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**Federal Motor Carrier Safety
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49 CFR Parts 350 et al.

**Commercial Driver's License Standards,
Requirements and Penalties; Commercial
Driver's License Program Improvements;
Proposed Rule**

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Parts 350, 383, and 384**

[Docket No. FMCSA-2001-9709]

RIN 2126-AA60

Commercial Driver's License Standards, Requirements and Penalties; Commercial Driver's License Program Improvements**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: The FMCSA proposes various changes to its Commercial Driver's License (CDL) Program. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) mandates these revisions. They are designed to enhance the safety of commercial motor vehicle (CMV) operations on our nation's highways by ensuring that only safe drivers operate CMVs.

DATES: We must receive your comments by October 25, 2001.

ADDRESSES: You can mail, fax, hand deliver or electronically submit written comments to the Docket Management Facility, U.S. Department of Transportation, Dockets Management Facility, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. The fax number is (202) 493-2251. Comments to the web site (<http://dmses.dot.gov/submit>) may be typed on-line. You must include the docket number that appears at in the heading of this document in your comment. You can examine and copy all comments at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. You may also review the docket on the Internet at <http://dms.dot.gov>. If you want notification of receipt of comments, please include a self-addressed, stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Redmond, Office of State Programs, (202) 366-5014, Federal Motor Carrier Safety Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: All comments received before the close of

business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

Background

The Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Public Law 99-570, 100 Stat. 3207-170, 49 U.S.C. 31301) established the commercial driver's license (CDL) program and the Commercial Driver's License Information System (CDLIS) to serve as a clearinghouse and repository of commercial driver licensing and conviction data. The CMVSA also requires States to ensure that drivers convicted of certain serious traffic violations be prohibited from operating a CMV. The Secretary of Transportation was directed to monitor the States' compliance with the standards established under the CMVSA. The goal of the CMVSA is to improve highway safety by ensuring that drivers of large trucks and buses are qualified to operate those vehicles and to remove unsafe and unqualified drivers from the highways.

In 1994, the agency initiated a benefits and effectiveness study to evaluate the effectiveness of the CDL program. The final report, submitted to Congress in 1999, documented vulnerabilities within the CDL program and provided recommendations to correct them.

Responding in part to the findings of this report, Congress passed the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Public Law 106-159, 113 Stat. 1748). The MCSIA amended numerous provisions of title 49 of the United States Code relating to the licensing and sanctioning of CMV drivers required to hold a CDL, and directed the Department of Transportation (DOT) to amend its regulations to correct specific weaknesses in the CDL program. This rulemaking proposes to amend various provisions of Parts 350, 383 and 384 of 49 CFR to implement these Congressionally mandated changes. The following is an analysis of these proposed regulations.

Emergency CDL Grants to States

Section 103(d) of the MCSIA authorizes the FMCSA to provide emergency CDL grants to assist States whose CDL programs may fail to meet the compliance requirements of 49

U.S.C. 31311(a) [49 CFR part 384, subpart B]. These grants of up to \$1,000,000 per State are subject to the annual appropriation of funds by Congress for information system grants. The FMCSA proposes adding language at 49 CFR 384.407 implementing FMCSA's authority to administer emergency CDL grants.

Withholding MCSAP Funds From States in Noncompliance With CDL Requirements

Section 103(e) of the MCSIA requires the FMCSA to withhold Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of MCSIA from States not in substantial compliance with 49 CFR part 384, subpart B. This new sanction is in addition to the one currently contained in 49 CFR part 384, subpart D requiring the agency to withhold five percent of some of a State's Federal-aid highway funds following the first year of non-compliance and 10 percent of such funds following the second and subsequent years of non-compliance. The amount of money a State could lose is therefore considerable. The FMCSA proposes amending 49 CFR 350.217 and 384.401 to implement this new sanction.

Disqualification for Driving While Suspended or Disqualified, and Causing a Fatality

Section 201(a) of the MCSIA amended the CMVSA to create two new disqualifying offenses, (1) driving a CMV after one's CDL has been revoked, suspended or canceled for violations while operating a CMV, and (2) causing a fatality through the negligent or criminal operation of a CMV.

The first of these disqualifying offenses requires a violation while driving a CMV that results in the revocation or suspension of the driver's CDL [49 U.S.C. 31310(b)(1)(D)]. However, section 201(b) of MCSIA also requires the disqualification of CDL-holders who are convicted of a drug- or alcohol-related offense while driving a non-CMV, provided that conviction results in the revocation, suspension, or cancellation of the driver's license [49 U.S.C. 31310(g)]. The FMCSA recently issued a separate NPRM to implement that requirement [66 FR 22499; May 4, 2001], but is proposing in this rulemaking to amend section 383.51 to disqualify drivers who continue to operate CMVs after being disqualified, or having had their CDLs revoked, suspended, or cancelled, regardless of whether the drivers were originally disqualified, or had their licenses revoked, suspended, or canceled, for

violations that occurred in a CMV or non-CMV.

The second disqualifying offense in section 201(a) requires a conviction for "causing a fatality through negligent or criminal operation of a commercial motor vehicle" [49 U.S.C. 31310(b)(1)(E)]. A conviction of this type would be included on the driver's record, but State laws classify convictions for "negligent or criminal operation" of CMVs in a variety of different ways. The FMCSA proposes to amend section 383.51 to add as new disqualifying offenses convictions of "homicide by motor vehicle, manslaughter, or negligent homicide." The agency requests comments on the accuracy and adequacy of that language to describe State convictions corresponding to "negligent or criminal operation" of a CMV.

The FMCSA also proposes adding a definition of fatality to section 383.5. It would differ from the definition found in section 390.5, which requires that the death must occur within 30 days of the accident. The proposed definition has no time restriction because that is more consistent with the assessment of criminal culpability in vehicle death cases and, accordingly, better implements the intent of this new statutory requirement.

Emergency Disqualification of Drivers Posing an Imminent Hazard

Section 201(b) of the MCSIA requires the Secretary of Transportation to impose an emergency disqualification on drivers whose continued operation of a CMV the Secretary determines would constitute an imminent hazard as defined in 49 USC 5102. If the disqualification is to be for a period of more than 30 days, the MCSIA further requires the Secretary to provide the driver with a notice of the proposed action and an opportunity for a hearing prior to imposition of the disqualification [49 U.S.C. 31310(f)].

The FMCSA proposes adding a new section (49 CFR 383.52) establishing the agency's criteria for implementing this new disqualification, including the notice and hearing requirements for disqualifications that exceed 30 days. The Associate Administrator for Enforcement and Program Delivery is the most appropriate official to make the determination whether or not a driver should be subject to an emergency disqualification, and the NPRM proposes to assign this authority accordingly.

Although the legislation does not establish a maximum period for this disqualification, the FMCSA believes that a one-year maximum is an

appropriate period. In recognition of the fact that many drivers who would be likely candidates for an emergency disqualification may also be subject to a longer disqualification under other provisions of the FMCSRs, the FMCSA proposes adding language to the regulation making clear that the imposition of an emergency disqualification does not preclude the imposition of an additional disqualification period if the driver is later convicted of any disqualifying offense arising out of the same incident.

The FMCSA notes that there is currently no code to identify this new Federal emergency disqualification on a driver's history and encourages the States and AAMVAnet to develop an appropriate code to identify such an action so that a driver's record may accurately reflect the fact that this sanction has been imposed.

New Serious Traffic Violations

Section 201(c) of the MCSIA adds three new offenses to the definition of serious traffic violations [49 U.S.C. 31301(12)(D), (E) and (F)]. These new violations include: driving a CMV when the driver has not obtained a CDL; driving a CMV without a CDL in his or her possession; and driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle. The FMCSA proposes adding these new offenses to the definition of serious traffic violations in section 383.5 and to the disqualification of driver provisions in section 383.51.

Expanded Driver Record Check

Before issuing a new CDL, States are currently required to request an applicant's driving record from any State that previously issued him or her a CDL. As amended by section 202(a) of the MCSIA, States will be required, before issuing or renewing a CDL, to request the applicant's record from each State that issued him or her any kind of driver's license [49 U.S.C. 31311(a)(6)]. The FMCSA proposes amending sections 383.71 and 384.206 to incorporate these new requirements.

New Notification Requirements

Section 202(b) of the MCSIA amends 49 USC 31311(a)(8) to add a requirement that States include and record the violation that resulted in the driver's disqualification, or the revocation, suspension or cancellation of his or her CDL, as part of the notification they are currently required to make under this statutory provision. The FMCSA proposes adding a new

section (49 CFR 384.208) incorporating this new legislative mandate.

Section 202(c) of the MCSIA clarifies a State's responsibility for notifying the State where a CDL driver is licensed whenever such an out-of-state driver is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), even if the driver was operating a non-CMV when the offense was committed [49 U.S.C. 31311(a)(9)]. The MCSIA also requires the State where such an offense was committed to notify the State where the driver is licensed if the offense was committed in a CMV, even if the driver did not have a CDL at the time. The MCSIA further requires that this notification be made no later than ten days after the driver's conviction.

Based on its current knowledge of State capabilities to obtain and transmit driver conviction information, the FMCSA believes that to immediately impose a ten-day time period would place an extensive and unreasonable burden on the States. Accordingly, the FMCSA proposes phasing in this time limitation over six years according to the following time schedule. Within three years of the effective date of the final rule, notification must be made within 30 days of the conviction. Within six years, notification must be made within ten days. The FMCSA proposes incorporating this new notification requirement into 49 CFR 384.209.

Prohibition on Issuing Hardship Licenses to Drivers Who Lose CDL

Suspension or revocation of a CDL for an offense committed in a private car or light truck has the collateral effect of barring truck and bus drivers from operating a CMV, and thus from earning a living in that field. In order to avoid that result, some States issue "hardship" licenses that authorize holders to operate CMVs, while barring them from driving all non-CMVs. Although this practice has always been questionable from a safety standpoint, FMCSA did not have the authority to prohibit it. Section 202(d) of the MCSIA [49 U.S.C. 31311(a)(10)] now gives the agency that authority. It explicitly prohibits States from issuing a provisional or temporary hardship license to CDL-holders who have been disqualified from operating a CMV or whose CDL has been revoked, suspended or canceled. A truck or bus driver whose CDL was suspended for speeding or reckless driving in his sport utility vehicle will now be unable to obtain a hardship license and may not drive a CMV until his CDL is restored. The FMCSA proposes amending 49 CFR

384.210 to implement this new requirement.

Penalties for Violating Licensing Requirements

Section 202(e) of the MCSIA clarifies the responsibility of States for establishing and imposing appropriate civil and criminal penalties for drivers committing offenses while operating a CMV. The FMCSA proposes amending 49 CFR 384.213 to incorporate this provision.

Maintaining Record of All Violations

Section 202(f) of the MCSIA requires the States to maintain a driver history record for CDL drivers of all convictions of State or local motor vehicle traffic control laws while operating any type of motor vehicle [49 U.S.C. 31311(a)(18)]. It also specifies that this information must be made available to authorized CDLIS users as part of normal operating practices. While the MCSIA does not specify a retention period for information on these convictions and other licensing actions, a minimum retention period of three years is needed to promote uniformity among the States. The FMCSA proposes adding section 384.225 to implement this new requirement.

Masking Prohibition

Section 202(g) of the MCSIA prohibits the practice of masking convictions required to be maintained by or transmitted to the State where the driver is licensed [49 U.S.C. 31311(a)(19)]. A Joint Explanatory Statement issued by Congress in conjunction with the MCSIA makes clear that this new provision is intended to prohibit States not only from masking convictions, but also from using diversion programs or any other disposition that would defer the listing of a guilty verdict on a CDL driver's record. This provision of the MCSIA also requires that records of such conviction information be made available to all authorized parties and government entities. The FMCSA proposes adding this new requirement as section 384.226.

Decertification of State CDL Programs for Noncompliance

Section 203 of the MCSIA requires the FMCSA to prohibit a State from issuing, renewing, transferring, or upgrading CDLs if the agency has determined that the State is in substantial noncompliance with the CDL licensing and sanctioning requirements of 49 CFR part 384, subpart B [49 U.S.C. 31312]. Because of the severity of this new sanction and the potential inconvenience to drivers and motor

carriers located in States found to be in non-compliance, this penalty should be used only after other attempts to bring the State into substantial compliance with CDL requirements have failed. The FMCSA proposes adding language at 49 CFR 384.405 to authorize the agency to implement this decertification authority, and to establish conditions for taking such action.

To mitigate the impact on drivers and motor carriers in States that have been decertified, the MCSIA proposes adding a provision to 49 CFR §§ 383.7 and 384.405(h) allowing drivers licensed before a State was decertified to continue to operate CMVs, as long as their licenses remain valid. The FMCSA also proposes to include language in 49 CFR 383.23(b)(2) authorizing States that are in substantial compliance to issue nonresident CDLs to drivers living in States that have been decertified.

School Bus Endorsement

Section 214 of the MCSIA requires the FMCSA to create a new endorsement that CDL holders must obtain to operate a school bus. To implement this new endorsement, the FMCSA proposes adding a definition of school bus to 49 CFR 383.5; amending other provisions of part 383 to recognize the new school bus endorsement; adding a license code for the endorsement; and specifying that applicants must pass both a knowledge and a skills test to obtain the endorsement. We also propose adding a new section (49 CFR 383.123) to establish the minimum knowledge and skills test requirements enumerated in the MCSIA for this new endorsement.

While the MCSIA established the minimum knowledge and skills test requirements that applicants for the school bus endorsement must meet, it does not specify what other requirements applicants must meet. The FMCSA is therefore proposing to require all applicants to meet the same knowledge and skills requirements they would need to meet to obtain a passenger vehicle endorsement. The agency would add language to proposed section 383.123 specifying that applicants for a school bus endorsement must meet all the requirements for obtaining a passenger vehicle endorsement as a condition of qualifying for a school bus endorsement.

During the rulemaking process to implement the CMVSA, numerous States expressed concern that they lacked the financial and human resources needed to provide the mandated skills test to the large number of drivers they anticipated would be applying for a CDL. To accommodate these concerns, the agency included a

provision authorizing States to substitute driving experience and a good driving record for the skills test requirements in the final rule implementing the CDL testing requirements. This "grandfathering" provision worked well in meeting the needs of the States by greatly limiting the number of CDL applicants having to take a skills test. To ensure that only qualified individuals would be eligible to receive a CDL without taking the skills test, the regulations required applicants to have a safe driving record and experience in the type vehicle they would be driving.

The skills test requirement for the new school bus endorsement mandated in the MCSIA would impose similar resource burdens on the States if all current school bus drivers were required to take the new school bus skills test. Accordingly, the FMCSA proposes including a provision in 49 CFR 383.123(b) giving States the option of not requiring applicants for the school bus endorsement to take the skills test in cases where the applicant has past experience driving a school bus and a good driving record. Such a "grandfather clause" incorporates appropriate experience and safety requirements to accomplish the objective of the MCSIA without imposing an undue burden on the States.

Substantial Compliance

The CDL provisions of the MCSIA that are proposed in this rulemaking add to the list of conditions necessary for States to achieve substantial compliance with the CMVSA of 1986. Substantial compliance is required to avoid having certain Federal-aid highway funds withheld. As provided by section 103(e) of the MCSIA, substantial compliance is also required to avoid having Motor Carrier Safety Assistance Program (MCSAP) funds withheld. The FMCSA understands the complexity of revising State legislation and establishing procedures to incorporate the new requirements into existing systems.

Section-by-Section Analysis

Section 350.217. What Are the Consequences for a State With a CDL Program Not in Substantial Compliance With 49 CFR Part 384, Subpart B?

Proposed § 350.217 would require the FMCSA to withhold MCSAP grant funds authorized under section 103(b)(1) of MCSIA from States determined not to be in substantial compliance with 49 CFR part 384, subpart B.

Section 383.5 Definitions

Section 383.5 would be amended to add three new definitions and change two existing definitions of words used in part 383 to implement provisions of the MCSIA. The definitions cover "fatality", "imminent hazard", and "school bus." The revised definitions cover "nonresident CDL," to authorize the issuance of a CDL to an individual domiciled in a State that has been prohibited from issuing CDLs under 49 CFR 384.405; and "serious traffic violation," by adding three new offenses to those for which a CDL holder may be disqualified. These violations are driving a CMV when the driver has not obtained a CDL; driving a CMV without a CDL in the driver's possession; and driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle.

Section 383.7 Validity of CDL Issued by Decertified State

Proposed § 383.7 would clarify that a CDL issued by a State subsequently prohibited from issuing CDLs under 49 CFR 384.405 remains valid until expiration.

Section 383.23 Commercial Driver's License

Section 383.23 would be amended to allow drivers domiciled in a State that has been prohibited from issuing CDLs under 49 CFR 384.405, to apply for a nonresident CDL from a State electing to issue such a license. References to the date "April 1, 1992" are being deleted from this section because that date has passed and it is no longer relevant.

Section 383.51 Disqualification of Drivers

The FMCSA would revise § 383.51 by using an if-then table format that is more easily understandable. We also propose to reserve rows within the table which are included in an NPRM recently published in the **Federal Register** under RIN 2126-AA55 relating to non-CMV convictions (66 FR22499; May 4, 2001).

Section 383.51 adds two new major violations, and three additional serious traffic violations, to those for which a CDL holder may be disqualified. The two new major violations are driving a CMV while the driver's CDL is revoked, suspended or canceled, or while the driver is disqualified; and causing a fatality through negligent or criminal operation of a CMV. The three new serious violations are driving a CMV when the driver has not obtained a CDL; driving a CMV without a CDL in the

driver's possession; and driving a CMV without having met the minimum testing standards for the specific class of CMV being operated or for the type of cargo being transported on the vehicle. This section would also be amended to specify the disqualification period for first time and subsequent offenders.

Section 383.52 Disqualification of Drivers Determined To Constitute an Imminent Hazard

Proposed § 383.52 would establish the FMCSA's criteria for implementing the emergency disqualification of CDL drivers posing an imminent hazard as defined in § 383.5.

Section 383.71 Driver Application Procedures

Section 383.71 would be amended to require applicants for an initial or transferred CDL to provide the State with the name of all States where they have previously been licensed to drive any type of motor vehicle so that the State may obtain a complete driving record for that person.

Section 383.73 State Procedures

Section 383.73 would be amended to require the State to request the complete driving record of applicants for an initial license, renewal or transfer of a CDL from all States where the applicant has previously been licensed to drive any type of motor vehicle.

Section 383.93 Endorsements

Section 383.93 would be amended to add a new paragraph recognizing the new school bus endorsement and specifying that applicants must pass both a knowledge and a skills test to obtain this new endorsement.

Section 383.123 Requirements for a School Bus Endorsement

Proposed § 383.123 would establish the knowledge and skills test requirements for the school bus endorsement. It would also allow States to exempt applicants, who meet specified requirements and who have a good driving record, from taking the skills test.

Section 383.153 Information on the Document and Application.

Section 383.153 would be amended to add a license code for the proposed school bus endorsement.

Section 384.206 State Record Checks

Section 384.206 would be amended to add a requirement that before issuing or allowing an applicant to transfer a CDL, the State must conduct a record check of all States where the applicant may

have received a license to operate any type of motor vehicle.

Section 384.208 Notification of Disqualification

Proposed § 384.208 would require any State that disqualifies, or takes any other action to prohibit, a CDL driver licensed by another State from operating a CMV for a period of 60 days or more, to notify the State where the driver is licensed of such action no later than 10 days after the driver is disqualified. This new provision also requires the notification to identify the violation that resulted in the disqualification, revocation, suspension or cancellation. The notification and the information it provides must be recorded on the driver's record.

Section 384.209 Notification of Traffic Violations

Section 384.209 would be amended to require the State where a CDL holder is convicted of a State or local traffic control law (except a parking violation) to notify the State where the driver is licensed, regardless of the type of vehicle he or she was operating. This reporting requirement would also apply if the offense were committed while the driver was operating a CMV, regardless of whether or not the driver had a CDL. States will need time to implement this new notification requirement, and the following phase-in period is therefore proposed. Within three years of the effective date of the final rule, States must make this notification within 30 days of the conviction. States are encouraged to implement the ten day notification time frame established in the MCSIA as expeditiously as possible, with all States making the required notification within 10 days of the conviction no later than six years after the effective date of the final rule.

Section 384.210 Limitation on Licensing

Section 384.210 would be amended to prohibit a State from issuing a special commercial driver's license or permit (including a provisional or temporary license) to any CDL driver who is disqualified or who has his or her non-commercial driver's license or driving privilege revoked, suspended or canceled.

Section 384.213 State Penalties for Drivers of CMVs

Section 384.213 would be amended to require States to establish and impose appropriate civil and criminal penalties consistent with the penalties required by part 383 for violations committed by CDL drivers while operating a CMV.

Section 384.225 Record of Violations

Proposed § 384.225 clarifies a State's responsibility for maintaining records on CDL drivers and drivers convicted of offenses while operating a CMV that require the driver to have a CDL. This new section also specifies what information those records must contain, how long the information must be retained, and who must have access to it.

Section 384.226 Prohibition on Masking Convictions

Proposed § 384.226 prohibits a State from masking conviction information, and from using diversion programs or other dispositions that defer the listing imposition of a guilty verdict on a CDL driver's record.

Section 384.301 Substantial Compliance—General Requirements

Section 384.301 would be amended to add a new paragraph (b) allowing States up to three years from the effective date of any newly adopted requirements of subpart B of this part to come into substantial compliance with those new requirements.

Section 384.307 FMCSA Program Reviews of State Compliance

Section 384.307 would be amended to remove the July 1 deadline by which the FMCSA must notify a State that a preliminary substantial noncompliance determination has been made. Removing this requirement gives the Agency the flexibility to conduct State compliance reviews until the end of the Federal fiscal year. A provision would also be added to this section giving a State aggrieved by an adverse decision under this section the right to seek judicial review consistent with 49 CFR 350.215 governing the cessation of MCSAP grant funding.

Section 384.401 Withholding of Funds Based on Noncompliance

Section 384.401 would be amended to authorize the withholding of MCSAP supplemental grant funds authorized under section 103(b)(1) of the MCSIA, in addition to the Federal-aid highway funds specified in 49 U.S.C. 31314, if the FMCSA finds that a State is not in substantial compliance with 49 CFR part 384, subpart B.

Section 384.403 Availability of Funds Withheld for Non-compliance

Section 384.403 would be amended to delete all references to funds withheld

on or before September 30, 1995, because that date has passed and no funds were withheld from highway trust funds under this section prior to that date.

Section 384.405 Decertification of State CDL Program

Proposed § 384.405 would prohibit a State from issuing, renewing or upgrading a CDL if the Administrator has determined the State is in substantial noncompliance with 49 CFR part 384, subpart B. This section would also contain language clarifying that the validity of a CDL issued by a State prior to the date the Administrator determined that State to be in substantial noncompliance would remain valid until its stated expiration date.

Section 384.407 Emergency CDL Grants

Proposed § 384.407 would allow the FMCSA to make emergency CDL grants to States whose CDL program may fail to meet the compliance requirements of 49 CFR part 384, subpart B. These grants of up to \$1,000,000 per State would be subject to the annual appropriation of funds by Congress for information system grants.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This NPRM is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Costs

Six provisions in this NPRM were analyzed. Each is represented here by the MCSIA section number and the title used in the NPRM. They include:

- Section 201(a), "Disqualification for Driving While Suspended, Disqualified and Causing a Fatality";
- Section 201(b), "Emergency Disqualification of Drivers Posing an Imminent Hazard";
- Section 201(c), "New Serious Traffic Violations";
- Section 202(a), "Expanded Driver Record Check";

- Section 202(b), "New Notification Requirements; and
- Section 202(g), "Masking Prohibition".

Several other provisions were examined for potential costs but were considered non-significant (relative to the above-mentioned sections) after initial consideration and, as a result, were not analyzed in detail. These include:

- Section 103(c), "Emergency CDL Grants to States";
- Section 103(e), "Withholding MCSAP Funds from States in Non-Compliance with CDL Requirements";
- Section 202(d), "Prohibition on Issuing Hardship License to Drivers Who Lose CDL";
- Section 202(e), "Penalties for Violating Licensing Requirements";
- Section 203, "Decertification of State CDL Programs for Non-Compliance"; and
- Section 214, "School Bus Endorsement";
- Section 201(b), "Serious Offenses Involving a Non-commercial Motor Vehicle" and
- Section 215, "Medical Certification," are being analyzed as part of separate NPRMs.

The primary categories of costs considered in this analysis include: (1) Information system implementation, modification, and maintenance costs to State government agencies; (2) labor costs to the State government agencies to handle new data collection and processing; and (3) wage reduction costs to CDL holders who are suspended or disqualified as a result of the new serious traffic violations and disqualifying offenses addressed under this proposed rule.

First-Year Costs

First-year costs for the six provisions examined for this NPRM total approximately \$12.3 million (present value) and primarily include information system developments and modifications by State government agencies. The year of implementation for each provision varies between 2002 and 2004 (depending upon the phase-in period outlined in the NPRM), but the majority of provisions are assumed to be implemented in years 2002 and 2003. The totals, broken down by sections of the MCSIA, are contained in Table A.

TABLE A.—TOTAL “FIRST-YEAR” COSTS, BY MCSIA SECTION

MCSIA section	MCSIA section title	Total first-year costs (millions of dollars, present value)
201(a)	“* * * Driving While Suspended * * *”	\$1.61
201(b)	“* * * Imminent Hazard”	2.15
201(c)	“Expanded Definition of Serious Traffic Violations”	1.41
202(a)	“Expanded Driver Record Check”	¹ 1.46
202(b)	“New Notification Requirements”	¹ 0.58
202(g)	“Masking Prohibition”	² 5.12
Total	12.33

¹ Information system implementation costs were spread over three calendar years.

² Includes information system implementation costs, State labor costs to collect, input, and transmit CDL data, and wage reduction costs to disqualified CDL holders.

These first-year cost estimates were taken from a survey conducted in the Fall of 2000, by the American Association of Motor Vehicle Administrators (AAMVA), which queried State motor vehicle administrations on the potential implementation costs of various sections of MCSIA. FMCSA used these estimates, submitted by a limited number of States (between seven and twelve, depending on the particular MCSIA section) to AAMVA, and extrapolated results to represent

information system development and modification costs to all fifty States and the District of Columbia. These costs represent personnel, hardware, and software costs to the State departments of motor vehicles to install and/or modify State information systems to accommodate the new MCSIA requirements. Since most of these provisions would be implemented simultaneously by the States, one could expect some economies of scale to occur and it is assumed that such cost savings

are included in the estimates submitted by States to AAMVA.

Later-Year Costs

Total later-year costs (e.g., those occurring beyond the first year of implementation of each provision) are estimated at \$272.6 million (present value, using a 7 percent discount rate). The majority of later-year costs occur between the years 2003 and 2011, after implementation of most provisions has begun. These totals, by sections of the MCSIA, are contained in Table B.

TABLE B.—TOTAL “LATER YEARS” COSTS, BY MCSIA SECTION

MCSIA section	MCSIA section title	Total first-year costs (millions of dollars, present value)
201(a)	“* * * Driving While Suspended * * *”	\$87.5
201(b)	“* * * Imminent Hazard”	17.6
201(c)	“Expanded Definition of Serious Traffic Violations”	43.8
202(a)	“Expanded Driver Record Check”	103.4
202(b)	“New Notification Requirements”	3.2
202(g)	“Masking Prohibition”	17.1
Total	\$72.6

These costs are primarily comprised of wage reduction costs to CDL holders who will now be suspended or disqualified as a result of this rule’s implementation. As mentioned, there are also labor costs to State government employees to handle new or expanded data collection and processing, although these costs comprise a much smaller percentage of the total than the wage reduction costs. Examples of expanded

or new data collection costs include the time required by State police to issue new citations (e.g., “Expanded Definition of Serious Traffic Violations”) and time costs for State employees to log new convictions (as defined under the Federal Motor Carrier Safety Regulations, or FMCSRs) and transmit to the Commercial Driver’s License Information System (CDLIS).

Analysis indicates that on average, approximately 31,897 commercial motor vehicle (CMV) drivers will have their CDLs disqualified (e.g., revoked, suspended or cancelled) annually as a result of implementing the six provisions analyzed here. The breakdown of estimated new CDL withdrawals by MCSIA section is contained in Table C:

TABLE C.—ESTIMATED NUMBER OF CDL WITHDRAWALS ANNUALLY, BY MCSIA SECTION

MCSIA section	NPRM section title	Annual CDL withdrawals
201(a)	“Driving While Suspended* * *”	4,296
201(b)	“* * * Imminent Hazard”	299
201(c)	“Expanded Definition of Serious Traffic Violations”	7,077
202(a)	“Expanded Driver Record Check”	16,500
202(b)	“New Notification Requirements”	¹ 0

TABLE C.—ESTIMATED NUMBER OF CDL WITHDRAWALS ANNUALLY, BY MCSIA SECTION—Continued

MCSIA section	NPRM section title	Annual CDL withdrawals
202(g)	“Masking Prohibition”	3,725
Total	31,897

¹ Any CDL disqualifications associated with this provision are accounted for under other, related provisions. For example, States will be required to notify CDLIS of those convictions CDL holders receive while operating a non-CMV, but resulting CDL disqualifications are accounted for under the “Non-CMV Offenses” NPRM.

The 31,897 annual CDL disqualifications estimated to occur as a result of this rule’s implementation represent roughly 0.6 percent (or 6/10ths of one percent) of the total 5.75 million CDL holders currently estimated to be “active” CMV operators.

Given that the current unemployment rate is 4.2 percent (January, 2001, U.S. Department of Labor) and the driver shortage in the motor carrier industry is

currently estimated at approximately 80,000 (American Trucking Associations), FMCSA assumed that those CDL holders disqualified as a result of this rule would find alternative employment in the industry (or closely-related ones), albeit at a 10-percent reduction in hourly wages.

The specific disqualification period assumed for each driver (during which they are assumed to earn 10 percent less

in average weekly wages) differs significantly from provision to provision (depending on specific conviction cited), but generally lasts between 520 working hours (e.g., roughly 3 months) and 2080 working hours (e.g., roughly one year). The specific disqualification periods assumed for each section of the MCSIA analyzed here are contained in Table D.

TABLE D.—DISQUALIFICATION PERIOD ASSUMED PER DRIVER, BY MCSIA SECTION

MCSIA section	NPRM section title	Disqualification period (hours)
201(a)	“. . . Driving While Suspended* * *”	2080 hours
201(b)	“* * *Imminent Hazard”	520 hours
201(c)	“Expanded Definition of Serious Traffic Violations”	520 hours
202(a)	“Expanded Driver Record Check”	520 hours
202(b)	“New Notification Requirements”	N/A
202(g)	“Masking Prohibition”	520 hours

For instance, two convictions of serious traffic violations (e.g., excessive speeding, 15 mph over speed limit) within a three-year period carries a disqualification period of 60 days, while three convictions within a three-year period carries 120 days, with a midpoint of 90 days (e.g., 3 months or 520 hours, assuming a 40-hour workweek). A single conviction of a disqualifying offense (e.g., alcohol-related conviction) generally carries a one-year disqualification period, or 2080 hours.

Total Costs of MCSIA Provisions

The total cost of this rule to industry and government agencies is estimated to be approximately \$285 million (present value) over the ten-year analysis period from 2002 through 2011, using a discount rate of 7 percent.

Benefits

The primary societal benefits expected from this rule are the truck-related crashes that one would expect to be avoided due to the additional CMV operators (CDL holders specifically) who will be suspended or disqualified for violation of the new disqualifying offenses and serious traffic violations covered under this proposed rule. It was

not possible to estimate the specific number of truck-related crashes that would be avoided from implementing each provision of this rule, given that FMCSA analysts had no available data on the direct link between these specific FMCSR-defined offenses and truck-related crashes. However, FMCSA analysts did use cost data on truck-related crashes from Zaloshnja, Miller, and Spicer (“The Costs of Large Truck- and Bus-Involved Crashes,” 2000) to derive an estimate of the total number of truck-related crashes that would have to be avoided per year for this rule to be cost effective (e.g., for discounted benefits to equal/exceed discounted costs). Zaloshnja, *et al.*, estimate that the average cost of all police-reported crashes (e.g., fatal, injury, and property-damage-only (PDO) crashes) involving trucks with a gross weight rating of more than 10,000 pounds is \$75,637 (in 1999 dollars). The average cost of large truck crashes involving a fatality is \$3.42 million, \$217,000 for those involving injuries, and \$11,300 for PDO crashes. Using data from “Trends in Motor Vehicle Crashes” (FMCSA, December, 2000), it can be seen that fatal, injury, and PDO crashes accounted

for one percent, 21 percent, and 78 percent of all large truck-related crashes, respectively, in 1999. As such, safety benefits of this proposed rule would exceed implementation costs if an average of 500 truck-related crashes are avoided annually over the 2003–2011 analysis period. (No crash reduction benefits are assumed to occur during the first year of implementation (2002), as a conservative assumption.) The 500 large truck crashes avoided (mostly PDO crashes), represents just 0.1 percent (or 1/10th of 1 percent) of the total 452,542 truck-related crashes reported in 1999. Breaking this total down by type of truck-related crash, the proposed rule will be cost effective if just 5 fatal crashes, 105 injury-related crashes, and 390 PDO crashes are avoided each year. Due to the conservative assumptions made here regarding the number of CDL holders expected to be disqualified because of this NPRM (e.g., more optimistic assumptions regarding CDL disqualifications would raise the potential crash reduction expectation), FMCSA analysts believe such crash reduction estimates are achievable, making this rule likely to be cost-effective.

As support, the 31,897 annual CDL disqualifications can be examined more closely. Assume each CDL disqualification period averages three months, since the disqualification period is assumed to be 90 days in most cases. Also assume that each CDL holder drives an average of 65,261 miles per year. This estimate is considered conservative, since other research indicates that large truck operators may travel upwards of 100,000 miles per year. However, data from the 1999 Highway Statistics (Table VM-1) on the annual distance traveled in miles for combination trucks indicates that each vehicle averages 65,261 miles annually. Therefore, the reduction in total commercial vehicle miles traveled (VMT) by this group is estimated at 520 million per year (e.g., 65,261 × 31,897 × 0.25 (% of annual calendar days disqualified on average)). Data from Wang, Knipling, and Blincoe (Journal of Transportation Statistics, May, 1999) indicates that the vehicle involvement rate in police-reported crashes for combination unit trucks is 225.52 per 100 million VMT. As such, from a static perspective, one could expect crashes involving combination trucks to be reduced by 1,176 per year from this rule. However, it is probably more realistic to assume that a sizable portion of these drivers' shipments would be picked up by other, existing CDL holders. If it is assumed that only one half of the initial crash reduction estimate is actually experienced, then 588 combination truck crashes are avoided each year from this rule. Even at 588 crashes avoided, this rule is cost-effective, with discounted benefits equaling \$317 million (or \$32 million more than total discounted costs of \$285 million over the 2002–2011 analysis period).

Regulatory Flexibility Act

The FMCSA has considered whether this interim rule would have a significant economic impact on a substantial number of small entities, and has determined that such businesses would not be adversely affected by this rule relative to larger carriers. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations less than 50,000.

In the motor carrier industry, the Small Business Administration (SBA) defines small entities as those firms earning less than \$18.5 million in gross revenues annually. Examining U.S. Census Bureau data on the revenue size of firms in the "General Freight Trucking" sector (NAICS Code 4841), the vast majority of firms represented in the sample fall below the SBA annual revenue threshold. And while these small entities represent over 90 percent of the firms in the sample, they employ only about 58 percent of the workers.

The primary focus of this rule is to expedite and expand the exchange of CDL violation information among the states, with the overall goal of improving commercial vehicle safety through the retrieval of more accurate, up-to-date CDL holder information. The only potentially significant cost to the motor carrier industry would be to CDL holders, due to greater potential for disqualification as a result of adding new disqualifying offenses and serious traffic violations to the FMCSRs. However, even the estimated number of new driver disqualifications resulting from this rule annually (approximately 31,897) is only 0.6 percent of the total number of CDL holders currently estimated to be active drivers (5.75 million). Since this proposed rule focuses on all CDL holders, and the

number of new drivers likely to be disqualified is relatively small, FMCSA analysts believe that small entities are not adversely impacted in absolute terms, or relative to industry participants overall.

Paperwork Reduction Act

This NPRM calls for collection of information under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320(c), "collection of information" comprises reporting, record keeping, monitoring, posting, labeling, and other similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow.

The time costs associated with implementation of this NPRM are primarily comprised of the following:

(1) The additional time spent by State police to check a CDL holder's record for new violations under the FMCSRs. The time cost is assumed to be 30 seconds per record checked;

(2) The additional time spent by State police to write citations for new violations covered under this NPRM (e.g., Expanded Definition of Serious Traffic Violations). The time required is assumed to be 5 minutes per citation written;

(3) The time required by State data entry employees to log the new conviction data and transmit to CDLIS. These costs are assumed to be one minute per record; and

(4) The time required by State department of motor vehicle employees to review a CDL holder's record during license application and renewal. These costs are assumed to be one minute per record reviewed. The total new time requirements under this NPRM are contained in Table E.

TABLE E.—ANNUAL STATE LABOR COSTS TO PROCESS PAPERWORK RESULTING FROM MCSIA

MCSIA section	NPRM section title	Hours required annually
201(a)	"* * * Driving While Suspended * * *	19,641
201(b)	* * * Imminent Hazard"	1
201(c)	"Expanded Definition of Serious Traffic Violations"	6,259
202(a)	"Expanded Driver Record Check"	27,500
202(b)	"New Notification Requirements"	2,438
202(g)	"Masking Prohibition"	1,089
Total Annual Time Cost	All Six Provisions Examined	56,927

¹ Negligible

The total annual additional time cost associated with implementation of this

NPRM is estimated to be 56,927 hours. These costs are almost exclusively borne

by State government employees who are being asked to expand the collection

and transmission of conviction information for CDL holders, and from writing additional citations related to new FMCSR violations outlined in this NPRM.

Unfunded Mandates Reform Act

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

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

Executive Order 13132 (Federalism)

This proposed action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and it has been determined that it would have significant Federalism implications or limit the policymaking discretion of the States.

The Federalism implications of the CDL program were addressed in detail in the rule that established the initial minimum standards (53 FR 27628, July 21, 1988). A summary of the points covered in that rule includes:

(a) The Congress determined that minimum Federal standards were required because medium and heavy trucks are involved in a disproportionately large percentage of fatal accidents. The States were carefully consulted in establishing the minimum standards that were established.

(b) The safety problem associated with CMVs is national in scope,

requiring a consistent and reciprocal approach to licensing, which retained the basic role of the States in issuing licenses.

(c) The standards adopted deliberately allowed maximum flexibility to the States in implementation of this program.

We believe the policies in this proposed rule are consistent with the principles and Federalism assessment in the CDL rule that established the initial minimum standards. Comments on this conclusion are welcome and should be submitted to the docket.

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.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and it has determined under DOT Order 5610.1C (September 18, 1979) that this action does not require any environmental assessment.

List of Subjects

49 CFR Part 350

Grant programs—Transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 383

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Motor carriers.

49 CFR Part 384

Administrative practice and procedure, Commercial driver's license, Commercial motor vehicles, Highway safety, Intergovernmental relations, Motor carriers.

In consideration of the foregoing, the FMCSA proposes to amend 49 CFR chapter III, as set forth below:

PART 350—[AMENDED]

1. Revise the authority citation for 49 CFR part 350 to read as follows:

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31312, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1753; and 49 CFR 1.73.

2. Add § 350.217 to subpart B to read as follows:

§ 350.217 What are the consequences for a State with a CDL program not in substantial compliance with 49 CFR part 384, subpart B?

(a) A State with a CDL program not in substantial compliance with 49 CFR part 383, subpart B, as required by 49 CFR part 384, subpart C, is subject to the loss of all Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159, 113 Stat. 1748) and loss of certain Federal-aid highway funds, as specified in 49 CFR part 384, subpart D.

(b) Withheld MCSAP grant funds will be restored to the State if the State meets the conditions of § 384.403 (b) of this subchapter.

PART 383—[AMENDED]

3. Revise the authority citation for 49 CFR part 383 to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, 31502; Sec. 214 of Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

4. Amend § 383.5 to revise the definitions of the terms “Nonresident CDL” and “Serious traffic violation” and to add the definitions of the terms “Fatality”, “Imminent hazard” and “School bus” in alphabetical order to read as follows:

§ 383.5 Definitions.

* * * * *

Fatality means the death of a person as a result of a motor vehicle accident.

* * * * *

Imminent hazard means the existence of a condition that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

* * * * *

Nonresident CDL means a CDL issued by a State under either of the following two conditions:

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

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

* * * * *

School bus means a CMV used to transport pre-primary, primary, or secondary school students from home to school, from school to home, or to and from school sponsored events. School bus does not include a bus used as a common carrier.

Serious traffic violation means conviction, when operating a CMV, of:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a CMV in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely;

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control (other than a parking violation). (Serious traffic violations exclude vehicle weight and defect violations.);

(f) Driving a CMV without obtaining a CDL;

(g) Driving a CMV without a CDL in the driver's possession. Any individual who provides proof to the enforcement authority that issued the citation, by the date the individual must appear in court or pay any fine for such a violation, that the individual held a valid CDL on the

date the citation was issued, shall not be guilty of this offense; or

(h) Driving a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.

* * * * *

5. Add § 383.7 to subpart A to read as follows:

§ 383.7 Validity of CDL issued by decertified State.

A CDL issued by a State prior to the date the State is notified by the Administrator in accordance with the provisions of § 384.405 of this subchapter that the State is prohibited from issuing CDLs will remain valid until its stated expiration date.

6. Amend § 383.23 to revise paragraphs (a)(2) and (b) to read as follows:

§ 383.23 Commercial driver's license.

(a) * * *

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction which the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part, the person may obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such subparts F, G, and H of this part.

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Nonresident CDL from any State which complies with the testing and licensing standards contained in subparts F, G, and H of this part.

* * * * *

7. Amend § 383.51, as proposed to be revised at 66 FR 22508, by adding new paragraphs (b)(7) and (b)(8) to Table 1 and by adding new paragraphs (c)(6), (c)(7), and (c)(8) to Table 2 to read as follows:

§ 383.51 Disqualifications of drivers.

* * * * *

(b) * * *

TABLE 1 TO § 383.51

	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	For a first conviction or refusal to be tested while operating a non-CMV, a CDL holder must be disqualified from operating a CMV for	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous materials Regulations (49 CFR part 172, subpart F), a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV, a person required to have a CDL and a CDL holder must be disqualified from operating a CMV for	For a second conviction or refusal to be tested in a separate incident of any offense in this Table while operating a CMV or a non-CMV, a CDL holder must be disqualified from operating a CMV for
(7) drives a CMV when the driver's CDL is revoked, suspended, or canceled, or the driver is disqualified from operating a CMV.	1 year	N/A	3 years	life	N/A.
(8) commits homicide by motor vehicle, manslaughter, or negligent homicide through the operation of a CMV.	1 year	N/A	3 years	life	N/A.

* * * * *

* * * * *

(c) * * *

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for	For a second conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CDL must be disqualified from operating a CMV for	For a third or subsequent conviction of any offense in this Table in a separate incident within a 3-year period while operating a CMV or non-CMV, a CDL holder must be disqualified from operating a CMV for
(6) drives a CMV without obtaining a CDL.	60 days	60 days	120 days	120 days.
(7) drives a CMV without a CDL in the driver's possession.	60 days	60 days	120 days	120 days.
(8) drives a CMV without the proper class of CDL and/or endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported.	60 days	60 days	120 days	120 days.

* * * * *

8-9. Add § 383.52 to read as follows:

§ 383.52 Disqualification of drivers determined to constitute an imminent hazard.

(a) The Associate Administrator for Enforcement and Program Delivery or his/her delegate will disqualify from operating a CMV any driver whose driving is determined to constitute an imminent hazard, as defined in § 383.5.

(b) In making the determination that a driver constitutes an imminent hazard at least two of the following six factors must be found to exist:

(1) The driver has been charged with committing an offense that upon conviction would require the driver to be disqualified.

(2) The driver's action or inaction resulted in a fatality or serious bodily injury.

(3) The driver has a condition that makes the driver medically unqualified to operate a CMV.

(4) The driver transports passengers or hazardous materials.

(5) The driver is an habitual offender, as evidenced by having been convicted of three or more disqualifying offenses within the past ten years.

(6) The driver has been convicted of one or more disqualifying offenses, but has never been disqualified by the State where he or she is licensed.

(c) The period of the disqualification may not exceed 30 days unless the provisions of paragraph (d) of this section have been complied with.

(d) Before imposing a disqualification for a period of more than 30 days, the

Associate Administrator for Enforcement and Program Delivery or his/her delegate will provide the driver notice of the proposed disqualification and an opportunity for a hearing to present a defense to the proposed disqualification. A disqualification imposed under this section may not exceed one year in duration.

(e) Any disqualification imposed in accordance with the provisions of this section must become a part of the driver's record maintained by the jurisdiction where the driver is licensed.

(f) Nothing in this section precludes a driver who would, upon conviction of a specific offense, be subject to a longer disqualification under other provisions of this subpart, or State law or regulation, from being disqualified for the longer period required by those provisions.

10. Amend § 383.71 to remove the period at the end of paragraph (a)(6) and add a semicolon in its place, to remove the period at the end of paragraph (a)(7) and add “; and” in its place, to remove “and” at the end of paragraph (b)(3), to remove the period at the end of paragraph (b)(4) and add “; and” in its place, to remove “and” at the end of paragraph (c)(2), to remove the period at the end of paragraph (c)(3) and add “; and” in its place, and to add paragraphs (a)(8), (b)(5) and (c)(4) to read as follows:

§ 383.71 Driver application procedures.

(a) * * *

(8) Provide the name of all States where the applicant has previously been

licensed to drive any type of motor vehicle.

(b) * * *

(5) Provide the name of all States where the applicant has previously been licensed to drive any type of motor vehicle.

(c) * * *

(4) Provide the name of all States where the applicant has previously been licensed to drive any type of motor vehicle.

* * * * *

11. Amend § 383.73 to revise paragraphs (a)(3)(ii) and (a)(3)(iii) introductory text and to add paragraph (a)(3)(iv) to read as follows:

§ 383.73 State procedures.

(a) * * *

(3) * * *

(ii) A check with the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the National Driver Register (NDR) to determine whether the driver applicant has:

* * * * *

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed to drive any type of motor vehicle; and

* * * * *

12. Amend § 383.93 to add paragraphs (b)(5) and (c)(5); and revise paragraphs

(b)(3), (b)(4), (c)(3) and (c)(4) to read as follows:

§ 383.93 Endorsements.

* * * * *

(b) * * *

(3) Tank vehicles;

(4) Required to be placarded for hazardous materials; or

(5) School buses.

(c) * * *

(3) Tank vehicle—knowledge test;

(4) Hazardous Materials—knowledge test; and

(5) School bus—knowledge and skills test.

13. Add § 383.123 to subpart G to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for a school bus endorsement must satisfy the following three requirements:

(1) *Qualify for passenger vehicle endorsement.* Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) *Knowledge test.* Must have knowledge covering at least the following three topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing highway rail grade crossings.

(3) *Skills test.* Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Substitute for driving skills test.* (1) At the discretion of a State, the driving skills test required in paragraph (a)(3) of this section may be waived for an applicant who is currently licensed, has experience driving a school bus, has a good driving record, and meets the conditions set forth in paragraph (b)(3) of this section.

(2) A State that wishes to waive the skills test otherwise required by paragraph (a)(3) of this section, must subject applicants, at a minimum, to the conditions and limitations specified in paragraph (b)(3) of this section.

(3) An applicant must certify and the State must verify that, during the two-year period immediately prior to applying for the school bus endorsement, the applicant:

(i) Held a valid CDL with a passenger vehicle endorsement to operate a school

bus representative of the group he or she will be driving;

(ii) Has not had his or her driver's license or CDL suspended, revoked or canceled or been disqualified from operating a CMV;

(iii) Has not been convicted of any of the disqualifying offenses in § 383.51(b) or of any offense in a non-CMV that would be disqualifying under § 383.51(b) if committed in a CMV;

(iv) Has not had more than one conviction of any of the serious traffic violations defined in § 383.5, while operating any type motor vehicle;

(v) Has not had any conviction for a violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident;

(vi) Has no record of an accident in which he or she was at fault; and

(vii) Has been regularly employed as a school bus driver and operated a school bus representative of the group the applicant seeks to drive and provides evidence of such employment.

(4) After [date 3 years after the effective date of final rule] the provisions in this paragraph (b) do not apply.

14. Amend § 383.153 to redesignate paragraph (a)(9)(vi) as paragraph (a)(9)(vii), revise paragraph (a)(9)(v) and add new paragraph (a)(9)(vi) to read as follows:

§ 383.153 Information on the document and application.

(a) * * *

(9) * * *

(v) X for a combination of tank vehicle and hazardous materials endorsement;

(vi) S for school bus; and

* * * * *

PART 384—[AMENDED]

15. Revise the authority citation for 49 CFR part 384 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; Sec. 103 of Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.73.

16. Amend § 384.206 to revise paragraph (a)(2) to read as follows:

§ 384.206 State record checks.

(a) * * *

(2) *Other States' records.* Before the initial or transfer issuance of a CDL to a person, and before renewing a CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle.

(ii) Within the time period specified in § 384.232, request the complete

driving record from all States where the applicant was previously licensed to operate any type of motor vehicle.

(iii) States receiving a request for the driving record of a person currently or previously licensed by the State must provide the information within 30 days.

* * * * *

17. Add § 384.208 to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CDL holder licensed by another State, or revoking, suspending, or canceling an out of State CDL holder's privilege to operate a commercial motor vehicle, for at least 60 days, the State must notify the State that issued the license of the disqualification, revocation, suspension, or cancellation.

(b) The notification must include both the disqualification and the violation that resulted in the disqualification, revocation, suspension, or cancellation. The notification and the information it provides must be recorded on the driver's record.

18. Revise § 384.209 to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CDL holders.* Whenever a person who holds a CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than a parking violation), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(b) *Required notification with respect to non-CDL holders.* Whenever a person who does not hold a CDL, but who is licensed to drive by another State, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

(c) *Time period for notification of traffic violations.* (i) Beginning on [date 3 years after effective date of final rule], the notification must be made within 30 days of the conviction.

(ii) Beginning on [date 6 years after effective date of final rule], the notification must be made within 10 days of the conviction.

19. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CDL or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined by § 383.5 of this subchapter, or under the provisions of § 383.73(g) of this subchapter;

(b) The CDL holder's noncommercial driving privilege has been revoked, suspended, or cancelled; or

(c) Any type of driver's license held by such person is suspended, revoked, or canceled by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking violations).

20. Revise § 384.213 to read as follows:

§ 384.213 State penalties for drivers of CMVs.

The State must impose on drivers of CMVs appropriate civil and criminal penalties that are consistent with the penalties prescribed under part 383, subpart D, of this subchapter.

21. Add § 384.225 to read as follows:

§ 384.225 Record of violations.

The State must:

(a) *CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed in any type of vehicle.

(b) *Non-CDL holders.* Record and maintain as part of the driver history all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than a parking violation) committed while the driver was operating a CMV.

(c) Make driver history information required by this section available to the authorized users designated in paragraph (e) of this section within 10 days of:

(1) Receiving the conviction or disqualification information from another State; or

(2) The date of the conviction, if it occurred in the same State.

(d) Retain on the driver history record all convictions, disqualifications and other licensing actions for violations for at least 3 years or longer as required under § 384.231(d).

(e) Only the following authorized users may receive the designated information:

(1) States—All information on all driver records.

(2) Secretary—All information on all driver records.

(3) Driver—Only information related to that driver's record.

(4) Motor Carrier or Prospective Motor Carrier—After notification to a driver, all information related to that driver's, or prospective driver's, record.

22. Add § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CDL driver's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (except a parking violation), from appearing on the driver's record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

23. Revise § 384.301 to read as follows:

§ 384.301 Substantial compliance-general requirements

(a) To be in substantial compliance with 49 U.S.C. 31311(a), a State must meet each and every standard of subpart B of this part by means of the demonstrable combined effect of its statutes, regulations, administrative procedures and practices, organizational structures, internal control mechanisms, resource assignments (facilities, equipment, and personnel), and enforcement practices.

(b) A State shall come into substantial compliance with the requirements of subpart B of this part in effect as of [effective date of final rule] as soon as practical, but, unless otherwise specifically provided in this part, not later than three years after [effective date of final rule].

24. Revise § 384.307 to read as follows:

§ 384.307 FMCSA program reviews of State compliance.

(a) *FMCSA Program Reviews.* Each State's CDL program will be subject to review to determine whether or not the State meets the general requirement for substantial compliance in § 384.301. The State must cooperate with the review, and provide any information requested by the FMCSA.

(b) *Preliminary FMCSA determination and State response.* If, after review, a preliminary determination is made either that the State has not submitted

the required annual self-certification or that the State does not meet one or more of the minimum standards for substantial compliance under subpart B of this part, the State will be informed accordingly.

(c) *Reply.* The State will have up to 30 calendar days to respond to the preliminary determination. The State's reply must explain what corrective action it either has implemented or intends to implement to correct the deficiencies cited in the notice or, alternatively, why the FMCSA's preliminary determination is incorrect. The State must provide documentation of corrective action as required by the Agency. Corrective action must be adequate to correct the deficiencies noted in the program review and be implemented on a schedule mutually agreed upon by the Agency and the State. Upon request by the State, an informal conference will be provided during this time.

(d) *Final FMCSA determination.* If, after reviewing a timely response by the State to the preliminary determination, a final determination is made that the State is not in compliance with the affected standard, the State will be notified of the final determination. In making its final determination the FMCSA will take into consideration the corrective action either implemented or planned to be implemented in accordance with the mutually agreed upon schedule.

(e) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

25. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following first year of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to five percent of the Federal-aid highway funds required to be apportioned to any State under each of sections 104(b)(1), (3), and (4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's first year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State was not in substantial compliance with subpart B of this part.

(b) *Following second and subsequent year(s) of noncompliance.* A State is subject to both of the following sanctions:

(1) An amount equal to ten percent of the Federal-aid funds required to be apportioned to any State under each of sections 104(b)(1), (3), and (4) of title 23, U.S.C., shall be withheld on the first day of the fiscal year following such State's second or subsequent year of noncompliance under this part.

(2) The Motor Carrier Safety Assistance Program (MCSAP) grant funds authorized under section 103(b)(1) of the Motor Carrier Safety Improvement Act of 1999 (Public Law 106-159, 113 Stat. 1754) shall be withheld from a State on the first day of the fiscal year following the fiscal year in which the FMCSA determined that the State had not returned to substantial compliance with subpart B of this part.

26. Revise § 384.403 to read as follows.

§ 384.403 Availability of funds withheld for non-compliance.

(a) Federal-aid highway funds withheld from a State under § 384.401 (a)(1) or (b)(1) shall not thereafter be available for apportionment to the State.

(b) MCSAP funds withheld from a State under § 384.401(a)(2) or (b)(2) remain available until June 30 of the fiscal year in which they were withheld. If, before June 30 the State submits a document signed by the Governor or his delegate certifying, and the FMCSA determines, that the State is now in substantial compliance with the standards of subpart B of this part, the withheld funds shall be restored to the State. After June 30 unreturned funds shall lapse and be allocated in accordance with § 350.313 of this subchapter to all States currently in substantial compliance with subpart B of this part.

27. Add § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CDL licensing activities.* The Administrator may

prohibit a State found to be in substantial noncompliance from performing any of the following four licensing transactions:

(1) Issuance of initial CDLs.

(2) Renewal of CDLs.

(3) Transfer of out-of-State CDLs to the State.

(4) Upgrade of CDLs.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Drivers License Information System (CDLIS) and/or National Driver Register (NDR) as required by § 383.73 of this subchapter when processing CDL applicants, drivers transferring a CDL issued by another State, CDL renewals and upgrades.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out of State drivers to the home State.

(4) The State does not properly administer knowledge and/or skills tests to CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed upon time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CDL applicants or drivers.

(d) *Decertification: preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in § 384.405(b), among other things, the FMCSA will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal

arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: final determination.* If, after considering all material submitted by the State in response to the FMCSA's preliminary determination, the Administrator decides that substantial noncompliance exists which warrants decertification of the CDL program, he or she will issue a decertification order prohibiting the State from issuing CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his or her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

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

28. Add § 384.407 to read as follows:

§ 384.407 Emergency CDL grants.

The FMCSA may provide grants of up to \$1,000,000 per State from funds made available under 49 U.S.C. 31107(a), to assist States whose CDL programs may fail to meet the compliance requirements of subpart B of this part.

Issued on: July 17, 2001.

Julie Anna Cirillo,

Acting Deputy Administrator.

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