

ACTION: Clarification of applicability of policy.

SUMMARY: This document provides clarification of Departmental policy concerning the applicability of the final revision of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments," published on May 17, 1995 (60 FR 26484-26507). It is the intent of the Department that this revised version of OMB Circular A-87 apply to awards made by the Department and its bureaus and offices as applicable.

EFFECTIVE DATE: The clarification of the applicability of the policy is effective November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Debra E. Sonderman (Director, Procurement and Property Management Systems), (202) 208-3336.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget published a revised version of Circular A-87 on May 17, 1995 (60 FR 26484-26507).

Paragraph 7, *Required Action*, of the final revision of the Circular requires that agencies issue codified regulations implementing the provisions of the Circular by September 1, 1995. The Department already has published permanent regulations incorporating the Circular. See 43 CFR 12.2(b)(1). 43 CFR 12.12(c) also makes any changes to the Circular published in the Federal Register a part of the regulation.

The Department adopted the Common Rule on "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments" at 43 CFR Part 12, Subpart C. In addition, promulgation of the regulation, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations," in subpart F, implements OMB Circular A-110.

Both of these regulations refer to OMB Circular A-87 as being the applicable directive for cost principles for State and local governments. Neither regulation identifies the specific version of the Circular to which it is referring. Nevertheless, because the Department's regulatory language at 43 CFR 12.12(c) indicates that any changes published in the Federal Register apply, the Department interprets our regulation to mean that the May 17, 1995, publication of the revised OMB Circular A-87 applies, according to the conditions stated in the Circular.

Therefore, the Department is clarifying that the May 17, 1995, version of the Circular is adopted without any further promulgation of regulations.

Until OMB issues another version, any reference to OMB Circular A-87 after the effective date for the Circular means the May 17, 1995, version.

Dated: October 28, 1995.
Bonnie R. Cohen,
Assistant Secretary—Policy, Management and Budget.
[FR Doc. 95-28288 Filed 11-15-95; 8:45 am]
BILLING CODE 4310-RF-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 384

[FHWA Docket No. MC-93-9]

RIN 2125-AD70

State Compliance With Commercial Driver's License Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final Rule, Technical Amendment.

SUMMARY: The FHWA is changing the applicability date of 49 CFR 384.231(b)(2) from October 1, 1995, to May 18, 1997, in order to allow the States additional time to solve the problem of disqualifying commercial motor vehicle (CMV) operators convicted of a disqualifying offense or offenses who do not possess a commercial driver's license (CDL) and for whom the State cannot identify a social security number (SSN).

EFFECTIVE DATE: November 16, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Ronald Finn, Driver Division, Office of Motor Carrier Research and Standards (202) 366-0647, or Ms. Grace Reidy, Motor Carrier Law Division, Office of the Chief Counsel, (202) 366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

In 1986, Congress enacted the Commercial Motor Vehicle Safety Act (Pub. L. 99-570, 100 Stat. 3207-170, as amended; 49 U.S.C. 31302 *et seq.*) (the Act) to improve the safety of CMV drivers throughout the Nation. The goals of the Act are:

- (1) Prevent CMV drivers from concealing unsafe driving records by carrying licenses from more than one State,
- (2) Ensure that all CMV drivers demonstrate the minimum levels of

knowledge and skills needed to safely operate CMVs before being licensed, and

(3) Subject CMV drivers to new, uniform sanctions for certain unsafe driving practices.

To accomplish these goals, Congress assigned responsibilities and deadlines to CMV drivers, employers, States, and the Secretary of Transportation. All responsibilities of the Secretary of Transportation in the Act were delegated to the FHWA. The responsibilities imposed on the States were enumerated in section 12009(a) of the Act (49 U.S.C. 31311). An additional requirement, bringing the number to 17, was later added to 49 U.S.C. 31311 by the Intermodal Surface Transportation Efficiency Act of 1991 (Pub. L. 102-240, 105 Stat. 1914).

A notice of proposed rulemaking (NPRM) was published in the Federal Register (58 FR 34344) on June 24, 1993. It proposes standards which States would have to meet in order to be in compliance with the Act and avoid the loss of Federal-aid highway funds. This NPRM proposes amending title 49 of the Code of Federal Regulations to include a whole new part 384 in which to delineate all the compliance requirements imposed on the States by the Act. This part would also specify the State procedures for determining whether a State was in compliance with the Act.

A final rule reiterating these standards and procedures with some minor adaptations and clarifications was published in the Federal Register (59 FR 26029) on May 18, 1994. As a result of this rulemaking, the States are required by 49 CFR 384.231 (b) and (c) to disqualify expeditiously a person convicted of the offenses enumerated in 49 CFR 383.51(b)(2) (i) through(v). In addition, the State must make a record of the disqualification and provide certain specific personal identifier information on the convicted individual to the Commercial Driver's License Information System (CDLIS) (49 CFR 384.231(d)).

Petition: Mr. John Strandquist, President and Chief Executive Officer of the American Association of Motor Vehicle Administrators (AAMVA), filed a petition on August 23, 1995, asking that the effective date for 49 CFR 384.231(b)(2), regarding disqualification of non-CDL holders, be changed from October 1, 1995, to September 1, 1996. Mr. Strandquist explained that the CDLIS computer record specifications require that the State include the operator's SSN as part of the master pointer record. However, the current requirements in 49 CFR part 383 do not

require a non-CDL holder, operating a CMV, to provide his or her SSN to the State. Mr. Strandquist further pointed out that some consistent and universally agreed upon solution to address the problem of disqualifying CMV operators without a CDL, for whom the State cannot identify a SSN, must be developed by the States. In addition, the States would have to demonstrate that they could successfully operate using the yet to be developed solution. He estimated that it will take at least until September 1, 1996, for all the States to accomplish any solution that might be proposed.

Response: The requirements in 49 CFR part 384 are primarily directed toward State driver licensing administrators and other State officials with responsibility to develop, administer, and enforce the CDL program. The FHWA agrees with AAMVA that the States will not be able to comply with the provisions of 49 CFR 384.231(b)(2) by October 1, 1995. Consequently, the deadline will be extended to May 18, 1997. Traditionally the FHWA has given parties subject to motor carrier regulations at least 3 years in order to comply with new requirements, but the regulations at issue in this case were published on May 18, 1994, and the effective date specified for compliance with 49 CFR 384.321(b)(2) regarding disqualification of non-CDL holders was set as October 1, 1995. By pushing the deadline for compliance back to May 18, 1997, the FHWA is merely providing State officials, to whom 49 CFR Part 384 is principally directed, the customary three years in which to comply. For these reasons and since this rule imposes no additional burdens on the States, the FHWA finds good cause to make this regulation final without prior notice and opportunity for comments and without the 30-day delay in effective date under the Administrative Procedure Act.

Rulemaking Analyses and Notices

The FHWA believes that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B). In addition, this final rule is effective upon publication because the FHWA finds that good cause exists for dispensing with the 30-day delay in effective date ordinarily required under 5 U.S.C. 553(d). The FHWA is not exercising discretion in a way that could be meaningfully affected by public comment. With this rulemaking, the FHWA is merely extending the deadline for compliance by the States with the requirements of 49 CFR 384.231(b)(2). Rather than imposing any additional

burden on the States, this rule would actually lessen the burden of complying with these CDL requirements. The FHWA has concluded that it is necessary to provide additional time for States to implement the requirement that certain CMV drivers be disqualified from driving in light of the current lack of a consistent and mutually agreed upon method for recording drivers' SSNs.

Executive Order 12866 (Federal Regulation) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action under Executive Order 12866, or significant within the meaning of Department of Transportation regulatory policies and procedures. This regulatory action is not likely to have an annual effect on the economy of \$100 million or more. In addition, it is not expected to cause an adverse effect on any sector of the economy because this rule will actually lessen the burden imposed by the regulation being amended. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FHWA's CDL program. Although the rights and obligations of recipients of Federal grants will be affected because compliance with the regulation at issue is a condition for the States receiving Federal-aid highway funds, the rights of the States will not be materially affected. This rulemaking actually makes it easier for them to qualify for these funds. In light of this analysis, the FHWA finds that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96-354, 5 U.S.C. 601- 612), the agency has evaluated the effects of this rulemaking on small entities. This rulemaking changes the date by which the States must comply with a regulation regarding the States' disqualification of CMV drivers who do not possess a CDL. CMV operators who do not hold CDLs are not currently required to disclose their SSNs to the States; however, the regulation at issue in this rulemaking requires that the States record disqualifications of non-CDL holding CMV drivers on the CDLIS. This obligates the States to include the CMV driver's SSN. The deadline extension created by the rule at hand was intended to provide the States with time to develop a mutually agreed upon solution to this inconsistency. Thus, this rulemaking will have an impact on the States; however, it is unlikely that

this impact will be significant in any way. Furthermore, States are not included within the definition of "small entity" set forth in 5 U.S.C. 601. Accordingly, the FHWA certifies that the action contained in this document will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a federalism assessment. This rule will merely delay the deadline for State compliance with an existing Federal regulation. It will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States. In fact, a regulatory burden will be lessened as a result of this rulemaking. In addition, this rule will not have a significant effect on the States' ability to discharge traditional State governmental functions even though the pre-existing regulation which this rule amends does deal with driver qualification. Driver qualification is an area over which the States have traditionally exercised their sovereign power. The rule at issue in the rulemaking at hand merely extends the deadline by which the States must comply with this pre-existing regulation of CMV driver qualification. Thus, an analysis of the Federalism issue raised by Federal regulation of CMV driver qualification, is not required for the purposes of this rulemaking. In any case, the Federal government's assertion of control over CMV driver qualification represents a justifiable response to the fact that CMV safety is a matter of national concern.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

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

Regulatory Identification Number

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

List of Subjects in 49 CFR Part 384

Commercial driver's license documents, Commercial motor vehicles, Driver qualification, Highways and roads, Motor carriers licensing and testing procedures, and Motor vehicle safety.

Issued on: November 6, 1995.
Rodney E. Slater,
Federal Highway Administrator.

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

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

Authority: 49 U.S.C. 31136, 49 U.S.C. 31301 *et seq.*, 31502; 49 CFR 1.48.

2. In 384.231, paragraph (b)(2) is revised to read as follows:

§ 384.231 Satisfaction of State disqualification requirements.

* * * * *

(b) * * *

(2) *Non-CDL holders applies on and after May 18, 1997.* A State shall satisfy the requirement of this subpart that the State disqualify a non-CDL holder who is convicted of an offense or offenses necessitating disqualification under § 383.51 by, at a minimum, implementing the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such non-CDL holder from legally obtaining a CDL from any State during the applicable disqualification period(s) specified in this subpart.

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[FR Doc. 95-28227 Filed 11-15-95; 8:45 am]
BILLING CODE 4910-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 950206040-5040-01; I.D. 110995A]

Groundfish of the Bering Sea and Aleutian Islands Area; Pacific Cod by Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustment, request for comments.

SUMMARY: NMFS is redistributing the 1995 Pacific halibut bycatch allowances specified for the Pacific cod hook-and-line gear fishery and the other non-trawl gear fishery in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to achieve the optimum yield from the groundfish fisheries.

DATES: Effective 12 noon, Alaska local time (A.l.t.), November 9, 1995, until 12 midnight, A.l.t., December 31, 1995. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 24, 1995.

ADDRESSES: Comments may be sent to Ronald J. Berg, Chief, Fisheries Management Division, Attn: Lori Gravel, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802-1668, or be delivered to Room 457, Federal Building, 709 West 9th Street, Juneau, AK.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by NMFS according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

Pursuant to § 675.21(a)(6) the prohibited species catch (PSC) limit of Pacific halibut caught while conducting any non-trawl fishery for groundfish in the BSAI during any fishing year is an amount of Pacific halibut equivalent to 900 metric tons (mt) of halibut mortality. In accordance with §§ 675.21(b)(2)(i) and (b)(4), the Final 1995 Harvest Specifications for the

BSAI groundfish fisheries (60 FR 8479, February 14, 1995, and 60 FR 12149, March 6, 1995) apportioned this PSC limit among the non-trawl gear fishery categories defined at § 675.21(b)(2)(ii) as follows: (1) Pacific cod hook-and-line, 725 mt; (2) "other non-trawl," 175 mt; (3) jig gear (exempt for 1995), 0 mt; (4) groundfish pot gear fisheries, (exempt for 1995), 0 mt; (5) sablefish hook-and-line (exempt for 1995), 0 mt (60 FR 12149, March 6, 1995).

As of October 21, 1995, 90 mt of halibut mortality remains of the "other non-trawl" fishery bycatch allowance. This fishery category will require an additional 20 mt of halibut mortality

during 1995, leaving 70 mt of Pacific halibut mortality uncaught. The Pacific cod hook-and-line gear fishery has 34 mt remaining of its halibut bycatch allowance, which is inadequate for harvesting the 9,000 mt of Pacific cod remaining in the allocation for hook-and-line or pot gear. The Pacific halibut bycatch allowance for the Pacific cod hook-and-line gear fishery needs to be augmented to promote achieving the optimum yield from the Pacific cod fishery.

Under § 675.20(e), the Regional Director is making an inseason adjustment to increase the Pacific halibut bycatch allowance specified for the Pacific cod hook-and-line gear fishery by 70 mt. The "other non-trawl" gear fishery's halibut bycatch is decreased by 70 mt. In accordance with § 675.20(e)(1)(iii), NMFS is redistributing the Pacific halibut bycatch mortality allowances of the non-trawl fisheries as follows: (1) Pacific cod hook-and-line, 795 mt; (2) "other non-trawl," 105 mt; (3) jig gear, 0 mt; (4) groundfish pot gear fisheries, 0 mt; (5) sablefish hook-and-line, 0 mt. This adjustment is necessary to prevent the underharvest of the BSAI Pacific cod total allowable catch pursuant to § 675.20(e)(2)(iii)

As required by § 675.20(f), all information relevant to this inseason adjustment, including the effect of overall fishing effort within the statistical area and economic impacts on affected fishing businesses, was considered. Current halibut bycatch allowances will cause a premature closure of the Pacific cod hook-and-line gear fishery and, therefore, will not promote optimum yield of groundfish and will result in economic harm to fishermen and processors who would otherwise participate in that fishery. Interested persons are invited to submit comment in writing to the previously cited address on or before November 24, 1995.