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#### List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

#### **PART 73—[AMENDED]**

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

#### **§ 73.202 [Amended]**

2. Section 73.202(b), the Table of FM Allotments under Wisconsin, is amended by adding Cornell, Channel 260C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 96-8121 Filed 4-2-96; 8:45 am]

BILLING CODE 6712-01-F

## **DEPARTMENT OF TRANSPORTATION**

### **Federal Highway Administration**

#### **49 CFR Parts 382, 383, 390, 391 and 392**

[FHWA Docket Nos. MC-92-19 and MC-92-23]

RIN 2125-AD46

#### **Commercial Driver's License Program and Controlled Substances and Alcohol Use and Testing**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule; technical correction.

**SUMMARY:** This document corrects the final rule on alcohol and drug testing rules and the regulations implementing the commercial driver's license program which was published in the issue of March 8, 1996, in FR Doc. 96-5373 on page 9564. In part 383, a reference to a nonexistent paragraph was inadvertently inserted and, by this document, is removed.

**EFFECTIVE DATE:** March 8, 1996.

**FOR FURTHER INFORMATION CONTACT:** For information regarding program issues: Office of Motor Carrier Research and

Standards, (202) 366-1790, For information regarding legal issues: Office of the Chief Counsel, Motor Carrier Law Division, (202)366-0834, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:** The FHWA hereby corrects 49 CFR part 383 as published on March 8, 1996, in FR Doc. 96-5373 on page 9564, in the introductory paragraph of § 383.3(d), by replacing the words “, (d)(2), and (d)(3) of this section” with the words “and (d)(2) of this section”.

Authority: 49 U.S.C. 322; 23 U.S.C. 315.

Issued on: March 27, 1996.

Edward V.A. Kussy,

Acting Chief Counsel.

[FR Doc. 96-8157 Filed 4-2-96; 8:45 am]

BILLING CODE 4910-22-P

#### **49 CFR Parts 383 and 395**

RIN 2125-AD83

#### **Exemptions From Federal Motor Carrier Safety Regulations**

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Final rule.

**SUMMARY:** The National Highway System Designation Act of 1995 creates exemptions from certain requirements of the Federal Motor Carrier Safety Regulations (FMCSRs) for employers engaged in: The transportation of agricultural commodities and farm supplies, the transportation of ground water drilling rigs, the transportation of construction materials and equipment, the operation of utility service vehicles, and the operation of snow and ice removal equipment within the boundaries of an eligible unit of local government. These exemptions relate to the hours-of-service and the commercial driver's license requirements of the regulations. This final rule amends the FMCSRs to conform to these statutory exemptions.

**EFFECTIVE DATES:** This rule is effective April 3, 1996 except § 383.3(d)(3) and §§ 395.1(n) and (o), pertaining to the transportation of snow and ice removal equipment, construction materials and equipment, and drivers of utility service vehicles, are not effective until May 26, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert F. Schultz, Jr., Office of Motor Carrier Research and Standards, (202) 366-2718, or Ms. Grace Reidy, Office of the Chief Counsel, (202) 366-6226,

Federal Highway Administration, DOT, 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 and Notices

On November 28, 1995, the President signed the National Highway Systems Designation Act of 1995, Pub. L. 104-59, 109 Stat. 568 (1995)(NHS Act). Section 345 of this Act creates five specific exemptions from certain provisions of the FMCSRs (49 CFR 390.1 *et seq.*).

The first exemption applies to drivers transporting agricultural commodities or farm supplies during planting and harvesting seasons, if the transportation is limited to the area within a 100 air mile radius of the source of the commodities or the distribution point for the farm supplies. These drivers are exempt from the maximum driving and on-duty time regulations of the FMCSRs.

The second exemption relates to drivers who are primarily involved in the transportation of ground water drilling rigs. These rigs include any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water. Current regulations forbid drivers from operating CMVs after they have been on duty a certain number of hours over a 7 or 8 day span. Specifically, if the employing motor carrier *does not* operate 7 days a week, the cutoff is 60 hours over a 7-day span; if the employing motor carrier *does* operate 7 days a week, the cutoff is either 60 hours over a 7-day span, or 70 hours over an 8-day span. The water drilling rig exception in the NHS Act permits these drivers to “restart the clock,” which means that at any point at which the driver is off-duty for 24 or more consecutive hours, the period of 7 or 8 days ends as of the beginning of that off-duty period, and the clock restarts for purposes of computing the 7 or 8 day period when the driver goes on duty again. Thus, this exemption enables the motor carrier to designate the time of day at which the period of 7 or 8 days begins. The definition of “24-hour period” in the NHS Act authorizes the carrier to designate the time of day at which the 24-hour period begins, which may vary between the various terminals from which drivers are dispatched.

The third exemption applies to drivers used primarily in the transportation of construction materials and equipment, which is defined as the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles. The driver must be en route to or from an "active construction site," which must be at a stage between initial mobilization of equipment and materials to the site, and final completion of the construction project. The construction site must also be within a 50 air-mile radius of the driver's normal work reporting location, and this exemption does not apply to the transportation of hazardous materials in a quantity requiring placarding. This exemption allows these construction drivers to restart the calculation of a 7 or 8 day period under the hours of service regulations in the same fashion as provided in the third exemption.

The fourth exemption applies these same provisions to drivers of utility service vehicles. In order to qualify as a utility service vehicle, the vehicle must be operated primarily within the service area of the utility's subscribers. In addition, it must be used in the furtherance of repairing, maintaining, or operating any physical facilities necessary for the delivery of public utility service and must be engaged in any activity necessarily related to the ultimate delivery of public utility services to the consumer, including travel to, from, upon, or between activity sites. The public utility, which includes those delivering electric, gas, water, sanitary sewer, telephone, and television service, need not be the actual owner of the vehicle in question. This exemption likewise enables utility drivers to restart the calculation of a 7 or 8 day period after the driver has been off duty for at least 24 hours consecutively.

The fifth and final exemption permits a State to exempt by waiver the requirement for a commercial driver's license (CDL) for back-up snow removal drivers employed by an eligible unit of local government. The vehicle must be operated within the boundaries of a city, town, borough, county, parish, district, or other unit of local government created pursuant to State law which has a total population of 3,000 or less. In addition, the vehicle must be operated by an employee of that local government for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting. This waiver may only be granted where the employee who ordinarily operates the vehicle is unavailable or in need of additional assistance due to

snow emergency. This provision does not affect the requirement that the customary operator of the vehicle have a CDL.

For each of the exemptions described above, other than the water well drilling exemption, the NHS Act provides the Secretary with the authority to negate or modify the exemption upon a determination, after a rulemaking proceeding, that the exemption is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles. The Federal Highway Administration (FHWA) has decided not to proceed with such a rulemaking proceeding at this time. Nevertheless, the FHWA is required by the statute to monitor the safety performance of drivers of vehicles that are subject to an exemption and report to Congress if a determination is made that public safety has been adversely affected by one of these exemptions.

The FHWA is investigating the issues surrounding maximum driving and on-duty time of truck drivers. At the Truck and Bus Summit held in March 1995, in Kansas City, Missouri, participants representing every segment of the U.S. trucking industry were assembled by the FHWA. The number one issue of concern to the participants was driver fatigue. In addition, the FHWA is also about to complete a multi-year, cooperative government-industry research effort designed to generate quantitative information about the impact of fatigue on motor carrier operations. The project will provide an empirical basis for reevaluating the restrictions on hours-of-service of CMV drivers.

In addition, the FHWA invited and received comments on the issue of waiver of the hours of service regulations for those transporting crops and farm supplies. 59 FR 63322; December 8, 1994. Docket comments were received from over 175 respondents, almost all of which were in support of the waiver concept.

#### Rulemaking Analyses and Notices

The FHWA is amending Parts 383 and 395 of the FMCSRs by proceeding directly to a final rule. The FHWA finds that prior notice and opportunity for comment are unnecessary under 5 U.S.C. 553(b)(3)(B) and that good cause exists to dispense with the 30-day delayed effective date ordinarily required under 5 U.S.C. 553(d) because these changes are statutorily mandated. The FHWA has also determined that prior notice and opportunity for comment are not required under Department of Transportation's

regulatory policies and procedures, as it is anticipated that such action would not result in the receipt of useful information.

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

These changes are being made to conform the FHWA's regulations to statutory exemptions already authorized by section 345 of the NHS Act. At this point, the FHWA is unable to predict what the impact of these changes will be. However, pursuant to the obligations imposed upon the Secretary by the NHS Act, the FHWA intends to monitor the impact of these changes.

#### Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), the FHWA has evaluated the effects of this action on small entities. This rule merely amends the FMCSRs to conform them to the exemptions granted in the NHS Act. These exemptions are likely to lessen the financial burden of complying with the relevant FMCSRs, but only for limited classes of operations. The FHWA certifies that this action will not have a significant 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 this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. As provided in section 345(b) of the NHS Act, these regulatory changes do not preempt any State laws or regulations concerning the safe operation of commercial motor vehicles. This action does not impose any additional cost or burden on any State. In addition, this rule would have no effect on the States' ability to discharge traditional State governmental functions.

#### 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 1995, 44 U.S.C. 3501-3520.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4347) and has determined that this action would not have any effect on the quality of the environment. Therefore, an environmental impact statement is not required.

Regulation Identification Number

A regulation 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 Parts 383 and 395

Commercial driver's license documents, Commercial motor vehicles, Driver's hours of service, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety, Reporting and recordkeeping requirements.

Issued on: March 26, 1996.

Rodney E. Slater,  
Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, subtitle B, chapter III, subchapter B, parts 383 and 395 as set forth below:

**PART 383—[AMENDED]**

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

Authority: 49 U.S.C. 31101 *et seq.*, 31136, and 31502; sec. 345, Pub. L. 104-59, 109 Stat. 568, 613; and 49 CFR 1.48.

2. Section 383.3(d) is amended by revising the heading and the introductory paragraph, and by adding a new paragraph (d)(3) to read as follows:

**§ 383.3 Applicability.**

\* \* \* \* \*

(d) *Exception for farmers, firefighters, emergency response vehicle drivers, and drivers removing snow and ice.* A State may, at its discretion, exempt individuals identified in paragraphs (d)(1), (d)(2), and (d)(3) of this section from the requirements of this part. The use of this waiver is limited to the driver's home State unless there is a

reciprocity agreement with adjoining States.

\* \* \* \* \*

(3)(i) A driver, employed by an eligible unit of local government, operating a commercial motor vehicle within the boundaries of that unit for the purpose of removing snow or ice from a roadway by plowing, sanding, or salting, if

(A) The properly licensed employee who ordinarily operates a commercial motor vehicle for these purposes is unable to operate the vehicle; or

(B) The employing governmental entity determines that a snow or ice emergency exists that requires additional assistance.

(ii) This exemption shall not preempt State laws and regulations concerning the safe operation of commercial motor vehicles.

\* \* \* \* \*

3. Section 383.5 is amended by adding the definition "Eligible unit of local government" in alphabetical order to read as follows:

**§ 383.5 Definitions.**

\* \* \* \* \*

*Eligible unit of local government* means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law which has a total population of 3,000 individuals or less.

\* \* \* \* \*

**PART 395—[AMENDED]**

4. The authority citation for part 395 is revised to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; sec. 345, Pub.L. 104-59, 109 Stat. 568, 613; and 49 CFR 1.48.

5. Section 395.1 is amended by revising paragraph (a) and by adding paragraphs (l), (m), (n), and (o) to read as follows:

**§ 395.1 Scope of rules in this part.**

(a) *General.* (1) The rules in this part apply to all motor carriers and drivers, except as provided in paragraphs (b) through (n) of this section.

(2) The exceptions from Federal requirements contained in paragraphs (l) through (n) do not preempt State laws and regulations governing the safe operation of commercial motor vehicles.

\* \* \* \* \*

(l) *Agricultural operations.* The provisions of § 395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in a State if such transportation:

(1) Is limited to an area within a 100 air mile radius from the source of the

commodities or the distribution point for the farm supplies, and

(2) Is conducted during the planting and harvesting seasons within such State, as determined by the State.

(m) *Ground water well drilling operations.* In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation and operations of a ground water well drilling rig, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(n) Construction materials and equipment. In the instance of a driver of a commercial motor vehicle who is used primarily in the transportation of construction materials and equipment, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(o) *Utility service vehicles.* In the instance of a driver of a utility service vehicle, any period of 7 or 8 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

6. Section 395.2 is amended by adding three definitions, alphabetically, to read as follows:

**§ 395.2 Definitions.**

\* \* \* \* \*

*Ground water well drilling rig* means any vehicle, machine, tractor, trailer, semi-trailer, or specialized mobile equipment propelled or drawn by mechanical power and used on highways to transport water well field operating equipment, including water well drilling and pump service rigs equipped to access ground water.

\* \* \* \* \*

*Transportation of construction materials and equipment* means the transportation of construction and pavement materials, construction equipment, and construction maintenance vehicles, by a driver to or from an active construction site (a construction site between mobilization of equipment and materials to the site to the final completion of the construction project) within a 50 air mile radius of the normal work reporting location of the driver. This paragraph does not apply to the transportation of material found by the Secretary to be hazardous under 49 U.S.C. 5103 in a quantity requiring placarding under regulations issued to carry out such section.

\* \* \* \* \*

*Utility service vehicle* means any commercial motor vehicle:

(1) Used in the furtherance of repairing, maintaining, or operating any

structures or any other physical facilities necessary for the delivery of public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, and television cable or community antenna service;

(2) While engaged in any activity necessarily related to the ultimate delivery of such public utility services to consumers, including travel or movement to, from, upon, or between activity sites (including occasional travel or movement outside the service area necessitated by any utility emergency as determined by the utility provider); and

(3) Except for any occasional emergency use, operated primarily within the service area of a utility's subscribers or consumers, without regard to whether the vehicle is owned, leased, or rented by the utility.

[FR Doc. 96-8158 Filed 4-2-96; 8:45 am]

BILLING CODE 4910-22-P

## NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

### 49 CFR Part 533

[Docket No. 94-20; Notice 4]

RIN 2127-AF16

### Light Truck Average Fuel Economy Standard, Model Year 1998

**AGENCY:** National Highway Traffic Safety Administration (NHTSA).

**ACTION:** Final rule.

**SUMMARY:** This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 1998. The issuance of the standard is required by statute. Pursuant to section 330 of the fiscal year (FY) 1996 DOT Appropriations Act, the light truck standard for MY 1998 is 20.7 mpg.

**DATES:** The amendment is effective May 3, 1996. The standard applies to the 1998 model year. Petitions for reconsideration must be submitted within 45 days of publication.

**ADDRESSES:** Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** Mr. Otto G. Matheke, III, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202-366-5263).

## SUPPLEMENTARY INFORMATION:

### I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973-74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, NHTSA shall consider four criteria: technological feasibility, economic practicability, the effect of other motor vehicle standards of the Government on fuel economy, and the need of the United States to conserve energy. Pursuant to this authority, the agency has set light truck CAFE standards through MY 1997. See 49 CFR 533.5(a). The standard for MY 1997 is 20.7 mpg. 59 FR 16312 (April 6, 1994).

NHTSA began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the Federal Register. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

Subsequent to reviewing the comments submitted in response to the ANPRM, the agency decided to defer rulemaking for MY's 1999-2006. NHTSA thereafter issued a notice of proposed rulemaking (NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg. 61 FR 145 (January 3, 1996). On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for

Fiscal Year 1996 was enacted. Pub. L. 104-50. Section 330 of that Act provides:

None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations \* \* \* prescribing corporate average fuel economy standards for automobiles \* \* \* in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for NHTSA to set the MY 1998 standard is approximately April 1, 1996. However, the agency cannot promulgate such a standard without the expenditure of funds, and it may not spend any funds in violation of the terms of section 330 of the FY 1996 Appropriations Act. Therefore, to ascertain the limits of its authority to promulgate CAFE standards during FY 1996, NHTSA must interpret the phrase "differs from standards promulgated for such automobiles prior to enactment of this section."

In the agency's view, the most compelling meaning of the phrase is to preclude the expenditure of funds to adopt a CAFE standard for any model year at any level other than the level of the CAFE standards previously established for MY 1997; i.e., 20.7 mpg for light trucks and 27.5 mpg for passenger cars.

The agency examined the legislative history of section 330 to seek additional insight into Congressional intent. Section 330 was reported out of the House Committee on Appropriations in its enacted form as part of H.R. 2002. The original Committee print of the House Report to accompany H.R. 2002 stated, at page 112, that the section precluded NHTSA from prescribing CAFE standards that "differ from those previously enacted:"

The Committee has adopted a general provision (Sec. 330) that prohibits NHTSA or the Department from prescribing corporate average fuel economy standards for automobiles that differ from those previously enacted.

This language was modified somewhat in the final version of the House report to accompany H.R. 2002, but repeated the command that CAFE standards promulgated in FY 1996 should not "differ from those previously enacted." The report stated:

The Committee has adopted a general provision (Sec. 330) that prohibits funds to be used to prepare, prescribe or promulgate corporate average fuel economy standards for automobiles that differ from those previously enacted. The limitation does not preclude the Secretary of Transportation, in order to meet