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[4910-EX-P]

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 390 and 391

[Docket No. FMCSA-2026-0826]

RIN 2126-AC99

English Language Proficiency; Out of Service Criteria

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FMCSA proposes to codify the English language proficiency (ELP) driver qualification requirement as an out-of-service (OOS) violation. The rulemaking would ensure uniform enforcement by aligning the Federal Motor Carrier Safety Regulations (FMCSR) with the current enforcement tolerances in the *North American Standard Out-of-Service Criteria* issued by the Commercial Vehicle Safety Alliance (CVSA). The rulemaking responds to a petition from CVSA.

DATES: Comments must be received on or before [Insert date 60 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by Docket Number FMCSA-2026-0826 using any of the following methods:

- Federal eRulemaking Portal: Go to https://www.regulations.gov/docket/FMCSA-2026-0826/document. Follow the online instructions for submitting comments.
- Mail: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., W58-213, Washington, D.C. 20590-0001.

- Hand Delivery or Courier: Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue S.E., W58-213, Washington, D.C. 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- Fax: (202) 493-2251.

FOR FURTHER INFORMATION CONTACT: Bill Mahorney, Enforcement Division, Office of Safety, FMCSA, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001; (202) 493-0001; bill.mahorney@dot.gov.

SUPPLEMENTARY INFORMATION:

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I. PUBLIC PARTICIPATION AND REQUEST FOR COMMENTS

A. Submitting Comments

If you submit a comment, please include the docket number for this NPRM (FMCSA-2026-0826), indicate the specific section of this document to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name, mailing address, email address, or telephone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to https://www.regulations.gov/docket/FMCSA-2026-0826/document, click on this NPRM, click “Comment,” and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing.

FMCSA will consider all comments and material received during the comment period.

Confidential Business Information (CBI)

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (5 U.S.C. § 552), CBI is exempt from public disclosure. If your comments responsive to the NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to the NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission that constitutes CBI as “PROPIN” to indicate it contains proprietary information. FMCSA will treat such marked submissions as confidential under the Freedom of Information Act, and they will not be placed in the public docket of the NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory

Evaluation Division, Office of Policy, FMCSA, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001 or via email at brian.g.dahlin@dot.gov. At this time, you need not send a duplicate hardcopy of your electronic CBI submissions to FMCSA headquarters. Any comments FMCSA receives not specifically designated as CBI will be placed in the public docket for this rulemaking.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to https://www.regulations.gov/docket/FMCSA-2026-0826/document, and choose the document to review. To view comments, click this NPRM, then click “Document Comments.” If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in room W58-213 of the DOT West Building, 1200 New Jersey Avenue S.E., Washington, D.C. 20590-0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

C. Privacy

In accordance with 5 U.S.C. § 553(c), DOT solicits comments from the public to inform its regulatory process. DOT posts these comments, including any personal information the commenter provides, to www.regulations.gov as described in the system of records notice DOT/ALL 14 (Federal Docket Management System (FDMS)), which can be reviewed at https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices. The comments are posted without edits and are searchable by the name of the submitter.

II. EXECUTIVE SUMMARY

FMCSA proposes to update the FMCSR to reflect that, under current enforcement tolerances, a violation of 49 CFR 391.11(b)(2) is an OOS violation. This rulemaking would make updates to sections 390.5, 390.5T, and 391.11(b)(2) to reflect that noncompliance with ELP requirements will result in a driver being placed OOS, unless the driver's current trip would not involve transportation in the United States outside of the U.S.-Mexico border commercial zones. These changes would align the FMCSR with current enforcement tolerances in the *North American Standard Out-of-Service Criteria* from CVSA and ensure uniform enforcement. The rulemaking is consistent with an April 19, 2026 revision to the CVSA OOS criteria, which narrows the previous exception for placing drivers OOS for ELP violations in U.S.-Mexico border commercial zones. FMCSA anticipates that the revision would result in annual costs of approximately $14.4 million for motor carriers.

III. ABBREVIATIONS

CBI	Confidential business information
CE	Categorical exclusion
CFR	Code of Federal Regulations
CMV	Commercial motor vehicle
CVSA	Commercial Vehicle Safety Alliance
DOT	Department of Transportation
ELP	English language proficiency
E.O.	Executive Order
FAQ	Frequently asked questions
FHWA	Federal Highway Administration
FMCSA	Federal Motor Carrier Safety Administration
FMCSR	Federal Motor Carrier Safety Regulations
FR	Federal Register
ICC	Interstate Commerce Commission
IRFA	Initial Regulatory Flexibility Analysis
PIA	Privacy Impact Analysis
PTA	Privacy Threshold Assessment
NPRM	Notice of proposed rulemaking
OMB	Office of Management and Budget
OOS	Out-of-service
RFA	Regulatory Flexibility Act
UMRA	Unfunded Mandates Reform Act of 1995
U.S.C.	United States Code

IV. LEGAL BASIS

This NPRM is consistent with the concurrent authorities of the Motor Carrier Act of 1935 (49 U.S.C. § 31502), as amended, and the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31131, *et seq.*), as amended. Section 204 of the Motor Carrier Act of 1935 provides that it shall be the duty of the Interstate Commerce Commission (ICC) (now the

Secretary of Transportation, after the broad delegation of jurisdiction to the Secretary under the ICC Termination Act of 1995)[1] to regulate common and contract carriers by motor vehicle as provided in that act, and that "to that end the Commission may establish reasonable requirements with respect to … qualifications and maximum hours of service of employees, and safety of operation and equipment." Motor Carrier Act, sec. 204(a)(1)–(2). Section 204 further provides for the establishment of similar regulations with respect to private carriers of property by motor vehicle, if need therefore is found. *See* Motor Carrier Act, section 204(a)(3). The Department of Transportation Act (Pub. L. No. 89-670, 80 Stat. 931, Oct. 15, 1966) transferred the ICC's safety authority and regulations to DOT (Section 6(e)(6)(C)), where those functions were assigned to the Federal Highway Administration (FHWA), and now to FMCSA (49 U.S.C. § 113(f)). Most of the Motor Carrier Act of 1935 has been repealed, but the previous safety provisions have been retained in 49 U.S.C. § 31502(b).

The Motor Carrier Safety Act of 1984 (49 U.S.C. § 31131 *et seq.*) was intended to recodify the previous ICC and FHWA regulations. Section 206(e) of the 1984 Act provided that, if DOT failed to issue new regulations consistent with the requirements of the statute, "the regulations pertaining to commercial motor vehicle safety which the Secretary issued before such date of enactment and in effect on such date of enactment shall, for purposes of this title, be deemed to be regulations issued by the Secretary under this section" Pub. L. No. 95-554, Title II, 98 Stat. 2832, 2834 (Oct. 30, 1984). The provisions listed in Section 206(a) were codified as 49 U.S.C. § 31136(a)(1)–(4). Thus, the 1984 Act intended to capture and recodify the detailed regulations on commercial motor vehicle safety that the ICC and FHWA had previously issued, including the requirement for ELP. Congress said that even more clearly in the Senate Report on Title

[1] Pub. L. No. 104–88, 109 Stat. 803 (Dec. 29, 1995).

II of the 1984 Act: “It is the intent of the Committee [on Commerce, Science, and Transportation] that nothing in section 6 of the bill [which became Section 206 of the 1984 Act] alter this state of affairs which has developed under existing provisions of law. Rather the Committee intends to reaffirm the scope of DOT’s authority to regulate safety in this area.” S. Rep. No. 98-424, at 9 (1984). Pursuant to 49 U.S.C. §§ 31502(b) and 31136(a), FMCSA may prescribe safety of operation requirements for the qualification of drivers operating CMVs in interstate commerce. This rulemaking addresses the qualifications of motor carrier employees, consistent with the safe operation of CMVs.

This NPRM is consistent with the safe operation of CMVs, as provided for in 49 U.S.C. § 31136(a)(1), as the proposal would ensure that drivers who cannot meet the minimum qualification requirements are placed out of service. The remaining statutory factors and requirements in section 31136(a), to the extent they are relevant, are also satisfied here. In accordance with section 31136(a)(2), the requirement under 49 CFR 391.11(b)(2) would not impose any responsibilities on CMV drivers that would impair their ability to operate the vehicles safely. This rulemaking does not address medical standards for drivers or possible physical effects caused by driving CMVs (section 31136(a)(3) and (a)(4), respectively). There is no basis to anticipate that this rulemaking would lead to driver coercion (section 31136(a)(5)), as the FMCSRs have required ELP since the 1930s and the rulemaking is codifying current enforcement tolerances.

The FMCSA Administrator is delegated authority under 49 CFR 1.87 to carry out the functions vested in the Secretary by 49 U.S.C. chapters 311 and 315 as they relate to CMV operators, programs, and safety.

V. BACKGROUND

On December 23, 1936, as part of its newly-promulgated “Motor Carrier Safety Regulations,” the ICC established an English language requirement for drivers of motor vehicles operated in interstate or foreign commerce by common and contract carriers.

The original wording, as contained in paragraph 3 of Part I [Qualification of Drivers] required that, on and after July 1, 1937, "no motor carrier shall drive, or require or permit any person to drive, any motor vehicle operated in interstate or foreign commerce, unless the person so driving possesses the following minimum qualifications: … (k) Ability to read and speak the English language, unless the person was engaged in so driving on July 1, 1937 or within one year prior thereto, but in any case ability to understand traffic and warning signs." 1 Motor Carrier Cases (M.C.C.) 1, at 18–19; later published at 2 FR 144 (Jan. 22, 1937). The preamble to the ICC decision stated that "[i]t is evident that ability to read and speak English is important to any adequate compliance with safety regulations. Cognizance has been taken, however, of the existence in certain areas of numbers of drivers in present service who are unable to read or speak English, but even in these cases the ability at least to understand traffic and warning signs is required" 1 M.C.C. 1, at 7–8.

On May 27, 1939, the ICC made certain changes and additions to the Motor Carrier Safety Regulations, including elimination of the exceptions granted by the original rules for those drivers unable to read and speak English. As stated in that notice, "[t]he intent of the Commission to require such ability of all drivers in this service has been unmistakable since 1937, and the intervening period of more than two years is regarded as sufficient to justify the removal of the exception" (14 M.C.C. 669, at 675). As explained above, while the ICC regulations on ELP have been recodified, the intent of Congress to retain and enforce them is clear.

In accordance with 49 CFR 391.11(a), a person shall not drive a *commercial motor vehicle*, as defined in section 390.5T, in interstate commerce unless the individual meets the driver qualification requirements in part 391. Under section 391.11(b)(2), the Secretary has determined that one such qualification requirement is that a person must be able to read and speak the English language sufficiently to converse with the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records. Pursuant to the regulation, a driver that cannot do so is therefore not qualified to operate a CMV in interstate commerce. In addition, each State or other entity receiving Federal funds through FMCSA's Motor Carrier Safety Assistance Program, which is currently all States plus D.C. and all U.S. territories, must adopt and maintain compatible laws, regulations, standards, and orders concerning CMV safety. Generally, the compatible State requirements include applicability of the rules to CMVs operating in intrastate commerce. See Subpart C to 49 CFR part 350. This includes the requirements in section 391.11.

Effective April 1, 2005, CVSA amended its *North American Standard Out-of-Service Criteria* to include violations of section 391.11(b)(2). CVSA is a non-profit organization, comprising Federal, State, provincial, territorial and local safety officials and industry representatives, that develops inspection, training, and enforcement standards for commercial motor vehicles. The *North American Standard Out-of-Service Criteria* is a reference guide that sets forth enforcement tolerances developed and maintained by CVSA to assist State inspectors in deciding whether to allow a commercial motor vehicle or driver, found in violation of law, to continue in commerce. It provides a detailed list of violations that the CVSA membership has agreed are sufficiently hazardous to justify restricting further operation by a driver or a commercial motor vehicle and placing them out of service. The list was developed over a period of more than 40 years by Federal, State and Provincial safety professionals, with input from the motor carrier industry, vehicle and equipment manufacturers, researchers, and other interested parties. The *North American Standard Out-of-Service Criteria* is non-binding guidance to assist Federal and State personnel to determine whether to place a vehicle or driver out-of-service.[2,3] All States participating in the Motor Carrier Safety Assistance Program consider the *North American Standard Out-of-Service Criteria* during roadside inspections. In accordance with the definition of *out-of-service order* under section 390.5T, violations may be considered an OOS condition if included within the *North American Standard Out-of-Service Criteria*.

On October 1, 2014, FMCSA published regulatory guidance titled, "Driver Qualifications; Regulatory Guidance Concerning the Applicability of Language Requirement to Drivers Who Do Not Meet the Hearing Standard" (79 FR 59139).[4] This guidance explained that the English language requirement should not be construed to prohibit operation of a CMV by hearing-impaired drivers who can read and write in the English language but do not speak, for whatever reason, and were granted exemptions[5] from section 391.41(b)(11) by FMCSA. Specifically, the guidance advises that a driver who is granted an exemption from section 391.41(b)(11) is not considered unqualified under the ELP requirement in section 391.11(b)(2) if the driver is capable of reading and

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[2] See 68 FR 43893, 43895 (July 24, 2003). The *North American Standard Out-of-Service Criteria* represent enforcement tolerances, and should not be construed to be regulations. As FMCSA noted in a July 24, 2003 notice withdrawing an ANPRM related to the *North American Standard Out-of-Service Criteria*, the Agency decided not to adopt the Criteria, either through codification of the text or through incorporation-by-reference, into the FMCSR. FMCSA continues to believe that the collaborative process currently used for amending or revising the *North American Standard Out-of-Service Criteria* has successfully achieved a level of uniformity amongst enforcement agencies throughout North America and that it is in the public interest that these enforcement tolerances continue to be managed through the partnership between the Federal, State, and Provincial governments from the United States, Canada, and Mexico, with participation by the industry, motor vehicle and equipment manufacturers, researchers and other interested parties. See id. at 43894-43895.

[3] In 1999, the U.S. Court of Appeals for the D.C. Circuit considered the issue of whether the *North American Standard Out-of-Service Criteria* are binding regulations because they are referenced in 49 CFR 390.5 and found the answer to be no because "no federal statute or regulation either requires or authorizes federal or state agents to use the [*North American Standard Out-of-Service Criteria*] in deciding to place a vehicle out of service," and "the inclusion of the [*North American Standard Out-of-Service Criteria*] in § 390.5 does not transform the [*North American Standard Out-of-Service Criteria*] into substantive rules." *National Tank Truck Carriers, Inc. v. Federal Highway Administration of the U.S. Department of Transportation,* 170 F.3d 203 at (Mar. 26, 1999).

[4] 79 FR 59139 (Oct. 1, 2014), available at https://www.federalregister.gov/documents/2014/10/01/2014-23435/driver-qualifications-regulatory-guidance-concerning-the-applicability-of-language-requirement-to.

[5] FMCSA may grant an exemption from the safety regulations for up to a five-year period if it finds "such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption." 49 U.S.C. §§ 31136(e) and 31315. See also 49 CFR part 381.

writing in the English language. In that circumstance, the hearing-impaired driver satisfies the English language requirement. This guidance remains in effect.

Effective April 1, 2015, CVSA removed section 391.11(b)(2) from its *North American Standard Out-of-Service Criteria*. On June 15, 2016, FMCSA issued a policy memorandum titled "English Language Proficiency Testing and Enforcement Policy (MC-ECE-2016-006)" to provide guidance to FMCSA personnel conducting safety investigations, audits, and inspections of CMVs and drivers. The policy removed the requirement for FMCSA personnel to place drivers OOS for ELP violations and changed the Agency's standard for determining non-compliance with the ELP requirements of section 391.11(b)(2). Under the 2016 policy, FMCSA personnel were directed to cite drivers for violations of section 391.11(b)(2) but not to place them OOS, consistent with CVSA's change to the enforcement tolerances used by personnel conducting CMV inspections.

On April 28, 2025, the President issued Executive Order (E.O.) 14286, "Enforcing Commonsense Rules of the Road for America's Truck Drivers,"[6] which directed FMCSA to rescind the 2016 guidance document and issue new enforcement guidance to FMCSA personnel, outlining inspection procedures necessary to ensure compliance with the requirements of section 391.11(b)(2). The E.O. directed FMCSA to take all necessary and appropriate actions, consistent with applicable law, to ensure that the *North American Standard Out-of-Service Criteria* are revised such that a violation of the ELP requirement results in the driver being placed OOS, including by working with the relevant entities responsible for establishing the *North American Standard Out-of-Service Criteria*.

[6] 90 FR 18759 (May 2, 2025), available at https://www.federalregister.gov/documents/2025/05/02/2025-07786/enforcing-commonsense-rules-of-the-road-for-americas-truck-drivers.

On May 1, 2025, during a meeting of the CVSA Board of Directors where FMCSA presented on the issue of ELP, CVSA voted to incorporate violations of section 391.11(b)(2) into the *North American Standard Out-of-Service Criteria*, effective June 25, 2025.[7] On May 20, 2025, FMCSA issued policy memorandum "English Language Proficiency Under § 391.11(b)(2) (MC-SEE-2025-0001)" [8] (May 2025 policy memo) to rescind the 2016 policy and provide guidance to FMCSA enforcement personnel providing oversight of part 391 in conducting North American Standard Driver and Vehicle Inspections who need to evaluate whether drivers can satisfy the ELP qualification requirements in section 391.11(b)(2).[9] The May 2025 policy memo also provides enforcement guidance for discovered violations of section 391.11(b)(2).The updates to the *North American Standard Out-of-Service Criteria* that became effective on June 25, 2025 established violations of section 391.11(b)(2) as an OOS violation and incorporated the inspection procedures from the May 2025 policy memo, which was applicable only to Federal personnel.[10]

On May 22, 2025 and May 28, 2025, FMCSA trained approximately 650 staff members—including inspectors, auditors, investigators, and headquarters personnel—on

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[7] "CVSA to Add English Language Proficiency to Its Out-of-Service Criteria," CVSA (May 1, 2025), available at https://cvsa.org/news/elp-oosc/.

[8] Available at https://www.fmcsa.dot.gov/newsroom/updated-internal-agency-enforcement-policy-english-language-proficiency. On May 22, 2025, FMCSA published related guidance for motor carriers on what they should do to assess a CMV driver's ELP during the driver qualification process. *See* FMCSA-DQ-391.11-FAQ001(2025-05-22), available at https://www.fmcsa.dot.gov/regulations/what-should-motor-carrier-do-assess-cmv-drivers-english-language-proficiency-elp-during.

[9] The May 2025 policy memo advises FMCSA personnel to initiate all roadside inspections in English. If the inspector's initial contact with the driver indicates that the driver may not understand the inspector's instructions, the inspector should conduct an ELP assessment consisting of a driver interview (to determine a driver's ability to respond sufficiently to official inquiries) and, if the driver passes the interview step, a highway traffic sign recognition assessment (to determine a driver's ability to understand sufficiently United States highway traffic signs, including electronic-display changeable message signs in the English language).

[10] "The CVSA North American Standard Out-of-Service Criteria has been amended to state that drivers who cannot satisfy the English language proficiency requirements of § 391.11(b)(2), as per the Federal Motor Carrier Safety Administration's (FMCSA) Enforcement Guidance Memo MC-SEE-2025-0001, will be declared out of service." CVSA, *Non-Compliance with English Language Proficiency Regulation Takes Effect as an Out-of-Service Driver Violation* (June 25, 2025), available at https://cvsa.org/news/elp-oosc-06252025/.

internal enforcement policy MC-SEE-2025-0001 via webinar. The training included information on the policy's background, the key provisions, procedures for effectuating the policy, and the updated SafeSpect violation codes. On June 25, 2025, FMCSA provided a similar webinar to state MCSAP personnel.

On October 25, 2025, CVSA submitted a petition for rulemaking requesting that FMCSA amend the FMCSR by requiring that noncompliance with the ELP requirements in section 391.11(b)(2) result in a driver being placed OOS.[11] CVSA stated that noncompliance with ELP requirements in section 391.11(b)(2) has already been added to the *North American Standard Out-of-Service Criteria*, and updating the FMCSR would be consistent with that action and the objectives of E.O. 14286. CVSA provided some recommended revisions to sections 390.5T and 391.11(b)(2) to accomplish this. The Agency grants that petition and proposes to incorporate the recommended changes, as discussed below.

On April 16, 2026, FMCSA issued a policy memorandum, titled "English Language Proficiency Under § 391.11(b)(2) (MC-SEE-2026-0002)"[12] (April 2026 policy memo), to update the guidance in the May 2025 policy memo. The April 2026 policy memo clarified that FMCSA enforcement personnel conducting inspections within a U.S.-Mexico border commercial zone must determine the scope of the driver's current trip before determining whether to issue an OOS order when citing a violation of 49 CFR section 391.11(b)(2). If the driver's current trip (as evidenced by bills of lading, dispatch records, equipment interchange receipts, driver statements, or other related shipping documents) involves transportation in the United States that would take the driver outside of the U.S.-Mexico border commercial zones, the driver shall be placed OOS for a

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[11] A copy of CVSA's petition is available in the docket for this rulemaking.

[12] Available at https://www.fmcsa.dot.gov/regulations/enforcement/fmcsa-elp-guidance-roadside-policy-mc-see-2026-0002.

violation of section 391.11(b)(2). If the driver's current trip does not involve transportation in the United States that would take the driver outside of the U.S.-Mexico border commercial zones (even if the cargo itself is ultimately destined outside of a border commercial zone via a different driver), the driver shall not be placed OOS for a violation of section 391.11(b)(2). As with the May 2025 policy memo, the April 2026 policy memo applies to FMCSA enforcement personnel only.

On April 16, 2026, FMCSA also published a guidance document titled, "English Language Proficiency Roadside Enforcement Policy FAQs,"[13] to address four questions regarding the April 2026 policy memo.[14] The FAQs provided clarity on the exception for drivers operating CMVs in the border commercial zones along the U.S.-Mexico border, on how to cite violations under the two-step test, on whether the violation codes were hardcoded in SafeSpect to ensure the correct OOS designation is applied to violation codes, and on language regarding initiating an action to disqualify the driver from operating CMVs in interstate commerce.

On April 19, 2026, CVSA's board of directors voted to revise the *North American Standard Out-of-Service Criteria* to update the entry for violations of section 391.11(b)(2) by replacing the reference to the May 2025 policy memo with a reference to "current FMCSA enforcement guidance."[15] This change ensures that the latest FMCSA enforcement guidance for violations of section 391.11(b)(2), which is now the April 2026 memo, is incorporated into the *North American Standard Out-of-Service Criteria*. This incorporation by CVSA makes FMCSA's April 2026 policy applicable to State

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[13] Available at https://www.fmcsa.dot.gov/regulations/english-language-proficiency-roadside-enforcement-policy-faqs-0.

[14] The guidance document revised a previous guidance document (FMCSA-DQ-391.11-ELP-Policy-CVSA-FAQs (2026-02-03)) that answered the same four questions based on the May 2025 policy memo.

[15] See April 20, 2026 letter to CVSA members available in the docket for this rulemaking.

inspectors as well and thereby provides uniform enforcement by Federal and State authorities.

VI. DISCUSSION OF PROPOSED RULEMAKING

FMCSA proposes to revise the FMCSR to reflect the current practice of placing drivers OOS for violations of the ELP requirements in section 391.11(b)(2), except when the driver's current trip would not involve transportation in the United States that would take the driver outside of the U.S.-Mexico border commercial zones. As discussed in the background section above, the *North American Standard Out-of-Service Criteria* currently require drivers in violation of section 391.11(b)(2) to be placed out of service.

CVSA, through its petition for rulemaking, requested revisions to sections 390.5T and 391.11(b)(2) to reflect that noncompliance with ELP requirements will result in a driver being placed OOS. CVSA requested that section 391.11(b)(2) be added to the list of regulatory requirements listed in the definition for *out-of-service order* in section 390.5T. Additionally, CVSA requested a new paragraph (c) be added to section 391.11 stating that a driver in violation of paragraph (b)(2) must be placed out of service immediately. FMCSA agrees with CVSA that the changes recommended in their petition are consistent with CVSA's enforcement tolerances in the *North American Out-of-Service Criteria*, FMCSA's updated enforcement policy in the April 2026 policy memo, and E.O. 14286.

The Agency is proposing to add the language recommended by CVSA in its petition, with two slight differences. First, FMCSA also proposes to update the definition of *out-of-service order* in the suspended section 390.5 to ensure consistency with section 390.5T.[16] This ensures that the changes made to the definition in section 390.5T

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[16] On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 390.5 was one of the sections suspended and section 390.5T, which is currently in effect, was one of the replacement sections added (82 FR 5299).

would remain in effect if the suspension of section 390.5 is lifted in the future. In addition, the Agency proposes additional language at the end of CVSA's recommended language in section 391.11(c).

The addition to section 391.11(c) would incorporate the limited exception from being placed OOS for ELP for drivers whose current trip would not involve transportation in the United States outside of the U.S.-Mexico border commercial zones. Specifically, the exception for U.S.-Mexico border commercial zones in the *North American Out-of-Service Criteria*, provides that enforcement personnel should cite drivers whose current trip would not involve transportation in the United States outside of the U.S.-Mexico border commercial zones for ELP violations during inspections in such zones but should not take follow-on actions of placing the driver OOS or initiating an action to disqualify the driver. This exception would not apply when there is evidence that the driver intends to operate, or has been operating, a CMV in the United States outside the border commercial zones. This would close a safety loophole to ensure uniform enforcement, regardless of where the inspection takes place. Non-compliant drivers who would not be placed OOS under this exception (because they did not operate or intend to operate in the United States outside of a border commercial zone) would still be cited for violating the ELP requirements in section 391.11(b)(2). FMCSA notes that under this proposed rule, a driver not placed OOS for an ELP violation under the exception could still be placed OOS if he or she commits a violation, other than under section 391.11(b)(2), that warrants being placed OOS.

Upon publication of a final rule, FMCSA will hold training for FMCSA and State partner enforcement personnel similar to the ones held in May and June 2025. This training will cover the limited exception from the paragraph above, as well as any other provisions in a final rule that may differ from prior enforcement practices.

The proposed revisions to sections 390.5, 390.5T, and 391.11 would ensure that the FMCSR are consistent with the enforcement tolerances in the *North American Standard Out-of-Service Criteria.* In addition, the MCSAP program requires States to adopt State laws or regulations compatible with the FMCSR as a condition of MCSAP grant eligibility. By codifying the OOS condition in the FMCSR, States will be required to adopt a compatible requirement into their State law regardless of any future revisions to the *North American Standard Out-of-Service Criteria.* This would ensure uniform enforcement of ELP violations beyond State use of the *North American Standard Out-of-Service Criteria*. This rulemaking would merely codify enforcement tolerances consistent with an April 19, 2026 revision to the *North American Standard Out-of-Service Criteria*, which narrows the previous exception for placing drivers OOS for ELP violations in U.S.-Mexico border commercial zones.

VII. INTERNATIONAL IMPACTS

Motor carriers and drivers are subject to the laws and regulations of the countries where they operate, unless an international agreement states otherwise. Drivers and carriers should be aware of the regulatory differences between nations. Canada- and Mexico-domiciled drivers operating CMVs in the United States have been subject to the ELP rules since they were implemented in the 1930s, regardless of whether those drivers' native language is not English. However, CMV drivers operating in the commercial zones along the U.S.-Mexico international border are not currently subject to being placed OOS for violating ELP requirements when their current trip would not involve transportation in the United States that would take the driver outside of the U.S.-Mexico border commercial zones. Those drivers would not be impacted by this rulemaking.

The proposed rule is consistent with established international agreements, including the United States-Mexico-Canada Agreement (USMCA) and the predecessor North American Free Trade Agreement (NAFTA) as well as agreements providing for the reciprocal recognition of commercial driver's licenses between the United States, Canada, and Mexico. The ELP requirement, like other operating qualification standards, applies equally to all commercial vehicle drivers operating in the United States regardless of nationality. Non-discriminatory, safety-based operating standards, like ELP requirements, and the enforcement tolerances set forth in this proposed rule are permissible under the USMCA framework.

VIII. SECTION-BY-SECTION ANALYSIS

This section-by-section analysis describes the proposed changes in numerical order.

Section 390.5 and 390.5T Definitions

FMCSA proposes to revise the definition of *out-of-service order* in sections 390.5 and 390.5T to include section 391.11(b)(2).

Section 391.11 General qualification of drivers

FMCSA proposes to add a new paragraph (c)(1), which would state that drivers violating paragraph (b)(2) of this section would be placed OOS. FMCSA would also add a new paragraph (c)(2), which would state that drivers would not be placed OOS if operating in the commercial zones, as designated in 49 CFR part 372, subpart B, along the U.S.-Mexico international border, unless there is evidence that the person has operated or intends to operate a CMV in the United States beyond the boundaries of the commercial zones.

IX. REGULATORY ANALYSES

A. E.O. 12866 (Regulatory Planning and Review) and DOT Policies and Procedures for Rulemakings

FMCSA has considered the impact of this proposed rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993) and DOT Rulemaking Procedures (49 CFR part 5, subpart B). The Office of Information and Regulatory Affairs within the Office of Management and

Budget (OMB) determined that this proposed rule is a significant regulatory action under section 3(f) of E.O. 12866 and has reviewed it under that E.O.

The proposed rulemaking does not create new requirements or obligations for regulated entities but would codify and align with current enforcement tolerances in the *North American Standard Out-of-Service Criteria* and E.O. 14286. The rulemaking is necessary to ensure uniform enforcement by aligning the FMCSR with the current enforcement tolerances in the *North American Standard Out-of-Service Criteria.* This proposed rule would incorporate the limited exception from OOS violations for drivers whose current trip would not involve transportation in the United States outside of the U.S.-Mexico border commercial zones and would amount to a slight clarification and narrowing of the previous exception in the *North American Standard Out-of-Service Criteria*, which had incorporated FMCSA's May 2025 internal enforcement policy, for inspections performed of drivers "operating [CMVs] in the border commercial zones along the U.S.-Mexico border." The May 2025 policy memo, which was incorporated by CVSA and effective on June 25, 2025, stated that enforcement personnel should cite drivers for ELP violations during inspections in such zones but should not take follow-on actions of placing the driver OOS or initiating an action to disqualify the driver. The proposed rule clarifies that this exception should not be applied where there is evidence that the driver intends to operate, or has been operating, a CMV in interstate commerce outside the U.S.-Mexico border commercial zones as part of their current trip. This would ensure uniform enforcement, regardless of where the inspection takes place.

Under the regulatory baseline, the enforcement tolerances in the *North American Standard Out-of-Service Criteria*, effective June 25, 2025, which incorporated the May 2025 policy memo, would remain in effect. The Agency has had requirements for ELP dating back to 1936. This proposed rule would not change the ELP requirements set forth in section 391.11(b)(2). Further, the proposal would not impact existing tools at the

Agency's discretion regarding letters of disqualification and civil penalty actions. These tools have been in place for over 40 years and would continue to be available to FMCSA if this proposed rule is finalized. This regulatory analysis of the proposed rule does, however, consider the cost of non-compliance with the existing ELP requirements with regards to violations identified during roadside inspections under certain circumstances. While the April 2026 memo and the update to the *North American Standard Out-of-Service Criteria* have already gone into effect, DOT has determined that it is appropriate to consider the costs and benefits of this policy change since it is roughly contemporaneous with this rulemaking.

Between January 2025 and June 24, 2025, 7,812 ELP violations were issued across the United States, with 33 of those resulting in OOS orders.[17] Between June 25, 2025 and March 19, 2026, there were 60,399 ELP violations issued, with 19,045 of those resulting in OOS orders.[18] The change to CVSA's enforcement tolerances in the summer of 2025 resulted in an increase in ELP violations and OOS orders. The 19,045 ELP violations that resulted in OOS orders all occurred outside of border commercial zones, while the remaining 44,354 ELP violations that occurred in border commercial zones did not result in OOS orders.

Though FMCSA believes the recent increase in ELP violations and OOS orders tied to the 2025 change in enforcement tolerances would continue under the baseline, the proposed rule would also clarify that OOS orders should be issued for ELP violations issued within the U.S.-Mexico border commercial zones if the driver's current trip involves transportation in the United States outside of the border commercial zones. Inspection documentation collected from June 25, 2025 through March 19, 2026 did not definitively capture the number of ELP violations that would fall into this category. It did

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[17] MCMIS/GOTHAM snapshot date as of Oct. 31, 2025.

[18] MCMIS/GOTHAM snapshot date as of Mar. 20, 2026.

capture the origin and destination of the cargo and the operating authority of the carrier for which the driver was working. This provides FMCSA with two different proxies for whether the driver had left or intended to leave the border commercial zone. For example, if cargo originated in Mexico and is bound for a commercial zone, FMCSA assumed that the driver was not planning to leave the commercial zone. In this case, under the proposal, the driver would have received an ELP violation, but would not have received an OOS order, which is the same result as under the June 2025 enforcement tolerances. However, if the cargo originated in a border commercial zone and was destined for a U.S. location outside the commercial zones, FMCSA assumed that the driver was planning to leave the commercial zones and would have received an OOS order under the proposal. Analyzing all 41,563 violations that were issued in the commercial zones between June 25, 2025 and March 19, 2026, FMCSA estimated that 83.5 percent would have only received ELP violations, and 16 percent would also have received an OOS order (in addition to the underlying ELP violation). Approximately 0.5 percent of the violations did not include either origin or destination information. Extrapolating to an entire year, FMCSA estimates that there would be approximately 56,575 ELP violations within the border commercial zones and that approximately 9,052 (16 percent) would be issued as OOS orders. FMCSA recognizes that origin and destination information from the inspection documentation may be specific to the cargo, and not necessarily the driver (*e.g.*, where the driver's destination as reflected on a dispatch order differs from the final destination of the cargo as listed on a waybill), but nevertheless believes it to be a reasonable estimate of the number of drivers who would be affected by the proposed rule.[19]

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[19] FMCSA also considered a second approach to estimating the number of affected drivers that analyzed the operating authority of the motor carriers for which the driver who received the ELP violation was working. Mexican-owned carriers that operate only within the border commercial zones receive OP-2 operating authority. Mexican-owned carriers that operate within and outside the commercial zones receive OP-1 operating authority. All other motor carriers, regardless of ownership, have operating authority that allows

For purposes of this analysis, FMCSA estimates that approximately 9,000 drivers would receive ELP violations and also be placed OOS annually within the border commercial zones. As the methodology employed by FMCSA provides an indirect estimate of whether the driver left, or intended to leave, the border commercial zones, FMCSA requests comment on the validity of this methodology, specifically in relation to whether it tends to under- or overestimate the number of drivers that would have been placed OOS under the proposal, and whether other methodologies would produce a more reliable estimate.

FMCSA evaluates the impact of this proposal as the difference between receiving an ELP violation only and receiving both an ELP violation and an OOS order, for both motor carriers and drivers. Generally, repeated violations issued to a carrier can negatively impact their Safety Measurement System score and lead to various consequences. An OOS order has a more immediate effect in that the carrier would need to find a replacement driver and incur any costs related to the resulting delivery delay. Motor carriers are encouraged to develop hiring practices and procedures to ensure their drivers are properly qualified, and, as is the case with all driver qualifications, are ultimately responsible for ensuring the driver is qualified to operate a CMV prior to the next dispatch. FMCSA does not require that motor carriers train their drivers in the English language, however, motor carriers have the discretion to establish internal training programs or rely on already established training materials. Some companies charge carriers an hourly detention fee if the delivery arrives outside the agreed upon window (*e.g.*, $50 to $100 per hour), while other companies charge a percentage of the

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them to operate within or outside the commercial zones. Isolating ELP violations attributed to OP-2 carriers yielded an estimate of the percentage of drivers that were most likely to have remained inside the zones, and would not have been placed OOS under the proposal, that was nearly the same (15 percent) as the first approach.

shipment value (*e.g.*, three percent).[20] Multiple industry sources have cited FleetNet America downtime cost estimates for a vehicle that range between $448 and $760 per day.[21] [22] This is generally understood to include lost revenue, fixed costs (*e.g.*, vehicle insurance premiums), and delay costs. It is not clear if it also includes the cost of finding and dispatching a replacement driver. Locating and dispatching an available replacement driver could require a few hours, or a few days. FMCSA relies on the higher end of this estimate and rounds it to $800 to ensure all costs are accounted for. Based on subject matter expertise, FMCSA estimates that a motor carrier would, on average, require two days to locate and dispatch the driver, and for the driver to reach the vehicle and continue the trip. This cost also does not consider potential spillover effects to the broader economy from late shipments.

For purposes of analysis, FMCSA assumes that 9,000 drivers would be placed OOS annually within the border commercial zones at a cost of $800 per day, and that it would take an average of two days to locate and dispatch a replacement driver and get the freight to its final destination. This results in an annual cost of $14.4 million (9,000 × $800 per day × 2 days).

FMCSA requests comment on how long it takes on average for a replacement driver to reach the vehicle and continue the trip, how long the driver in violation would remain OOS and be unable to operate a CMV, and the average cost of delay associated with driver OOS orders. Are there other impacts that FMCSA should consider when evaluating the difference between an ELP violation and an OOS order? Given the costs

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[20] Tow4 Tech. The High Cost of Downtime and Missed Delivery Windows in the Trucking Industry, available at https://www.tow4tech.com/post/the-high-cost-of-downtime-and-missed-delivery-windows-trucking-industry.

[21] Tow4 Tech. The High Cost of Downtime and Missed Delivery Windows in the Trucking Industry, available at https://www.tow4tech.com/post/the-high-cost-of-downtime-and-missed-delivery-windows-trucking-industry

[22] Millennials Maintenance. What a Semi Truck Breakdown Really Costs a Fleet: The Invoice and Everything Else, available at: https://millennialsmaintenance.com/blog/semi-truck-breakdown-cost-fleet.

associated with a driver being placed OOS, would motor carriers be less likely to place unqualified drivers behind the wheel of a CMV?

FMCSA stresses that ELP has been a longstanding requirement for driver qualification, and this proposal would not place new requirements on motor carriers or drivers. FMCSA does not generally estimate the costs of non-compliance in its regulatory impact analyses, but in this instance, provides examples of the types of costs that could be incurred under the proposal should a motor carrier choose to employ unqualified drivers.

Further, this proposal would require that FMCSA and State partner enforcement personnel working within the U.S.-Mexico border commercial zones receive training on how to identify drivers that intend to operate, or have been operating, a CMV in interstate commerce outside the border commercial zones. FMCSA anticipates that this training would be conducted via a 1-hour webinar, similar to the training undergone for other updates to enforcement policy. There are approximately 100 Federal border inspectors and 1,900 State enforcement personnel that would undergo this training. The fully-loaded hourly rate for Federal Border Inspectors is $84.84 ($39.15 base hourly rate[23] + ($39.15 × 47 percent fringe benefits rate[24]) + ($39.15 × 69.7 percent overhead rate[25]). The fully-loaded hourly rate for State enforcement personnel is $60.68 ($30.32 median hourly rate[26]) + ($30.32 × 62 percent fringe benefits rate[27]) + ($30.32 × 28 percent overhead rate[28]). FMCSA anticipates that this training would occur in the first year following the

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[23] Locality-adjusted hourly wage rate, weighted by GS grade of FMCSA's border inspectors.

[24] OMB, Object Class Analysis. Divided "civilian personnel benefits" by "Full time permanent" for Department of Transportation, page 19. Available at: https://www.whitehouse.gov/wp-content/uploads/2025/04/BUDGET-2026-OBJCLASS-1.pdf (Accessed Apr. 7, 2026).

[25] Volpe Project costs. https://www.volpe.dot.gov/work-with-us/volpe-project-costs (Accessed Apr. 7, 2026).

[26] Bureau of Labor Statistics, https://www.bls.gov/oes/2023/may/naics4_999200.htm.

[27] Bureau of Labor Statistics, Employer Costs for Employee Compensation, Table 3. Available at https://www.bls.gov/news.release/ecec.t03.htm.

[28] Average overhead as provided by States within eCVSP grant applications.

publication of the final rule, and in subsequent years would be part of the existing training for inspectors. FMCSA estimates that training costs for Federal border inspectors in the first year of the analysis would total approximately \$8,500 (100 Federal inspectors × 1 hour × \$84.84) and that the training costs for State inspectors would total approximately \$115,300 (1,900 State inspectors × 1 hour × \$60.68).

FMCSA requests comment on the methodology to determine the number of OOS orders that would be issued under the proposal, and the impact to motor carriers, the Federal government, and State partners that would result from this proposal. The Agency also requests comment on the aggregate impact to the supply chain (e.g., changes in shipping costs, delayed cargo delivery), including impacts to shippers, from an increase in driver OOS orders in the border commercial zones.

The primary benefit of this proposed rulemaking would be improved safety outcomes resulting from more uniform and consistent enforcement of driver qualification standards. Aligning the FMCSR with the current enforcement tolerances in the *North American Standard Out-of-Service Criteria* would help ensure that drivers operating CMVs are in compliance with driver qualification standards related to ELP. Specifically, codifying these requirements would yield compounding benefits for highway safety. It would close an existing safety loophole, guaranteeing that uniform enforcement is applied to unqualified drivers regardless of where the roadside inspection takes place and regardless of possible future amendment of the enforcement tolerances set forth in the *North American Standard Out-of-Service Criteria*. The rulemaking would directly protect the safe operation of CMVs by ensuring that drivers who fail to meet minimum qualification requirements are immediately placed out of service. Consistent ELP enforcement would ensure drivers possess the vital ability to read and understand English-language highway traffic signs and signals. The foundational importance of this ability for adequate compliance with safety regulations has been recognized by the government since 1937.

FMCSA also considered an alternative to this regulatory action; reverting to the policy in effect on June 15, 2016. Effective on that date, FMCSA issued a policy in line with CVSA's removal of the ELP requirements under section 391.11(b)(2) from its *North American Standard Out-of-Service Criteria*. However, reverting to the previous policy framework would still result in a disconnect between the applicable enforcement tolerances and the FMCSRs as well as a lack of uniform enforcement, and would not take steps to close the safety loophole identified in this proposed rule. As such, the Agency did not quantify the costs and benefits associated with this alternative.

B. E.O. 14192 (Unleashing Prosperity Through Deregulation)

E.O. 14192, Unleashing Prosperity Through Deregulation, issued on January 31, 2025 (90 FR 9065), requires that, for every new regulation issued by an agency, at least 10 prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process. This proposed rule is expected to have total costs greater than zero, and, if finalized, would therefore qualify as an E.O. 14192 regulatory action.

C. Advance Notice of Proposed Rulemaking

Under 49 U.S.C. § 31136(g), FMCSA is required to publish an advance notice of proposed rulemaking (ANPRM) or proceed with a negotiated rulemaking, if a proposed safety rule "under this part"[29] is likely to lead to the promulgation of a major rule.[30] As

[29] Part B of Subtitle VI of Title 49, United States Code, i.e., 49 U.S.C. chapters 311–317.

[30] A *major rule* means any rule that OMB finds has resulted in or is likely to result in (a) an annual effect on the economy of $100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. *See* 49 CFR 389.3; *see also* 5 U.S.C. § 804(2).

this proposed rule is not likely to result in the promulgation of a major rule, the Agency is not required to issue an ANPRM or to proceed with a negotiated rulemaking.

D. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA, 5 U.S.C. § 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996,[31] requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term *small entities* comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 (5 U.S.C. § 601(6)). Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses.

When an Agency issues a proposed rule, the RFA requires the Agency to "prepare an initial regulatory flexibility analysis" that will describe the impact of the proposed rule on small entities (5 U.S.C. § 604(a)). Section 605 of the RFA allows an agency to certify a rule, instead of preparing an analysis, if the rule is not expected to have a significant impact on a substantial number of small entities.

FMCSA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FMCSA is publishing this Initial Regulatory Flexibility Analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. The Agency invites all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. FMCSA will consider all comments received in the public comment process

[31] Pub. L. No. 104-121, 110 Stat. 857, (Mar. 29, 1996).

when making a determination or when completing a Final Regulatory Flexibility Assessment.

An IRFA must contain the following:

(1) a description of the reasons why the action by the agency is being considered;

FMCSA proposes to codify the ELP driver qualification requirement as an OOS violation. The rulemaking would ensure uniform enforcement by aligning the FMCSR with the current enforcement tolerances in the *North American Standard Out-of-Service Criteria.* The rulemaking responds to a petition from CVSA.

(2) a succinct statement of the objective of, and legal basis for, the proposed rule;

FMCSA proposes to update the FMCSR to reflect that, under current enforcement tolerances, a violation of 49 CFR 391.11(b)(2) is an OOS violation. This NPRM is consistent with the concurrent authorities of the Motor Carrier Act of 1935 (49 U.S.C. § 31502), as amended, and the Motor Carrier Safety Act of 1984 (49 U.S.C. § 31131, *et seq.*), as amended. Section 204 of the Motor Carrier Act of 1935 provides that it shall be the duty of the ICC (now the Secretary of Transportation, after the broad delegation of jurisdiction to the Secretary under the ICC Termination Act of 1995)[32] to regulate common and contract carriers by motor vehicle as provided in that act, and that "to that end the Commission may establish reasonable requirements with respect to … qualifications and maximum hours of service of employees, and safety of operation and equipment." Motor Carrier Act, section 204(a)(1)–(2). Section 204 further provides for the establishment of similar regulations with respect to private carriers of property by motor vehicle, if need therefore is found. Motor Carrier Act, section 204(a)(3). The

[32] Pub. L. No. 104–88, 109 Stat. 803 (Dec. 29, 1995).

Department of Transportation Act (Pub. L. No. 89-670, 80 Stat. 931, Oct. 15, 1966) transferred the ICC's safety authority and regulations to DOT (Sec. 6(e)(6)(C)), where those functions were assigned to FHWA, and now to FMCSA. See 49 U.S.C. § 113(f). Most of the Motor Carrier Act of 1935 has been repealed, but the previous safety provisions have been retained in 49 U.S.C. § 31502(b).

(3) a description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

This proposed rule would not change requirements for small entities. Nor would it change the cost of non-compliance with the existing ELP requirements because the proposed rule merely codifies existing FMCSA guidance and CVSA's *North American Standard Out-of-Service Criteria*. However, under the analytical framework explained above, FMCSA is considering the effects of the revisions to FMCSA guidance and the *North American Standard Out-of-Service Criteria* that are roughly contemporaneous with this rulemaking. Under that methodology, FMCSA anticipates that approximately 9,000 drivers could be placed OOS annually as a result of the changes in the proposed rule. Assuming each driver was employed by a distinct motor carrier, a maximum of 9,000 motor carriers could see an increase in the cost of non-compliance related to ELP requirements. FMCSA anticipates that all impacted entities would operate in and around the U.S.-Mexico border commercial zones. FMCSA requests comment on the number of these motor carriers that would be considered small.

(4) a description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

There are no reporting, recordkeeping, or other compliance requirements in this proposed rulemaking.

(5) an identification, to the extent practicable, of all relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule; and a description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

FMCSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. This proposed rule would align the FMCSR with the current enforcement tolerances in the *North American Standard Out-of-Service Criteria.* As a practical matter, there are no alternatives that would also allow for such an alignment.

E. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. No. 104-121, 110 Stat. 857), FMCSA wants to assist small entities in understanding this rulemaking so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the rulemaking would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the person listed under FOR FURTHER INFORMATION CONTACT.

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 (Office of the National Ombudsman, see https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

F. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (UMRA, 2 U.S.C. §§ 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 $206 million (which is the value equivalent of $100 million in 1995, adjusted for inflation to 2024 levels) or more in any one year. Though this rulemaking would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rulemaking elsewhere in this preamble.

G. Paperwork Reduction Act

This proposed rule contains no new information collection requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. §§ 3501–3520).

H. E.O. 13132 (Federalism)

A rulemaking has implications for federalism under section 1(a) of E.O. 13132 (64 FR 43255, Aug. 10, 1999), Federalism, 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.”

FMCSA has determined that this rulemaking would not have substantial direct costs on or for States, nor would it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

I. Privacy

The Consolidated Appropriations Act, 2005,[33] requires the Agency to assess the privacy impact of a regulation that will affect the privacy of individuals. This NPRM would not require the collection of personally identifiable information.

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

The E-Government Act of 2002,[34] requires Federal agencies to conduct a Privacy Impact Analysis (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 rulemaking. Accordingly, FMCSA has not conducted a PIA.

The Agency will complete a Privacy Threshold Assessment (PTA) to evaluate the risks and effects the proposed rulemaking might have on collecting, storing, and sharing personally identifiable information. The PTA will be submitted to FMCSA's Privacy Officer for review and preliminary adjudication and to DOT's Privacy Officer for review and final adjudication.

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

This rulemaking does not have Tribal implications under E.O. 13175 (65 FR 67249, Nov. 9, 2000), 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.

K. National Environmental Policy Act of 1969

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[33] Pub. L. No. 108-447, 118 Stat. 2809, 3268, note following 5 U.S.C. § 552a (Dec. 4, 2014).

[34] Pub. L. No. 107-347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

FMCSA analyzed this proposed rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. § 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under DOT Order 5610.1D,[35] Subpart B, paragraph (e)(6)(s). The categorical exclusion (CE) in paragraph (6)(s) covers regulations regarding commercial driver's license disqualifications. The proposed requirements in this rulemaking are covered by this CE.

L. Rulemaking Summary

As required by 5 U.S.C. § 553(b)(4), a summary of this rulemaking may be found at regulations.gov, under the docket number.

List of Subjects

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.

Accordingly, FMCSA proposes to amend 49 CFR chapter III, parts 390 and 391 as follows:

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. No. 103-311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. No. 106-159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. No. 106-159 (as added and transferred by sec. 4115 and amended by secs. 4130-4132, Pub. L. No. 109-59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. No. 109-59,

[35] Available at https://www.transportation.gov/mission/dots-procedures-considering-environmental-impacts.

119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. No. 112-141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. No. 113-125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. No. 114-94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. No. 115-105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

2. § 390.5 is amended by:

a. Lifting the suspension of the section;

b. Revising the definition of "Out-of-service order"; and

c. Suspending the section.

The revision reads as follows:

§ 390.5 [Suspended]

* * * * *

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 391.11(b)(2), 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

* * * * *

3. § 390.5T is amended by revising the definition of "Out-of-service order" to read as follows:

§ 390.5T Definitions.

* * * * *

Out-of-service order means a declaration by an authorized enforcement officer of a Federal, State, Canadian, Mexican, or local jurisdiction that a driver, a commercial motor vehicle, or a motor carrier operation is out of service pursuant to 49 CFR 386.72, 391.11(b)(2), 392.5, 392.9a, 395.13, or 396.9, or compatible laws, or the North American Standard Out-of-Service Criteria.

* * * * *

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

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

Authority: 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. No. 102-240, 105 Stat. 1914, 2152; sec. 114, Pub. L. No. 103-311, 108 Stat. 1673, 1677; sec. 215, Pub. L. No. 106-159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. No. 112-141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. No. 114-94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. No. 115-105, 131 Stat. 2263; and 49 CFR 1.87.

5. § 391.11 is amended by adding new paragraph (c) to read as follows:

§ 391.11 General qualifications of drivers.

* * * * *

(c)(1) Except as provided in paragraph (c)(2) of this section, any person who is found to be in violation of the provisions of paragraph (b)(2) of this section while operating a commercial motor vehicle in interstate commerce shall be placed out-of-service immediately.

(2) Any person who is found to be in violation of the provisions of paragraph (b)(2) of this section while operating a commercial motor vehicle in interstate commerce in a commercial zone, designated in part 372, subpart B of this subchapter, along the U.S.-Mexico international border will not be placed out-of-service for that violation, unless there is evidence that the person has operated or intends to operate a commercial motor vehicle in the United States beyond the boundaries of the commercial zones.

Issued under authority delegated in 49 CFR 1.87.

Derek D. Barrs,
Administrator.

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