For reasons set forth in the preamble, LSC amends Chapter XVI of Title 45 by adding part 1644 as follows:

PART 1644—DISCLOSURE OF CASE INFORMATION

Sec.
1644.1 Purpose.
1644.2 Definitions.
1644.3 Applicability.
1644.4 Case disclosure requirement.
1644.5 Recipient policies and procedures.

Authority: Pub. L. 105–119, 111 Stat. 2440, Sec. 505; Pub. L. 104–134, 110 Stat. 1321; 42 U.S.C. 2996g(a).

§ 1644.1 Purpose.

The purpose of this rule is to ensure that recipients disclose to the public and to the Corporation certain information on cases filed in court by their attorneys.

§ 1644.2 Definitions.

For the purposes of this part:

(a) *To disclose the cause of action* means to provide a sufficient description of the case to indicate the type or principal nature of the case.

(b) *Recipient* means any entity receiving funds from the Corporation pursuant to a grant or contract under section 1006(a)(1)(A) of the Act.

(c) *Attorney* means any full-time or part-time attorney employed by the recipient as a regular or contract employee.

§ 1644.3 Applicability.

(a) The case disclosure requirements of this part apply:

(1) To actions filed on behalf of plaintiffs or petitioners who are clients of a recipient;

(2) Only to the original filing of a case, except for appeals filed in appellate courts by a recipient if the recipient was not the attorney of record in the case below and the recipient's client is the appellant;

(3) To a request filed on behalf of a client of the recipient in a court of competent jurisdiction for judicial review of an administrative action; and

(4) To cases filed pursuant to subgrants under 45 CFR part 1627 for the direct representation of eligible clients, except for subgrants for private attorney involvement activities under part 1614 of this chapter.

(b) This part does not apply to any cases filed by private attorneys as part of a recipient's private attorney involvement activities pursuant to part 1614 of this chapter.

§ 1644.4 Case disclosure requirement.

(a) For each case filed in court by its attorneys on behalf of a client of the recipient after January 1, 1998, a recipient shall disclose, in accordance with the requirements of this part, the following information:

(1) The name and full address of each party to a case, unless:

(i) the information is protected by an order or rule of court or by State or Federal law; or

(ii) the recipient's attorney reasonably believes that revealing such information would put the client of the recipient at risk of physical harm;

(2) The cause of action;

(3) The name and full address of the court where the case is filed; and

(4) The case number assigned to the case by the court.

(b) Recipients shall provide the information required in paragraph (a) of this section to the Corporation in semiannual reports in the manner specified by the Corporation. Recipients may file such reports on behalf of their subrecipients for cases that are filed under subgrants. Reports filed with the Corporation will be made available by the Corporation to the public upon request pursuant to the Freedom of Information Act, 5 U.S.C. 552.

(c) Upon request, a recipient shall make the information required in paragraph (a) of this section available in written form to any person. Recipients may charge a reasonable fee for mailing and copying documents.

§ 1644.5 Recipient policies and procedures.

Each recipient shall adopt written policies and procedures to implement the requirements of this part.

June 15, 1998.

Victor M. Fortuno,

General Counsel.

[FR Doc. 98–16243 Filed 6–17–98; 8:45 am]

BILLING CODE 7050–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, 392, 395, 396, and 397

[FHWA Docket No. FHWA–97–2328; MC–97–3]

RIN 2125–AD72

Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is adopting a final rule to remove, amend, and redesignate certain provisions of the Federal Motor Carrier Safety Regulations concerning financial responsibility; general applicability and definitions; accident recordkeeping requirements; qualifications of drivers; driving of commercial motor vehicles; hours of service of drivers; inspection, repair, and maintenance; and the transportation of hazardous materials. The agency considers many of these regulations to be obsolete, redundant, unnecessary, ineffective, or burdensome. Others are more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. This action is consistent with the FHWA's Zero Base Regulatory Review and the President's Regulatory Reinvention Initiative.

EFFECTIVE DATE: July 20, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah M. Freund, Office of Motor Carrier Research and Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

As part of its Zero Base Regulatory Review Program, the FHWA published a notice of proposed rulemaking in the **Federal Register** on January 27, 1997 (62 FR 3855) to request comment on an extensive list of changes proposed concerning Parts 387, 390, 391, 392, 395, 396, and 397 of the Federal Motor Carrier Safety Regulations (FMCSRs). The agency had implemented an earlier set of changes to the FMCSRs on November 23, 1994 (59 FR 60319) after receiving comments to a notice of proposed rulemaking published on January 10, 1994 (59 FR 1366). The agency had also published a final rule on July 28, 1995 (60 FR 38739) making technical corrections to keep the FMCSRs accurate and up to date.

Discussion of Comments

The FHWA extended the comment period for the NPRM on March 27, 1997 (62 FR 14662). Comments to the docket were accepted through May 12, 1997.

Comments were received from 55 organizations, companies, and individuals as follows:

Ten States (State of California Business, Transportation, and Housing Agency; Colorado Department of Public

Safety; State of Connecticut; Delaware Department of Public Safety; State of Idaho Transportation Department; State of Missouri Department of Revenue and Department of Economic Development; North Dakota Department of Transportation; Commonwealth of Pennsylvania; Vermont Department of Motor Vehicles; Wisconsin Department of Transportation); and one city (City of Littleton, Colorado);

Five power utilities operating commercial motor vehicles (Alabama Power, Duquesne Light Company, Houston Lighting and Power, Southern Company Services, Inc., Virginia Power);

Six manufacturers and distributors of explosives (Austin Powder Company, Viking Explosives and Supply, Inc., Dyno Nobel, Inc., the Ensign-Bickford Company, Maynes Explosives Company, Sierra Chemical Company);

Two professional associations of the explosives industry (Institute of Makers of Explosives, International Society of Explosives Engineers);

Four consumer and safety advocacy groups (Advocates for Highway and Auto Safety, Transportation Consumer Protection Council, Inc., New York Operation Lifesaver, Operation Lifesaver, Inc.);

Four freight railroads and commuter rail lines (CSX Transportation, Louisiana Railroads, Metra (Northeast Illinois Regional Commuter Railroad Corporation), Vermont Railroad/ Clarendon and Pittsford);

Nine transportation industry associations (American Bus Association (ABA), American Trucking Associations (ATA), Association of American Railroads (AAR), Association of Waste Hazardous Materials Transporters (AWHMT), Distribution and LTL Carriers Association, National Automobile Dealers Association (NADA), National School Transportation Association (NSTA), National Tank Truck Carriers, Inc. (NTTC), Petroleum Marketers Association of America (PMAA));

Four drivers' organizations, labor unions, and other professional organizations (Brotherhood of Locomotive Engineers, International Association of Fire Fighters, Owner-Operator Independent Drivers Association, United Transportation Union);

Three motor carriers (Air Products and Chemicals, Ameritech, Radian International);

Two firms providing services to motor carriers (Consolidated Safety Services, Inc., DAC Services);

Three government agencies and associations of government organizations (American Association of Motor Vehicle Administrators, National Road Transport Commission of Australia, National Transportation Safety Board); and

Two individuals (Hoy Richards, Richards and Associates; O. Bruce Bugg).

Section 387.5, Definitions [Transportation of Property]

Under the statutory authority provided by 49 U.S.C 31139, the Secretary of Transportation is required to set forth regulations to require minimum levels of financial responsibility for the transportation of property for compensation by motor vehicles in interstate commerce. The FHWA proposed to amend the definitions in § 387.5 to make clear that for-hire transportation—transportation for compensation—included transportation by contract, common, and exempt motor carriers of property.

The Transportation Consumer Protection Council (TCPC) noted that, although the ICC Termination Act of 1995 (Pub. L. 104–88, 109 Stat. 803) eliminated the distinction between ''common'' and ''contract'' motor carriers, the terms still appear in proposed text of revised FMCSR sections. The TCPC also pointed out what it believed were errors in some citations.

The Owner-Operator Independent Drivers Association (OOIDA) supported the revision of the definition of ''motor carrier'' and suggested the elimination of the distinction between ''motor common carrier'' and ''motor contract carrier.''

The National Automobile Dealers Association (NADA) suggested that the preamble of the final rule include several examples of transportation involving a variety of facts and circumstances.

The Association of Waste Hazardous Materials Transporters (AWHMT) favored the proposed revision to eliminate what it viewed as obsolete definitions. Although the AWHMT agreed that transporters of hazardous materials should be subject to the financial responsibility provisions of part 387, it referenced a 1982 Interstate Commerce Commission (ICC) ruling that hazardous waste destined for disposal was not considered ''property.'' The AWHMT recommended that the ''property'' definition in part 387 include ''a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more in interstate or foreign commerce.''

The OOIDA recommended eliminating the distinction between ''exempt'' and ''non-exempt'' commodities. The OOIDA holds that the economic regulations forming the basis for the definitions no longer exist at the Federal level. The OOIDA asserts that some States will not alter their regulations, and will continue to require duplicate registrations and separate insurance coverages until the definitions are changed through Federal regulation.

FHWA Response

The FHWA plans to address the definitional issue of for-hire motor carriers of property in detail in the context of future rulemakings addressing the commercial regulation of motor carriers. Responsibility for these regulations was transferred from the ICC to the DOT under the provisions of the ICC Termination Act of 1995.

The definition of ''motor carrier'' is revised to make it consistent with the definition as it appears in § 390.5. The terse definition proposed in the NPRM did not include the agents, officers and representatives of the motor carrier, nor its employees responsible for driver or vehicle safety.

As for the AWHMT's concern, the FHWA used the term ''property'' to differentiate between two types of transportation—non-passengers and passengers. The merits of using other terms, such as ''goods'' or ''commodities'' as a substitute for the ''property'' could be debated. However, the term ''property'' is of longstanding use and is clearly understood to imply non-passenger transportation. In this context, the term also includes transportation of refuse and hazardous materials waste.

Section 387.27(b)(4), Exceptions to Applicability [School Bus Transportation]

The American Bus Association (ABA) suggested using the term ''for-hire carrier under contract'' rather than ''contract motor carrier'' to be consistent with other definitions in part 387, § 387.27(b)(4). The ABA also recommended that the ''extracurricular'' trips envisioned in the proposal have some preponderant educational purpose to qualify for the exemption from the minimum financial responsibility requirements. The ABA expressed concern that school districts could contract to transport students to amusement parks or other non-educational destinations, without any insurance coverage for the passengers or the public.

FHWA Response

This revision adopted today is consistent with an interpretation issued on April 4, 1997 (62 FR 16370, at 16403) as part of the Regulatory Guidance for the Federal Motor Carrier Safety Regulations. It is also consistent with Congressional intent. In certain instances, motor carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act (49 U.S.C. 31138(e)(1)). Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387 (49 CFR 387.27(b)(1)). Therefore, school bus contractors are not subject to the Federal financial responsibility requirements for interstate trips such as sporting events and class trips, but they must comply with all other requirements of the FMCSRs. They would, however, be subject to State financial responsibility requirements.

In today's final rule, the term ''contract motor carrier'' replaces ''motor carrier under contract.'' In all other respects, the final rule uses the language proposed in the NPRM.

Section 387.29, Definition, ''For-Hire Carriage'' [Passenger Transportation]

The FHWA proposed to amend this definition to codify regulatory guidance issued on November 17, 1993 (58 FR 60734) and slightly revised on April 4, 1997 (62 FR 16370, at 16406–16407). This guidance made clear the intent of the definition to cover transportation: (1) generally available to the public and (2) performed for a commercial purpose by a motor carrier who receives compensation for the transportation service.

The ABA believed there may be some confusion about the concept ''generally available to the public.'' It pointed out that many bus service contracts might not in fact be available to the general public. An example of this would be a contract with a corporation to transport employees between the corporation's facilities. The ABA noted that the FHWA still issues permits for motor contract carriers of passengers. The ABA recommended that the term be defined to include motor contract carriage operations.

FHWA Response

The FHWA is adopting a more direct definition than that proposed in the NPRM: ''For-hire motor carrier of passengers means a person engaged in the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property of another.'' This definition more clearly expresses the FHWA's intent to cover all types of for-hire passenger transportation, irrespective of the business relationship between the transportation provider and the customer. Because many motor carriers of passengers also transport the passengers' property (for example, their luggage), and, possibly, small packages not accompanying the passengers, the term ''goods or property of another'' is included in the definition.

Section 390.3(f)(2), Accident Register Requirement for Federal, State, and Local Government Agencies

The FHWA proposed removing the requirement that government agencies described in this section maintain an accident register for transportation activities involving interstate charter transportation of passengers.

The ABA opposed the proposal. It noted that, although governmental entities are not subject to FHWA compliance reviews, they are essentially unregulated from a safety standpoint (except for the commercial drivers license (CDL) and related controlled substance and alcohol testing regulations). The ABA argued that the FHWA will have no other means to obtain accident information about this segment of the charter service population. The ABA asserted that the minimal burden imposed on the public transit agencies is outweighed by the need to obtain this information to make informed decisions on regulatory policies. It added, ''[A]s the Federal Transit Administration continues to purchase intercity buses for suburban commuter operations, which buses might also be used for charter operations, this lack of accident information could be magnified.''

FHWA Response

The FHWA believes government agencies have a strong self-interest in maintaining safe operations. The fact that they are not subject to compliance reviews probably does not influence their recordkeeping practices concerning accidents. Furthermore, any accidents their vehicles are involved in are a matter of public record, and this information could be gathered readily if the need arises. Accordingly, paragraph 390.3(f)(2) is revised as proposed in the NPRM.

Section 390.5, Definitions

Accident

The FHWA attempted to clarify the meaning of the term ''public road'' in the definition of ''accident.'' The term ''public road'' was defined to include privately owned roads accessible to the general public. The intent of the proposed change was to emphasize that the defining factor is the road's accessibility to the public, rather than its owner's identity.

Commenters addressing this issue were: the Austin Powder Company (letters from its Director of Safety and Compliance and another employee who is Chairman of the American National Standards Institute A10.7 Standard Committee), Institute of Makers of Explosives (IME), International Society of Explosives Engineers, Viking Explosives & Supply, Inc., Dyno Nobel, Inc., Maynes Explosives Company, Sierra Chemical Company (letters from three officials and a staff engineer), and the Ensign-Bickford Company.

The commenters were concerned that the proposed revision to the definition of ''accident,'' and, in particular, the ''public road'' portion of the definition, could require many existing explosive storage facilities (magazines) to be closed, relocated, or have their storage capacities reduced. Several commenters noted that many of these magazines are currently accessed by private roads, or are located near private roads.

The associations, manufacturers, and users of explosives provided consistent commentary and background for their positions. The IME first developed a safety standard to provide protection from explosives storage sites in 1910. This was done at the request of the Bureau of Explosives (now part of the Department of the Treasury, Bureau of Alcohol, Tobacco, and Firearms (ATF)). The standard has been revised and updated over the years and is currently published as IME Safety Library Publication No. 2, ''The American Table of Distances.'' This table is incorporated into the regulations of the Occupational Safety and Health Administration (OSHA) (29 CFR 1910.109), the ATF (27 CFR 55.11 and 55.218), State regulations, ANSI standards, National Fire Protection Association standards, Uniform Fire Code, U.S. Army Corps of Engineers, Building Officials and Code Administrators, Southern Building Code, and other national safety standards and codes. Most of the commenters on this issue stated they use ANSI Standard A10.7, ''Commercial Explosives and Blasting Agents—Safety Requirements for Transportation Storage, Handling, and Use'' to provide

minimum recommendations for locating explosive storage sites in reference to inhabited buildings, public highways, and passenger railways.

The definition of ''highway'' applicable to the American Table of Distances (29 CFR 1910.109(c)(1)(v), Table H–21) is ''any public street, public alley, or public road.'' Commenters stated that the table has never been used to refer to ''private'' roads on construction sites, distribution sites, and the like. If the definition were to be changed to include ''private'' roads which may be accessible to the public, the commenters believed many existing explosive storage facilities (magazines), currently accessed by private roads, or located near private roads, may be forced to close or to significantly reduce their capacity due to quantity/distance restrictions. Several commenters expressed particular concern with a sentence in the preamble to the NPRM which stated: ''Therefore, accessibility to the public, not the identity of the owner, is the major factor which determines whether a road or way is public.'' The IME noted:

> Explosive storage facilities on mining properties, quarrying operations, and construction projects are accessed by mine and construction roads or are located in proximity to such roads. These roads have never been considered ''public roads'' for purposes of determining quantity/distance separations even though the public may have access to such roads (it would be a physical impossibility to fence off the hundreds of square miles on such sites in order to restrict public accessibility). Although such roads are generally posted and/or barricaded, experience has shown that even fences and roving patrols cannot keep the ''public'' in four wheel drive vehicles, all terrain vehicles (ATVs), snowmobiles, etc. from traveling the roads, especially during hunting and fishing seasons.
>
> For over eighty years, the term ''public road'' has always been regarded by the explosives, blasting, mining, quarrying, and construction industries to mean a road that was constructed, financed, maintained, and controlled by some political subdivision.

Two commenters asked for clarification concerning the applicability of the proposed definition to accidents on private property. The National Automobile Dealers Association (NADA) asked the FHWA to clarify whether the definition would extend to accidents occurring on truck dealership properties. The State of Idaho Transportation Department wished clarification concerning parking lots, garages, and private roads around stadiums, shopping malls, and similar facilities.

FHWA Response

The FHWA has never intended to expand the definition of ''public road'' to encompass any roadway only remotely accessible to the public at large. The agency's intent was to codify an interpretation published in the April 4, 1997, Regulatory Guidance for the Federal Motor Carrier Safety Regulations (62 FR 16370, at 16408). That interpretation reads as follows:

Section 390.5 Definitions

* * * * *

Question 26: What is considered a ''public road''?

Guidance: A public road is any road under the jurisdiction of a public agency and open to public travel or any road on private property that is open to public travel.

Many roads performing the identical access functions of ''public roads'' are, in fact, constructed, operated, and, sometimes, maintained by non-governmental entities. These entities include shopping center owners, commercial real estate developers, and homeowners associations. These roads are nearly always designed, constructed, marked, signed, and signaled in conformance with national, State, and local guidelines, regulations, and ordinances. In these times of scarce governmental resources, commercial and private enterprises are more often being required to provide the immediate access to their proposed land developments as a *quid pro quo* for obtaining a zoning approval and construction permit for a facility generating personal and vehicular travel on the surrounding roadway network. In addition, conformity with design and construction practices is usually a requirement for a local governmental entity to take over the maintenance of the completed facility.

Another term, ''Open to public travel,'' found at 23 CFR 460, clearly expresses the FHWA's intent. The definition reads as follows:

Open to public travel means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

The FHWA believes the definition specifically addresses the IME's concern because it excludes road sections barricaded or posted.

Another issue is the nature of the storage of commercial explosives. Footnote 5 to the American Table of Distances reads as follows:

This table applies only to the manufacture and permanent storage of commercial explosives. It is not applicable to the transportation of explosives, or any handling or temporary storage necessary or incident thereto. It is not intended to apply to bombs, projectiles, or other heavily encased explosives.

The FHWA believes the IME's and other commenters' concerns about the potential necessity of relocating explosives magazines may extend beyond the application of the American Table of Distances. Many magazines, such as those used in the earthmoving stages of road construction projects, are temporary storage facilities.

The FHWA is substituting the term ''road open to public travel'' for the term ''public road'' in the definition of ''accident.'' It is discussed in detail under the heading, ''Highway,'' later in this document.

The NADA and the State of Idaho Transportation Department asked about accidents taking place on a truck dealership's property, parking lots, parking garages, and roads providing access to shopping malls, stadiums, and similar facilities. If the property is ''open to public travel,'' a motor carrier would be required to record those accidents under § 390.15. In general, the FHWA considers the following *ungated* facilities to be open to public travel: Customer parking lots, garages and access roads to malls, stadiums, etc. On the other hand, *gated* parking lots, garages, etc., are not open to public travel. The customer parking areas of a truck dealership are open to the public, whereas areas of the dealership used to park or store new and used vehicles prior to sale generally are not.

Commercial Motor Vehicle

The FHWA proposed to revise the definition of commercial motor vehicle to provide consistent definitions of designed passenger capacity and transportation of hazardous materials in §§ 383.5 and 390.5. The FHWA received no comments on this element of the proposal.

The definition is, therefore, revised as proposed in the NPRM, with two minor changes. The first change deletes the modifying term ''public'' (as in ''public highway'') because the term ''highway'' is now defined and added to the definitions. The second change deletes the Code of Federal Regulations citation for the Hazardous Materials Regulations because the FHWA believes the motor

carriers subject to these regulations are well aware of the reference, and a cross-reference here is superfluous.

Several commenters addressed the issue of the weight threshold for commercial motor vehicles subject to the FMCSRs. Those comments appear under ''Comments to FMCSR sections not addressed in the NPRM,'' later in this document.

Highway

Because of the concern generated by the FHWA's proposal to revise the use of the term ''public road'' in the definition of ''accident,'' the FHWA is adding the term ''highway'' to the definitions of § 390.5. This definition builds upon the definition in Section 1–127 of the ''Uniform Vehicle Code and Model Traffic Ordinance'' (UVCMTO), 1992 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances in Evanston, Illinois, which reads as follows:

§ 1–127—Highway.—The entire width between the boundary lines of every way publicly maintained when any part thereof is *open to the use of the public* for purposes of vehicular travel (emphasis added).

The FHWA has modified this definition and added it to those proposed in the NPRM: *Highway* means any road, street, or way, whether on public or private property, open to public travel. ''Open to public travel,'' as defined at 23 CFR 460.2, will be incorporated in this definition.

The key difference between the Uniform Vehicle Code definition and the definition the FHWA is adopting is the public-use nature of the facility, rather than its ownership or maintenance.

Intermittent, Casual, or Occasional Driver

Section 391.63 contains a limited exemption from certain driver qualification requirements for an ''intermittent, casual, or occasional driver.'' This term is defined in § 390.5 as a driver, who in any period of 7 consecutive days, is employed by more than a single motor carrier. Section 390.5 also defines a ''regularly employed driver'' as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace the term ''intermittent, casual, or occasional driver'' with the term ''multiple-employer driver'' to clarify both definitions.

Radian International LLC (Radian) is concerned that the proposed term ''multi-employer driver'' would drastically alter the meaning of the current definition and eliminate the relief from certain recordkeeping requirements it provides. Radian, an environmental engineering firm, occasionally requires its employees to drive a company-owned commercial motor vehicle (CMV) with a gross vehicle weight rating (GVWR) of more than 10,000 pounds (4,545 kilograms) to test sites. It cited a letter of interpretation issued by the Office of Motor Carrier Standards on October 2, 1992, advising that its drivers were intermittent, casual, or occasional in this situation and that §§ 391.63 and 395.8(j)(2) of the FMCSRs would be applicable to Radian's situation.

FHWA Response

The FHWA has reassessed the 1992 letter of interpretation and now believes it was erroneous. A driver who is employed by a single motor carrier meets the definition of a regularly employed driver in § 390.5 even though he or she might drive a CMV only intermittently or occasionally. Radian provided no information at the time the interpretation was requested to support classification of its employees as anything other than ''regularly employed drivers,'' unless they drive CMVs for other motor carriers during any period of 7 consecutive days. The fact that these employees may only occasionally drive CMVs as part of their assigned duties does not change this fact. No other commenter challenged the revision to the definition, and it is being adopted as proposed. The 1992 letter of interpretation is therefore overruled. The administrative adjustments Radian must make are not arduous. Potentially, they can provide Radian with additional assurance of the safe driving records of its employees.

The FHWA will delete the second sentence of the definition proposed in the NPRM, referencing the qualifications of these drivers. Under Subpart G, Limited Exemptions, §§ 391.63 and 391.65 provide clear guidance to the exemptions for multiple-employer drivers and drivers furnished by other motor carriers.

The term ''single-employer driver'' replaces the term ''regularly-employed driver'' as proposed in the NPRM.

Interstate Commerce

The FHWA proposed to revise the definition of interstate commerce to clarify that transportation within a single State is considered interstate commerce if this transportation continues a through movement originating outside the State, or has a destination outside the State.

The Advocates for Highway and Auto Safety (AHAS) stated its strong support of the proposal to clarify the definition. The NTTC advised the FHWA to coordinate with the Research and Special Programs Administration on jurisdictional questions of interstate/intrastate hazardous materials transportation, and particularly recommended that the FHWA review the comprehensive HM–223 and HM–200 rulemakings concerning operation of non-specification cargo tank motor vehicles.

The Distribution and LTL Carriers Association (LTL) recommended that paragraph (3) of the definition be revised to read: ''Between two places in a State as part of trade, traffic, or transportation which has originated from outside the State or is destined by the shipper to go outside the State.''

In a related comment, the AHAS requested the FHWA to address ''commercial vehicle axle and gross weight limits for trucks operating wholly intrastate but engaging in transport that is interstate in character, hours of service requirements that diverge from the federal standards of 23 CFR Pt. 395 [sic], and States that establish overall length limits for trucks as viewed within the limitations and grandfathering provisions of 49 U.S.C. § 31111(b). We do not regard the interpretation of these and a number of other topics as obvious when certain intrastate commercial movements are denominated interstate.'' The AHAS did not explain how it defined ''transport that is interstate in character.''

FHWA Response

Although the LTL's suggested revision does not cover international movements, it is otherwise more concrete than the proposed definition. The agency therefore adopts a revised version of the LTL's suggested wording.

With respect to the NTTC's recommendation, the FHWA continues to work very closely with the RSPA on technical, jurisdictional, and programmatic issues related to all hazardous materials rulemaking actions.

The concerns of the AHAS about weights and dimensions of CMVs operating in interstate commerce are beyond the scope of this rulemaking, but we will forward them to the offices responsible for implementing the CMV size and weight regulations.

Principal Place of Business

The FHWA proposed to amend this definition to mean a single location where records required by parts 382, 387, 390, 391, 395, 396, and 397 of the FMCSRs will be made available for inspection within 48 hours after a request has been made by a special

agent or authorized representative of the FHWA. Because the definition is revised to accompany a new § 390.29, comments are summarized under the heading for that section.

Regularly Employed Driver

Section 390.5 defines a ''regularly employed driver'' as a driver employed or used solely by a single motor carrier in any period of 7 consecutive days. The FHWA proposed to replace this term with ''single employer driver'' to make it more consistent with the intended meaning.

The FHWA received no comments on this item and it will be revised as proposed in the NPRM.

Section 390.29, Location of Records or Documents

The FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

In regulatory guidance issued on November 17, 1993 [58 FR 60734], the FHWA allowed inspection, repair, and maintenance records required under part 396 to be maintained at a location of the motor carrier's choice, but required the motor carrier to make them available within two business days upon the FHWA's request. The revised definition of the principal place of business, and the new § 390.29, extend these recordkeeping allowances and provisions to all records required under parts 382, 387, 390, 391, 395, 396, and 397. The change proposed will provide motor carriers with increased flexibility in complying with recordkeeping requirements of the FMCSRs.

Houston Lighting and Power Company (Houston L&P), Distribution and LTL Carriers Association, ABA, and the National Automobile Dealers Association (NADA) supported the proposed revision.

National Tank Truck Carriers, Inc., a trade association of motor carriers specializing in cargo tank transportation, requested that the FHWA codify regulations concerning the retention of ''electronic'' records.

FHWA Response

The definition of ''Principal place of business'' in § 390.5 is revised as proposed in the NPRM with one minor addition. The NPRM language at 62 FR 3866 inadvertently omitted the reference to part 397 in the proposed rule, although it was mentioned in the preamble. It is included in today's rule.

The new § 390.29 is added as proposed in the NPRM, but with the phrase ''principal place of business'' added to clarify that a motor carrier may maintain records or documents at a headquarters location.

The FHWA will address the specific issue of electronic recordkeeping and information transmission in separate future rulemakings on the subject of supporting documents and other types of records.

Section 391.11, Qualifications of Drivers

The heading for § 391.11 is changed from ''Qualifications of drivers'' to ''General qualifications of drivers.'' Although this was not presented for comment in the NPRM, the FHWA believes there is good cause for this minor revision to the title of this section. The title more appropriately reflects the coverage of the section—basic qualifications, of a general nature, for CMV drivers.

Sections 391.11(b)(4) and (b)(5), Determining Proper Securement of Cargo

The FHWA proposed to delete these provisions from the driver qualifications section of the FMCSRs. The FHWA reasoned they were redundant because §§ 383.111(d) and 392.9(a) address the topic of a driver's knowledge and experience relating to proper securement of cargo.

Although no commenters addressed the proposal to delete these provisions, the FHWA has determined there is good cause to retain them because they pertain to the general qualifications of CMV drivers. An essential element of safe operations is a driver's ability to determine whether cargo is properly secured and to secure cargo himself/herself, and for motor carriers to assure themselves that their drivers have the necessary knowledge and skills to carry out these tasks. The paragraphs clearly complement the provisions of §§ 392.9 and 383.111(d).

The ability of a driver to determine the proper location, distribution, and securement is clearly a skill that is learned through instruction and experience. A driver might arrive at a new job without specific experience in handling a particular type of cargo, but be well qualified in other respects. The FHWA believes that skills and practice in safe cargo handling are more appropriately categorized as responsibilities, rather than ''qualifications.'' For that reason, these requirements will be placed under a new heading, Responsibilities of drivers, § 391.13.

Section 391.11(b)(7), Jurisdiction Issuing a Commercial Motor Vehicle Operator's License

The State of Idaho Transportation Department (Idaho) requested the FHWA to consider specifying that the currently-valid operator's license be issued by the driver's State or jurisdiction of domicile, rather than ''from one State or jurisdiction.'' Idaho reasoned this would be consistent with the definition of ''State of domicile'' used for the CDL in § 383.5 and the driver application procedures for transfer of a CDL in § 383.71(b).

FHWA Response

The FHWA acknowledges Idaho's comment concerning the desirability of consistent requirements for CMV drivers required to hold a CDL and CMV drivers required to hold an operator's license. The FHWA raised the issue of a driver's domicile in its 1990 NPRM concerning learner's permits for drivers seeking to obtain a CDL (55 FR 34478, August 22, 1990). The FHWA raised the issue of the domicile requirement in existing CDL regulations and their impact on drivers wishing to acquire commercial driver training in preparation for obtaining a CDL. The FHWA received a number of comments, filed under FHWA Docket Number MC–90–10 (now Department of Transportation Docket FHWA–97–2181). The issue of how best to deal with the definition of jurisdiction of licensure is still ongoing. The FHWA will address this issue in future rulemaking actions.

Because §§ 391.11(b)(4) and (b)(5) are redesignated as §§ 391.13(a) and (b), this paragraph is redesignated as (b)(5) and reads: ''Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction.''

Section 391.11(b)(10), Road Test

The FHWA proposed to delete all requirements related to the road test contained in subpart D, §§ 391.31 and 391.33. Therefore, this section, cross-referencing the road test provisions, was proposed to be deleted as well. The FHWA reasoned the road test requirement was redundant for driver applicants required to possess a CDL or who successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. Additional discussion may be found under the heading for Section 391.31 later in this document.

The FHWA has determined that it is in the best interests of safety to retain

§ 391.31 and to revise § 391.33. The background of the proposed change, the summary of docket comments, and the FHWA's response are detailed under the headings for §§ 391.31 and 391.33. This section is retained and redesignated as § 391.11(b)(8).

Section 391.11(b)(11), Application for Employment

The FHWA proposed to remove the section requiring a commercial motor vehicle driver to furnish the employing motor carrier with an application for employment in accordance with § 391.21. The agency reasoned that the completion and furnishing of an employment application are not driver qualification standards as such. However, they are necessary and important actions to evaluate the competence of applicants for CMV driver positions, and they are addressed in § 391.21.

The ATA opposed the removal of this provision. It stated, ''Completion of an application for employment is fundamental to the process of selecting safe CMV drivers since the beginning of structured safety programming and was published as a trucking industry safety standard in 1939, 12 years before it was incorporated into the FMCSRs.'' The ATA believed the deletion of the paragraph would prevent motor carriers from gathering information to determine applicants' qualifications in accordance with § 391.21.

FHWA response

A driver's application for employment is not a ''qualification'' *per se*. The revised heading of § 391.11 as ''General qualifications'' clarifies the intent to include performance-oriented qualifications. An application for employment is simply a presentation of a document. The FHWA is not revising or removing § 391.21, Application for employment. As stated in the preamble to the NPRM, the action of removing § 391.11(b)(11) is not intended to affect the responsibility of CMV drivers to complete and furnish the motor carrier considering hiring them with employment applications containing certain information required by § 391.21.

Accordingly, § 391.11(b)(11) is removed as proposed in the NPRM.

Section 391.13, Responsibilities of Drivers

The FHWA proposed to delete §§ 391.11(b)(4) and (b)(5) concerning a CMV driver's knowledge and experience with methods and procedures for location, distribution, and securement of cargo. The FHWA has determined it is in the best interests of safety to retain those sections, as discussed above. A new § 391.13 will be added to the FMCSRs, and the provisions will be redesignated to appear under that heading.

Section 391.15(b), Disqualification for Loss of Driving Privileges

The FHWA proposed to redesignate § 392.42 as § 391.15(b)(2) and to title the paragraph ''Loss of driving privileges.'' The provision requires a driver who receives a notice that his/her license, permit, or privilege to operate a CMV has been revoked, suspended, or withdrawn to notify the employing motor carrier before the end of the business day following the day the driver received the notice. The FHWA believed the notification requirement would be more appropriately included in § 391.15 because it specifically addresses the disqualification of drivers, rather than general requirements for safe driving.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. The FHWA sought information to determine if § 391.15(b) should be revised to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn. The FHWA received many comments on this speculative proposal. Because they were requested under the heading of § 392.42 in the NPRM, they are summarized under that heading in this preamble.

The State of Idaho recommended an additional revision to this section. Idaho recommended adding a CMV driver's refusal to undergo controlled substance testing as a disqualifying offense, noting that ''Based on current regulations, a CDL driver cannot be disqualified for refusing to undergo a controlled substance test.''

FHWA Response

The agency is revising § 391.15(b) as proposed in the NPRM. The section contains general provisions to require a driver notified that a temporary or permanent limitation has been placed on his/her CMV driving privilege to inform the employing motor carrier of this event.

Because of continuing discussions regarding how to treat loss-of-privilege from a jurisdiction other than the one that issued a license to a driver, the FHWA has determined it is appropriate to retain the current title ''Disqualification for loss of driving privileges.'' Any proposals concerning loss-of-privilege actions imposed by the non-licensing jurisdiction will be addressed in a future rulemaking action.

The FHWA has determined it is not appropriate at this time to change the FMCSRs to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

As for Idaho's comments, the intent of the current § 392.42 is to require the driver to inform the motor carrier of notifications received from State or local licensing or law enforcement agencies. In the case of a controlled substance test administered by a police officer, a driver's refusal to test would be covered by the appropriate State or local laws, and the driver would be required to inform the motor carrier of any adverse license actions related to the event.

On the other hand, Idaho's belief that ''a CDL driver cannot be disqualified for refusing a controlled substance test'' is not entirely accurate. The disqualifying offenses under § 391.15(c)(2), which have not been proposed for revision here, include driving a CMV under the influence of a Schedule I drug or other substance identified in 21 CFR 1308 [Schedule of Controlled Substances]. If the driver refused to take a controlled-substance test under the provisions of 49 CFR part 382, the refusal generates the same consequences as a positive test. The statute (49 U.S.C. 31306) requires a motor carrier to test its drivers under certain circumstances under regulations promulgated by the FHWA. One of these circumstances is a driver's refusal to comply with the statute. If the driver does not comply, he or she must not operate a CMV, and the motor carrier must not permit or require the driver to do so until the provisions of §§ 382.503 and 382.309 have been met through Substance Abuse Professional (SAP) evaluation and the return-to-duty testing process. This means the driver must take an actual test to be allowed to resume driving duties in interstate commerce. In addition, the driver may be subject to his or her employer's policy actions.

In sum, controlled-substance and alcohol tests administered by an employer do not fall under State laws.

The employer is responsible for taking the appropriate actions in accordance with the FMCSRs and with company policy. The FHWA's regulations consider a driver's refusal to submit to testing a prohibited practice. If a driver refuses to undergo a test, the motor carrier must prohibit the driver from driving a CMV and must provide the driver with names, addresses, and telephone numbers of substance abuse professionals.

The FHWA also believes it is inappropriate to equate a driver's refusal to test or a positive test result under part 382 as equivalent to a criminal conviction for driving under the influence of a controlled substance. Criminal convictions of this nature are generally based upon a law enforcement officer's determination that probable cause existed to require a test and an arrest under his/her jurisdiction's policies. The criminal process also generally allows a driver more due process rights to contest the arrest and positive test result because the driver's license privilege is in jeopardy.

The FHWA is reviewing regulations and guidance concerning controlled-substance and alcohol tests administered by law-enforcement officials. The agency will address these issues in a separate rulemaking.

Section 391.25, Annual Review of Driving Record

The FHWA proposed to revise this section to replace the annual review of a driver's driving record with a specific requirement to make an inquiry to the appropriate agency of every State in which the driver held a CMV operator's license or permit during the time period.

DAC Services (DAC), a consumer reporting agency and a major provider of automated driver screening services, favored the proposed revision. However, DAC was concerned that the proposed language could be interpreted to prohibit third-party firms from obtaining records on behalf of motor carriers. DAC noted that the FHWA field staff occasionally question whether the information obtained through DAC can be used to satisfy a motor carrier's compliance with § 391.23, Investigation and inquiries. DAC recommended changing the proposed revision explicitly to recognize the role of third-party information services:

§ 391.25(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make, *or cause to be made by or through its agent,* an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

DAC also requested the FHWA add ''or its agent on the motor carrier's behalf,'' before the words ''shall make the following investigations and inquiries * * *'' in § 391.23.

The Delaware Department of Public Safety favored the proposed change while noting that expanded direct communications between motor carriers and State agencies will likely increase its workload. Taking another point of view, Duquesne Light Company's Nuclear Power Division believed the current requirements are sufficient, and implementing the proposed rule change would place an additional administrative burden on companies.

FHWA Response

The FHWA is amending § 391.25 as proposed in the NPRM with a minor editorial change. The language will be edited to clarify the requirement for the motor carrier to maintain a copy of the responses from each State agency to the inquiry concerning drivers' records. The motor carrier must maintain these responses regardless of their content.

In response to DAC's comment, the definition of ''motor carrier'' in § 390.5 specifically includes the motor carriers agents, officers, and representatives. Since third-party firms providing reporting and other services to a motor carrier act as the motor carrier's agents, they are already included in the definition of those entities who are authorized to obtain records on behalf of motor carriers.

In response to the Duquesne Light Company's concern, the requirement to make inquiries with each jurisdiction where the driver held a CMV operator's license or permit during the past year is intended to consider the documented recordkeeping practices of licensing jurisdictions, some of which remove data on drivers' convictions for various reasons.

However, as the Delaware Department of Public Safety pointed out, there are well-founded concerns about the workload for both the motor carriers and the DMVs. The time and cost burdens associated with the annual review of driving records are discussed under the Paperwork Reduction Act section of the preamble to today's final rule.

Section 391.27, Record of Violations

The FHWA proposed to delete the provision that a motor carrier require its drivers, at least every 12 months, to prepare and furnish the motor carrier with a list of all violations of motor vehicle traffic laws and ordinances (except those violations involving only parking), of which the driver has been convicted or has forfeited bond or collateral during that period. The FHWA reasoned that making these inquiries to State agencies would be a more effective way to gather this information because it would not rely on the driver's memory or veracity.

Air Products and Chemicals (Air Products) opposes the proposal to eliminate the requirement for motor carriers to require its drivers to furnish a list of traffic violations resulting in convictions. Air Products' experience has indicated that the information its outside service obtains from State sources is not always complete or timely—it lags behind the information drivers provide. Air Products maintains that States need to improve their collection and transmission of these data to make them sufficiently reliable to meet the company's needs. For the present, Air Products continues to check both State records and drivers' lists.

The ABA supported the proposal as a method of streamlining the process of inquiring into drivers' records.

The AHAS and the AAMVA both supported the proposal as a more objective method to gather information, as well as a way to corroborate information on violations reported by drivers. The AAMVA believed waiving the requirement for drivers to notify motor carriers is acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary.

The ATA forwarded concerns expressed by a motor carrier employing non-CDL CMV drivers. The motor carrier was concerned that, if § 391.27 were deleted, a motor carrier could not check information from a State motor vehicle record (MVR) against any information reported by its non-CDL drivers.

Vermont DMV Inspector R. Moore recommended making Commercial Drivers License Information System (CDLIS) inquiries in each State where a driver has driven during the preceding 12 months. This would provide a violation record on a national basis for each driver.

The ATA recommended allowing the motor carrier to require a driver to secure and submit an MVR annually. The ATA also recommend the FHWA accept evidence that a motor carrier has requested records from a State licensing agency as proof of compliance with the provision, even if the motor carrier has not received the State agency's response. The ATA maintains that privacy concerns have resulted in States developing elaborate procedures for

obtaining MVRs, and that delays are often encountered.

FHWA Response

The FHWA has determined it is in the best interest of safety to retain this section. The proposal to delete the provision was based on two assumptions which commenters have questioned. The first assumption was that State driver-licensing systems would be able to provide a comprehensive record of accidents and traffic violations involving interstate [non-CDL-holding] CMV drivers. The second assumption was that the State records would be far superior and more objective than the current practice of relying on a driver's memory. It appears that several serious limitations would prevent successful adoption of such a rule at this time.

Several commenters expressed reservations about the completeness and timeliness of States' operator license status information. They believe significant improvements must be made in the States' collection and transmission of this data before motor carriers should be asked to rely completely on it.

Relying completely on State information sources would also eliminate a cross-check between driver-provided information and information obtained from State MVRs. This would be especially problematic for non-CDL-licensed CMV drivers because there is no centralized information source similar to CDLIS, except for the National Driver Register Problem Driver Pointer System (NDR–PDPS) sponsored by the National Highway Traffic Safety Administration. This system focuses primarily upon adverse actions against a licensee, such as suspensions and revocations. One commenter also highlighted the administrative difficulty of gathering State MVR information on non-CDL drivers when the home States of the driver and the motor carrier are different. While this certainly can present a challenge for a motor carrier attempting to obtain the information on its own, the information is commonly available via third-party providers for a fee. However, there is no such service available to obtain NDR–PDPS information.

As the AAMVA noted, waiving the requirement for drivers to notify motor carriers might be acceptable in the cases where the State has a mandatory notification program, but not where the State's program is discretionary. The AAMVA noted that, as of mid-1997, no States had a mandatory program, and only two States had widespread voluntary programs, one of which was limited to intrastate drivers and motor carriers.

Requesting information from drivers serves another safety and business purpose. It is common practice for motor carriers to require drivers and driver-applicants to certify the correctness of information they provide. Falsification of information is often grounds for dismissal. Until the completeness and timeliness of State-based driver record information is substantially improved, it is important for motor carriers to obtain this information from both the driver and the State-based source to enable cross-verification of information.

The proposal to make an inquiry to each State where a driver has driven during the preceding 12 months would place an undue burden on drivers' employers and the State recordkeeping systems supporting the CDLIS. The FHWA plans to address improvements in the effectiveness of the CDLIS recordkeeping functions in a future rulemaking action.

The primary concern for both motor carriers and drivers is that a loss of driving privileges in a jurisdiction other than the one licensing a driver, is not always brought to the attention of the licensing jurisdiction. A common basis for a loss of driving privileges is the driver's failure to appear in court to respond to a traffic citation. Since ''failure to appear'' does not have a specific traffic violation associated with it, the licensing jurisdiction may choose not to post it on an MVR. This is a difficult and complex issue, and the FHWA expects to address it in a future NPRM.

The FHWA believes the ATA's first suggested revision could place the cost and time burden of obtaining information solely upon the driver. This is not the FHWA's intent. Furthermore, the regulation in its current form does not prohibit a motor carrier from requiring a driver to provide this information as a condition of employment: some motor carriers do, in fact, require their drivers to obtain their own MVRs.

The FHWA believes it is premature to accept the ATA's second recommendation, that evidence of an information request made to a State driver-licencing agency should constitute compliance with the section. This could encourage motor carriers to delay making these requests until they were compelled to, rather than integrating them into their normal safety-oversight practices. The agency is aware of recent significant changes in the reporting process made necessary by the Driver's Privacy Protection Act of 1994 (18 U.S.C. 2721–2725) and the recent amendments to the Fair Credit Reporting Act (15 U.S.C. 1681–1681u). Both of these laws are generating numerous adjustments within licensing agencies and the business community. The FHWA will monitor this issue as it affects driver records and we encourage users of this information to inform the agency if there are continuing problems.

Section 391.31, Road Test, and Related Sections 391.11(b)(10), 391.51(c)(4), 391.51(d)(2), 391.61, 391.67(c), 391.68(c), 391.69, and 391.73

The FHWA proposed to remove all requirements related to the road test and equivalent of the road test, with the exception of the applicability to drivers who apply for a waiver of physical disqualification. The FHWA reasoned the test requirements were redundant for those driver-applicants required to hold a CDL or who had successfully completed a road test as part of the process of obtaining another type of license or as required by an employer. The FHWA also highlighted beneficial outcomes of providing motor carriers more flexibility and reducing their recordkeeping burden.

The Houston Lighting and Power Company favored removing the requirement, contending that motor carriers are in the best position to determine whether a road test is needed for a non-CDL driver. The ABA also supported the proposal, noting ''it is no longer meaningful for any driver that has a Commercial Driver's License.''

The OOIDA opposed the proposal, contending that the key assumption is flawed: a CMV driver's possession of a CDL does not necessarily mean the driver is qualified to operate a CMV. The OOIDA's chief concern is that State-administered driving and skills tests are designed to assess a limited scope of performance. The OOIDA asserted that it is not uncommon for inexperienced drivers with little or no commercial driver training to pass skills tests administered by State personnel or State-authorized third-party testers, and that inadequate State budgets may have an adverse impact on both the thoroughness of the skills testing procedures and the qualifications of testing personnel. It quoted an ''On Guard'' bulletin issued by the FHWA in January 1997:

> A CDL does not indicate that the holder is a trained or experienced truck or bus driver . . . Title 49 CFR 391.11(b)(3), (Qualification of Drivers) requires that a driver be able, by reason of experience, training, or both, to safely operate the commercial motor vehicle he or she drives. This requirement is not met

by simply ascertaining that a prospective driver holds a CDL.

Air Products also opposed the proposal. The firm has found that many drivers holding CDLs do not possess the skills necessary to operate the company's vehicles safely. Air Products and the OOIDA shared the concern that some motor carriers, eager to reduce costs, would interpret the elimination of the FMCSR requirement for a road test as relieving them of all responsibility to test their drivers prior to hiring them.

FHWA Response

The FHWA has determined that it is in the best interest of safety to retain this section. It serves a useful purpose for both CDL and non-CDL drivers. Commenters noted that some CDL holders might not, or do not, possess the skills necessary to safely operate the vehicles the company plans to assign them to drive. This is a particular concern with drivers who hold endorsements for cargo tanks and operation of double and triple trailer combination vehicles, both of which are granted on the basis of written tests rather than road tests.

Section 391.33, Equivalent of Road Test

The FHWA proposed to delete this entire section as a requirement related to the road test proposed for deletion and discussed above. This section covers documents a driver may present, and a motor carrier may present, in place of, and as equivalent to, a road test required by § 391.31.

As part of its comment to the proposed deletion of §§ 391.31 and 391.33 (see above), the OOIDA requested removal of § 391.33(a)(1). That provision allows a driver to present and a motor carrier to accept a valid operator's license as equivalent to the road test required under § 391.31.

FHWA Response

As discussed in the previous section, the FHWA has determined that it is in the best interest of safety to retain the requirement for the road test, § 391.31. The agency has determined that a CDL, but not the double/triple trailer or cargo tank vehicle endorsements, may be considered as the equivalent of a road test. However, a non-CDL operator's license will no longer automatically be considered the equivalent of a road test. If a driver presents an operator's license (i.e., a State classified operator's license that is not a CDL), the motor carrier must make this determination in accordance with the existing provisions of § 391.33(c).

The provision in § 391.33(a)(1) currently allows a motor carrier to accept *a valid operator's license (emphasis added)* in place of and as equivalent to the road test required by § 391.31. The operator's license is different in many ways from the CDL. States' requirements for road tests required to obtain an operator's license vary considerably in their coverage and depth. On the other hand, the driving test required for CDL applicants contains a required series of activities and maneuvers for the driver to demonstrate basic vehicle control, safe driving, use of air brakes, and pre-trip vehicle inspection.

However, the CDL endorsements required to operate double/triple trailer combination CMVs and cargo tank CMVs are awarded based upon successfully passing a knowledge test. No States offer skills tests as a requirement for obtaining these endorsements. A motor carrier must still assess a driver's skill in operating these vehicles, using, at minimum, the maneuvers and operations required under § 391.31(c).

The FHWA will replace the words ''valid operator's license'' in § 391.33(a)(1) with the phrase ''valid Commercial Driver's License, as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements''.

Section 391.49(d)(5), Copy of Certificate of Road Test for Drivers Requesting Waiver of Certain Physical Defects

The FHWA received no comments on the proposal to revise this section. The section concerns a copy of a certificate issued pursuant to a driver's road test administered as part of the process of requesting a physical qualifications waiver for drivers with specific listed limb impairments, who are otherwise qualified to drive a CMV.

FHWA Response

The FHWA has decided to retain this section as it appears in the current FMCSRs, including retaining the existing cross-reference to § 391.31. The proposed revision would have deleted, among other things, the requirement for the driver to successfully demonstrate performance of a pretrip inspection.

Section 391.51, Driver Qualification Files

The FHWA proposed to remove § 391.51(b)(5) covering ''any other matter which relates to the driver's qualification to drive a commercial motor vehicle safely.'' The FHWA noted that the rules in part 391 are minimum requirements, that motor carriers are allowed to maintain any document in a driver qualification file related to the driver's qualifications, and concluded that this section was unclear and unnecessary. The FHWA also proposed to remove paragraph (d), concerning files for intermittent, casual, or occasional drivers, and paragraph (e), concerning drivers employed by another motor carrier.

Inspector Moore of the Vermont DMV recommended retention of paragraph (b)(5) because he believed that it encompassed a variety of documentation making up an integral part of a driver qualification file, and that the motor carrier might not otherwise retain such documentation. Inspector Moore named some examples: The motor carrier's periodic inquiries to State DMVs concerning a driver's record [over and above those required by regulation]; copies of accident reports not otherwise required to be retained; correspondence concerning an individual's driving; correspondence concerning regulatory compliance received from industry, enforcement agencies, or the public; copies of safe driving awards; and copies of records of disciplinary action against the driver by the motor carrier.

The FHWA received no other comments concerning § 391.51.

FHWA Response

The FHWA believes most motor carriers retain all of this information and more as a normal business practice. Without a requirement to retain specific documents, there is a possibility some motor carriers might be more selective in their choice of records to be maintained and retained. The FHWA proposed to remove paragraph (b)(5) because it did not provide specific examples of what information the motor carrier would be required to retain. This might be remedied at some future time through regulatory interpretation. Accordingly, the section is revised as proposed in the NPRM, except that the provisions in the current regulations concerning the certificate of the driver's road test and the list or certificate relating to violations of traffic laws and ordinances are retained.

The FHWA is revising the other elements of § 391.51 as proposed in the NPRM.

Section 391.61, Drivers Who Were Regularly Employed Before January 1, 1971

The FHWA proposed to revise this section which covers limited exemptions from the part 391 driver qualification requirements for CMV drivers who were regularly employed before January 1, 1971. The agency proposed to delete the reference to the

road test, to change the term ''regularly employed driver'' to ''single-employer driver,'' and to delete the redundant final sentence of the section. No commenters addressed this section. Except for retaining the reference to the road test, the FHWA is revising the section as proposed in the NPRM.

Section 391.63, Intermittent, Casual, or Occasional Drivers

The FHWA proposed to revise this section to replace the term ''intermittent, casual, or occasional drivers'' with ''multi-employer drivers'' (see comments and discussion under the heading, § 390.5 Definitions, earlier in this document), and to revise the list of actions a motor carrier is not required to perform with respect to these drivers.

Because the FHWA has determined it is not in the interest of safety to remove the requirement that a driver provide a record of violations or a certificate in accordance with § 391.27, the action will remain in the list of exemptions under § 391.63.

Section 391.65, Drivers Furnished by Other Motor Carriers

The FHWA proposed two revisions to this section which concerns the driver qualification file requirements for drivers furnished by other motor carriers. The first would require a motor carrier that obtains a driver's qualification certificate from his/her previous motor carrier employer to contact that motor carrier to verify the validity of the certificate. The second would replace the current requirement for a motor carrier to recall a qualification certificate if it learns the driver is no longer qualified under the regulations of part 391. The revised regulation would require the motor carrier to be responsible for the accuracy of the certificate, and make the certificate invalid if the driver left the employment of the issuing motor carrier or the driver was no longer qualified under part 391.

No comments were received on these proposed revisions. The FHWA incorporates them into the final rule.

Section 391.67, Farm Vehicle Drivers of Articulated Commercial Motor Vehicles

The FHWA proposed to revise this section, which covers certain exemptions from the part 391 driver qualification requirements provided to farm vehicle drivers of articulated CMVs. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. The FHWA also proposed to delete § 391.67(c) to conform to the proposed deletion of part 391, subpart D.

Because the FHWA has decided to retain § 391.11(b)(8) and subpart D, the reference will refer to redesignated §§ 391.11(b)(6) and 391.11(b)(8), and retain the references to subparts C, D, and F.

Section 391.68, Private Motor Carriers of Passengers (Nonbusiness)

The FHWA proposed to revise paragraph (a) of this section, concerning certain exemptions from the part 391 driver qualification requirements provided to CMV drivers of nonbusiness private motor carriers of passengers. The agency proposed replacing the references to § 391.11(b)(8), (b)(10), and (b)(11) with a reference to § 391.21 only. Because the FHWA has determined that § 391.11(b)(8) will be retained and § 391.11(b)(10) and (b)(11) will be redesignated, the section cross-references the redesignated §§ 391.11(b)(6) and (b)(8). Private motor carriers of passengers (nonbusiness) continue to be exempt from the requirement relating to a driver's application for employment.

Since the NPRM was published, a technical amendment published July 11, 1997 (62 FR 37150) removed all requirements and references to part 391, subpart H, from parts 355 through 391 of the FMCSRs. This was necessary because the implementation of part 382 made part 391, subpart H, obsolete. The final rule will also reflect this change.

Section 391.69, Drivers Operating in Hawaii

This section provides a limited exemption from certain driver qualification requirements for drivers who have been regularly employed by motor carriers operating in the State of Hawaii for a continuous period beginning prior to April 1, 1975. The FHWA believed the exemption provided was redundant and proposed to remove it.

The FHWA received no comments on this item. Accordingly, it will be removed.

Section 391.71, Intrastate Drivers of Commercial Motor Vehicles Transporting Class 3 Combustible Liquids

The FHWA proposed to delete this section that deals with certain exceptions to the part 391 driver qualification requirements for intrastate drivers of commercial motor vehicles transporting Class 3 combustible liquids. The agency reasoned it had no authority to support application of parts 390 through 399 of the FMCSRs to a motor carrier or driver operating a CMV in intrastate commerce, whether or not the motor carrier has an interstate operation. However, the FHWA noted the requirements of parts 382, 383, and 387 would continue to apply.

The FHWA received two comments concerning the proposal to delete this section. Houston L&P favored the proposal and supported the FHWA's assertion that the Hazardous Material Regulations cover these vehicles and drivers. The AWHMT also favored the proposal, although it questioned the rationale described in the preamble to the NPRM.

FHWA Response

The FHWA removes and reserves this section as proposed in the NPRM.

The preamble to the NPRM explained in detail the FHWA's reason for proposing to delete the section (see 62 FR 3855, at 3859). The agency concluded that 49 CFR 177.804 was never intended to make the FMCSRs applicable to intrastate commerce. Section 177.804 requires motor carriers subject to part 177 to comply with 49 CFR parts 390–397 ''to the extent those regulations apply.'' Its purpose was to make the civil penalty provisions of the Hazardous Materials Transportation Act applicable to hazardous materials carriers already subject to the FMCSRs. The assertion of jurisdiction over intrastate commerce in § 391.71, limited though it may be, is beyond the FHWA's authority. Section 391.71 is therefore being removed.

However, the Controlled Substances and Alcohol Use and Testing standards in 49 CFR part 382, and the CDL standards in 49 CFR part 383, apply to drivers and their employers who operate CMVs transporting hazardous materials in a quantity requiring placarding, in intrastate commerce. The financial responsibility requirements in part 387 still apply to motor carriers operating motor vehicles transporting certain types of hazardous materials, hazardous substances, and hazardous waste in certain types of containment systems, in intrastate commerce.

Section 391.73, Private Motor Carriers of Passengers (Business)

Because § 391.69 was proposed to be removed and § 391.71 was proposed to be removed and reserved, the FHWA proposed to redesignate this § 391.73 as § 391.69. This would place the section concerning provisions for private motor carriers of passengers (nonbusiness) directly after those for private motor carriers of passengers (business) in a more logical sequence in the FMCSRs.

The agency did not propose revisions to the scope or content of the section.

The FHWA received no comments on this proposal. The section will be redesignated as proposed in the NPRM.

Section 392.7, Equipment, Inspection, and Use; Section 392.8, Emergency Equipment, Inspection, and Use

The FHWA proposed to remove these sections. They cover the driver's responsibility to satisfy himself/herself that specified CMV parts, accessories, and emergency equipment are in good working order, and require the driver to use them when and as needed. The agency reasoned that they duplicated both § 396.13(a), which requires a driver to be satisfied the CMV is in safe operating condition before driving it, and the equipment requirements of part 393.

The FHWA received four comments concerning the proposal to remove these sections. Air Products recommended the specific language of § 392.7 be relocated to § 396.13(a), rather than being deleted. Air Products believes it is necessary for drivers to have instructions specifically identifying critical safety components. Inspector Moore of Vermont DMV expressed much the same concerns.

The ATA favored the proposal to remove the sections and to rely on the provisions in § 396.13 as an interim measure. However, the ATA was concerned that distributing ''initial compliance'' requirements among other sections of the FMCSRs may tend to diminish the importance of this issue in the minds of drivers: ''We believe drivers tend to focus their attention on parts 392 and 395 which have an inherently greater impact on their actions.'' The ATA also believed that incorporating driver vehicle inspection report requirements in part 396 and moving the ''pre-trip inspection'' checklist from part 392 to part 396 could send drivers the unintended message that these activities, and the completion and submittal of records associated with them, were of lesser importance.

The AAMVA expressed much the same concern regarding instructions for drivers on precautions for unattended vehicles and driving under hazardous conditions.

FHWA Response

The FHWA is retaining these two sections. The agency agrees with the commenters that there is a need for drivers to have instructions specifically identifying critical safety components. Also, the FMCSRs provide a specific, prescriptive basis for motor carriers to develop their own policies and procedures.

Section 392.9, Safe Loading, Drivers of Trucks and Truck Tractors

The FHWA proposed to remove this section, covering requirements for a driver to assure the proper loading and securement of cargo prior to driving, inspecting the cargo and its securement within the first 25 miles, and reexamining the cargo and its securement at a change of duty status or after 3 hours or 150 miles of driving.

The FHWA received two comments on this section. Houston L&P favored the proposed removal. It asserted that each motor carrier has a responsibility to ensure all loads are properly distributed and secured. Removing this section would give motor carriers this flexibility.

Air Products agreed with the FHWA's explanation of the reason for eliminating the paragraph, but was concerned how motor carriers would develop policies and procedures without guidance currently provided in the FMCSRs. Air Products maintained that many motor carriers rely on the specific prescriptive nature of the FMCSRs. It recommended that the FHWA place a requirement in § 393.100 to emphasize the need for motor carriers to develop adequate cargo securement inspection procedures for their drivers to follow.

FHWA Response

The FHWA retains this section in the FMCSRs. Although the section appears highly prescriptive, it is supported by operational practices and by contemporary research, including the nearly-completed Load Securement Study sponsored by the Ontario Ministry of Transportation and Communications, Transport Canada, and the FHWA. The U.S. Department of Transportation published an advance notice of proposed rulemaking on October 17, 1996 (61 FR 54142) and established a public docket, FHWA–97–2289 (formerly FHWA Docket MC–96–41) on this subject. The Canadian Council of Motor Transport Administrators (CCMTA), one of the members of a drafting group developing a model set of cargo securement guidelines based upon the results of the research, has posted information on the Internet. Its website is *http://www.ab.org/ccmta/ccmta.html.*

Section 392.9(c), Safe Loading, Buses

The FHWA proposed redesignating § 392.9(c)(1) as § 392.62, deleting § 392.9(c)(2), and redesignating § 392.9(c)(3) as § 392.9(b). This redesignation was proposed to consolidate several requirements related to transportation of passengers in a single location in the regulations and to remove a redundant requirement. No commenters addressed this proposal.

The FHWA removes and redesignates the sections as proposed in the NPRM with one minor editorial change. The term ''freight'' in the current § 392.9(c)(3) embraces the term ''express packages,'' so the phrase ''or express'' is deleted in the final rule.

Section 392.9b, Hearing Aid to Be Worn

The FHWA proposed to remove this section because it duplicates the information contained in the Medical Examiner's Certificate at § 391.45(g), ''[Driver] qualified only when wearing a hearing aid.''

The agency received no comments on this proposal. Accordingly, the section is removed as proposed.

Section 392.10(b)(1) and (3), Railroad Grade Crossings, Stopping Required

The provisions of § 392.10 require CMVs transporting passengers or hazardous materials requiring placarding to stop prior to crossing railroad tracks at grade, except in certain specified cases described in paragraphs (b)(1) through (b)(5). The FHWA proposed to add another exception, to permit these CMVs to cross without stopping at locations equipped with an active warning device (signal, gate, lights) when the device is not activated to warn drivers of the approach of an oncoming train.

The FHWA received 22 comments responding to this provision of the proposal. Four commenters favored the proposed revision.

The National Transportation Safety Board (NTSB) restated its 1981 Safety Recommendation H–81–77, the basis for the proposal. The NTSB recommendation stated:

> [T]he FHWA amend § 392.10, consistent with the Uniform Vehicle Code, to require trucks carrying bulk hazardous materials to stop at crossings with active warning devices only when the devices are activated to warn drivers of an approaching train. The Safety Board is not aware of any accident data nor has the Safety Board investigated any accident which suggests that the proposed revision would have an adverse impact on commercial vehicle or hazardous materials safety.

The ATA also favored revising the regulation. It pointed to considerations of disruption of the flow of traffic, as well as the potential of rear-end collisions and unsafe passing by other vehicles at the crossings. The ATA stated it had discussed the issue with

safety professionals from 4 major tank truck carriers [not named] at a meeting of the ATA's Safety Management Council, and that they supported the proposed regulatory revision. The ATA also recommended the FHWA urge States to amend their laws, noting that only 11 States provide relief from stops at active railroad crossings.

Mr. Hoy A. Richards, Principal, Richards & Associates and Senior Scientist, Texas Transportation Institute, also supported the proposal. He asserts stopped CMVs are a safety hazard unless pull-out lanes are provided; that State highway safety statistics (especially those from Texas, Illinois, and Oregon) ''will show that there are twice as many no-train motor vehicle accidents as there are motor vehicle/train accidents.'' He also believes most drivers have no understanding of why CMVs stop at non-activated [dark] signals, although he stated he could not quote statistics. Mr. Richards did not cite reports nor provide references to the accident statistics he cited in his comments.

Mr. Richards also recommended several countermeasures based upon changes to traffic signs and signals, including use of a black-on-white crossbuck at all active highway-rail intersections and installation of a green traffic signal in all active devices. He also recommended engineering studies to determine whether standard highway traffic signal control devices could be installed at branch line and industrial grade crossings.

The State of Connecticut's DOT (Connecticut) noted that its State statutes require passenger and hazardous-materials-laden CMVs to stop before crossing any railroad tracks at grade. Connecticut said it has recently established a committee to study highway-rail crossing matters, including, among other things, the requirement for school buses to stop at all active crossings. Although it stated that no consensus had been reached on this issue, Connecticut said it would generally support the proposed revision, provided the FHWA addressed two issues. It requested the FHWA to address the definition of an ''active warning device'' and limit it to those grade crossings with standard railroad flashing lights and gates. It also recommended specific regulatory signage at exempt crossings used exclusively for industrial switching purposes.

The remainder of the commenters were strongly opposed to the proposal. These commenters were: the Association of Waste Hazardous Materials Transporters; Air Products and Chemicals, Inc.; the North Dakota DOT; the City of Littleton, Colorado, Fire Department; New York Operation Lifesaver; the Association of American Railroads; CSX Transportation; the American Association of Motor Vehicle Administrators; the United Transportation Union; the International Association of Fire Fighters; Louisiana Railroads; Northeast Illinois Regional Commuter Railroad Corporation (Metra); Missouri Department of Economic Development; Operation Lifesaver, Inc.; Brotherhood of Locomotive Engineers; National School Transportation Association; and Vermont Railway/ Clarendon and Pittsford.

Commenters raised numerous concerns relating to the availability of current data to support the proposed regulatory revision, differentiation between active and passive grade crossings (availability and meaning of warning signals, habituation of CMV drivers to stop at one type of crossing but not another), reliability of the active warning devices, other drivers' expectations of tank vehicles and buses stopping at railroad grade crossings, and the use of a Federal standard as a foundation for States' motor carrier safety regulations and motor carriers' company policies. Some commenters also reflected upon their own and colleagues' experiences with near-misses and in dealing with the aftermath of rail-motor vehicle collisions. The following summaries are representative of these comments.

CSX Transportation noted ''In nearly every case involving a collision between any motor vehicle and a train, the primary contributing factor is *failure to stop* on behalf of the motor vehicle.''

Operation Lifesaver emphasized a need for contemporary research [T]o determine whether actions recommended [by the NTSB] 12 to 16 years ago are relevant or even advisable today from a safety perspective. Many highway-rail crossing safety issues have been addressed successfully during the past 16 years by federal, state, and local governments, and by private organizations, including Operation Lifesaver. In fact, highway-rail collisions nationwide have dropped from 8,500 in 1981 to 4,000 in 1995, a decrease of 53 percent. Given this marked safety improvement, the 1981 and 1985 recommendations may not reflect priority concerns in 1997.

Operation Lifesaver also criticized a 1985 FHWA study that recommended rescinding the CMV stopping requirement, although it also projected an increase in the number of hazardous materials-carrying CMVs, school buses, and passenger buses striking trains.

Louisiana Railroads stated that available data indicate approximately 50 percent of accidents occur at crossings where an active warning device is present, whether or not the device is activated.

The United Transportation Union commented:

In 1995, there were 579 deaths at public highway crossings, and 1,888 injuries were sustained. During the first 11 months of 1996 (the latest figures available) there have been 3,214 accidents at public crossings involving motor vehicles, and resulting in 328 deaths and 1,234 injured. It is important to keep in mind that these tragedies occurred even when CMVs are required to stop at all crossings. To permit such vehicles to continue through crossings when there is no signal activation will create an even more hazardous situation than currently exists.

The Brotherhood of Locomotive Engineers commented:

Locomotive Engineers are a unique party in this proceeding because we are usually the only witness to the real world at a highway rail crossing * * * Reckless behavior at the crossing is a sorry sight at best, a stupid and painful tragedy at worst. When the vehicle is one carrying hazardous material or passengers, the careless behavior at the crossing may literally destroy hundreds, perhaps thousands, of lives and wield tremendous economic damage. The consequences of a train collision with a large truck carrying hazardous materials or a bus carrying passengers could be so severe there seems little rational argument to support removing the extra measure of safety that is provided by stopping before crossing.

Several commenters pointed out the proposed change would negate many State statutes, and advised that the language of the proposed rule would not require a stop at an activated warning device.

FHWA Response

The FHWA has determined that it is in the best interest of highway safety to retain § 392.10 of the FMCSRs in its current format at this time.

The NTSB's Safety Recommendations, H–81–77 and H–89–36, if looked at together, propose that § 392.10 of the FMCSRs be amended by rescinding paragraph (b)(1) (exclusively for industrial switching) and revising the balance of the section. The FHWA's proposal would have revised the FMCSRs to require placarded hazardous materials laden CMVs, as well as passenger CMVs, to stop at only those railroad grade crossings equipped with active warning devices, and only when the devices are activated to warn drivers of an approaching train.

Data furnished by the Federal Railroad Administration that the FHWA forwarded to the NTSB show a constant and dramatic decrease in railroad grade crossing accidents involving

commercial motor vehicles during the past 10 years. While there is no data directly linking the FHWA's grade crossing regulations with this documented decline in grade crossing accidents, neither is there data to substantiate the hypothesis that changing § 392.10 of the FMCSRs to reflect the Board's recommendations is likely to result in a decline in grade crossing accidents. However, the trend information available substantiates the FHWA's experience that the current grade crossing requirements are warranted and, we believe, at least partially responsible for reducing the number of such accidents. We continue to be concerned that the recommendations, if implemented, would reduce the effectiveness of the current requirements and undo some of the progress that has been made in railroad grade crossing safety.

The text of § 11–702 of the UVCMTO, ''Certain vehicles must stop at all railroad grade crossings,'' has not changed substantively since the NTSB issued its Safety Recommendations. Although paragraph (b) of § 11–702 indicates certain types of railroad grade crossings where vehicles would not be required to stop, paragraph (c) states that the State officials ''shall adopt such regulations as may be necessary describing the vehicles which must comply with the stopping requirements of this section * * * [and] shall give consideration to the number of passengers carried by the vehicle and the hazardous nature of any substance carried by the vehicle. Such regulations shall correlate with and so far as possible conform to the most recent regulation of the United States Department of Transportation.'' The footnotes to the 1979, 1987, and 1992 editions of the UVCMTO refer to § 392.10 of the FMCSRs.

No commenters favoring the proposed revision addressed motor carriers' proactive actions to prevent rear-end collisions. Many CMVs carrying hazardous-materials have a sign, ''This vehicle stops at all RR crossings'' placed on the rear of the vehicle so it is clearly visible to other motorists. The statement that drivers of other vehicles do not understand why CMVs stop at railroad crossings was contradicted by several commenters in favor of retaining the current regulation.

Finally, none of the commenters favoring the proposed change provided current data in support of their positions. Mr. Richards' comments did not specify whether the ''no-train'' accidents he cited were all accidents in those States, or only those at or near grade crossings.

Sections 392.13, Drawbridges, Slowing Down of Commercial Motor Vehicles; Section 392.14, Hazardous Conditions, Extreme Caution; Section 392.15, Required and Prohibited Use of Turn Signals

The FHWA proposed to delete these sections because they are currently, and more appropriately, enforced through State and local traffic laws. In addition, the FHWA concluded that the provisions of § 392.14 are fundamental safe driving practices and are probably incorporated into most motor carriers' policy manuals.

Air Products generally supported the proposal to remove and reserve the three sections. However, it was concerned about potential non-uniformity of various State requirements and recommended that the FHWA issue guidelines to the States to minimize conflicts.

The ATA supported removing § 392.15 (a) through (c), but not paragraphs (d) and (e). The ATA asserted the prohibitions are unique to the FMCSRs and provided some history. The ''parking'' use prohibition in § 392.15(d) was a response to the use of turn signals on one side of the CMV prior to the advent of four-way flashers. The ''do pass'' prohibition in § 392.15(e) was incorporated into the FMCSRs with the support of the trucking industry because of lawsuits against motor carriers whose drivers had given this signal to a following driver who was then struck by a third vehicle. The ATA recommended that the FHWA review State laws on these topics before making a decision on revoking the provisions.

The Pennsylvania DOT was concerned that removing § 392.15 would limit enforcement because State personnel who are not sworn police officers cannot enforce traffic laws. Inspector Moore of the Vermont DMV commented that the Vermont State statutes contain no provisions similar to § 392.14, and that Vermont traffic laws require use of turn signals only for vehicles traveling on limited-access highways.

FHWA Response

The FHWA believes State and local traffic laws and motor carriers' safe and prudent operating practices cover these situations. Therefore, the FHWA is removing and reserving §§ 392.13 and 392.15 as proposed in the NPRM. However, the FHWA has determined it is in the interest of highway safety to retain § 392.14. This section provides a specific basis for motor carriers to develop their own safety policies and procedures for operating a CMV when adverse environmental conditions limit visibility or reduce traction.

The FHWA included § 392.15(d) and (e) in the recodification of the FMCSRs on December 26, 1968 (33 FR 19700), a year after the motor carrier safety regulations of the former Interstate Commerce Commission had been transferred to the new Department of Transportation. A review of the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standard (FMVSS) suggests that the uses of turn signals described in § 392.15(d) and (e) have been made obsolete by the availability of vehicle hazard warning signal flashers, commonly known as ''four-ways.'' Table 1, Required Motor Vehicle Lighting Equipment Other than Headlamps (Multipurpose Passenger Vehicles, Trucks, Trailers, and Buses, of 80 or more inches Overall Width) of FMVSS 108 (49 CFR 571.108) references Society of Automotive Engineers (SAE) Recommended Practice J945, issued in February 1966.

The use of vehicle hazard warning signals also is described in the UVCMTO § 12–215. The UVCMTO was revised in 1968 to permit vehicles to be equipped with lamps for the purpose of warning the operators of other vehicles of the presence of a vehicular traffic hazard requiring the exercise of unusual care in approaching, overtaking, or passing. The same year, the UVCMTO also added a requirement that every bus, truck, truck-tractor, trailer semitrailer, or pole trailer 80 inches or more in overall width, or 30 feet for more in overall length be equipped with lamps meeting these requirements. Finally, paragraphs (f) and (g) of UVCMTO § 12–215 state:

> (f) The driver of any vehicle equipped with vehicular hazard warning lights may activate such lights whenever necessary to warn the operators of following vehicles that the signaling vehicle may itself constitute a traffic hazard.
>
> (g) The driver of a truck, bus, or truck tractor pulling a trailer or trailers, equipped with vehicular hazard warning lights may activate such lights when that vehicle is proceeding up a grade, or under other conditions requiring it to be operated at a speed less than the prevailing speed of traffic.

The FHWA believes these UVCMTO citations adequately address the concerns of the ATA and other commenters concerning the proper use of vehicular hazard warning lights.

In its current form, the section only considers potential hazards to passengers in the event a CMV is operated during adverse environmental conditions. The FHWA plans to address this issue as it relates in more general

terms to other highway users in a future rulemaking action.

Section 392.20, Unattended Commercial Motor Vehicles; Precautions

The FHWA proposed to remove the section prohibiting a commercial motor vehicle from being left unattended until the parking brake has been set and all reasonable precautions have been taken to prevent the vehicle from moving. The agency reasoned that State and local government authorities are in a better position to monitor and enforce regulations of this nature for commercial motor vehicles transporting non-hazardous materials (special regulations for HM-laden commercial motor vehicles are covered in part 397 of the FMCSRs). The FHWA received no comments, and the section is removed and reserved as proposed in the NPRM.

Section 392.22, Emergency Signals; Stopped Commercial Motor Vehicles

The FHWA proposed to revise paragraph (b) of this section, concerning the placement of warning devices in the event a CMV is stopped on the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops. The agency believes drivers often do not place warning devices at the locations or distances specified in the regulation because the instructions are not clear and because it is difficult for them to estimate distances by eye. The agency proposed to revise the section to make the language clearer and to include the number of paces as well as the required linear distances at which warning devices are to be placed.

The ATA provided the only comment on this section. It recommended listing the distances in paces first, as they were when this regulation was first promulgated by the ICC.

FHWA Response

The FHWA agrees with the ATA's recommendation to list the locations for placing warning devices in paces, followed by the approximate linear distances in meters and feet. The final rule describes the locations as ''x paces (approximately y meters or z feet)'' where x, y, and z are the appropriate dimensions in § 392.22(b)(1) (i), (ii), and (iii).

Section 392.25, Emergency Signals; Dangerous Cargoes

The FHWA proposed to delete this section prohibiting the use of flame-producing devices on CMVs carrying certain hazardous materials cargoes or fueled by compressed gas. The agency reasoned it was unnecessary to prohibit the use of flame-producing devices because § 393.95(g) of the FMCSRs prohibits those devices from being carried on a CMV transporting the same classes of placarded hazardous materials described in § 392.25.

Several commenters opposed removing this section. Mr. O. Bruce Bugg, a law enforcement officer with experience in CMV and HM safety, stated that it is not uncommon for CMV drivers to borrow warning devices from other drivers to replace or to supplement their own equipment. He said other drivers, highway department personnel, and police officers could supply flame-producing devices to CMV drivers transporting placarded ''flammable'' cargoes. The Pennsylvania DOT had a similar comment.

The AHAS and Inspector Moore of the Vermont DMV also opposed removing the requirement. They noted this section contains the only specific prohibition on the use of these flame-producing devices. The AHAS recommended merging the proscription against use of the devices with the proscription against carrying the devices at § 393.95(g). Mr. Bugg recommended the provision be combined with sections in parts 393 or 396.

FHWA Response

The FHWA is retaining this section, and is also changing the heading to ''Flame producing devices'' to make the intent more clear. As several commenters pointed out, someone else (perhaps even a law-enforcement official) could give a flame-producing device to a CMV driver, with potentially serious consequences.

The FHWA believes the ''use'' provisions of part 392, the ''equipment'' provisions of part 393, and the ''inspection'' provisions of part 396 of the FMCSRs need to be considered in their own contexts. Section 392.25 specifically prohibits use of these devices. On the other hand, § 393.95(g), codified in an FMCSR part that describes requirements for ''equipment'' rather than its use, specifically prohibits carrying these devices.

Section 392.42, Notification of License Revocation

The FHWA proposed to move the requirement for a driver to notify the employing motor carrier of a license revocation, which is currently addressed in § 392.42, to § 391.15(b)(2). The agency also proposed to change the title of paragraph (b) to ''Loss of driving privileges.'' The change was proposed because the section addresses conditions relating to driver disqualification, rather than general safe driving provisions.

The FHWA also requested State driver licensing agencies to comment on whether they send written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. These comments were to be considered to determine if the FHWA should further revise § 391.15(b) to exempt a driver from the requirement to notify his/her employing motor carrier if a State licensing agency sends written notification to the motor carrier in the event the driver's license was revoked, suspended, or withdrawn.

The sole commenter favoring this speculative revision was Houston L&P. Houston L&P believed the MVR issued by a State licensing agency provides adequate means for obtaining information on convictions, disqualifications, license suspensions, revocations and cancellations as required under §§ 383.31(a) and 383.33. However, Houston L&P did not comment on whether these sections, applicable to CDL holders, provided comparable information for non-CDL CMV drivers.

All other commenters opposed the intent and direction of such a revision. The AAMVA, the States of Wisconsin, Delaware, Idaho, Missouri, Vermont, and Wisconsin, and one private motor carrier addressed this issue.

The AAMVA stated it would strongly oppose a requirement for DMVs to notify motor carriers of convictions or adverse licensing actions against motor carriers' employees' driving records. It noted that only a few Departments of Motor Vehicles (DMVs) have programs to notify motor carriers of any violations added to a driver's record. The AAMVA pointed out that California's statutory requirement and New York's voluntary program require motor carriers to pay participation fees. Finally, the AAMVA advised that these programs are costly to administer. Because employment turnover rates in the trucking industry are high, the single task of processing employer change notices requires significant resources.

Delaware, Idaho, Missouri (Department of Revenue), and Vermont stated they do not have a program in place to notify motor carriers when drivers lose their driving privilege. The Delaware DPS added it could not notify employers of CMV driver violations because it does not, nor does it propose to, maintain records of drivers' employers. This function would require a legislative change the Delaware DPS believes would be difficult or impossible to pass. The Delaware DPS stated it could not support a method

where the State would be held responsible or liable for this reporting. Delaware also identified many of the issues noted by the AAMVA concerning the significant difficulty in maintaining current basic information, such as a driver's address. Delaware was profoundly concerned that the transfer of these responsibilities to State agencies could take place without the Federal government adequately assessing the costs to the States. It cited ''the anticipated transfer of medical qualification determinations'' [the subject of an ongoing FHWA negotiated rulemaking] as an example of such a transfer.

The North Dakota Department of Transportation stated it would not be able to comply with a requirement that a State notify a driver's employer. North Dakota DOT noted many States do not keep records of drivers' employers, and many drivers do not work for the same motor carrier for any substantial length of time.

The Wisconsin Department of Transportation stated that it does not send a written notification to a motor carrier when a driver's privilege is withdrawn, and would oppose such a requirement. The State has a voluntary ''Employer Notification Program'' enabling them to receive notification of ''hits'' on an employee's record. The program requires the employer to keep the DMV informed when drivers leave the company or retire. Employers are charged a $20 annual base fee, a one-time fee of $2 per employed driver, and a fee of $3 per driver record abstract change generated by an accident, conviction, withdrawal from the program, or other event. During 1996, 1,012 employers received over 52,000 driver abstracts.

Air Products also strongly opposed the revision on the ground that each employee has a responsibility to report any issue negatively affecting his or her ability to perform job functions. Further, if a driver fails to report a license revocation, and that driver is involved in an accident while driving for the employing motor carrier, the motor carrier is still liable and responsible for the driver's actions. Air Products contends that ''by exempting drivers from this requirement, a message is being sent to the drivers that it is acceptable to remain quiet.''

The Delaware DPS' point of view was similar to that of Air Products—motor carriers are in the key position to review and assess the safety of the drivers they employ. Delaware DPS also commented that the FMCSRs might be amended to require at least an annual record check of the safest (i.e., violation-free) drivers and more frequent checks of the records of ''problem'' drivers.

FHWA Response

Section 392.42 is redesignated as § 391.15(b)(2) as proposed in the NPRM.

The issue of loss of driving privileges on the basis of citations from a driver's licensing State or a State or other jurisdiction other than the licensing State is a complex one. The FHWA will consider it in a future rulemaking action. The title of § 391.15(b) remains ''Disqualification for loss of driving privileges.''

No changes are made to require State licensing agencies to notify motor carrier employers of licensing actions taken against drivers. Placing the primary burden on the State licensing agencies to notify employers of drivers' disqualifications would create a significant unfunded mandate. The requirement would also be a difficult, if not impossible, undertaking for most States due to the high turnover rate of commercial motor vehicle drivers.

Section 392.51, Reserve Fuel

The FHWA proposed to remove this section. The section prohibits carrying fuel for propulsion or operation of accessories except in a properly mounted fuel tank. The agency believed there was no sound reason to prohibit carrying small amounts of fuel under those circumstances while (by implication) allowing the practice if the fuel were to be used to power machinery transported on the CMV.

The FHWA received two comments. The AWHMT asked the FHWA to clarify the rationale for removing this regulation. It raised two concerns: (1) The definition of ''small package;'' and (2) how the carriage of small packages containing fuel would be made consistent with the Hazardous Materials Regulations (HMRs). Houston L&P supported the proposal, citing the ''Materials of Trade'' exceptions to the HMRs issued in January 1997.

FHWA Response

Just prior to the publication of the FHWA's NPRM, the Research and Special Programs Administration issued a final rule, on January 8, 1997 (62 FR 1208). The RSPA final rule, effective October 1, 1997, with a compliance date of October 1, 1998 (see 62 FR 49560, September 22, 1997), applies a uniform system of safety regulations to all hazardous materials transported in commerce throughout the United States and requires intrastate motor carriers and shippers to comply with the HMRs, with certain exceptions. One set of exceptions applies to ''materials of trade.''

The RSPA defines a ''material of trade'' as a hazardous material, other than a hazardous waste, that is carried on a motor vehicle: (1) For the purpose of protecting the health and safety of the motor vehicle operator or passengers; (2) for the purpose of supporting the operation or maintenance of a motor vehicle (including its auxiliary equipment); or (3) by a private motor carrier (including vehicles operated by a rail carrier) in direct support of a principal business that is other than transportation by motor vehicle. See 49 CFR 171.8. The exceptions codified at 49 CFR 173.6 cover materials and amounts, packaging, hazard communication, and aggregate gross weight provisions for the ''materials of trade.''

Several of these exceptions apply to fuels. Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR parts 171, 172, 173, and 178, or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106. For a Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons). A Division 2.1 material (flammable gas) in a cylinder is limited to a gross weight of 100 kg (220 pounds). The RSPA final rule states that the aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

The FHWA provides references to the RSPA regulation in the FMCSRs. For ready reference, the gross weight limits of commonly-used fuels (gasoline, diesel, and flammable gases) and the packaging requirements for gasoline are restated in today's final rule.

Accordingly, the FHWA will revise § 392.51 to allow small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) to be carried as defined under ''materials of trade,'' 49 CFR 171.8.

Section 392.52, Buses; Fueling

The FHWA proposed to remove the section prohibiting buses from being fueled in a closed building with passengers aboard. The agency reasoned that this is a rare occurrence, does not influence highway safety, and does not warrant a Federal prohibition. No comments were received on this proposal. Accordingly, the section is removed and reserved as proposed in the NPRM.

Section 392.68, Motive Power Not To Be Disengaged

The FHWA proposed to remove and reserve this section, which prohibits CMVs from being driven with the source of motive power disengaged from the driving wheels. The agency reasoned that this prohibition is more appropriately monitored and enforced by State and local officials. This prohibition is, in fact, contained in the Uniform Vehicle Code and Model Traffic Ordinance, § 11–1108, Coasting Prohibited:

(a) The driver of any motor vehicle when traveling upon a down grade shall not coast with the gears or transmission of such vehicle in neutral.

(b) The driver of a truck or bus when traveling upon a down grade shall not coast with the clutch disengaged.

The FHWA received no comments on the proposal to remove this section. It is removed and reserved as proposed in the NPRM.

Sections 395.1(g), Hours of Service of Drivers; Retention of Driver's Record of Duty Status

The FHWA proposed to remove § 395.1(g), Retention of driver's record of duty status. This section covered the divided record authority provisions for records of duty status. As described earlier in this document, the FHWA proposed to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this section, and the final rule incorporates the proposed change.

Sections 395.1(h), (i), and (j), and (k); Sleeper Berths, State of Alaska, State of Hawaii, Travel time, Agricultural operations, Ground Water Well Drilling Operations, Construction Materials and Equipment, Utility Service Vehicles

Because the FHWA proposed to delete § 395.1(g), it proposed to redesignate the four paragraphs following it. The agency proposed no substantive changes and received no comments concerning the redesignations for these sections. However, the FHWA inadvertently neglected to propose to redesignate the last four paragraphs in the section, 395.1(l) through 395.1(o). The final rule implements the proposed redesignations as well as redesignating by technical amendment §§ 395.1(l) through 395.1(o) as §§ 395.1(k) through 395.1(n).

Section 395.2, Definitions, ''On-duty Time''

The FHWA proposed to revise the definition by removing paragraph (2), inspection of equipment as required by §§ 392.7 and 392.8, because the agency had proposed to delete those sections. Although the FHWA has determined it is in the interest of safety to retain those sections (see discussion earlier in this document under those headings), the agency believes the proposed text, ''all time inspecting, servicing, or conditioning any commercial motor vehicle at any time,'' includes the equipment, parts, and accessories described in §§ 392.7 and 392.8. The proposed language is therefore being adopted.

Paragraph (7) under the definition of on-duty time covers time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the FHWA and USDOT controlled substance and alcohol testing regulations. The paragraph refers to subpart H of part 391. After the NPRM was published, the regulations in subpart H of part 391 were removed because they have been superseded by part 382. The FHWA published a technical amendment describing this action on July 11, 1997 (62 FR 37150).

No commenters addressed the proposed revision of § 395.2. The FHWA has made several minor editorial changes (such as deleting the phrase ''of this section'') from the text proposed in the NPRM. The reference to subpart H is also removed as a technical amendment.

Section 395.8, Driver's Record of Duty Status

The FHWA proposed revising paragraph (k)(1) to reflect the proposal described earlier in this document to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or other specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed the provision as reflected in this section and it is revised as proposed.

Section 396.11(b), Driver Vehicle Inspection Report(s); Report Content

The proposed revision to this paragraph was editorial in nature (''vehicle'' for ''motor vehicle'' and ''report'' for ''vehicle inspection report''). The FHWA received no comments on the proposed revision, and the final rule incorporates the proposed changes.

Section 396.11(c), Corrective Action

The proposed revision to this paragraph made the language consistent with other parts of the FMCSRs (''prior to operating'' replaced with ''prior to requiring or permitting a driver to operate''). The FHWA received no comments, and this section is revised as proposed in the NPRM.

Sections 396.11(c)(1) Through (c)(3), 396.11(d), and 396.13(b), Concerning Driver Vehicle Inspection Report(s)

The FHWA proposed to remove § 396.11(c)(3), requiring a legible copy of the last driver vehicle inspection report (DVIR) to be carried on the power unit. Other paragraphs within the section would be revised to reflect this change. The agency believed the administrative burden of requiring the DVIR to be carried on the power unit outweighed its benefits. The NPRM stated that the presence or absence of a DVIR was not a factor in the decision to conduct a roadside inspection of a CMV and noted that failure to have the DVIR is not an out-of-service violation under the CVSA North American Out-of-Service Criteria. However, the FHWA emphasized that the proposed removal of the requirement was not intended to affect the driver's access to the DVIR and the requirement for the driver to review it before driving a CMV.

The FHWA received six comments concerning the proposal to delete these provisions. Two commenters favored the proposal, one suggested revisions to the proposed language, and three opposed it.

The ATA favored the proposal, but believed it was insufficient to ''alleviate the burdens and costs of the remaining 'paper chase'.'' The ATA also recommended the FHWA remove the requirement that the motor carrier or its agent certify correction of the defects on the DVIR and require the next driver to sign it. It contended that a review of a motor carrier's work orders, generated in response to specific defects reported by drivers, would be a more useful way to ascertain whether maintenance practices are effective at keeping CMVs safe.

Houston L&P supported the proposal as promoting performance-oriented flexibility.

Consolidated Safety Services, Inc. (CSS), a nationwide occupational safety and health organization, offered comments concerning the text of the proposed revisions to § 396.11. CSS

interpreted the proposed language to imply there is only one copy of the DVIR. CSS maintains the industry practice has been to use a two-copy form (original and legible copy). CSS recommended minor changes to the proposed revision to clarify the requirement for a single copy of the DVIR as follows:

396.11(c)(1) Every motor carrier or its agent shall certify on *the original* driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

396.11(c)(2) Every motor carrier shall maintain the *original* driver vehicle inspection report and the certification of repairs, *and the certification of the driver's review,* for three months from the date the written report was prepared.

The Colorado Department of Public Safety (CDPS), the Pennsylvania DOT (PennDOT), and Inspector Moore of the Vermont DMV opposed the proposal. The CDPS and Inspector Moore asserted that a roadside inspector's review of a DVIR provides opportunities to determine a driver's knowledge of how to perform a vehicle inspection, to assess an example of a motor carrier's maintenance procedures, and to determine whether education, review, or enforcement actions are warranted.

The CDPS proposed that §§ 396.11 and 396.13 be combined into a single requirement. The requirements for pre- and post-trip inspections would be retained, but motor carriers would determine which one would be documented and the documentation filed.

The PennDOT also found inappropriate the FHWA's rationale for proposing to delete this section. The PennDOT noted that, if the out-of-service criteria were the only basis for a regulatory requirement, then many of the other existing regulations would need to be eliminated as well.

Inspector Moore of the Vermont DMV believed many motor carriers will probably continue to carry the DVIR in the vehicle because they find it convenient to do so.

FHWA Response

The FHWA is removing § 396.11(c)(3) and revising § 396.13(b) as proposed in the NPRM, and incorporating the modifications that CSS suggested. The FHWA continues to believe that the presence or absence of a DVIR in the power unit is not a primary factor in a decision to conduct a roadside inspection. The FHWA believes the concerns of the CDPS regarding documentation of the inspection are addressed because there is no change in the requirement to document the results of an inspection and certification of corrective action.

The FHWA is not removing the requirement for certification of corrective action, as the ATA had recommended be done. The ATA's recommendation of reviewing a work order would significantly increase the complexity and time required to determine how a reported CMV defect had been resolved. It would require a driver to contact maintenance personnel who might not be available when the driver was being dispatched. It would also require FHWA motor carrier safety specialists to examine and cross-check separate maintenance and operational records. The final rule otherwise adopts the changes proposed in the NPRM.

Section 397.19, Transportation of Hazardous Materials; Driving and Parking Rules; Instructions and Documents

The FHWA proposed to revise the text of this section to remove the reference to the motor carrier's principal place of business in paragraph (b) to reflect the proposal described earlier in this document. The effect of this change would be to allow motor carriers with multiple terminals or offices to maintain all records required by Subchapter B at regional offices or driver work-reporting locations, provided records can be produced at the principal place of business or another specified location within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

No commenters addressed this provision and it is revised as proposed.

Comments on FMCSR Sections Not Addressed in the NPRM Definition of CMV

Houston L&P, Alabama Power, and Southern Company Services, Inc., believe a CMV should be defined to include vehicles of 26,001 or more pounds. The AAMVA and Ameritech Corporation (Ameritech) recommended the FHWA reconcile the weight definitions in parts 383 and 390 ''so only one definition exists.'' Ameritech believed the FHWA should evaluate the current GVWR criteria for the CMV definitions, weigh the regulatory burden and return on safety performance, and assess the different points where States apply the intrastate CMV safety regulations. Ameritech also stated the FMCSRs should apply to ''all applicable drivers * * * whether they operate a 12,000 pound utility truck or an 80,000 pound long-haul vehicle.''

FHWA Response

The FHWA is currently addressing the issue of the application of the FMCSRs to different weight classes of CMVs, the motor carriers operating them, and their drivers, in several ongoing regulatory activities. Section 344 of the National Highway System Designation Act of 1995 (Pub. L. 104–59, 109 Stat. 568) calls for a ''Motor Carrier Regulatory Relief and Demonstration Project'' to exempt CMVs and their drivers from elements of the FMCSRs for a 3-year pilot period (49 U.S.C. 31136(e)(2)). Applicant motor carriers must have an exemplary safety history to participate. The Secretary of Transportation will oversee safety through monitoring and reporting of safety-related data. A Notice of Final Determination for this project was published in the **Federal Register** on June 10, 1997 (62 FR 31655). The FHWA is accepting applications through June 30, 1998.

State Conformity With Interstate Regulations

The Pennsylvania DOT noted that its State Vehicle Code is automatically revised to conform to changes in the FMCSRs. It added that not all States have this provision, and incompatibilities between State and Federal regulations could arise.

FHWA Response

Several other States have brought similar concerns to the FHWA's attention from time to time. Because of differences in State laws and administrative procedures, the process to adopt FMCSR revisions into State regulations takes one of three paths. Twenty-four States adopt the FMCSRs by reference. Nineteen others adopt the FMCSRs into their State regulations following an administrative review process performed by executive-branch agencies (such as the State Department of Transportation). Nine States adopt changes after legislative review and process. One State adopts most changes through administrative process, but requires a legislative process for others. The FHWA's MCSAP provides a phase-in period of no longer than three years for States to revise their regulations to respond to revisions to the FMCSRs. Despite the variation in State adoption procedures and schedules, however, the MCSAP has produced a degree of national uniformity in commercial motor vehicle safety regulations never before achieved.

Enforcement Powers of Civilian State Motor Carrier Safety Personnel

The Pennsylvania DOT staffs its motor carrier safety programs with uniformed personnel from State and local police forces, as well as with civilian Public Utilities Commission and DOT inspectors. The Pennsylvania DOT advises the FHWA that its civilian officials, who are not sworn police officers, have limited enforcement powers. For example, they cannot enforce local traffic regulations concerning the use of turn signals, but they can cite a CMV driver under a State's version of 49 CFR 392.15, Required and prohibited use of turn signals.

FHWA Response

There are many more sworn officers in any given jurisdiction than there are civilian motor carrier safety officials. Although the Pennsylvania DOT may have to limit civilian inspectors to certain tasks, the FHWA believes there will be little, if any, negative impact from deleting § 392.15, as well as several other regulations adequately covered under State and local traffic laws.

Performance Oriented Compliance Criteria

Houston L&P suggested motor carriers with a satisfactory safety rating be relieved of certain regulatory requirements and be allowed to maintain ''core records.'' These could include the Driver Qualification File (§ 391.51), Alcohol and Drug Testing (part 382, pre-employment drug testing, post-accident testing, random testing at a 25 percent rate for drugs and 10 percent rate for alcohol), and documents pertaining to financial responsibility requirements (part 387), Inspection, repair, and maintenance (part 396), and hazardous materials. Houston L&P believes that, if a motor carrier were assigned an ''Unsatisfactory'' safety rating, the motor carrier should be required to add hours of service (part 395) and increase the random testing rates to 50 percent for drugs and 25 percent for alcohol.

FHWA Response

The FHWA may consider these comments in future rulemaking actions as part of the Zero-Base Regulatory Reform Initiative.

Other Simplifications, Clarifications Requested

Alabama Power and Southern Company Services, Inc. believe the zero-base process must continue to address regulations they consider burdensome and of questionable value for safety: ''Each section of the FMCSRs should be considered individually and impacted industries allowed to debate the requirements.'' They believe further simplification and clarification of some regulations is needed, including raising the threshold for FMCSR applicability to 26,000 pounds, requiring States to be more consistent regarding waivers and exemptions, and revising the hours-of-service regulations.

FHWA Response

The FHWA is currently addressing all of these issues. The agency is implementing a demonstration program required under Section 344 of the National Highway System Designation Act to exempt motor carriers operating vehicles with a GVWR of 10,001 to 26,000 pounds from certain regulations (61 FR 44385). The FHWA's MCSAP program activities and its consultative role in the CVSA continually address compatibility between State and federal determinations of applicability to motor carrier safety regulations. The FHWA has also initiated a rulemaking to revise the hours-of-service regulations (61 FR 57252, November 5, 1996).

Section 392.10(a), Railroad Grade Crossings; Stopping Required

The ATA recommended the FHWA delete this section's prohibition against shifting gears while crossing railroad tracks. The ATA contends that without this provision, CMVs would be able to negotiate grade crossings in shorter periods of time. The ATA based this conclusion upon results of a computer simulation performed by a major engine manufacturer (the ATA did not name the company). The simulation modeled crossing times for an 80,000 pound CMV consisting of a tractor powered by a 330-hp engine with 10-speed transmission towing a 53-foot semitrailer. For an upshift from third to fifth gear, times for crossing a single track were computed to be reduced from 13.6 to 9.9 seconds. For crossing a double track, the times were computed to be reduced from 14.8 to 10.6 seconds.

FHWA response

The FHWA appreciates this information. However, before a regulatory change can be considered, more analyses will be needed, similar to the work performed by the University of Michigan Transportation Research Institute for the FHWA in 1985 and reported in *Consequences of Mandatory Stops at Rail-Highway Crossings* (Report FHWA/RD–86/014). Those analyses should explore the influence of engine power ratings, longer trailer combinations including multiple trailers, multiple-track grade crossings, and different grades at the crossings.

Section 392.33, Obscured Lamps or Reflectors

The Colorado DPS suggested this section be removed because State law already requires that lamps be visible and §§ 396.3(a)(1) and 396.7 appear to cover this violation.

FHWA Response

The FHWA will consider this in a separate rulemaking as part of its Zero-Base Regulatory Reform initiative.

Section 393.70, Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations

Inspector Moore of the Vermont DMV requested the FHWA to revise the section to include a discussion of coupling device requirements for the towing of semitrailers not equipped with fifth wheel assemblies, such as those using pintle hook devices.

FHWA Response

The FHWA is addressing coupling devices and towing methods in a separate NPRM published April 14, 1997 (62 FR 18170). Among other things, the NPRM proposes revising §§ 393.70 and 393.71.

Section 395.1(e), 100 Air-Mile Radius Driver

This provision concerns the exemption from the requirements of § 395.8 for drivers who operate within a 100 air-mile radius of the drivers' normal work reporting location and return to the normal work reporting location and are released from work within 12 consecutive hours.

The Distribution and LTL Carriers Association (LTL) recommended the FHWA increase the 100 air-mile radius to 150 air-miles, or, alternatively, provide the exemption to drivers who report to and are released from a normal reporting location and who are on duty for 12 hours or less. The LTL also suggested linking the § 395.8 exemption to three of the five requirements in the current regulation: (1) the driver's on-duty status was 12 consecutive hours from start to finish of the shift; (2) the driver commences and concludes work at points where the motor carrier can verify the driver's on-duty status; and (3) the employer maintains accurate time records on shift starting time, completion time, and total hours on-duty. The LTL also raised the possibility of increasing the consecutive hours of the work shift in § 395.1(e)(2), but it did not specify a figure or range.

The LTL provided historical and operational perspectives to support its proposal. In 1980, the 100 air-mile exemption was increased from 50 air-miles. The same year, economic deregulation provided motor carriers the opportunity to expand their operations to meet customer needs. The LTL asserted that flexibility to meet those needs ''may necessitate more routine operations beyond 100 miles from terminals.'' According to the LTL, other factors, such as the use of larger-capacity 28-foot doubles trailers for linehaul operations, improvements to road networks, and increased operational scope of terminals and warehouses in large metropolitan areas, make it possible for runs within a 150-mile radius to be performed safely and efficiently under the current 10-hour driving limit, and within 12 hours of the time a driver reports to work.

According to the LTL, approximately 24 percent of the employees of distribution and LTL motor carriers are local or shorthaul drivers. Based on that figure, extending the exemption could relieve some 100,000 drivers of the paperwork burden of records of duty status. The LTL noted that the States of Illinois, Maryland, and Texas already permit a 150-air-mile radius exemption for intrastate transportation under the MCSAP Tolerance Guidelines, but that the FHWA had determined Florida's 200 air-mile radius exemption did not conform to the Guidelines.

FHWA Response

The FHWA recognizes that some drivers operating outside the 100 air-mile radius might drive less than a driver operating within the 100 air-mile radius. This brings into question the value of a distance-based compliance ''floor'' for records of the type required under § 395.8. The FHWA will address the issue of distance- and time-based exemptions to § 395.8 in a future rulemaking.

Section 395.8(k), Retention of Driver's Record of Duty Status

The Department of California Highway Patrol (CHP) suggests that the FHWA define ''supporting documents'' using the text of the November 1993 Regulatory Guidance (58 FR 60734).

FHWA Response

As part of the Hazardous Materials Transportation Authorization Act of 1994 (Sec. 113, Pub.L. 103–311, 108 Stat. 1673, 1676), the Congress directed the Secretary of Transportation to prescribe regulations to improve compliance with the hours of service requirements, and to improve the effectiveness and efficiency of Federal and State officials reviewing such compliance. As part of that mandate, Congress directed the FHWA to specify the supporting documents that motor carriers must maintain. The FHWA is addressing this issue in a Notice of Proposed Rulemaking published April 20, 1998 (63 FR 19457). The docket number is FHWA–98–3706. Comments are requested by June 19, 1998.

Section 396.9(d), Inspection of Motor Vehicles in Operation; Motor Carrier Disposition

Section 396.9(d) requires correction of violations or defects noted in the report, and requires the motor carrier to certify those corrections within 15 days following receipt of the report. In his comments, Inspector Moore of the Vermont DMV contended that motor carriers interpret this to mean they have 15 days to correct the violation. Inspector Moore requested this statement be amended to advise motor carriers that ''violations or defects identified on an inspection report, but which have not been designated as out-of-service violations, be repaired or corrected prior to use of the vehicle for any purpose other than the specific assignment it was engaged in at the time of the inspection.''

FHWA Response

The FHWA believes the current language of the regulation adequately addresses this issue.

Other Comments

Virginia Power and the Petroleum Marketers Association of America stated that they supported all the proposed changes.

For ease of reference the following distribution table is provided:

Old section	New section
387:5	387.5.
For-hire carriage	Revised.
Motor carrier	Revised.
None	387.27(b)(4) [added].
387.29	387.29.
Motor common carrier	Removed.
Motor contract carrier	Removed.
For-hire carriage	Revised.
Motor carrier	Revised.
390.3(f)(2)	Revised.
390.5	390.5 definitions revised.
Accident	Revised.
Commercial motor vehicle.	Revised.
Highway	Added.
Intermittent, casual, or occasional driver..	Renamed: Multiple-employer driver.
Interstate commerce	Revised.
Principal place of business.	Revised.
Regularly employed driver.	Renamed: Single-employer driver.
None	390.29 added.
391.11	391.11 section heading revised.
391.11(b)(4), (b)(5)	Redesignated as 391.13(a),(b).
391.11(b)(6)	391.11(b)(4).
391.11(b)(7)	391.11(b)(5) and revised.
391.11(b)(8)	391.11(b)(6).
391.11(b)(9)	391.11(b)(7).
391.11(b)(10)	391.11(b)(8) and revised.
391.11(b)(11)	Removed.
None	391.13 added.
391.15(b)	391.15(b)(1) and (2).
391.25	Revised.
391.33(a)(1)	Revised.
391.51(a)	Revised.
391.51(b) introduction	Revised.
391.51(b)(1)	391.51(b)(7).
391.51(b)(2)	391.51(b)(8).
391.51(b)(3)	391.51(b)(5).
391.51(b)(4)	391.51(b)(6).
391.51(b)(5)	Removed.
391.51(c) introduction	Removed.
391.51(c)(1)	Removed.
391.51(c)(2)	391.51(b)(1).
391.51(c)(3)	391.51(b)(2).
391.51(c)(4)	391.51(b)(3).
None	391.51(b)(4).
391.51(d)	Removed.
391.51(e)	Removed.
391.51(f)	391.51(c).
391.51(g)	Removed.
391.51(h) intro	391.51(d) intro.
391.51(h)(1)	391.51(d)(4).
391.51(h)(2)	391.51(d)(2).
391.51(h)(3)	391.51(d)(3).
391.51(h)(4)	391.51(d)(5).
None	391.51(d)(1).
391.61	Revised.
391.63	Revised.
391.65(b) and (c)	Revised.
391.67	Revised.
391.68	Revised.
391.69 Drivers operating in Hawaii.	Removed.
391.71	Removed and reserved.
391.73	Redesignated as § 391.69 and revised.
392.9(c)	Redesignated as § 392.62 and revised.
392.9b	Removed.
392.13	Removed and reserved.
392.15	Removed and reserved.
392.20	Removed. and reserved.
392.22(b)(1)	Revised.
392.25	Revised section heading.
392.42	Redesignated as § 391.15(b)(2) and revised.
392.51	Revised.
392.52	Removed and reserved.

Old section	New section
392.68	Removed and reserved.
395.1(g)	Removed.
395.1(h)	Redesignated as § 395.1(g).
395.1(i)	Redesignated as § 395.1(h).
395.1(j)	Redesignated as § 395.1(i).
395.1(k)	Redesignated as § 395.1(j).
395.1(l)	Redesignated as § 395.1(k).
395.1(m)	Redesignated as § 395.1(l).
395.1(n)	Redesignated as § 395.1(m).
395.1(o)	Redesignated as § 395.1(n).
395.2:	395.2 definitions revised.
On-duty time	Revised.
395.8(k)(1)	Revised.
396.11(b)	Revised.
396.11(c)	Revised.
396.11(c)(1)	Revised.
396.11(c)(2)	Revised.
396.11(c)(3)	Removed.
396.11(d)	Revised.
396.13(b)	Revised.
397.19(b)	Revised.

Rulemaking Analyses and Notices

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

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. In addition, this regulatory action is not expected to cause an adverse effect on any sector of the economy. The regulations which are the subject of this rulemaking are obsolete, redundant, unnecessary, ineffective, burdensome, more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. Thus, the rulemaking actually lessens the burden imposed by regulations which are being removed, amended, or redesignated. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FMCSRs. In addition, the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The FHWA believes this rule will not have a significant economic impact on a substantial number of small entities.

For the most part, this rulemaking will reduce the burden of complying with the FMCSRs by making the regulations clearer and less repetitious. As a result, all entities which are subject to these regulations would benefit, regardless of size. Any benefits resulting from this action, however, would not be of sufficient magnitude to generate a significant economic impact on small entities that would require a full regulatory flexibility analysis to be performed.

This regulatory action will also facilitate compliance with the FMCSRs by removing certain regulations that are more appropriately addressed by company policy. This action will provide motor carriers with more flexibility in furthering the safety of their operations.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; 2 U.S.C. 1532) requires each agency to assess the effects of its regulatory actions on State, local, and tribal governments and the private sector. Any agency promulgating a final rule likely to result in a Federal mandate requiring expenditures by a State, local, or tribal government or by the private sector of $100 million or more in any one year must prepare a written statement incorporating various assessments, estimates, and descriptions that are delineated in the Act. The FHWA has determined that the changes in this rulemaking will not have an impact of $100 million or more in any one year.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined this rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These changes to the FMCSRs will not preempt any State law or regulation and no additional costs or burdens will be imposed on the States. In fact, regulatory burdens will be reduced as a result of this rulemaking. In addition, this action will not have a significant effect on the States' ability to execute traditional State governmental functions.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Although this rulemaking does not impose new information collection requirements, it will change existing information collections. These changes were submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The final rule revises two elements and deletes one element within the existing information collections.

The first element is a recordkeeping requirement, Annual inquiry into drivers' driving records, included in the following information collection at § 391.51 OMB Control Number 2125–0065:

Title: Driver Qualification Files.

Affected Public: Approximately 405,000 motor carriers.

Abstract: Motor carriers are required to maintain a driver qualification file for each CMV driver to document that the driver meets the qualification standards to drive in interstate commerce.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: Based on an estimate of 5,500,000 interstate CMV drivers, and 405,000 motor carriers subject to the regulation, the initial employment applications impose an annual burden of 23,833 hours on drivers and 11,917 hour on motor carriers. Initial inquiry into drivers' records and investigations into employment records impose a burden of 178,750 hours. Annual inquiries into drivers' driving records impose an estimated annual burden of 398,750 hours. The recordkeeping requirements related to the list of certification of violations impose an estimated annual burden of 159,500 hours. The total estimated burden is 777,333 hours. The OMB has approved this information collection through October 31, 2000.

The second information collection revision involves the requirement that motor carriers who use a driver furnished by another motor carrier obtain information regarding the validity of the driver's qualification

certificate. This requirement is included in the following information collection required under § 391.63 and documented under OMB Control Number 2125–0081:

Title: Qualification Certificate.

Affected Public: Approximately 405,000 motor carriers.

Abstract: A motor carrier that employs a driver who is furnished by another motor carrier, is exempt from maintaining a driver qualification file for such driver, provided a qualification certificate is obtained from the furnishing motor carrier.

Need: To ensure motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: The proposed information collection involving contacts to verify the validity of qualification certificates increases the total estimated annual burden of qualification certificates (approved by the OMB under control number 2125–0081) by 13,750 hours, from 13,750 total hours to 27,500 total hours. This information collection was approved by OMB through April 30, 2000.

The third information collection revision deletes the requirement codified at 49 CFR 396.11(c)(3) for a copy of the driver vehicle inspection report to be carried on the CMV's power unit.

Title: Inspection, Repair, and Maintenance.

OMB Number: 2125–0037.

Abstract: Motor carriers must maintain, or cause to be maintained, records that document the inspection, repair, and maintenance activities performed on their owned or leased motor vehicles. There are no prescribed forms. The records are used by the FHWA and its representatives to verify motor carriers' compliance with the inspection, repair, and maintenance standards in part 396 of the FMCSRs.

Respondents: 405,000 motor carriers.

Estimated Total Annual Burden per Record: 3,848,000 hours for routine inspection, repair, and maintenance records; 32,271,702 hours for driver vehicle inspection reports; 145,431 hours for the motor carrier disposition; 87,333 hours for the periodic inspection; 9,330 hours for the records of inspector qualifications; and 10,361 hours for the evidence of brake inspector qualifications.

Revision to Information collection budget for this item: The FHWA has determined safety will not be adversely impacted if it removes the requirement for a copy of the driver vehicle inspection report to be carried on the CMV's power unit. This will reduce the time burden by 4,661,468 hours for this item from the current 33,114,100 hours to 28,452,600 hours for the overall information collection. This information collection was approved by OMB through October 31, 2000. A discussion of this revision appears under the comments concerning part 396.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 387

Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

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

49 CFR Part 391

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

49 CFR Part 392

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Global positioning systems, Highway safety, Intelligent transportation systems, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

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

49 CFR Part 397

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

Issued on: June 9, 1998.

Kenneth R. Wykle,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA amends title 49, Code of Federal Regulations, chapter III, subchapter B, parts 387, 390, 391, 392, 395, 396, and 397 as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 31139; and 49 CFR 1.48.

2. In § 387.5, the definitions *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.5 Definitions.

* * * * *

For-hire carriage means the business of transporting, for compensation, the goods or property of another.

* * * * *

Motor carrier means a for-hire motor carrier or a private motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

3. Section 387.27 is amended by removing ''and'' at the end of paragraph (b)(2), by removing the period at the end of paragraph (b)(3) and adding ''; and'' in its place, and by adding paragraph (b)(4) to read as follows:

§ 387.27 Applicability.

* * * * *

(b) Exception. * * *

* * * * *

(4) A motor vehicle operated by a motor carrier under contract providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

4. In § 387.29, the definitions of the terms *Motor common carrier* and *Motor contract carrier* are removed and the definitions of *For-hire carriage* and *Motor carrier* are revised to read as follows:

§ 387.29 Definitions.

* * * * *

For-hire carriage means the business of transporting, for compensation, passengers and their property, including any compensated transportation of the goods or property or another.

* * * * *

Motor carrier means a for-hire motor carrier. The term includes, but is not limited to, a motor carrier's agent, officer, or representative; an employee responsible for hiring, supervising, training, assigning, or dispatching a driver; or an employee concerned with the installation, inspection, and maintenance of motor vehicle equipment and/or accessories.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

5. The authority citation for part 390 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); and 49 CFR 1.48.

6. Section 390.3 is amended by revising paragraph (f)(2) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States;

* * * * *

7. In § 390.5, the definition of the term *Accident* is revised; the term *Highway* is added; the term *Intermittent, casual, or occasional driver* is removed; the term *Multiple-employer driver* is added; the term *Regularly employed driver* is removed; the term *Single-employer driver* is added; and the terms *Commercial motor vehicle, Interstate commerce,* and *Principal place of business* are revised. All are placed in alphabetical order and read as follows:

§ 390.5 Definitions.

* * * * *

Accident means—

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a highway in interstate or intrastate commerce which results in:

(i) A fatality;

(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

(i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or

(ii) An occurrence involving only the loading or unloading of cargo.

* * * * *

Commercial motor vehicle means any self-propelled or towed vehicle used on a highway in interstate commerce to transport passengers or property when the vehicle—

(1) Has a gross vehicle weight rating or gross combination weight rating of 4,537 kg (10,001 lb) or more; or

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

(3) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101 *et seq.*) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

* * * * *

Highway means any road, street, or way, whether on public or private property, open to public travel. ''Open to public travel'' means that the road section is available, except during scheduled periods, extreme weather or emergency conditions, passable by four-wheel standard passenger cars, and open to the general public for use without restrictive gates, prohibitive signs, or regulation other than restrictions based on size, weight, or class of registration. Toll plazas of public toll roads are not considered restrictive gates.

Interstate commerce means trade, traffic, or transportation in the United States—

(1) Between a place in a State and a place outside of such State (including a place outside of the United States);

(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation originating or terminating outside the State or the United States.

* * * * *

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier.

* * * * *

Principal place of business means the single location designated by the motor carrier, normally its headquarters, for purposes of identification under this subchapter. The motor carrier must make records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter available for inspection at this location within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Highway Administration.

* * * * *

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. This term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

* * * * *

8. Section 390.29 is added to read as follows:

§ 390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at its principal place of business, a regional office, or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Highway Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

PART 391—QUALIFICATIONS OF DRIVERS

9. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

10. Section 391.11 is amended by revising the section heading and by revising paragraph (b) to read as follows:

§ 391.11 General qualifications of drivers.

* * * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;

(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of this part;

(5) Has a currently valid commercial motor vehicle operator's license issued only by one State or jurisdiction;

(6) Has prepared and furnished the motor carrier that employs him/her with the list of violations or the certificate as required by § 391.27;

(7) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15; and

(8) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him/her has accepted as equivalent to a road test in accordance with § 391.33.

11. Section 391.13 is added to read as follows:

§ 391.13. Responsibilities of drivers.

In order to comply with the requirements of § 392.9(a) and § 393.9 of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

(a) Can, by reason of experience, training, or both, determine whether the cargo he/she transports (including baggage in a passenger-carrying commercial motor vehicle) has been properly located, distributed, and secured in or on the commercial motor vehicle he/she drives;

(b) Is familiar with methods and procedures for securing cargo in or on the commercial motor vehicle he/she drives.

12. Section 391.15 is amended by revising paragraph (b) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(b) Disqualification for loss of driving privileges. (1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

* * * * *

13. Section 391.25 is revised to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations in this subchapter or Hazardous Materials Regulations (49 CFR chapter I, subchapter C).

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping. (1) A copy of the response from each State agency to the inquiry required by paragraph (a) of this section shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

14. Section 391.33, paragraph (a)(1) is revised to read as follows:

§ 391.33 Equivalent of road test.

(a) * * *

(1) A valid Commercial Driver's License as defined in § 383.5 of this subchapter, but not including double/triple trailer or tank vehicle endorsements, which has been issued to him/her to operate specific categories of commercial motor vehicles and which, under the laws of that State, licenses him/her after successful completion of a road test in a commercial motor vehicle of the type the motor carrier intends to assign to him/her; or

15. Section 391.51 is revised to read as follows:

§ 391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with § 391.21;

(2) A written record with respect to each past employer who was contacted and a copy of the response by each State agency, pursuant to § 391.23 involving investigation and inquiries;

(3) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33;

(4) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(5) A note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(6) A list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(7) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle as required by § 391.43(f) or a legible photographic copy of the certificate; and

(8) A letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under § 391.49.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for three years thereafter.

(d) The following records may be removed from a driver's qualification file three years after the date of execution:

(1) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(3) The list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27;

(4) The medical examiner's certificate of the driver's physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by § 391.43(f); and

(5) The letter issued under § 391.49 granting a waiver of a physical disqualification.

(Approved by the Office of Management and Budget under control number 2125–0065)

16. Section 391.61 is revised to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.33 (relating to road tests) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

17. Section 391.63 is revised to read as follows:

§ 391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in § 390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person;

(3) Perform the annual driving record inquiry required by § 391.25(a);

(4) Perform the annual review of the person's driving record required by § 391.25(b); or

(5) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

(Approved by the Office of Management and Budget under control number 2125–0081)

18. Section 391.65 is amended by revising paragraphs (b) and (c) to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

* * * * *

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for three years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no longer qualified under the rules in this part.

19. Section 391.67 is revised to read as follows:

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5 of this subchapter) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of drivers);

(c) Subpart D (relating to road tests); and

(d) Subpart F (relating to maintenance of files and records).

20. Section 391.68 is revised to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

(a) Section 391.11(b)(1), (b)(6) and (b)(8) (relating to general qualifications of drivers);

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);

(c) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his/her person; and

(d) Subpart F (relating to maintenance of files and records).

§ 391.69 [Removed]

21. Section 391.69, Drivers operating in Hawaii, is removed.

§ 391.71 [Removed and Reserved]

22. Section 391.71 is removed and reserved.

§ 391.73 [Redesignated as § 391.69]

23. Section 391.73 is redesignated as new § 391.69 and revised to read as follows:

§ 391.69 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who was a single-employer driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

PART 392—DRIVING OF COMMERCIAL MOTOR VEHICLES

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

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

§ 392.9 [Amended]

25. Section 392.9(c) is redesignated as § 392.62 in subpart G and revised to read as follows:

§ 392.62 Safe operation, buses.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless—

(a) All standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter;

(b) All aisle seats in the bus conform to the requirements of § 393.91 of this subchapter; and

(c) Baggage or freight on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

§ 392.9b [Removed]

26. Section 392.9b is removed.

§ 392.13 [Removed and Reserved]

27. Section 392.13 is removed and reserved.

§ 392.15 [Removed and Reserved]

28. Section 392.15 is removed and reserved.

§ 392.20 [Removed and Reserved]

29. Section 392.20 is removed and reserved.

30. Section 392.22 is amended by revising paragraph (b)(1) to read as follows:

§ 392.22 Emergency signals; stopped commercial motor vehicles.

* * * * *

(b) Placement of warning devices—

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall, as soon as possible, but in any event within 10 minutes, place the warning devices required by § 393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and 4 paces (approximately 3 meters or 10 feet) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at 40 paces (approximately 30 meters or 100 feet) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

* * * * *

31. Section 392.25 is amended by revising the section heading to read as follows:

§ 392.25 Flame producing devices.

* * * * *

§ 392.42 [Removed]

32. Section 392.42 is removed.

33. Section 392.51 is revised to read as follows:

§ 392.51 Reserve fuel; materials of trade.

Small amounts of fuel for the operation or maintenance of a commercial motor vehicle (including its auxiliary equipment) may be designated as materials of trade (see 49 CFR 171.8).

(a) The aggregate gross weight of all materials of trade on a motor vehicle may not exceed 200 kg (440 pounds).

(b) Packaging for gasoline must be made of metal or plastic and conform to requirements of 49 CFR Parts 171, 172, 173, and 178 or requirements of the Occupational Safety and Health Administration contained in 29 CFR 1910.106.

(c) For Packing Group II (including gasoline), Packing Group III (including aviation fuel and fuel oil), or ORM–D, the material is limited to 30 kg (66 pounds) or 30 L (8 gallons).

(d) For diesel fuel, the capacity of the package is limited to 450 L (119 gallons).

(e) A Division 2.1 material in a cylinder is limited to a gross weight of 100 kg (220 pounds). (A Division 2.1 material is a flammable gas, including liquefied petroleum gas, butane, propane, liquefied natural gas, and methane).

§ 392.52 [Removed and Reserved]

34. Section 392.52 is removed and reserved.

§ 392.68 [Removed and Reserved]

35. Section 392.68 is removed and reserved.

PART 395—HOURS OF SERVICE OF DRIVERS

36. The authority citation for part 395 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub. L. 104–59, 109 Stat. 568, 613; and 49 CFR 1.48.

§ 395.1 [Amended]

37. Section 395.1 is amended by removing paragraph (g) and redesignating paragraphs (h) through (o) as paragraphs (g) through (n), respectively.

38. Section 395.2 is amended by revising the definition of *On duty time* to read as follows:

§ 395.2 Definitions.

* * * * *

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. *On duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time;*

(4) All time, other than *driving time*, in or upon any commercial motor vehicle except time spent resting in a *sleeper berth;*

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-accident, or follow-up testing required by part 382 of this subchapter when directed by a motor carrier;

(8) Performing any other work in the capacity, employ, or service of a motor carrier; and

(9) Performing any compensated work for a person who is not a motor carrier.

* * * * *

39. Section 395.8 is amended by revising paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) *Retention of driver's record of duty status.* (1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

40. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; 49 CFR 1.48.

41. Section 396.11 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) *Report content.* The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall

so indicate. In all instances, the driver shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) *Corrective action.* Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on the original driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the original driver vehicle inspection report, the certification of repairs, and the certification of the driver's review for three months from the date the written report was prepared.

(d) *Exceptions.* The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

42. Section 396.13 is amended by revising paragraph (b) to read as follows:

§ 396.13 Driver inspection.

* * * * *

(b) Review the last driver vehicle inspection report; and

* * * * *

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

43. The authority citation for part 397 continues to read as follows:

Authority: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

44. Section 397.19 is amended by revising paragraph (b) to read as follows:

§ 397.19 Instructions and documents.

* * * * *

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

* * * * *

[FR Doc. 98–15880 Filed 6–17–98; 8:45 am]

BILLING CODE 4910–22–P