CFR 1.87.

13. Revise § 384.107 to read as follows:

§ 384.107 Matter incorporated by reference.

(a) Incorporation by reference. This part includes references to certain matter or materials. The text of the materials is not included in the regulations contained in this part. The materials are hereby made a part of the regulations in this part. The Director of the Office of the Federal Register has approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. For materials subject to change, only the specific version approved by the Director of the Office of the Federal Register and specified in the regulation are incorporated. Material is incorporated as it exists on the date of the approval and a notice of any change in these materials will be published in the FEDERAL REGISTER. All of the materials incorporated by reference are available from the sources listed below and available for inspection at the Department of Transportation Library, 1200 New Jersey Ave., SE., Washington, DC 20590-0001; telephone is (202) 366-0746. These documents are also available for inspection and copying as provided in 49 CFR part 7. They are 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.

(b) The American Association of Motor Vehicle Administrators (AAMVA), 4301 Wilson Boulevard, Suite 400, Arlington, VA 22203, (703) 522-1300,

<http://www.aamva.org>.

(1) “Commercial Driver's License Information System (CDLIS) State Procedures Manual,” Release 5.3.2.1, August 2013, incorporation by reference approved for §§384.225(f) and 384.231(d).

(2) [Reserved]

14. Amend § 384.206 by revising (a)(1) introductory text to read as follows:

§ 384.206 State record checks.

(a) * * *

(1) Before issuing, renewing, or upgrading a CLP or issuing, renewing, upgrading or transferring CDL to any person, the driver's State of record must, within the period of time specified in § 384.232, check its own driver records as follows:

* * * * *

§ 384.209 [Amended]

15. Amend § 384.209(b)(2) by adding the phrase “from a foreign country” after the phrase “a person” and before the phrase “who is unlicensed.”

16. Revise § 384.212(b) to read as follows:

§ 384.212 Domicile requirement.

* * * * *

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

17. Amend § 384.225 by revising paragraph (e) introductory text and paragraph (f) to read as follows:

§ 384.225 CDLIS driver recordkeeping.

* * * * *

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

* * * * *

(f) Ensure the content of the report provided a user authorized by paragraph (e) of this section from the CDLIS driver record is comparable to the report that would be generated by a CDLIS State-to-State request for a CDLIS driver history, as defined in the “CDLIS State Procedures Manual” (incorporated by reference, see § 384.107(b)), and must include the medical certification status information of the driver in paragraph (a)(2) of this section. This does not preclude authorized users from requesting a CDLIS driver status.

18. Amend §384.228 by adding paragraph (h)(3) and revising paragraph (j) to read as follows:

§ 384.228 Examiner training and record checks.

* * * * *

(h) * * *

(3) 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) Rescind the certification to administer CDL tests of all test examiners who do not successfully complete the required refresher training every 4 years.

* * * * *

19. Revise § 384.229(b) to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

* * * * *

(b) At least once every 2 years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners.

* * * * *

§ 384.305 [Amended]

20. Amend § 384.305 by removing the phrase “(Approved by the Office of Management and Budget under control number 2125-0542)” at the end of the section.

PART 385—SAFETY FITNESS PROCEDURES

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

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 13901-13905, 31133, 31135, 31136, 31137(a), 31144, 31148, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88; Sec. 350 of Pub. L. 107-87; and 49 CFR 1.87.

§ 385.308 [Amended]

22. Amend § 385.308(a)(1) by adding the word “motor” after the word “commercial” and before the word “vehicle.”

Appendix B to Part 385 [Amended]

23. In Appendix B to Part 385, section VII, List of Acute and Critical Regulations, remove the entry for § 397.101(d), which reads “Requiring or permitting the

operation of a motor vehicle containing highway route-controlled quantity, as defined in §173.403, of radioactive materials that is not accompanied by a written route plan.”

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

24. The authority citation for part 387 continues to read as follows:

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

§ 387.15 [Amended]

25. Amend § 387.15 as follows:

- a. Remove the designation “OMB No. 2125-0074” under the center heading “Illustration I” and following the phrase “Form Approved.”
- b. Remove the phrase “(Form approved by Office of Management and Budget under control no. 2125-0075)” under the center heading “Illustration II” and following the phrase “Form MCS-82 (4/83).”

§ 387.39 [Amended]

26. Amend § 387.39 by removing the phrase “(Approved by the Office of Management and Budget under control number 2125-0518)” at the end of the section.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 504, 508, 31132, 31133, 31136, 31144, 31151, 31502; sec. 114, Pub. L. 103-311, 108 Stat. 1673, 1677-1678; sec. 212, 217, 229, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-1744); sec. 4136, Pub. L. 109-59, 119 Stat. 114, 1745; sections 32101(d) and 32934, Pub. L. 112-141, 126 Stat. 405, 778, 830; and 49 CFR 1.87.

28. Amend § 390.5 as follows:

- a. In the definition of “Conviction” remove the word “probated” and add in its place the word “prorated.”
- b. Add a definition for "Crash" in alphabetical order.

§ 390.5 Definitions.

* * * * *

Crash — See accident.

* * * * *

29. Revise § 390.19(d) to read as follows:

§390.19 Motor carrier, hazardous material shipper, and intermodal equipment provider identification reports.

* * * * *

(d) *Where to file.* The required form under paragraph (a) of this section must be filed with the FMCSA Office of Registration and Safety Information. The form may be filed electronically according to the instructions at the Agency's Web site, or it may be sent to Federal Motor Carrier Safety Administration, Office of Registration and Safety Information (MC-RS), 1200 New Jersey Avenue, SE., Washington, DC 20590.

* * * * *

§ 390.40 [Amended]

30. Amend §390.40(j) by removing the reference “§386.72(b)(1)” and adding in its place “§ 386.72(b)(3)”.

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

31. The authority citation for part 391 continues 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; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 391.63 [Amended]

32. Amend § 391.63 by removing the phrase “(Approved by the Office of Management and Budget under control number 2125-0081)”.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

33. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 504, 13902, 31136, 31151, 31502; Section 112 of Pub. L. 103-311, 108 Stat. 1673, 1676 (1994), as amended by sec. 32509 of Pub. L. 112-141, 126 Stat. 405, 805 (2012); and 49 CFR 1.87.

§ 392.5 [Amended]

34. Amend § 392.5(a)(3) introductory text by removing the word “and” and adding in its place the word “or.”

PART 395—HOURS OF SERVICE OF DRIVERS

35. The authority citation for part 395 continues 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; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 395.8 [Amended]

36. Amend § 395.8 by removing the phrase “(Approved by the Office of Management and Budget under control number 2125-0016)” at the end of the section.

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

37. The authority citation for part 397 continues 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.

38. Amend § 397.69 by revising paragraphs (b) and (c) to read as follows:

§ 397.69 Highway routing designations; preemption.

* * * * *

(b) Except as provided in §§ 397.75 and 397.219, an NRHM route designation made in violation of paragraph (a) of this section is preempted pursuant to 49 U.S.C. 5125(c).

(c) A highway routing designation established by a State, political subdivision, or Indian tribe before November 14, 1994 is subject to preemption in accordance with the preemption standards in paragraphs (a)(1) and (a)(2) of §397.203.

* * * * *

39. Revise § 397.73 to read as follows:

§397.73 Public information and reporting requirements.

(a) Public information. Information on NRHM routing designations must be made available by the States and Indian tribes to the public in the form of maps, lists, road signs or some combination thereof. If road signs are used, those signs and their placements must comply with the provisions of the Manual on Uniform Traffic Control

Devices for Streets and Highways, published by the Federal Highway Administration (FHWA), particularly the Hazardous Cargo signs identified as R14-2 and R14-3 shown in Section 2B-62 of that Manual. This publication may be accessed free of charge on the Internet at <http://mutcd.fhwa.dot.gov/>.

(b) Reporting and publishing requirements. Each State or Indian tribe, through its routing agency, shall provide information identifying all NRHM routing designations that exist within its jurisdiction to the Federal Motor Carrier Safety Administration, Office of Enforcement and Compliance (MC-EC), 1200 New Jersey Ave., SE., Washington, DC 20590-0001. States shall also submit to FMCSA the current name of the State agency responsible for NHRM highway routing designations. The State or Indian tribe shall include descriptions of these routing designations, along with the dates they were established. This information may also be published in each State's official register of State regulations. Information on any subsequent changes or new NRHM routing designations shall be furnished within 60 days after establishment to the FMCSA. This information will be available from the FMCSA, consolidated by the FMCSA, and published annually in whole or as updates in the Federal Register. Each State may also publish this information in its official register of State regulations.

(c) A State or Tribally-designated route is effective only after it is published in the Federal Register in FMCSA's Hazardous Materials Route Registry.

40. Amend § 397.103 by adding a new paragraph (c)(3) to read as follows:

§397.103 Requirements for State routing designations.

* * * * *

(c) * * *

(3) The route is published in FMCSA's Hazardous Materials Route Registry.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: September 23, 2014

T.F. Scott Darling, III
Acting Administrator

[FR Doc. 2014-23433 Filed 10/01/2014 at 8:45 am; Publication Date: 10/02/2014]