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DEPARTMENT OF TRANSPORTATION

[4910-EX-P]

Federal Motor Carrier Safety Administration

49 CFR Parts 350, 365, 375, 377, 381, 383, 384, 385, 387, 389, 390, 391, 393, 395, 396,

397, and Appendix F to Subchapter B of Chapter III

[Docket No. FMCSA-2015-0207]

RIN 2126-AB83

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

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

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections and ministerial corrections throughout title 49 of the Code of Federal Regulations (CFR), subtitle B, chapter III. The Agency is making minor changes to correct errors and omissions, ensure conformity with Office of the Federal Register style guidelines, update cross references, restore an inadvertent deletion of the reference to an Underwriters Laboratories' standard, and improve clarity and consistency of certain regulatory provisions. This rule does not make any substantive changes to the affected regulations, except to remove one obsolete provision.

DATES: The final rule is effective **[Insert date of publication in the FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION:

Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 85–670, 80 Stat. 931 (1966)). Section 55 of the DOT Act transferred to the Department the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours-of-service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce. See 49 United States Code (U.S.C.) 104. This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this authority became known as the Federal Motor Carrier Safety Regulations (FMCSRs), appearing generally at 49 CFR parts 350–399. The administrative powers to enforce chapter 315 were also transferred from the ICC to the DOT in 1966 and appear in 49 U.S.C. chapter 5. The Secretary of the DOT (Secretary) delegated oversight of these provisions to the Federal Highway Administration (FHWA), a predecessor agency of FMCSA. The FMCSA Administrator

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

Between 1984 and 1999, a number of statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations (HMRs), and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III (MCSA); the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, 100 Stat. 3207-170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101-615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; and the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131-149.

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000. The motor carrier safety responsibilities previously assigned to both ICC and FHWA are now assigned to FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Pub. L. 107-56, 115 Stat. 272, Oct. 26, 2001), the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005), the

SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008), and the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012).

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the CFR. Title 49 CFR subtitle B, chapter III, contains all of the FMCSRs.

The Administrative Procedure Act (APA) (5 U.S.C. 551- 706) specifically provides exceptions to its notice and public comment rulemaking procedures where the Agency finds there is good cause (and incorporates the finding and a brief statement of reasons therefore in the rules issued) to dispense with them. Generally, good cause exists where the Agency determines that notice and public procedures are impractical, unnecessary, or contrary to the public interest (5 U.S.C. 553(b)(3)(B)). The amendments made in this final rule merely correct inadvertent errors and omissions, remove or update obsolete references, and make minor changes to improve clarity and consistency. The technical amendments do not impose any new requirements, nor do they make any substantive changes to the CFR. For these reasons, FMCSA finds good cause that notice and public comment on this final rule is unnecessary.

The APA also allows agencies to make rules effective upon publication with good cause (5 U.S.C. 553 (d)(3)), instead of requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective on the date of publication in the Federal Register.

Background

This document makes editorial changes to correct inaccurate references and citations, improve clarity, and fix errors. The reasons for each of these minor revisions are set out below, in a section-by-section description of the changes. These amendments do not impose any new requirements, nor (with one exception) do they make substantive changes to the CFR.

Section-by-Section Analysis

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

Part 350

Section 350.105. Under the section for “Definitions,” the term "Basic Program Funds" is defined to mean total Motor Carrier Safety Assistance Program (MCSAP) funds less other funds, including "Border Activity Funds." An October 1, 2012 (77 FR 59823) rulemaking, however, deleted the definition of "Border Activity Funds" because a statute mandated that such funds be removed from MCSAP. Therefore, FMCSA removes the words "Border Activity" from the definition of "Basic Program Funds."

In addition, the SAFETEA-LU amendments, published July 5, 2007 (72 FR 36760), added “New Entrant” funds as a set aside of up to \$29,000,000 from MCSAP grant funds per fiscal year, making grants available from this amount to State and local governments for new entrant motor carrier audits without requiring a matching contribution from such governments. Although references to new entrant funds were added in various places in that final rule, the term was not added to the definition of the

term "Basic Program Funds" as one of the funds to be subtracted from total MCSAP funds—similar to High Priority Activity, Administrative Takedown, and Incentive Funds. Therefore, Agency adds the term “New Entrant” to the definition of “Basic Program Funds.”

Section 350.201. This section answers the question “What conditions must a State meet to qualify for Basic Program Funds?” MAP-21 added a 26th condition in paragraph (z); but the October 1, 2013 (78 FR 60226, at 60230), rule did not update the introductory phrase to change the 25 conditions to 26 conditions. This final rule adds the reference to the 26th condition to the introductory text of the section.

Paragraph (y) requires the State to ensure that bus inspections are conducted at a location such as "a border maintenance facility, ... or other location" where motor carriers make planned stops. However, the correct phrase in SAFETEA-LU is "border crossing, maintenance facility, ... or other locations." The July 5, 2007 (72 FR 36769) rule, which added § 350.201(y), inadvertently omitted the word "crossing," which FMCSA adds through this technical amendment.

Part 365

Section 365.503. Paragraph (d) references an outdated universal resource locator (URL) on the Internet. The correct URL, which is <http://www.fmcsa.dot.gov/mission/forms>, replaces the current reference.

Part 375

Section 375.201. Paragraph (d) references § 375.303(g), but paragraph (g) was redesignated as § 375.303(c)(5) on March 5, 2004 (69 FR 10575). This technical amendment replaces the reference to § 375.303(g) with § 375.303(c)(5).

Section 375.501. This section answers the question “Must I write up an order for service?” Paragraph (h) states that the valuation statement can be included in the bill of lading or order for service. On January 12, 2012, the Surface Transportation Board (STB) served a decision amending its released rates order. See “Released Rates of Motor Common Carriers of Household Goods,” Surface Transportation Board, Docket No. RR 999 (Amendment No. 5), Order, January 10, 2012. Among other things, that decision directed household goods motor carriers to provide the STB’s required valuation statement on the shipper’s bill of lading. To conform part 375 to these changes, FMCSA published a final rule amending § 375.505(b)(12) and removing § 375.505(e), both of which previously stated that the carrier had the option of including the valuation statement on either the bill of lading or order for service. See “Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations: Released Rates of Motor Carriers of Household Goods,” Docket No. FMCSA-2012-0101, 77 FR 25371, April 30, 2012. New § 375.505(b)(12) no longer includes any language granting the choice and § 375.505(e) no longer exists. Therefore, this technical amendment removes the language granting the choice and requires household goods motor carriers to provide the STB’s required valuation statement on the shipper’s bill of lading only.

Section 375.505. Both the eCFR version and the printed CFR version show paragraph (b)(12) incorrectly labeled. Paragraph (b)(12) should just be labeled (12). The extra (b) in front of (12) is removed.

Appendix A, Subpart A, Definitions. For the most part, the definitions in Appendix A mirror the definitions in § 375.103. The definition of “Advertisement” in § 375.103 was updated on October 1, 2012 (77 FR 59823), to include the motor carrier’s name and address on an Internet Web site (“or displayed on an Internet Web site”). FMCSA updates the definition in the appendix to conform with § 375.103.

Part 377

Section 377.211. This section contains a cross-reference to § 386.32(a), but that section no longer exists. It was removed by a May 18, 2005 (70 FR 28475) rule and the provision’s language was moved to § 386.8. This technical amendment replaces the reference to § 386.32(a) with a reference to § 386.8.

Part 381

Section 381.110. In the definition for “FMCSRs,” this section contains a reference to § 385.21, but that section was removed on June 2, 2000 (65 FR 35295), and its requirements were combined with those of former § 385.23 in a new § 390.19. FMCSA corrects this error by changing the reference to “§ 390.19.”

Part 383

Section 383.5. On October 2, 2014 (79 FR 59455), FMCSA incorrectly revised the definition of “Commercial motor vehicle (CMV)” in § 383.5. The revision added paragraphs (1), (2), and (3) for Groups A, B, and C, respectively. Paragraph (3) was

further divided into three definitions of a Group C vehicle, designated as paragraphs (3)(i), (ii), and (iii). This part of the revised CMV definition now says: “Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a * * * (3) Small Vehicle (Group C)—(i) that does not meet Group A or B requirements; (ii) Is designed to transport 16 or more passengers, including the driver; *or* (iii) Is of any size and is used in the transportation of hazardous materials as defined in this section.”

The “*or*” between paragraphs (3)(ii) and (3)(iii), in italic above, means that paragraphs (3)(i), (ii), and (iii) are alternative definitions of a Group C vehicle, which is clearly not the case. There should be only two alternative definitions. Instead, paragraph (3) of the definition of “commercial motor vehicle” in § 383.5 should mirror the definition of a Group C vehicle in § 383.91(a)(3): “(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials as defined in § 383.5.”

The definition of the term “commercial motor vehicle” in § 383.5 is corrected to clarify that there are only two alternative definitions for a Group C vehicle. See below for a change to § 383.91(a)(3), which was referenced in this explanation.

In addition, in the definitions for “Alcohol or alcoholic beverage,” “Commerce,” and “Driving a commercial motor vehicle while under the influence of alcohol,”

paragraphs are renumbered to conform to current Federal Register style. A cross reference and a grammatical correction are also made in the definition for “Commerce.”

Section 383.71. A number of amendments in the September 24, 2013 (78 FR 58470), technical amendments rule were incorporated into the CFR incorrectly, and are corrected in this rule. The following corrections comport with the September 24, 2013 (78 FR 58470) technical amendment. In paragraphs (a)(1) introductory text and (a)(2) introductory text, the Agency removes the date “July 8, 2014” in every place it appears and replaces it with “July 8, 2015.” In paragraph (g), FMCSA replaces the reference to “§ 383.71” with a reference to “§ 383.71(b)(1).” Also in paragraph (g), FMCSA removes the phrase “on or after January 30, 2012, but not later than January 30, 2014” because the requirement has been in effect for nearly 2 years since the 2014 “not later than” date and it is no longer needed.

Section 383.72. This section cross-references “§ 383.51(b), Table 1, item (4),” however, this does not follow the same format as other cross-references to § 383.51 tables. FMCSA revises § 383.72 to change the format of the cross-reference to “item (4) of Table 1 to § 383.51 of this subpart”.

Section 383.73. The following correction comports with the September 24, 2013 (78 FR 58470) technical amendment. In paragraph (a)(2) introductory text, FMCSA removes the date “July 8, 2014” in every place it appears and replaces it with “July 8, 2015.”

Section 383.91. FMCSA corrects paragraph (a)(3) by removing the phrase “materials found to be hazardous for the purposes of the”, which was inadvertently not deleted from the CFR when the paragraph was revised in an October 1, 2012 (77 FR 59825) rulemaking.

Part 384

Section 384.222. The following correction comports with the September 24, 2013 (78 FR 58470) technical amendment. During the codification process, the correct new reference to “§ 383.37(d)” was added, but the old reference to “§383.37(c)” was not removed. Therefore, FMCSA removes the reference to § 383.37(c).

Section 384.228. Paragraph (k) currently references “six units of training described in paragraphs (c) and (d) of this section.” This is corrected to “eight units of training” (three units in paragraph (c) and five units in paragraph (d)).

Section 384.403. FMCSA removes paragraph (b), leaving only the text of previous paragraph (a) in revised § 384.403. Paragraph (b) concerns Motor Carrier Safety Assistance Program (MCSAP) funds withheld from a State under § 384.401(a)(2) and (b)(2). However, paragraphs (a)(2) and (b)(2) of § 384.401 were removed in a rule, published on July 5, 2007 (72 FR 36788), and § 384.401 no longer mentions withholding MCSAP funds. FMCSA corrects this error by removing § 384.403(b).

Part 385

Section 385.3. In § 385.3, the term “HMRs” is defined as “the Hazardous Materials Regulations (49 CFR parts 100-178).” However, the Materials Transportation Bureau of the Department of Transportation, a predecessor to the Pipeline and Hazardous

Materials Safety Administration (PHMSA), established subtitle B, Chapter I, subchapter C, as the Hazardous Materials Regulations on July 29, 1975 (40 CFR 31767). In § 171.1, PHMSA continues to maintain that the HMRs comprise 49 CFR parts 171-180. The definition of HMRs is therefore corrected to reference 49 CFR parts 171-180.

Section 385.321. Violation 15 in the Table to § 385.321 contains a reference to § 396.11(c), but the information previously in that paragraph was largely moved to § 396.11(a)(3) on June 12, 2012 (77 FR 34846). Violation 15 is changed to update the reference.

Section 385.403. In paragraph (b), FMCSA clarifies that the threshold weight of explosive material is the net weight of the material or article. The current language creates confusion as to whether the weight is net weight or gross weight and whether, for an explosive article, the weight refers to the weight of the article or the weight of the explosive contained in the article. The clarification is based on information that is presented in FMCSA's brochure relating to the Hazardous Materials Safety Permit (HMSP) Program (FMCSA-CMO-04-002)¹ that indicates net weight, as well as a 22-year old PHMSA interpretation (93-0068)² relating to PHMSA's registration requirements that parallel the HMSP requirements.

FMCSA also changes the terminology in paragraph (f) to make it consistent with the proper shipping name language in the Hazardous Materials Table in 49 CFR 172.101.

¹ A copy of the brochure has been placed in the docket.

² A copy of PHMSA interpretation 93-0068 has been placed in the docket.

Appendix B to Part 385—Explanation of Safety Rating Process. FMCSA updates a citation within Section VII of Appendix B, “List of Acute and Critical Regulations,” to reflect a reorganization of a regulation published June 12, 2012 (77 FR 34852). FMCSA changes the citation from “§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)” to “§ 396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute).”

Part 387

Section 387.317. On November 14, 1983 (48 FR 51777), the ICC revised former 49 CFR 1043.1, the predecessor to § 387.301, and redesignated paragraph (d) as paragraph (c). Therefore, FMCSA changes the cross-reference in § 387.317 from § 387.301(d) to § 387.301(c) to reflect this redesignation.

Part 389

Sections 389.21 and 389.35. These two sections specify how to submit comments to rulemakings or petitions for reconsideration. They have remained largely the same since they were promulgated on June 8, 1968 (33 FR 8493), except for Agency name and address changes, and a redesignation within title 49 in 1968 from 49 CFR Part 289 to 49 CFR Part 389.

The requirement that comments or petitions must be submitted in five (5) legible copies has existed since 1968. Before the adoption of the electronic docketing system employed by the Department of Transportation in 1997, five legible copies were needed for the paper-based docketing system for clerks to include a copy in the official docket

and send other copies for distribution to various Agency offices to take appropriate action. The electronic docketing system allows the scanning of any original paper-based comment or petition, or the uploading of an electronically-submitted file of the comment or petition. As the electronic docketing system has now been in wide use by the Agency for over 18 years, the requirement for more than one original comment or petition for reconsideration is unnecessary, duplicative, and burdensome to the commenter or petitioner. Therefore, FMCSA is removing the requirement in §§ 389.21 and 389.35(a) for the comment or petition to be filed with five legible copies.

Part 390

Section 390.5. In the definition of the term “Lessee,” the word “of” is added following the phrase “in subpart F” to correct an inadvertent omission.

In the definition of the term “Texting,” paragraph (2)(iii) references purposes that are not otherwise prohibited “in this part.” This reference primarily relates to the ban on texting which is found in § 392.80 rather than part 390. The reference to “this part” is too limited and is, therefore, changed to reference “this subchapter,” consistent with the general scope of the § 390.5 definitions.

In the definition of “Trailer,” redesignate paragraphs (a), (b), and (c), as paragraphs (1), (2), and (3) to conform this definition to the style used in a definitions section and the other definitions in § 390.5.

Section 390.42. Section 390.42(b) currently contains an incorrect cross-reference to § 396.11(b)(2). On June 12, 2012 (77 FR 34852), FMCSA revised § 396.11, subdividing paragraph (b) into four paragraphs: paragraphs (b)(1) through (4). However,

FMCSA did not change the cross reference in § 390.42(b). The October 1, 2012 (77 FR 59828) technical amendment attempted to correct the error, but incorrectly changed the cross reference to § 396.11(b)(2). This technical amendment correctly changes the cross reference to § 396.11(b)(1).

Section 390.115. FMCSA corrects an inadvertent grammatical error in paragraph (d)(2)(iv) by removing the phrase “performs examinations maintain documentation” and replaces it with the phrase “performs examinations and maintains documentation.” This wording is consistent with the wording in § 390.115(f)(4).

Part 391

Section 391.1. FMCSA changes paragraph (b) to remove a grammatical inconsistency and improve clarity. Currently, paragraph (b) reads, “A motor carrier who employs himself/herself as a driver” FMCSA changes it to read: “An individual who meets the definition of both a motor carrier and a driver employed by that motor carrier”

Section 391.13. The introductory text of § 391.13 concerning responsibilities of drivers for determining whether cargo is properly located, distributed, and secured in or on the CMV cross references § 393.9, but § 393.9, “Lamps operable, prohibition of obstructions of lamps and reflectors,” is not about cargo securement. The incorrect reference to § 393.9 was included in the final rule that added § 391.13 (June 18, 1998, 63 FR 33277) to the FMCSRs. However, in reviewing the preamble to the 1998 final rule (see page 33259), it appears that the reference should have been to § 383.111(d) rather than § 393.9. Section 383.111 was revised on May 9, 2011 (76 FR 26888) and the rules

on the required knowledge of the relationship of cargo to vehicle control are now codified in § 383.111(a)(16). Therefore, FMCSA changes the cross reference in the first line of the introductory text so that it reads, “In order to comply with the requirements of §§ 392.9(a) and 383.111(a)(16) of this subchapter...”.

Section 391.15. The following corrections comport with the September 24, 2013 (78 FR 58482) technical amendment. In paragraph (c)(1)(i), FMCSA corrects the cross reference to read, “§ 395.2 of this subchapter” rather than “§ 395.2(a) of this partsubchapter.” In addition, FMCSA removes the semi-colon that mistakenly follows the final period of paragraph (c)(1)(ii).

Section 391.23. Throughout paragraph (c), any reference to “driver investigation history file,” “Driver Investigation file,” or “driver history investigation file,” is revised to read consistently in each instance “driver investigation history file.” This clarifies that all these references are to the same file and makes the terminology consistent with § 391.53.

The cross reference in paragraph (m)(3)(i)(C) currently references § 383.73(a)(5), but that paragraph was removed on May 9, 2011 (76 FR 26883). FMCSA replaces that reference with the correct reference to “§ 383.73(a)(2)(vii).”

Section 391.41. FMCSA corrects the format of the cross reference in paragraph (b)(12)(ii) by changing it from “21 part 1308” to “21 CFR part 1308.”

Section 391.43. FMCSA corrects paragraph (g)(4) included in the Agency’s April 23, 2015 (80 FR 22790, 22812) final rule, “Medical Examiner’s Certification Integration.” Currently, paragraph (g)(4) indicates that beginning June 22, 2018, if the

medical examiner determines that a driver should not be issued a medical card until additional medical information is considered, the examiner must so inform the driver, etc. However, the compliance date was supposed to have been December 22, 2015. FMCSA amends the first sentence by changing June 22, 2018, to December 22, 2015, considering that this paragraph has to be effective on the same date as the forms. Amendatory instruction number 5 in the June 22, 2015, correction notice (80 FR 35578), which updated the date from June 22, 2018, to December 22, 2015, made no reference to amending paragraph (g)(4) even though (g)(4) rule text is shown on page 35595. Amendatory instruction number 5 only refers to amending “paragraphs (f), (g)(5)(ii), and (h)”, therefore, the eCFR did not make the change. FMCSA is ensuring that the printed CFR revised as of October 1, 2015, will include the updated date.

Section 391.45. This section specifies the drivers who must be medically examined and certified, “[e]xcept as provided in § 391.67.” Because § 391.67 no longer includes any exceptions from the medical examination and certification requirements, the introductory phrase “Except as provided in § 391.67” is removed.

Section 391.47. To comport with the September 24, 2013 (78 FR 58482) technical amendment, FMCSA corrects paragraph (f) by adding a space after the last parentheses and before the word “orders.”

FMCSA also removes the authority citation that appears in parentheses after the last paragraph in § 391.47. The authority citation is outdated; and the FMCSA no longer includes an authority citation at the end of a section. Moreover, the citations for § 391.47 are covered by the general authority citations for all of part 391, namely, 49 U.S.C.

31133, 31136, and 31149 of the Motor Carrier Safety Act of 1984, as amended, and 49 U.S.C. 31502 of the Motor Carrier Act of 1935, as amended.

Part 393

Section 393.7. FMCSA amends § 393.7(b)—which lists all the paragraphs in part 393 that have materials incorporated by reference—to restore a reference to an Underwriters Laboratories’ standard that was mistakenly deleted. Section 393.95(j) refers to a specific Underwriters Laboratories’ standard on highway emergency signals and then states “See § 393.7 for information on the incorporation by reference and availability of this document.” However, § 393.7(b) fails to include that document.

On August 15, 2005 (70 FR 48027), the Agency published general amendments to 49 CFR Part 393. The final rule was intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor Vehicle Safety Standards (49 CFR part 571); and codify certain FMCSA regulatory guidance concerning the requirements of part 393. However, the rulemaking resulted in the inadvertent deletion of the reference to the Underwriters Laboratories’ standard. Section 393.7(c)(1) still references the address, but the publication is not listed in § 393.7(b). To correct this error, FMCSA adds a reference to the standard in paragraph (b)(15) to read as follows: “Highway Emergency Signals, Fourth Edition, Underwriters Laboratories, Inc., UL No. 912, July 30, 1979 (with an amendment dated November 9, 1981), incorporation by reference approved for § 393.95(j).”

Section 393.17. FMCSA corrects paragraph (c)(1) by removing an obsolete cross-reference to former § 392.30, “Lighted Lamps; Moving Vehicles.” That section was removed on November 23, 1994 (59 FR 60319), because it was duplicative of State laws and could only be enforced by State and local authorities.

Section 393.71. FMCSA corrects paragraph (n)(1) by removing an obsolete cross-reference to § 393.71(g)(2)(ii). Section 393.71(g)(2)(ii) was removed August 15, 2005 (70 FR 48054). Editorial changes also are made to maintain consistency with (1) the language in the current § 393.71(n) and (2) the August 2005 final rule.

Section 393.95. FMCSA removes the outdated authority citations following § 393.95. They are obsolete, current Federal Register style dictates that they do not belong at the end of a section, and they are covered by the general authority citations cited for all of part 393. That authority citation includes 49 U.S.C. 31136 and 31151 (the Motor Carrier Safety Act of 1984, as amended); 49 U.S.C. 31502 (the Motor Carrier Act of 1935, as amended); and sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991) (the Intermodal Surface Transportation Efficiency Act of 1991), providing that “fuses and flares are given equal priority with regard to use as reflecting signs” under § 393.95.

Part 395

Section 395.1. To comport with the September 24, 2013 (78 FR 58482) technical amendment, FMCSA corrects § 395.1 by removing the redundant paragraph (g)(1)(ii)(C). The language revised on September 24, 2013, was added but the obsolete language was inadvertently not removed.

Part 396

Section 396.11. In the September 24, 2013 (78 FR 58485) technical amendment, FMCSA attempted to remove a semicolon at the end of § 396.11(b)(2)(ix) and add a period in its place. However, that instruction was inaccurate, as there is no paragraph (b)(2)(ix). The CFR now carries a note saying the CFR could not incorporate the 2013 amendment. FMCSA requests CFR editors to remove the inaccurate instruction and the note.

Part 397

Section 397.215. This section, titled “Waiver notice,” is a part of the preemption procedures that States, political subdivisions of States, and Indian tribes must follow to apply for waivers of preemption determinations either made pursuant to 49 U.S.C. 5125, 49 CFR 397.69, or 49 CFR 397.203, or that have been determined by a court of competent jurisdiction to be preempted. This section requires that copies of the application for a waiver of preemption and any subsequent amendments or other documents relating to the application must be mailed to each person whom the applicant reasonably ascertains will be affected by the determination sought. The copy of the application must be accompanied by a statement that the affected person may submit comments to the FMCSA Administrator within 45 days. The application filed with the Administrator must include a certification of compliance with 49 CFR 397.215(a). A grammatical error exists in the last sentence of paragraph (a). The phrase “certification with the application has complied” is grammatically incorrect and so FMCSA replaces it with the phrase “certification that the application complies.”

Appendix F to Subchapter B of Chapter III—Commercial Zones

Section 31. FMCSA corrects a typographical error in paragraph (d) of Section 31 of the ICC-defined commercial zone for Charleston, South Carolina in 1975. This paragraph contains cross-references to “paragraphs (1) and (c) of this section.”

Based on the 1972-1974 editions of 49 CFR part 1048, which was the basis for Appendix F to Subchapter B of Chapter III, the correct reference is to paragraph (b), not paragraph (1). This error was corrected in the May 19, 1988, final rule (53 FR 18042, at 18067), but the October 1, 1988, CFR edition reinstated the use of a (1) instead of the correct (b).

Rulemaking Analyses

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

FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866, as supplemented by Executive Order 13563 (76 FR 3821, Jan. 18, 2011), or within the meaning of the DOT regulatory policies and procedures (44 FR 1103, Feb. 26, 1979). Thus, the Office of Management and Budget (OMB) did not review this document. We expect the final rule will have no costs; therefore, a full regulatory evaluation is unnecessary.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis. This is because this rule does not require publication of a general notice of proposed rulemaking. However, in compliance

with the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA has evaluated the effects of this rule on small entities. Because the rule makes only minor editorial or clarifying revisions and places no new requirements on the regulated industry, FMCSA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The final rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, et seq.), that will result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of \$155 million (which is the value of \$100 million in 2015 after adjusting for inflation) or more in any 1 year.

E.O. 13132 (Federalism)

A rule has implications for Federalism under section 1(a) of Executive Order 13132 if it has “substantial direct effects on the States, on the relationship between national government and the States, or on the distribution of power and responsibilities among various levels of government.” FMCSA has determined that this rule will not have substantial direct effects on States, nor will it limit the policymaking discretion of States. Nothing in this document preempts or modifies any provision of State law or regulation, imposes substantial direct unreimbursed compliance costs on any State, or diminishes the power of any State to enforce its own laws. Accordingly, this rulemaking does not have Federalism implications warranting the application of E.O. 13132.

E.O. 12372 (Intergovernmental Review)

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this rule.

Indian Tribal Governments

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

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this final rule, nor are there any revisions to existing, approved collections of information.

National Environmental Policy Act

FMCSA analyzed this final rule for the purpose of ascertaining the applicability of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.) and determined under our Environmental Procedures Order 5610.1, issued March 1, 2004 (69 FR 9680), that this action would not have any effect on the quality of the environment. In addition, this final rule is categorically excluded from further analysis

and documentation under the Categorical Exclusion (CE) in paragraph 6(b) of Appendix 2 of FMCSA Order 5610.1. This CE addresses minor editorial corrections such as found in this rulemaking; therefore, preparation of an environmental assessment or environmental impact statement is not necessary.

FMCSA also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 42 U.S.C. 7506(c)), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

E.O. 12898 (Environmental Justice)

This final rule is not subject to Executive Order 12898 (59 FR 7629, Feb. 16, 1994). Executive Order 12898 establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. FMCSA determined that this rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not change the substance of any of the FMCSRs.

E.O. 13211 (Energy Effects)

FMCSA has analyzed this rule under Executive Order 13211 titled, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use."

The Agency has determined that it is not a “significant energy action” under that Executive Order because it is not a “significant regulatory action” under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, no Statement of Energy Effects is required.

E.O. 13045 (Protection of Children)

Executive Order 13045 titled, “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, Apr. 23, 1997), requires agencies issuing “economically significant” rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation’s environmental health and safety effects on children. As discussed previously, this rule is not economically significant. Therefore, no analysis of the impacts on children is required.

E.O. 12988 (Civil Justice Reform)

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

E.O. 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630 titled, “Governmental Actions and Interference with Constitutionally Protected Property Rights.”

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because FMCSA does not intend to adopt technical standards, there is no need to submit a separate statement to OMB on this matter.

Privacy Impact Assessment

Section 522(a)(5) of the Transportation, Treasury, Independent Agencies, and General Government Appropriations Act, 2005 (Pub. L. 108–447, Division H, Title I, 118 Stat. 2809 at 3268, Dec. 8, 2004) requires DOT and certain other Federal agencies to conduct a privacy impact assessment of each rule that will affect the privacy of individuals. Because this final rule will not affect the privacy of individuals, FMCSA did not conduct a separate privacy impact assessment.

List of Subjects

49 CFR Part 350

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 365

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

49 CFR Part 375

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 377

Credit, Freight forwarders, Maritime carriers, Motor carriers, Moving of household goods.

49 CFR Part 381

Motor carriers.

49 CFR Part 383

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety and motor carriers.

49 CFR Part 384

Administrative practice and procedure, Alcohol abuse, Drug abuse, Highway safety, Incorporation by reference, and Motor carriers.

49 CFR Part 385

Administrative practice and procedure, Highway safety, Incorporation by reference, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety,

Moving of household goods, Penalties, Reporting and recordkeeping requirements,
Surety bonds.

49 CFR Part 390

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

49 CFR Part 391

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers,
Reporting and recordkeeping requirements, Safety, Transportation.

49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

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

49 CFR Part 397

Administrative practice and procedure, Highway safety, Intergovernmental
relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping
requirements, Tires.

Correction

In FR Rule Doc. 2013-22484 appearing on page 58470 in the Federal
Register of Tuesday, September 24, 2013, make the following correction:

On page 58485, in the second column, in section 396.11, amendment 117, remove instruction c.

In consideration of the foregoing, FMCSA is amending 49 CFR chapter III, subchapter B, parts 350, 365, 375, 377, 381, 383, 384, 385, 387, 389, 390, 391, 393, 395, 396, 397, and Appendix F, as set forth below:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

1. The authority citation for part 350 continues to read as follows:

Authority: 49 U.S.C. 13902, 31101-31104, 31108, 31136, 31140-31141, 31161, 31310-31311, 31502; and 49 CFR 1.87.

2. Amend § 350.105 by revising the definition of the term “Basic Program Funds” to read as follows:

§ 350.105 What definitions are used in this part?

* * * * *

Basic Program Funds means the total MCSAP funds less the High Priority Activity, New Entrant, Administrative Takedown, and Incentive Funds.

* * * * *

3. Amend § 350.201 by revising the introductory text and paragraph (y) to read as follows:

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following 26 conditions:

* * * * *

(y) Except in the case of an imminent or obvious safety hazard, ensure that an inspection of a vehicle transporting passengers for a motor carrier of passengers is conducted at a station, terminal, border crossing, maintenance facility, destination, or other location where a motor carrier may make a planned stop.

* * * * *

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

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

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

5. Amend § 365.503 by revising paragraph (d) to read as follows:

§ 365.503 Application.

* * * * *

(d) You may obtain the application forms from any FMCSA Division Office or download them from the FMCSA Web site at: <http://www.fmcsa.dot.gov/mission/forms>.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

6. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109-59; and 49 CFR 1.87.

7. Amend § 375.201 by revising paragraph (d) to read as follows:

§ 375.201 What is my normal liability for loss and damage when I accept goods from an individual shipper?

* * * * *

(d) As required by §375.303(c)(5), you may have additional liability if you sell liability insurance and fail to issue a copy of the insurance policy or other appropriate evidence of insurance.

* * * * *

8. Amend § 375.501 by revising paragraph (h) to read as follows:

§ 375.501 Must I write up an order for service?

* * * * *

(h) You must place the valuation statement on the bill of lading.

9. Amend § 375.505 by revising paragraph (b)(12) to read as follows:

§ 375.505 Must I write up a bill of lading?

* * * * *

(b) * * *

(12) The valuation statement provided in the Surface Transportation Board's released rates order requires individual shippers either to choose Full Value Protection for your liability or waive the Full Value Protection in favor of the STB's released rates. The released rates may be increased annually by the motor carrier based on the U.S. Department of Commerce's Cost of Living Adjustment. Contact the STB for a copy of the Released Rates of Motor Carrier Shipments of Household Goods. If the individual shipper waives your Full Value Protection in writing on the STB's valuation statement, you must include the charges, if any, for optional valuation coverage (other than Full Value Protection).

* * * * *

10. Amend appendix A to part 375, under subpart A, by revising the definition of the term “Advertisement” under the section heading “What Definitions Are Used in This Pamphlet?” to read as follows:

APPENDIX A TO PART 375—YOUR RIGHTS AND RESPONSIBILITIES WHEN YOU MOVE

* * * * *

SUBPART A—GENERAL REQUIREMENTS

* * * * *

WHAT DEFINITIONS ARE USED IN THIS PAMPHLET?

* * * * *

Advertisement—This is any communication to the public in connection with an offer or sale of any interstate household goods transportation service. This will include written or electronic database listings of your mover's name, address, and telephone number in an online database or displayed on an Internet Web site. This excludes listings of your mover's name, address, and telephone number in a telephone directory or similar publication. However, Yellow Pages advertising is included within the definition.

* * * * *

PART 377—PAYMENT OF TRANSPORTATION CHARGES

11. The authority citation for part 377 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13701, 13702, 13706, 13707, and 14101; and 49 CFR 1.87.

12. Revise § 377.211 to read as follows:

§ 377.211 Computation of time.

Time periods involving calendar days shall be calculated pursuant to 49 CFR 386.8.

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

13. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e) and 31315; and 49 CFR 1.87.

14. Amend § 381.110 by revising the definition of “FMCSRs” to read as follows:

§ 381.110 What definitions are applicable to this part?

* * * * *

FMCSRs means Federal Motor Carrier Safety Regulations (49 CFR parts 382 and 383, §§ 390.19, 390.21, and parts 391 through 393, 395, 396, and 399).

* * * * *

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

15. The authority citation for part 383 is revised to read as follows:

Authority. 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

16. Amend § 383.5 as follows:

a. Amend the definition of “Alcohol or alcoholic beverage” by redesignating paragraphs (a) through (c) as paragraphs (1) through (3);

b. Revise the definitions of the terms “Commerce” and “Commercial motor vehicle (CMV)”; and

c. Amend the definition of “Driving a commercial motor vehicle while under the influence of alcohol” by redesignating paragraphs (a) through (c) as paragraphs (1) through (3).

The revisions read as follows:

§ 383.5 Definitions.

* * * * *

Commerce means

(1) Any trade, traffic or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States, and

(2) Trade, traffic, and transportation in the United States that affects any trade, traffic, and transportation described in paragraph (1) of this definition.

* * * * *

Commercial motor vehicle (CMV) means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle is a—

(1) Combination Vehicle (Group A)—having a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or

gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Heavy Straight Vehicle (Group B)—having a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

(3) Small Vehicle (Group C) that does not meet Group A or B requirements but that either—

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

(ii) Is of any size and is used in the transportation of hazardous materials as defined in this section.

* * * * *

17. Amend § 383.71 by revising paragraphs (a)(1) introductory text, (a)(2) introductory text, and (g) to read as follows:

§ 383.71 Driver application and certification procedures.

(a) * * *

(1) Commercial learner's permit applications submitted prior to July 8, 2015.

CLPs issued prior to July 8, 2015, for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

* * * * *

(2) Commercial learner's permit applications submitted on or after July 8, 2015.

Any person applying for a CLP on or after July 8, 2015, must meet the following conditions:

* * * * *

(g) Existing CLP and CDL Holder's Self-Certification. Every person who holds a CLP or CDL must provide to the State the certification contained in §383.71(b)(1) of this subpart.

* * * * *

18. Revise § 383.72 to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of item (4) of Table 1 to § 383.51 of this subpart and § 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

19. Amend § 383.73 by revising paragraph (a)(2) introductory text to read as follows:

§ 383.73 State procedures.

(a) * * *

(2) On or after July 8, 2015. Prior to issuing a CLP to a person on or after July 8, 2015, a State must:

* * * * *

20. Amend § 383.91 by revising paragraph (a)(3) to read as follows:

§ 383.91 Commercial motor vehicle groups.

(a) * * *

(3) Small Vehicle (Group C)—Any single vehicle, or combination of vehicles, that meets neither the definition of Group A nor that of Group B as contained in this section, but that either is designed to transport 16 or more passengers including the driver, or is used in the transportation of hazardous materials as defined in § 383.5.

* * * * *

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

21. 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.

22. Revise § 384.222 to read as follows:

§ 384.222 Violation of out-of-service orders.

The State must have and enforce laws and/or regulations applicable to drivers of CMVs and their employers, as defined in § 383.5 of this subchapter, which meet the minimum requirements of § 383.37(d), Table 4 to § 383.51, and § 383.53(b) of this subchapter.

23. Amend § 384.228 by revising paragraph (k) to read as follows:

§ 384.228 Examiner training and record checks.

* * * * *

(k) The eight units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

24. Revise § 384.403 to read as follows:

§ 384.403 Availability of funds withheld for noncompliance.

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

PART 385—SAFETY FITNESS PROCEDURES

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

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901-13905, 13908, 31133, 31135, 31136, 31137(a), 31144, 31148, 31151, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88; Sec. 350 of Pub. L. 107-87; and 49 CFR 1.87.

26. Amend § 385.3 by revising the definition of the term “HMRs” to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

HMRs means the Hazardous Materials Regulations (49 CFR parts 171-180).

* * * * *

27. Amend § 385.321(b) by revising Violation 15 of the Table to § 385.321 to read as follows:

§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its USDOT new entrant registration will be revoked?

* * * * *

(b) * * *

TABLE TO § 385.321—VIOLATIONS THAT WILL RESULT IN AUTOMATIC FAILURE OF THE NEW ENTRANT SAFETY AUDIT

Violation	Guidelines for determining automatic failure of the safety audit
<p style="text-align: center;">* * * * *</p> <p>15. § 396.11(a)(3)—Failing to correct out-of-service defects listed by driver in a driver vehicle inspection report before the vehicle is operated</p> <p style="text-align: center;">* * * * *</p>	<p style="text-align: center;">* * * * *</p> <p>Single occurrence</p> <p style="text-align: center;">* * * * *</p>

28. Amend § 385.403 by revising paragraphs (b) and (f) to read as follows:

§385.403 Who must hold a safety permit?

* * * * *

(b) More than 25 kg (55 pounds) net weight of a Division 1.1, 1.2, or 1.3 (explosive) material or articles or an amount of a Division 1.5 (explosive) material requiring placarding under part 172 of this title;

* * * * *

(f) A shipment of methane (compressed or refrigerated liquid), natural gas (compressed or refrigerated liquid), or any other compressed or refrigerated liquefied gas

with a methane content of at least 85 percent, in bulk packaging having a capacity equal to or greater than 13,248 L (3,500 gallons).

Appendix B to Part 385 [Amended]

29. Amend Appendix B to Part 385, in section VII, by removing the citation for “§ 396.11(c) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)” and adding in its place a citation that reads as follows: “§ 396.11(a)(3) Failing to correct Out-of-Service defects listed by driver in a driver vehicle inspection report before the vehicle is operated again (acute)”.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139, and 31144; and 49 CFR 1.87.

§ 387.317 [Amended]

31. Amend § 387.317 by removing the reference to “§ 387.301(d)” and adding in its place a reference to “§ 387.301(c)”.

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

32. The authority citation for part 389 continues to read as follow:

Authority: 49 U.S.C. 113, 501 et seq., subchapters I and III of chapter 311, chapter 313, and 31502; 42 U.S.C. 4917; and 49 CFR 1.87.

33. Revise § 389.21 to read as follows:

§ 389.21 Contents of written comments.

All written comments must be in English. Any interested person must submit as part of his/her written comments all material that he/she considers relevant to any statement of fact made by him/her. Incorporation of material by reference is to be avoided. However, if such incorporation is necessary, the incorporated material shall be identified with respect to document and page.

34. Amend § 389.35 by revising paragraph (a) to read as follows:

§ 389.35 Petitions for reconsideration.

(a) Any interested person may petition the Administrator for reconsideration of any rule issued under this part. The petition must be in English and submitted to the Administrator, Federal Motor Carrier Safety Administration, 1200 New Jersey Ave., SE., Washington, DC 20590-0001, and received not later than thirty (30) days after publication of the rule in the Federal Register. Petitions filed after that time will be considered as petitions filed under § 389.31 of this part. The petition must contain a brief statement of the complaint and an explanation as to why compliance with the rule is not practicable, is unreasonable, or is not in the public interest.

* * * * *

PART 390 — FEDERAL MOTOR CARRIER SAFETY REGULATIONS;

GENERAL

35. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 504, 508, 13301, 13902, 13908, 31132, 31133, 31136, 31144, 31151, 31502, 31504; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 212, 217, Pub. L. 106–159, 113 Stat. 1748, 1767, 1773; sec. 229 Pub. L. 106-159 (as transferred by sec. 4114 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743-44); and 49 CFR 1.81, 1.81a, and 1.87.

§ 390.5 [Amended]

36. Amend § 390.5 as follows:

a. In the definition of the term “Lessee,” add the word “of” after the phrase “in subpart F” in the first sentence;

b. In paragraph (2)(iii) of the definition of the term “Texting,” remove the phrase “in this part” and add in its place the phrase “in this subchapter”.

c. In the definition of the term “Trailer,” redesignate paragraphs (a), (b), and (c), as paragraphs (1), (2), and (3).

§ 390.42 [Amended]

37. Amend § 390.42(b) by removing the reference to “§ 396.11(b)(2)” and adding in its place a reference to “§ 396.11(b)(1)”.

38. Amend § 390.115 by revising paragraph (d)(2)(iv) to read as follows:

§ 390.115 Procedure for removal from the National Registry of Certified Medical Examiners.

* * * * *

(d) * * *

(2) * * *

(iv) Maintain documentation of State licensure, registration, or certification to perform physical examinations for each State in which the examiner performs examinations and maintains documentation of completion of all training required by §§ 390.105 and 390.111 of this part. The medical examiner must also make this documentation available to an authorized representative of FMCSA or an authorized representative of Federal, State, or local government. The medical examiner must provide this documentation within 48 hours of the request for investigations and within 10 days of the request for regular audits of eligibility.

* * * * *

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

39. The authority citation for part 391 is revised to read as follows:

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, and 31502; sec. 4007(b) of Pub. L. 102-240, 105 Stat. 1914, 2152; sec. 114 of Pub. L. 103-311, 108 Stat. 1673, 1677; sec. 215 of Pub. L. 106-159, 113 Stat. 1748, 1767; sec. 32934 of Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

40. Amend § 391.1 by revising paragraph (b) to read as follows:

§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

* * * * *

(b) An individual who meets the definition of both a motor carrier and a driver employed by that motor carrier must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

41. Amend § 391.13 by revising the introductory text to read as follows:

§ 391.13 Responsibilities of drivers.

In order to comply with the requirements of §§ 392.9(a) and 383.111(a)(16) of this subchapter, a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless the person—

* * * * *

42. Amend § 391.15 by revising paragraphs (c)(1)(i) and (ii) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(1) * * *

(i) The offense was committed during on-duty time as defined in § 395.2 of this subchapter or as otherwise specified; and

(ii) The driver is employed by a motor carrier or is engaged in activities that are in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

* * * * *

43. Amend § 391.23 by revising paragraphs (c)(3) and (4) and (m)(3)(i)(C) to read as follows:

§ 391.23 Investigation and inquiries.

* * * * *

(c) * * *

(3) Prospective employers should report failures of previous employers to respond to an investigation to the FMCSA and use the complaint procedures specified at § 386.12 of this subchapter. Keep a copy of the reports in the driver investigation history file as part of documenting a good faith effort to obtain the required information.

(4) Exception. For drivers with no previous employment experience working for a DOT-regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver investigation history file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

* * * * *

(m) * * *

(3) * * *

(i) * * *

(C) Until June 22, 2018, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(a)(2)(vii) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

* * * * *

44. Amend § 391.41 by revising paragraph (b)(12)(ii) to read as follows:

§ 391.41 Physical qualifications of drivers.

* * * * *

(b) * * *

(12) * * *

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a commercial motor vehicle.

* * * * *

45. Amend § 391.43 by revising paragraph (g)(4) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(g) * * *

(4) Beginning December 22, 2015, if the medical examiner finds that the determination of whether the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b) should be delayed pending the receipt of additional information or the conduct of further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination

completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

* * * * *

46. Amend § 391.45 by revising the introductory text to read as follows.

§ 391.45 Persons who must be medically examined and certified.

The following persons must be medically examined and certified in accordance with § 391.43 of this subpart as physically qualified to operate a commercial motor vehicle:

* * * * *

47. Amend § 391.47 by removing the authority citation that follows the section and by revising paragraph (f).

The revision reads as follows.

§ 391.47 Resolution of conflicts of medical evaluation.

* * * * *

(f) Status of driver. Once an application is submitted to the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS), the driver shall be deemed disqualified until such time as the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) makes a determination, or until the Director, Office of Carrier, Driver and Vehicle Safety Standards (MC-PS) orders otherwise.

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

48. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

49. Amend § 393.7 by adding paragraph (b)(15) to read as follows:

§ 393.7 Matter incorporated by reference.

* * * * *

(b) * * *

(15) Highway Emergency Signals, Fourth Edition, Underwriters Laboratories, Inc., UL No. 912, July 30, 1979 (with an amendment dated November 9, 1981), incorporation by reference approved for § 393.95(j).

* * * * *

50. Amend § 393.17 by revising paragraph (c)(1) introductory text to read as follows:

§ 393.17 Lamps and reflectors—combinations in driveaway-towaway operation.

* * * * *

(c) * * *

(1) When the vehicle is operated in accordance with the terms of a special permit prohibiting operation during the times when lighted lamps are required, it must have on the rear—

* * * * *

51. Amend § 393.71 by revising paragraph (n)(1) to read as follows:

§ 393.71 Coupling devices and towing methods, driveaway-towaway operations.

* * * * *

(n) * * *

(1) Front axle attachment. The front axle of one motor vehicle intended to be coupled with another vehicle or parts of motor vehicles together to form one vehicle shall be attached with U-bolts meeting the requirements of paragraph (j)(2) of this section.

* * * * *

§ 393.95 [Amended]

52. Amend § 393.95 by removing the authority citation that follows the section.

PART 395—HOURS OF SERVICE OF DRIVERS

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

Authority: 49 U.S.C. 504, 31133, 31136, 31137, and 31502; sec. 113, Pub. L. 103-311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106-159 (as transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. 109-59, 119 Stat. 1144, 1726, 1743, 1744); sec. 4133, Pub. L. 109-59, 119 Stat. 1144, 1744; sec. 108, Pub. L. 110-432, 122 Stat. 4860-4866; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 395.1 [Amended]

54. Amend § 395.1 by removing the second paragraph (g)(1)(ii)(C).

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

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

Authority: 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

§ 397.215 [Amended]

56. Amend § 397.215(a) by removing the phrase “certification with the application has complied” in the third sentence and adding in its place the phrase “certification that the application complies”.

57. Amend Appendix F to Subchapter B of Chapter III—Commercial Zones, Section 31, Charleston, S.C., by revising paragraph (d) to read as follows:

Appendix F to Subchapter B of Chapter III—Commercial Zones

* * * * *

Sec. 31 Charleston, S.C.

* * * * *

(d) All of any municipality any part of which is within the limits of the combined areas defined in paragraphs (b) and (c) of this section.

* * * * *

Issued under authority delegated in 49 CFR 1.87 on: September 23, 2015

T. F. Scott Darling III,
Acting Administrator.
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