



**DEPARTMENT OF TRANSPORTATION**

**Federal Motor Carrier Safety Administration**

**[4910-EX-P]**

**49 CFR Part 384**

**[Docket No. FMCSA 2015-0174]**

**RIN 2126-AB80**

**State Compliance with Commercial Driver's License Program: Correction**

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA corrects its regulations implementing certain provisions of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21). FMCSA determined that an error was made in the publication of the October 1, 2013, MAP-21 Implementation final rule. That rule inadvertently deleted paragraph (c) of § 384.209, Notification of traffic violations. This final rule is necessary to address the inadvertent error made to the state compliance regulations.

**DATES:** This final rule becomes effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Robert Redmond, Commercial Driver's License Division, Office of Safety Programs, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, by telephone at (202) 366-5014 or via e-mail at [robert.redmond@dot.gov](mailto:robert.redmond@dot.gov).

If you have questions on viewing material to the docket, contact Docket Services, telephone (202) 366-9826.

**SUPPLEMENTARY INFORMATION:**

## **Legal Basis**

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking (NPRM) and providing an opportunity for public comment under procedures required by the Administrative Procedure Act (APA), as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides an exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest.” FMCSA finds that notice and comment is unnecessary prior to adoption of this final rule because it is merely restoring an inadvertently removed, a statutorily-required regulation. Accordingly, the Agency is performing a nondiscretionary, ministerial act by publishing today’s final rule. Therefore, the Agency may adopt this rule without notice and receiving public comment, in accordance with the APA. For these same reasons, under the good cause authority found in 5 U.S.C. 553 (d)(3), the rule will be effective upon publication.

## **Background**

FMCSA determined that an error was made in the publication of the October 1, 2013, MAP-21 Implementation final rule. 78 FR 60226. That rule inadvertently deleted paragraph (c) of § 384.209, Notification of traffic violations. As explained in the 2013 final rule, FMCSA intended to amend paragraphs (a) and (b) of § 384.209. Paragraphs (a) and (b) previously required States to report a commercial driver’s convictions to the driver’s State of licensure. The 2013 amendments added the requirement that States report foreign commercial drivers’ convictions to FMCSA’s Federal Convictions and Withdrawal Database, in accordance with MAP-21 requirements. 78 FR 60227. In making that addition, FMCSA did not intend to remove paragraph (c), which is statutorily required and directed States to report the convictions within 10 days. *See* 49 U.S.C. 31311.

Accordingly, the 10-day reporting requirement remains in effect and paragraph (c) should not have been removed as a part of the MAP-21 Implementation rule. Today's final rule corrects that error by restoring the 10-day reporting requirement in paragraph (c). Prior to its inadvertent removal, paragraph (c) contained outdated references to the effective dates for the 10-day reporting requirement, which took place in 2005 and 2008. The Agency believes that this final rule provides an appropriate opportunity to remove those outdated references. Accordingly, today's final rule restores the inadvertently removed reporting requirement, but eliminates the obsolete effective dates.

## **RULEMAKING ANALYSES AND NOTICES**

### **Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)**

FMCSA has determined this final rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of Department of Transportation Regulatory Policies and Procedures.

As explained above, this final rule is strictly administrative in that it corrects the inadvertent removal of a nondiscretionary statutory requirement. Today's final rule will not exceed the \$100 million annual threshold. There are no costs attributed to this final rule. This final rule is not expected to generate substantial congressional or public interest. Therefore, a full regulatory impact analysis has not been conducted nor has there been a review by the Office of Management and Budget (OMB).

### **Regulatory Flexibility Act**

Pursuant to the Regulatory Flexibility Act (RFA) of 1980 (5 U.S.C. 601 et seq.), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a final regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because the Agency has not issued a notice of proposed rulemaking prior to this action. FMCSA has determined that it has good cause to adopt the rule without notice and comment.

### **Assistance for Small Entities**

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this final rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact, Mr. Robert Redmond, listed in the **For Further Information Contact** section of this rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

### **Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$151 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2012 levels) or more in any 1 year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

### **Paperwork Reduction Act**

This final rule will call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) because it merely corrects an inadvertent error. Regardless, the notification requirement in 49 CFR 384.309(c) was previously approved under OMB Control No. 2126-0011.

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

A rule has implications for Federalism under Section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” As this rule merely corrects an inadvertent error from a previous rule, and will have no actual impact on any State nor limit the policymaking discretion of the States, FMCSA has determined that there is no federalism impact. As such, the Agency is not required to prepare a Federalism Assessment or Impact Statement.

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

This final rule 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.

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

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this final rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

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

FMCSA reviewed this final rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have takings implications.

### **Privacy**

The Consolidated Appropriations Act, 2005, (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rule does not include a collection of personally identifiable information (PII), therefore no PIA is required.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program.

The E-Government Act of 2002, Pub. L. 107-347, § 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a PIA for new or substantially changed technology

that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this rule. As a result, FMCSA has not conducted a PIA.

**E.O. 12372 (Intergovernmental Review of Federal Programs)**

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

**E.O. 13211 (Energy Supply, Distribution, or Use)**

FMCSA has analyzed this final rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

**E.O. 13175 (Indian Tribal Governments)**

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

**National Technology Transfer and Advancement Act (Technical Standards)**

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus

standards (e.g., specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This final rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

### **Environment (NEPA, CAA, Environmental Justice)**

FMCSA analyzed this final rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined that this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1(69 FR 9680, March 1, 2004), Appendix 2, paragraph (6b), concerning editorial and procedural regulations. The CE is available for inspection or copying in the [Regulations.gov](https://www.regulations.gov) Web site listed under **ADDRESSES**.

FMCSA also analyzed this action under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this rule, nor is there any collective environmental impact that would result from its promulgation.

### **List of Subjects in 49 CFR Part 384**

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

In consideration of the foregoing, FMCSA amends 49 CFR part 384 as follows:

**PART 384 – STATE COMPLIANCE WITH COMMERCIAL DRIVER'S LICENSE  
PROGRAM**

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

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

2. In § 384.209, add paragraph (c) to read as follows:

**§ 384.209 Notification of traffic violations.**

\* \* \* \* \*

(c) Notification of traffic violations must be made within 10 days of the conviction.

Issued under the authority of delegation in 49 CFR 1.87: June 22, 2015

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T. F. Scott Darling, III  
Chief Counsel

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