levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of section 408(n)(4) of the FFDCA. For these same reasons, the Agency has determined that this rule does not have any ''tribal implications'' as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the Executive Order to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This rule will not have substantial direct effects on tribal governments, 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, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

VIII. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801*et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: May 6, 2004.

Lois Rossi,

Director, Registration Division, Office of Pesticide Programs.

■ Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. Section 180.564 is amended by alphabetically adding the following commodities to the table in paragraph (a)(2) to read as follows:

§ 180.564 Indoxacarb; tolerances for residues.

(a) * * * P≤(2) * * *

Commodity	Parts per million	Expiration/revocation date
Cherry, sweet	1.0	May 21, 2007
Cherry, tart	1.0	May 21, 2007
* *	* * *	

* * * * *

[FR Doc. 04–11346 Filed 5–18–04; 8:45 am]

BILLING CODE 6560–50–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

42 CFR Part 1003

RIN 0991–AB30

Medicare and State Health Care Programs; Fraud and Abuse: OIG Civil Money Penalties Under the Medicare Prescription Drug Discount Card Program

AGENCY: Office of Inspector General (OIG), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: In accordance with section 1860D–31 of the Social Security Act, this rule sets forth the OIG's new authority for imposing civil money penalties (CMPs) against endorsed sponsors under the Medicare prescription drug discount card program that knowingly engage in false or misleading marketing practices; overcharge program enrollees; or misuse transitional assistance funds.

DATES: *Effective date:* These regulations are effective on June 18, 2004.

Comment date: We will consider comments if we receive them at the appropriate address, as provided in the address section below, no later than 5 p.m. on July 19, 2004.

ADDRESSES: In commenting, please refer to file code OIG–54–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission. Please mail or deliver your written comments to the following address: Office of Inspector General, Department of Health and Human Services, Attention: OIG–54–FC, Room 5246, Cohen Building, 330 Independence Avenue, SW,. Washington, DC 20201.

Please allow sufficient time for us to receive mailed comments on time in the event of delivery delays. Because access to the Cohen Building is not readily available to persons without Federal government identification, commenters are encouraged to leave their comments in the OIG drop box located in the main lobby of the building. For information on viewing public comments, see section IV. in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Joel Schaer, Office of Management and Policy, (202) 619–0089; or Niteesha Gupte, Office of Counsel to the Inspector General, (202) 619–1306.

SUPPLEMENTARY INFORMATION:

I. OIG Civil Money Penalties

In 1981, Congress enacted the civil money penalty statute, section 1128A of

the Social Security Act (42 U.S.C. 1320a–7a), as one of several administrative remedies to combat increases in fraud and abuse. The civil money penalty (CMP) law authorized the HHS Secretary and the Inspector General to impose CMPs and program exclusions on individuals and entities whose wrongdoing caused injury to HHS programs or their beneficiaries. Since 1981, the CMP provisions have been expanded to apply by reference to numerous types of fraudulent and abusive activities.

II. The Medicare Prescription Drug, Improvement, and Modernization Act

Section 101 of the Medicare Prescription Drug, Improvement, and Modernization Act (MPDIMA) of 2003, as enacted by Public Law 108–173 and codified in section 1860D–31 of the Social Security Act (the Act), provides for a voluntary prescription drug discount card program for Medicare beneficiaries entitled to benefits, or enrolled, under Part A or enrolled under Part B, excluding beneficiaries entitled to medical assistance for outpatient prescription drugs under Medicaid, including section 1115 waiver demonstrations. Eligible beneficiaries may access negotiated prices on prescription drugs by enrolling in drug discount card programs offered by Medicare-endorsed sponsors.[1] The Medicare drug discount card program is intended to serve as a transitional program providing immediate assistance to Medicare beneficiaries with prescription drug costs during calendar years 2004 and 2005 while preparations are made for implementation of the Medicare drug benefit under Medicare Part D in 2006.

The implementing regulations establishing the requirements for the MPDIMA program were published in the **Federal Register** as an interim final rule with comment period by the Centers for Medicare & Medicaid Services (CMS) on December 15, 2003 (68 FR 69840).[2]

[1] Eligible beneficiaries may enroll in the Medicare drug discount card program beginning no later than 6 months after the date of enactment of MPDIMA and ending December 31, 2005. After December 31, 2005, beneficiaries enrolled in the program may continue to use their drug discount card during a short transition period beginning January 1, 2006 and ending upon the effective date of a beneficiary's outpatient drug coverage under Medicare Part D, but no later than the last day of the initial open enrollment period under Part D.

[2] Section 902 of MPDIMA has established timelines for the publication of the Medicare rules under section 1871(a) of the Act. This provision requires CMS to publish a final rule within 3 years of the publication of the interim final rule.

1. Eligibility Procedures and Enrollment

Sections 1860D–31(b)(1) and (2) of the Act, and 42 CFR 403.810(a) and (b) of the CMS regulations, establish the eligibility criteria for the Medicare drug discount card program and for transitional assistance. Section 1860D–31(f)(1)(A) of the Act directs the Secretary to specify the procedures for determining a beneficiary's eligibility for the Medicare drug discount card program or transitional assistance, and section 1860D–31(c)(1) directs the Secretary to establish a process for eligible beneficiaries enrolling in, and disenrolling from, an endorsed program. These provisions have been codified, respectively, in 42 CFR 403.810 and 403.811 of the CMS regulations.

2. Endorsed Sponsors

Section 1860D–31(a)(1)(A) of the Act requires the Secretary to endorse qualified applicants seeking to offer endorsed discount card programs to Medicare beneficiaries. MPDIMA sets forth specific requirements that applicants must satisfy to be eligible for endorsement and that endorsed sponsors must meet to retain their endorsement. The obligations of endorsed sponsors related to eligibility determinations and enrollment are specifically set forth in section II.C.6. of the preamble to the interim final rule.

3. Transitional Assistance

Under MPDIMA, certain low-income Medicare beneficiaries enrolled in the Medicare drug discount card program are eligible to receive transitional assistance of up to $600 per year, which may be applied toward the cost of covered discount card drugs obtained under the program. Section 1860D–31(h)(1)(C) of the Act requires endorsed sponsors to administer the transitional assistance on behalf of CMS and to demonstrate to the Secretary that they have satisfactory arrangements to account for the transitional assistance provided to transitional assistance enrollees. These requirements are codified in 42 CFR 403.806(e).

4. Information and Outreach

Section 1860D–31(d)(2)(A) of the Act requires that each prescription drug card endorsed sponsor that offers an endorsed discount card program make available to beneficiaries eligible for the discount card program—through the internet and otherwise—information that the Secretary identifies as being necessary to promote informed choice among endorsed discount card programs, including information on enrollment fees and negotiated prices for covered discount card drugs. In addition, section 1860D–31(h)(7)(A) of the Act limits drug card endorsed sponsors to providing under their endorsements only products and services directly related to covered discount card drugs, or discounts on over-the-counter drugs; and section 1860D–31(h)(7)(B) prohibits endorsed sponsors from marketing, under their endorsements, any products and services other than those described in section 1860D–31(h)(7)(A). The requirements for information to be included in materials are contained in the CMS regulations at 42 CFR 403.806(g).

III. Civil Money Penalties Under Public Law 108–173

Section 1860D–31(i)(3) of the Act authorizes the imposition of CMPs against endorsed sponsors that knowingly engage in conduct that violates the requirements of section 1860D–31 of the Act or engage in false or misleading marketing practices. Section 403.820(b) of the CMS regulations interpreted this to mean that those endorsed sponsors that knowingly engage in conduct that violates the conditions of their endorsement agreement with the Department or that constitutes false or misleading marketing practices may be subject to CMPs.

The Department has divided the sanction authority between CMS and the OIG. Where CMP authority is shared between CMS and the OIG, the Department has assigned sanction authority to the OIG for those violations that concern *misleading or defrauding* a beneficiary. The Department also assigned sanction authority to the OIG for misuse of transitional assistance funds.[3] On the other hand, CMS has the authority to impose CMPs in those instances where the endorsed sponsor's conduct constitutes *non-compliance with an operational requirement* not directly related to beneficiary protection. (Section 403.802(b)(2) of the CMS regulations sets forth a full listing of the CMS CMP authorities related to MPDIMA.)

As a result, in accordance with CMS's Medicare prescription drug discount card implementing regulations (68 FR 69787; December 15, 2003), in addition to or in place of sanctions that CMS may impose, as set forth in 42 CFR 403.820(a), the OIG has been authorized to impose CMPs against an endorsed

[3] Technical assistance, as defined in § 403.802 of the CMS regulations, refers to the subsidy funds that transitional enrollees may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d).

sponsor whom it determines knowingly (as defined in 42 CFR 1003.102(e)):

- Misrepresented or falsified information in outreach material or comparable material provided to a program enrollee or other person;
- Charged a program enrollee in violation of the terms of the endorsement contract; or
- Used transitional assistance funds in any manner that is inconsistent with the purpose of the transitional assistance program.

The OIG may impose CMPs of no more than $10,000 for each of these violations. A violation is deemed to occur in each instance when an endorsed sponsor (1) provides misleading information to a program enrollee or other person; (2) overcharges a program enrollee; or (3) misuses the transitional assistance funds of a program enrollee. Appeal rights will be afforded in accordance with the appeal procedures set forth in 42 CFR parts 1003 and 1005.

IV. Provisions of This Final Rule

To address these new OIG civil money penalty authorities, we are amending 42 CFR part 1003 as follows:

- In § 1003.100, Basis and purpose, we are revising paragraphs (a) and (b) to state the broad purpose of these new CMP authorities.
- In § 1003.101, Definitions, we are adding a definition for the term ''transitional assistance,'' consistent with the definition in 42 CFR 403.802.
- In § 1003.102, Basis for CMPs and assessments, we are adding new paragraphs (b)(17), (b)(18) and (b)(19) to cross-reference the implementing CMS regulations and the OIG's authority to impose penalties for violations.
- In § 1003.103, Amount of penalty, we are adding a new paragraph (k) to address the $10,000 maximum penalty amounts for each of these violations.

The OIG specifically seeks public comments on the possible inclusion of specific mitigating and aggravating factors to be considered in determining penalty amounts.

We note that in addition to the CMPs set forth above, a card sponsor's misuse of the Medicare name or emblem may subject them to CMPs in accordance with 42 U.S.C. 1320b–10 and the OIG regulations at § 1003.102(b)(7), which prohibit the misuse of the Medicare name and emblem. In general, in accordance with the statute and the implementing regulations, the OIG may impose penalties on any person who misuses the term ''Medicare,'' or other names associated with DHHS in any item constituting a communication in a manner which the person knows or should know gives the false impression that the item is approved, endorsed, or authorized by the Department. Violators are subject to fines of up to $5,000 per violation or, in the case of a broadcast or telecast violation, $25,000.

V. Regulatory Impact Statement

A. Regulatory Analysis

We have examined the impacts of this proposed rule as required by Executive Order 12866, the Regulatory Flexibility Act (RFA) of 1980, the Unfunded Mandates Reform Act of 1995, and Executive Order 13132.

1. Executive Order 12866

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulations are necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects ($100 million or more in any given year). This is not a major rule as defined at 5 U.S.C. 804(2), and it is not economically significant since it would not have a significant effect on program expenditures and there would be no additional substantive cost to implement the resulting provisions. The OIG has significant experience in enforcing CMPs for a wide variety of violations and fraudulent conduct. Over the past three fiscal years (FYs), total CMPs levied by the OIG for various violations and fraudulent conduct has averaged about $2.2 million annually ($1.1 million in FY 2001; $2.4 million in FY 2002; and $3.1 million in FY 2003). In addition, the revisions to 42 CFR part 1003 set forth in this rule are designed to further clarify statutory requirements, and hence the economic effect of these regulatory provisions should impact only those limited few endorsed sponsors that would perhaps engage in prohibited behavior in violation of the statute. Given the OIG's enforcement history and the nature of the entities subject to CMPs, we do not believe that these regulations will result in a significant economic impact or have an appreciable effect on the economy or on Federal or State expenditures.

2. Regulatory Flexibility Act

The RFA, and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most providers are considered to be small entities by having revenues of $6 million to $29 million or less in any one year. For purposes of the RFA, most physicians and suppliers are considered to be small entities. In addition, section 1102(b) of the Social Security Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural providers. This analysis must conform to the provisions of section 604 of the RFA.

Because of the requirements to be an endorsed sponsor, we anticipate that few, if any, endorsed sponsors will be small entities and none will be rural providers. However, even if some sponsored entities are small entities, we believe that the aggregate economic impact of this rulemaking is minimal since it is the nature of the conduct and not the size or type of the entity that would result in a violation of the statute and the regulations. As a result, we have concluded that this rulemaking rule should not have a significant impact on the operations of a substantial number of small or rural providers, and that a regulatory flexibility analysis is not required for this rulemaking.

3. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. As indicated, these proposed revisions comport with congressional and statutory intent and clarify the Department's legal authorities against those who defraud or otherwise act improperly against the Federal and State health care programs. As a result, we believe that there are no significant expenditures required by these revisions that would impose any mandates on State, local, or tribal governments, or the private sector that will result in an expenditure of $110 million or more (adjusted for inflation) in any given year, and that a full analysis under the Unfunded Mandates Reform Act is not necessary.

4. Executive Order 13132

Executive Order 13132, Federalism, establishes certain requirements that an agency must meet when it promulgates a rule that imposes substantial direct requirements or costs on State and local governments, preempts State law, or

otherwise has Federalism implications. In reviewing this rule under the threshold criteria of Executive Order 13132, we have determined that this proposed rule would not significantly affect the rights, roles, and responsibilities of State or local governments.

The Office of Management and Budget (OMB) has reviewed this final rule in accordance with Executive Order 12866.

B. Paperwork Reduction Act

The provisions of this rulemaking impose no express new reporting or recordkeeping requirements on health care providers or endorsed sponsors.

VI. Response to Public Comments

Comments will be available for public inspection beginning on June 2, 2004, in Room 5518 of the Office of Inspector General at 330 Independence Avenue, SW., Washington, DC, on Monday and through Friday of each week from 8 a.m. to 4 p.m., (202) 619–0089. Because of the large number of comments we normally receive on regulations, we cannot acknowledge or respond to comments individually. However, we will consider all timely and appropriate comments when developing any revised final rulemaking.

VII. Waiver of Proposed Rulemaking

We ordinarily publish a proposed rule in the **Federal Register** and provide a period for public comment before we publish a final rule. We may waive this procedure, however, for good cause if we find that the notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and if we incorporate a statement of this finding and its reasons in the rule issued. We find it unnecessary to undertake notice and comment rulemaking in this instance because we believe that it is in the public interest to comply with the statutory requirement in section 1860D–31(a)(2)(B) of the Act, which authorizes interim final rules for implementing the prescription drug discount card program. The statute is clear on the penalty provisions and affords the OIG little discretion, and does not make or change substantive policy, but merely sets forth the statutorily specified penalty provisions in the OIG enforcement regulations. Therefore, in accordance with MPDIMA and the Administrative Procedure Act (APA) (5 U.S.C. 553(b)(B)), for good cause, we waive notice and comment procedures.

This rulemaking provides for a 60-day public comment period.

List of Subjects in 42 CFR Part 1003

Administrative practice and procedure, Fraud, Grant programs—health, Health facilities, Health professions, Maternal and child health, Medicaid, Medicare, Penalties, Social security.

■ Accordingly, 42 CFR part 1003 is amended as set forth below:

PART 1003—CIVIL MONEY PENALTIES, ASSESSMENTS AND EXCLUSIONS

■ 1. The authority citation for part 1003 is revised to read as follows:

Authority: 42 U.S.C. 262a, 1302, 1320–7, 1320a–7a, 1320b–10, 1395u(j), 1395u(k), 1395cc(j), 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395nn(g), 1395ss(d), 1396b(m), 11131(c), and 11137(b)(2).

■ 2. Section 1003.100 is amended by revising paragraph (a); republishing the introductory text for paragraphs (b) and (b)(1); revising paragraphs (b)(1)(xv) and (b)(1)(xvi); and by adding a new paragraph (b)(1)(xvii) to read as follows:

§ 1003.100 Basis and purpose.

(a) Basis. This part implements sections 1128(c), 1128A, 1140, 1860D–31(i)(3), 1876(i)(6), 1877(g), 1882(d) and 1903(m)(5) of the Social Security Act; sections 421(c) and 427(b)(2) of Pub. L. 99–660; and section 201(i) of Pub. L. 107–188 (42 U.S.C. 1320–7(c), 1320a–7a, 1320b–10, 1395w–141(i)(3), 1395dd(d)(1), 1395mm, 1395ss(d), 1396b(m), 11131(c), 11137(b)(2) and 262).

(b) Purpose. This part—

(1) Provides for the imposition of civil money penalties and, as applicable, assessments against persons who—

* * * * *

(xv) Violate the Federal health care programs' anti-kickback statute as set forth in section 1128B of the Act;

(xvi) Violate the provisions of part 73 of this title, implementing section 351A(b) and (c) of the Public Health Service Act, with respect to the possession and use within the United States, receipt from outside the United States, and transfer within the United States, of select agents and toxins in use, or transfer of listed biological agents and toxins; or

(xvii) Violate the provisions of part 403, subpart H of this title, implementing the Medicare prescription drug discount card and transitional assistance program, by misleading or defrauding program beneficiaries, by overcharging a discount program enrollee, or by misusing transitional assistance funds.

* * * * *

■ 3. Section 1003.101 is amended by republishing the introductory text and by adding, in alphabetical order, a definition for the term ''transitional assistance'' to read as follows:

§ 1003.101 Definitions.

For purposes of this part:

* * * * *

Transitional assistance means the subsidy funds that Medicare beneficiaries enrolled in the prescription drug discount card and transitional assistance program may apply toward the cost of covered discount card drugs in the manner described in § 403.808(d) of this title.

■ 4. Section 1003.102 is amended by republishing the introductory text for paragraph (b); and by adding new paragraphs (b)(17), (b)(18), and (b)(19) to read as follows:

§ 1003.102 Basis for civil money penalties and assessments.

* * * * *

(b) The OIG may impose a penalty and, where authorized, an assessment against any person (including an insurance company in the case of paragraphs (b)(5) and (b)(6) of this section) whom it determines in accordance with this part—

* * * * *

(17) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly misrepresented or falsified information in outreach material or comparable material provided to a program enrollee or other person.

(18) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly charged a program enrollee in violation of the terms of the endorsement contract.

(19) Is an endorsed sponsor under the Medicare prescription drug discount card program who knowingly used transitional assistance funds of any program enrollee in any manner that is inconsistent with the purpose of the transitional assistance program.

■ 5. Section 1003.103 is amended by adding a new paragraph (m) to read as follows:

* * * * *

§ 1003.103 Amount of penalty.

* * * * *

(m) For violations of section 1860D–31 of the Act and 42 CFR part 403, subpart H, regarding the misleading or defrauding of program beneficiaries, or the misuse of transitional assistance funds, the OIG may impose a penalty of not more than $10,000 for each individual violation.

Dated: February 17, 2004.

Dara Corrigan,

Acting Principal Deputy Inspector General.

Approved: March 1, 2004.

Tommy G. Thompson,

Secretary.

[FR Doc. 04–11191 Filed 5–18–04; 8:45 am]

BILLING CODE 4152–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 380 and 391

[Docket FMCSA–97–2176]

RIN 2126–AA08

Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements; Correction

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

ACTION: Final rule; correction.

SUMMARY: The Federal Motor Carrier Safety Administration published in the **Federal Register** of March 30, 2004, a final rule concerning requirements for operators of LCVs and the instructors who train them. The requirements codified at § 391.53 should have been designated § 391.55. In addition, the authority citation for the rule failed to include the authorities listed in another FMCSA rule amending part 391 that was published the same day. This document corrects these errors. Also, under the **SUPPLEMENTARY INFORMATION** section, we discuss an error in the preamble of the March 30 rule which does not require a correction to the regulatory text.

DATES: Effective on June 1, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of Safety Programs, (202) 366–9579, Federal Motor Carrier Safety Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., e.s.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: The FMCSA published two documents in the **Federal Register** of March 30, 2004, both of which mistakenly added a new § 391.53 with different section headings and contents. The *Safety Performance History of New Drivers* final rule (69 FR 16684) added § 391.53 Driver Investigation History File. The final rule on *Minimum Training Requirements for Longer Combination Vehicle (LCV) Operators and LCV Driver-Instructor Requirements* (69 FR 16722) added § 391.53 LCV Driver-Instructor qualification files. This correction changes the designation of the ''LCV Driver-Instructor qualification files'' from § 391.53 to § 391.55. This amendment is being adopted to avoid codifying two different provisions under the same section number. FMCSA also revises the authority citation to reflect the statutory authority for changes to 49 CFR part 391 resulting from the *Safety Performance History of New Drivers* final rule. Because the content of the re-designated section is unchanged, and the authority citation has no effect on the public, FMCSA has determined pursuant to 5 U.S.C. 553(b)(B) and (d)(3) that prior notice and opportunity for comment on these amendments are unnecessary and that good cause exists to make the amendments effective upon publication in the **Federal Register**.

The discussion of CDL endorsements under § 383.93(b), which occurs in the preamble of the March 30 final rule, includes obsolete information about the hazardous materials endorsement and omits the school bus endorsement. The agency revised § 383.93(b) in an interim final rule titled *Limitations on the Issuance of a Commercial Driver's Licenses with a Hazardous Materials Endorsement* (68 FR 23844, May 5, 2003). Formerly, only a driver who operated a vehicle hauling a placardable amount of hazardous materials must obtain a hazardous materials endorsement. The May 5 final rule additionally requires drivers that transport select agents and toxins to obtain a hazardous materials endorsement and made a conforming amendment to § 393.93(b)(4) to cross-reference the broadened hazardous materials definition. In the March 30 document, on page 16723, in the first column, the first full paragraph reads:

In accordance with the CMVSA, all drivers of commercial motor vehicles must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or expect to operate any of the following vehicles, which have special handling characteristics, must obtain endorsements under 49 CFR 383.93(b):

(a) Double/triple trailers;

(b) Passenger vehicles;

(c) Tank vehicles;

(d) Vehicles required to be placarded for hazardous materials.

The correct information is as follows:

In accordance with the CMVSA, all drivers of commercial motor vehicles must possess a valid CDL in order to be properly qualified to operate the vehicle(s) they drive. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, 49 CFR 383.93(b) requires an operator to obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

(1) Double/triple trailers;

(2) Passenger vehicles;

(3) Tank vehicles;

(4) Used to transport hazardous materials as defined in § 383.5, or

(5) School buses.

The information on those endorsements for which a driver must pass a skills test excludes the school bus endorsement. On page 16723, in the first column, in paragraph 2, in the second full paragraph, the second sentence reads:

To obtain a passenger endorsement, the driver also must pass a skills test.

It should read:

To obtain a passenger or school bus endorsement, the driver also must pass a skills test.

These preamble errors do not require a correction to the regulatory text.

Correction

In rule FR Doc. 04–6794 published on March 30, 2004, (69 FR 16722) make the following corrections:

1. On page 16727, in the third column, in paragraph 3, in the seventh line, ''391.53'' is corrected to read ''391.55''.

PART 391—[CORRECTED]

■ 2. On page 16738, in the third column, in paragraph 1, the authority citation for part 391 is corrected to read:

''**Authority:** 49 U.S.C. 322, 504, 508, 31133, 31136 and 31502; Sec. 4007(b) of Pub. L. 102–240 (105 Stat. 2152); Sec. 114, Pub. L. 103–311 (108 Stat. 1673, 1677); and 49 CFR 1.73''.

■ 3. On page 16738, in the third column, in amendatory instruction 3, in the third line, ''§ 391.53'' is corrected to read ''§ 391.55''.

§ 391.53 [Corrected]

■ 4. On page 16738, in the third column, in the section heading, ''§ 391.53'' is corrected to read ''§ 391.55''.

Dated: May 13, 2004.

Annette M. Sandberg,

Administrator.

[FR Doc. 04–11306 Filed 5–18–04; 8:45 am]

BILLING CODE 4910–EX–P