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Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

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

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 387, 390, 391, 392, 395, 396, and 397

[FHWA Docket No. MC-97-3]

RIN 2125-AD72

Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document requests comments on the intent of the FHWA to remove, amend, and redesignate certain regulations concerning financial responsibility; general applicability and definitions; accident recordkeeping requirements; qualifications of drivers; driving of commercial motor vehicles; hours of service of drivers; inspection, repair, and maintenance; and the transportation of hazardous materials. These regulations are obsolete, redundant, unnecessary, ineffective, burdensome, more appropriately

regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. This action is consistent with the FHWA's Zero Base Regulatory Review and the President's Regulatory Reinvention Initiative.

DATES: Comments must be received no later than March 28, 1997.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC-10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard/envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Peter C. Chandler, Office of Motor Carrier Research and Standards, (202) 366-5763, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 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:

Background

The first Federal Motor Carrier Safety Regulations (FMCSRs) were promulgated in 1937. The FMCSRs have been amended many times during the past 59 years. In September 1992, the FHWA began a comprehensive multi-year project to develop modern, uniform safety regulations that are up to date, clear, concise, easier to understand, and more performance oriented. This project has been named the Zero Base Regulatory Review.

Upon the announcement of the first four public outreach sessions in the Federal Register on August 18, 1992 [57 FR 37392], the FHWA opened a public docket, MC-92-33, to allow interested parties who were unable to attend an outreach session the opportunity to submit comments and recommendations for improvement of the FMCSRs. After the comment period closed on April 1, 1993, and the comments were analyzed, the FHWA published a notice of proposed rulemaking (NPRM) in the Federal Register on January 10, 1994 [59 FR 1366], and a final rule on November 23, 1994 [59 FR 60319], to remove obsolete or redundant

regulations and appendices from the FMCSRs. On July 28, 1995 [60 FR 38739], the FHWA published a final rule which made technical corrections to keep the FMCSRs accurate and up to date. These actions were in response to the Zero Base Regulatory Review.

This rulemaking would remove, amend, and redesignate other regulations and would amend the single regulation which was proposed to be removed in the January 10, 1994, NPRM and was not removed in the November 23, 1994, final rule. The FHWA requests comments on these proposed regulatory changes and recommendations from all interested persons on additional regulatory changes to improve the FMCSRs. The following is a discussion of the proposed amendments to and deletions from the FMCSRs arranged by part and section of the FMCSRs except for divided record authority which is discussed first because the provision is mentioned in two parts of the FMCSRs.

Divided Record Authority

A motor carrier may maintain driver qualification files, records of duty status, and receipts for instructions and documents for drivers of motor vehicles transporting Division 1.1, 1.2, or 1.3 (explosive) materials at a regional or terminal office if the motor carrier has requested and been approved by the Regional Director of Motor Carriers to do so in accordance with §§ 391.51(g) and 395.1(g). Upon approval by the Regional Director of Motor Carriers, the current policy of the FHWA is, generally, to allow a motor carrier to maintain records and documents at only one location per State. Otherwise, records required by subchapter B of title 49, Code of Federal Regulations, must be maintained at a motor carrier's principal place of business except for inspection, repair, and maintenance records which must be maintained where the motor vehicle is either housed or maintained, and the records of a motor carrier's alcohol and controlled substances use and testing program which must be made available for inspection at the principal place of business within two business days after a request has been made by an authorized representative of the FHWA. On November 17, 1993 [58 FR 60734], the FHWA issued regulatory guidance that allows inspection, repair, and maintenance records to be maintained at a location of the motor carrier's choice if a motor vehicle is not housed or maintained at a single location, but these records must be made available within two business days upon request of the FHWA in all cases (§ 396.3, question 5). At the same time, the

FHWA issued regulatory guidance that allows supporting documents for records of duty status and time records for 100 air-mile radius drivers to be maintained at locations other than the principal place of business provided these documents and records can be forwarded to the principal place of business within two business days upon request by a special agent or authorized representative of the FHWA (§ 395.8, question 10 and § 395.1, question 8, respectively). Thus, the FMCSRs and the regulatory guidance establish dissimilar recordkeeping requirements related to the location of required records. The FHWA proposes to establish uniform recordkeeping requirements related to the location of required records.

Specifically, the FHWA proposes to allow motor carriers with multiple terminals or offices to maintain all records required by subchapter B at regional offices or driver work-reporting locations provided records can be produced at the principal place of business or other specified locations within 48 hours upon request by a special agent or authorized representative of the FHWA. Saturdays, Sundays, and Federal holidays would be excluded from the computation of the 48-hour period of time. The FHWA believes that 48 hours is a reasonable period of time to produce records at the principal place of business in consideration of the availability of overnight mail service and facsimile and other electronic transmission equipment. Motor carriers with a single place of business would not be allowed 48 hours to produce records when requested. A motor carrier with multiple terminals or offices would be required to make its records maintained at a given location available for inspection immediately upon request by an FHWA representative who is present at that location. For motor carriers with multiple terminals or offices, a request to forward files, documents, and records maintained at driver work-reporting locations to the principal place of business or other specified location would generally be limited to a specific sample or selection chosen by the FHWA representative. However, all files, documents, and records maintained at regional or terminal offices or driver work-reporting locations may be requested to be forwarded to the principal place of business or other specified location in some cases.

In an effort towards uniformity, the FHWA proposes to make the allowances and limitations for all recordkeeping requirements in subchapter B similar.

The FHWA believes there is no sound reason to allow some, but not all, required records to be maintained at locations other than the principal place of business. One thrust of the Zero Base Regulatory Review is to make the FMCSRs more performance oriented to provide motor carriers with increased flexibility in achieving compliance. The proposed removal of divided record authority is a good example of this goal. The FHWA proposes to eliminate divided record authority by removing §§ 391.51(g) and 395.1(g), amending §§ 391.51(f), 395.8(k)(1), and 397.19(b), and by codifying a flexible rule on record retention for motor carriers with multiple terminals or offices in § 390.29. The FHWA also proposes to amend the definition of *principal place of business* in § 390.5 to mean a single location where records required by parts 382, 387, 390, 391, 395, 396, and 397 of this subchapter will be made available for inspection within 48 hours after a request has been made by a special agent or authorized representative of the FHWA.

Part 387—Minimum Levels of Financial Responsibility for Motor Carriers

Part 387 prescribes the minimum levels of financial responsibility required to be maintained by motor carriers of property and passengers. The purpose of these regulations is to ensure that motor carriers maintain an appropriate level of financial responsibility for motor vehicles operated on public highways.

Subpart A—Motor Carriers of Property

Definitions

For-Hire Carriage

There has been confusion within the motor carrier and insurance industries about whether a for-hire motor carrier of a commodity which is exempt from the economic regulations of the Interstate Commerce Commission (ICC), whose remaining functions have now been divided between the Surface Transportation Board of the Department of Transportation and the FHWA, is subject to the requirements in part 387. Under the statutory authority provided by 49 U.S.C. 31139, the Secretary of Transportation is required to prescribe regulations to require minimum levels of financial responsibility for the transportation of property for compensation by motor vehicles in interstate commerce. An exempt commodity motor carrier of property is subject to part 387 when operating a motor vehicle with a gross vehicle weight rating of 10,000 pounds or more in interstate or foreign commerce. The

FHWA, therefore, proposes to amend the definitions in § 387.5 to specify that *For-hire carriage* means transportation of property by a common, contract, or exempt commodity motor carrier of property.

Motor Carrier

The FHWA proposes to amend the definition of *motor carrier* to a for-hire or private motor carrier of property in order to make it clear that the term includes an exempt commodity motor carrier of property.

Subpart B—Motor Carriers of Passengers

Applicability

On November 17, 1993 [58 FR 60734], the FHWA issued regulatory guidance that addressed the applicability of the financial responsibility requirements to school bus transportation (§ 387.27, question 4). Specifically, for-hire contractors providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid for by the school district are not subject to the financial responsibility requirements. The FHWA proposes to codify this regulatory guidance in § 387.27(b)(4).

Definitions

For-Hire Carriage

On November 17, 1993 [58 FR 60734], the FHWA issued regulatory guidance which clarified the meaning of for-hire passenger transportation (§ 390.5, question 8). To codify this interpretative guidance, the FHWA proposes to amend the definition of *For-hire carriage* in § 387.29. The definition will make it clear that the term means passenger transportation which is generally available to the public at large and is performed for a commercial purpose by a motor carrier which is directly or indirectly compensated, monetarily or otherwise, for the transportation service provided.

Motor Carrier

The FHWA proposes to amend the definition of *motor carrier* to make it clear that the term includes a for-hire motor carrier of passengers which was not subject to economic regulation by the ICC. *Motor carrier* would be amended to mean a person providing for-hire carriage.

Motor Common Carrier

Motor Contract Carrier

The FHWA proposes to remove the terms *motor common carrier* and *motor contract carrier* because the terms would not be used in part 387 after the

amendment of the definition of motor carrier proposed here.

Part 390—Federal Motor Carrier Safety Regulations; General

Part 390 establishes general applicability, definitions, general requirements, and information pertaining to motor carriers and drivers subject to the FMCSRs.

Definitions

Accident

The FHWA proposes to clarify the meaning of the term “public road” in the definition of *accident* by the addition of a parenthetical phrase. The term “public road” is inclusive of privately owned roads or way which are accessible to the general public such as those within and around stadiums, arenas, shopping malls, residential developments, private schools, parking garages and lots, etc. Therefore, accessibility to the public, not the identity of the owner, is the major factor which determines whether a road or way is public. The FHWA proposes to add the phrase “(inclusive of privately owned way which are accessible to the general public)” after the term “public road” in the definition of *accident* in § 390.5.

The current definition of the term *accident* would be amended by deleting paragraph (2)(iii), an occurrence in the course of the operation of a passenger car or a multipurpose passenger vehicle (as defined in 49 CFR 571.3) by a motor carrier that is not transporting passengers for hire or hazardous materials of a type and quantity that require the motor vehicle to be marked or placarded in accordance with 49 CFR 177.823. A passenger car or a multipurpose passenger vehicle is limited by the definitions in § 571.3 to a motor vehicle designed for carrying 10 persons or less. The term *accident* is limited by definition to an occurrence involving a commercial motor vehicle. “Commercial motor vehicle” is limited by the definition in § 390.5 to a motor vehicle with a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds, a motor vehicle designed to transport more than 15 passengers including the driver, or a motor vehicle used to transport hazardous materials in a quantity requiring placarding. Therefore, paragraph (2)(iii) would only apply to two types of motor vehicles involved in an *accident*: (1) A motor vehicle which has a gross vehicle weight rating or a gross combination weight rating of 10,001 or more pounds, is designed to carry 10 persons or less,

and is involved in the private transportation of passengers; and (2) a passenger car or a multipurpose passenger vehicle operated by a motor carrier that is subject to the accident recordkeeping requirements in § 390.15. The exclusion of these types of motor vehicles from the definition of the term *accident* is unnecessary. The FHWA proposes to remove paragraph (2)(iii) from the definition of the term *accident*.

Commercial Motor Vehicle

The definitions for CMV in §§ 383.5 and 390.5 are written differently in terms of designed passenger capacity and the transportation of hazardous materials, but they have the same meaning. There is no reason for two definitions that have no functional difference. The FHWA, therefore, proposes to amend paragraphs (b) and (c) of the definition of CMV in § 390.5 to read the same as paragraphs (c) and (d), respectively, of the definition of CMV in § 383.5.

Interstate Commerce

The FHWA proposes to add language to the definition of the term *interstate commerce* to clarify that transportation within a single State constitutes interstate commerce if such transportation is the continuation of a through movement which has originated from outside the State or is destined to go outside the State. Whether transportation of property qualifies as interstate commerce depends on the essential character of the movement which is determined by the shipper's fixed and persisting intent at the time of shipment. This intent is ascertained by examining all of the facts and circumstances surrounding the transportation. Consequently, the motor carrier that performs an intrastate portion of an interstate movement is engaged in interstate commerce.

Regularly Employed Driver

The FHWA proposes to replace the term *regularly employed driver* in § 390.5 with the term *single-employer driver* because the FHWA believes that the latter term is more consistent with the intended meaning. In addition, the FHWA proposes to clarify that this proposed term includes a driver who drives a CMV for only one motor carrier on an intermittent, casual, or occasional basis.

Accident Recordkeeping Requirements

Section 390.3(f) provides general exemptions from the FMCSRs for certain types of operations and transportation. Section 390.3(f)(2) exempts from the FMCSRs, unless

otherwise specifically provided, transportation performed by the Federal government, a State, any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States. However, § 390.3(f)(2) does specifically make the recordkeeping requirements of § 390.15(b) applicable to these governmental entities when engaged in the interstate charter transportation of passengers. The information required to be maintained by § 390.15(b) comprises the accident register. The only other regulations in subchapter B of title 49 which may be applicable to a government entity engaged in the interstate charter transportation of passengers are the Controlled Substances and Alcohol Use and Testing standards in part 382 and the CDL standards in part 383. It makes little sense to require government entities engaged in the interstate charter transportation of passengers to maintain an accident register because these entities are not subject to FHWA compliance reviews and do not receive accident countermeasure assistance. Therefore, the FHWA proposes to remove this recordkeeping requirement from § 390.3(f)(2).

Part 391—Qualifications of Drivers

The primary purpose of part 391 is to ensure that operators of CMVs meet minimum physical qualifications and possess the necessary knowledge, skills, and abilities to operate CMVs safely.

Qualification of Drivers

Driver qualification standards are contained in § 391.11 of the FMCSRs. These standards are minimum requirements that a person must meet to be qualified to drive a CMV in interstate commerce. The driver qualification standards are designed to protect the safety of the motoring public by not permitting a person to drive a CMV who lacks the essential abilities to perform his/her duties safely.

Paragraphs (4) and (5) in § 391.11(b) require a driver to be able to determine whether the cargo he/she transports has been properly distributed and secured and to be familiar with methods and procedures for securing cargo in or on the CMV that he/she drives. Section 383.111(d) requires CMV operators to have knowledge of the principles and procedures for the proper handling of cargo in order to obtain a CDL. Section 392.9(a) prohibits a person from driving a CMV and prohibits a motor carrier from requiring or permitting a person to drive a CMV unless the CMV's cargo is properly distributed and adequately

secured. The FHWA, therefore, proposes to remove §§ 391.11(b)(4) and (5) because these paragraphs are redundant.

The FHWA proposes to remove the completion and furnishing of an application for employment as a CMV driver as driver qualification standards. The FHWA believes that the completion and furnishing of an employment application are not driver qualification standards, but rather necessary and important actions which enable motor carriers to evaluate the competence of applicants for CMV driver positions. The FHWA believes that the failure of a CMV driver to complete and furnish an application to his/her employing motor carrier should not result in the CMV driver being unqualified. The FHWA, therefore, proposes to remove § 391.11(b)(11). This is not intended to affect the responsibility of CMV drivers to complete and furnish the motor carriers that employ them with employment applications containing certain information as required by § 391.21.

Record of Violations

In 1994, the FHWA proposed to remove the requirements related to the record of violations in 49 CFR 391.27 and 391.51(b)(4) [59 FR 1366, January 10, 1994]. In comments to this proposal, a recommendation was made to replace these requirements with similar ones involving an annual inquiry addressed to the State licensing agency regarding drivers' driving records. The FHWA took no action on the record of violations provisions when the final rule was adopted (59 FR 60319, November 23, 1994), but promised further evaluation of the comments.

In December 1994, the National Transportation Safety Board recommended (H-94-12) that the FHWA "immediately revise the Federal Motor Carrier Safety Regulations to require that motor carriers check a driver's record, both initially and at least annually, with State licensing agencies where the driver works and is licensed." The initial inquiry into a driver's driving record to the State licensing agency is already required by § 391.23.

The FHWA now proposes to replace the requirements related to the record of violations with similar requirements involving an annual inquiry to the State licensing agency regarding drivers' driving records. Interested persons are invited to send comments concerning the paperwork burden of this proposal to the Office of Management and Budget (OMB). See the Paperwork Reduction Act section below under Rulemaking

Analyses and Notices for further information.

The sections to be removed or amended by this proposal include §§ 391.11(b)(8); 391.25; 391.27; 391.51(b)(3) and (b)(4); 391.51(h)(2) and (h)(3); 391.63(a)(3) and (a)(4); 391.67(a); and 391.68(a). This replacement would create a more effective means for the motor carrier to obtain information about its drivers' moving violations during the previous 12 months because it does not rely upon the memory or honesty of the driver. This amendment would further highway safety by requiring the motor carrier to better verify that its drivers have not lost their driving privileges and have not been otherwise disqualified to drive a CMV. It would also provide a way for a motor carrier to check whether its drivers who are subject to the CDL standards have reported their convictions, disqualifications, and license suspensions, revocations, and cancellations as required by §§ 383.31(a) and 383.33. Many motor carriers or their insurance providers already make such inquiries at least once per year, which is good evidence that the technique is useful in a safety program.

Road Test

Section 391.31 prohibits a driver from driving a CMV unless he/she has successfully completed a road test which is administered by the prospective employing motor carrier. A motor carrier may accept a driver's license as equivalent to a road test if such driver-applicant completed a road test in the type of CMV that the motor carrier intends to assign to him or her, as part of the licensing process. A motor carrier may also accept a certification of road test issued to the driver-applicant within the preceding three years. In any event, a driver-applicant must demonstrate the ability to safely operate the type of CMV to which he/she will be assigned.

In order to obtain a CDL, a driver must pass a driving skills test in a CMV which is comparable to the CMV that the driver expects to operate. At the discretion of a State, either a driving record and previous passage of an acceptable driving skills test or a driving record in combination with certain driving experience may be substituted for the driving skills test (49 CFR 383.77). In all cases, a driver must demonstrate the ability to operate a certain type of CMV safely.

The road test requirements in part 391 are redundant for those driver-applicants who are required to possess a commercial driver's license or who successfully completed a road test, as

part of the process of obtaining some other type of license or as required by an employer, in a CMV comparable to the vehicle they own or will drive. Motor carriers are in a better position than the FHWA to decide whether a road test remains an effective method for determining whether driver-applicants who are subject to the driver qualification standards in part 391, but who are not required to possess a commercial driver's license, can safely operate their CMVs. The choice should be made by the prospective employer based on the available information, such as the nature and extent of a driver-applicant's driving experience; the type of driver's license that the driver-applicant possesses; the requirements that the driver-applicant had to meet for such license to be issued; the number and severity of convictions for violations of motor vehicle laws; any denial, revocation, or suspension of any driver's license; and information provided by previous employers. Such information must be obtained by the new employer [49 CFR 391.21 and 391.23]. The removal of the road test would not affect the requirement under 49 CFR 391.11(b)(3) that a driver be able to operate the type of CMV safely that he or she drives by reason of experience, training, or both.

The removal of the requirements related to the road test would reduce the paperwork burden upon motor carriers and make the driver qualification requirements more performance oriented. One thrust of the Zero Base Regulatory Review is to allow motor carriers more flexibility in making their operations safe and achieving compliance.

Motor carriers that want to continue giving road tests to their driver-applicants might prefer the retention of a regulatory requirement. This is not sufficient reason to retain the road test provisions. Motor carriers have long been allowed to require or enforce more stringent safety or health standards than those required by the FMCSRs [49 CFR 390.3(d)].

The FHWA proposes to remove the requirements related to the road test. The sections affected by this proposed removal include §§ 391.11(b)(10), 391.31, 391.33, 391.49(d)(5), 391.51(c)(4), 391.51(d)(2), 391.61, 391.67(c), 391.68(c), 391.69, and 391.73. The FHWA, however, proposes to retain the requirement in § 391.49(d)(5) that a road test be administered to a driver who applies for a waiver of physical disqualification. The FHWA believes that the agency should consider only those driver applicants who have successfully completed a road test

administered by the motor carrier co-applicant or other appropriate person, for a waiver of physical disqualification.

Driver Qualification Files

A driver qualification file contains all required documentation that a driver is qualified to drive a CMV in interstate commerce. These recordkeeping requirements facilitate enforcement of the driver qualification standards by enabling FHWA officials to check compliance quickly. Section 391.51(b)(5) also requires a driver qualification file to include any other matter which relates to the driver's qualifications or ability to drive a CMV safely. The FMCSRs offer no examples or further clarification of what these additional records or documents might include. A recordkeeping requirement for a nonspecific record is not necessary. Furthermore, the rules in part 391 establish minimum qualifications for CMV drivers, and motor carriers are not prohibited from establishing more stringent driver qualification standards. In any case, a motor carrier is permitted to maintain any document in a driver qualification file regardless of the document's relation to driver qualifications. The FHWA proposes to remove § 391.51(b)(5) because it is unclear and unnecessary.

Section 391.51 includes exemptions for several types of drivers who are covered more broadly in Subpart G—Limited Exemptions. The driver qualification file requirements would be easier to understand if § 391.51 contained only the general requirements. A motor carrier could easily determine the driver qualification requirements for a specific driver by comparing § 391.51 with subpart G. The FHWA proposes to amend § 391.51 to exclude all but the general requirements for driver qualification files. This proposal integrates § 391.51(c) into § 391.51(b) and removes paragraphs (d) and (e) of § 391.51.

Intermittent, Casual, or Occasional Drivers

Section 391.63 contains a limited exemption from certain driver qualification requirements for a motor carrier which employs an intermittent, casual, or occasional driver. That term is defined in § 390.5 as a driver who in any period of seven consecutive days is employed or used by more than a single motor carrier. A driver who is employed by a single motor carrier meets the definition of a regularly employed driver in § 390.5 even though he or she might work only intermittently or occasionally. In an effort to promote clarity, the FHWA proposes to replace

the confusing term intermittent, casual, or occasional driver in § 390.5 and part 391 with the term multiple-employer driver.

Drivers Furnished by Other Motor Carriers

Section 391.65 contains a limited exemption from the generally applicable driver qualification requirements for a motor carrier that employs a driver who was furnished by another motor carrier if the furnishing motor carrier certifies in writing that the driver is fully qualified to drive a CMV. This written statement, commonly called a qualification certificate, must be substantially in accordance with the form in § 391.65(a)(2). A motor carrier which certifies a driver's qualification is required under § 391.65(c)(2) to recall the unexpired certificate carried by the driver immediately upon learning that the driver is no longer qualified under the regulations in part 391. It is unreasonable to require a motor carrier to recall a qualification certificate because the carrier's only option is to request the driver to return the certificate. If the driver is uncooperative or no longer employed by the motor carrier, there is no obvious means of securing the return of a certificate of qualification.

The FHWA, therefore, proposes to remove § 391.65(c)(2). Instead, a new version of § 391.65(c) would declare that the qualification certificate is no longer valid when the driver leaves the employment of the motor carrier that issued it or is no longer qualified under part 391. The FHWA also proposes to require that a motor carrier which employs a driver furnished by another motor carrier contact the motor carrier which issued the qualification certificate to verify its validity. This would prevent a driver from obtaining employment through use of an invalid or false qualification certificate. The FHWA does not propose to require a motor carrier to make a written record of this contact. This is not intended to lessen the motor carrier's responsibility to ensure that the driver is fully qualified under the regulations in part 391. Interested persons are invited to send comments concerning the burden of this proposed requirement to obtain information, to the OMB. See the Paperwork Reduction Act section below under Rulemaking Analyses and Notices for further information.

Drivers Operating in Hawaii

Section 391.69 provides a limited exemption from certain driver qualification requirements for drivers who have been regularly employed by

motor carriers operating in the State of Hawaii continuously since before April 1, 1975. Section 391.61 provides a limited exemption from the same requirements for drivers who have been regularly employed by motor carriers continuously since before January 1, 1971. For a motor carrier operating in the State of Hawaii, there is considerable overlap between these exemptions. The only difference is that drivers in Hawaii need 4¼ fewer years of continuous employment to qualify for the exemption. Since very few, if any, Hawaiian drivers fall into this category, § 391.69 is largely redundant and the FHWA proposes to remove it. The FHWA requests comments from motor carriers operating in the State of Hawaii as to whether they employ a substantial number of drivers who have been regularly employed for a continuous period which began before April 1, 1975, but on or after January 1, 1971.

Intrastate Drivers of Vehicles Transporting Class 3 Combustible Liquids

Section 391.71 contains a limited exemption from certain driver qualification requirements for drivers who have been regularly employed by motor carriers continuously since July 1, 1975, and who drive a CMV transporting Class 3 combustible liquids in intrastate commerce. On January 24, 1974 [39 FR 2768], Hazardous Materials Docket No. HM-102 established the term combustible liquids which resulted in drivers and motor vehicles engaged in intrastate operations performed by interstate motor carriers becoming subject to the FMCSRs for the first time. Several commenters requested that a permanent exemption be granted from the requirements of part 391, but provided no data in support thereof. Nonetheless, a limited exemption was provided to address the commenters' concerns and minimize the paperwork burden upon the affected intrastate operations of interstate motor carriers, which generally include the local delivery of fuel oil and heating oil.

Section 397.2, adopted in 1971, requires that a motor carrier or other person to whom part 397 applies comply with the FMCSRs (49 CFR parts 390 through 397) when the person is transporting hazardous materials requiring the motor vehicle to be marked or placarded. Section 397.2 was issued jointly under the Explosives and Other Dangerous Articles Act (EODAA) [formerly 18 U.S.C. 831-835] and the Interstate Commerce Act (ICA) [now 49 U.S.C. 31502]. The scope of the EODAA was considered to be broader than that of the ICA and to reach the intrastate

operations of an interstate motor carrier. The EODAA was repealed by the Hazardous Liquid Pipeline Safety Act of 1979 (HLPESA) [49 U.S.C. 60101–60125]. The provisions of the EODAA which were in part the authority for § 397.2 were not continued in the HLPESA.

Section 177.804 of the Hazardous Materials Regulations (HMRs) requires motor carriers and other persons subject to 49 CFR part 177 to comply with the FMCSRs (49 CFR parts 390 through 397) to the extent those regulations apply. Section 177.804 was issued under the authority of the Hazardous Materials Transportation Act (HMTA) [49 U.S.C. 5101 *et seq.*] as a final rule without notice or opportunity for comment. The purpose of the issuance of § 177.804 was to make civil penalties and other enforcement tools of the HMTA applicable to hazardous materials carriers already subject to the FMCSRs. The issuance of § 177.804 merely reissued, under new authority, regulations already in effect. Section 177.804 incorporated the FMCSRs by reference; therefore, the applicability and preemptive effects of the FMCSRs, as reissued under the HMTA, were not changed.

Consequently, no authority exists to support application of parts 390 through 399 of the FMCSRs to a motor carrier or driver who operates a CMV transporting hazardous materials in intrastate commerce whether or not the motor carrier has an interstate operation. Therefore, the FHWA proposes to remove § 391.71. However, the Controlled Substances and Alcohol Use and Testing standards in part 382 and the CDL standards in part 383 apply to drivers and their employers who operate CMVs transporting hazardous materials in a quantity requiring placarding, in intrastate commerce. The financial responsibility standards in part 387 continue to apply to motor carriers operating motor vehicles transporting certain types of hazardous materials, hazardous substances, and hazardous waste in certain types of containment systems, in intrastate commerce.

Private Motor Carrier of Passengers (Business)

Section 391.73 contains a limited exemption from certain driver qualification requirements for a driver who has been a regularly employed driver of a private motor carrier of passengers (business) since July 1, 1994, and continues to be so employed by that motor carrier. With the proposed removal of §§ 391.69 and 391.71, the limited exemptions in subpart G of part 391 would appear in a logical sequence if the limited exemption for drivers of

private motor carriers of passengers (business) immediately followed the limited exemption for drivers of private motor carriers of passengers (nonbusiness) in § 391.68. The FHWA proposes to move § 391.73 to § 391.69.

Part 392—Driving of Motor Vehicles

The primary purpose of part 392 is to ensure that CMVs are driven in a safe manner.

Equipment, Inspection and Use

Section 392.7 prohibits a CMV from being driven unless the driver is satisfied that nine specified parts and accessories are in good working order. Section 396.13(a) requires a driver to be satisfied that the CMV is in safe operating condition before driving the CMV. One of these duplicative sections should be removed. The FHWA believes that this requirement is more appropriately contained in § 396.13(a) because it addresses equipment condition more than safe driving.

Section 392.7 also requires a driver to use or make use of the same nine specified parts and accessories when and as needed. All of these parts and accessories including the service brakes, tires, horn, windshield wipers, etc. are essential vehicular components which drivers necessarily use. It is redundant for the FMCSRs to require their use by a driver when and as needed. Therefore, the FHWA proposes to remove § 392.7.

Emergency Equipment; Inspection and Use

Part 393 prohibits the operation of a CMV that is not equipped in accordance with the requirements and specifications therein. Section 393.95 requires all power units to be equipped with specific emergency equipment. Section 392.8 prohibits a CMV from being driven unless the driver is satisfied that the emergency equipment required by § 393.95 is in place and ready for use. Section 396.11 requires a driver to prepare a driver vehicle inspection report (DVIR), which covers emergency equipment, at the completion of each day's work on each motor vehicle operated. If the emergency equipment is found to be defective or missing, this must be shown on the DVIR. Section 396.13 requires the next driver to review the last DVIR and sign it, if defects or deficiencies were noted by the previous driver, to acknowledge that the DVIR was reviewed and that there is a certification that the required repairs have been completed.

Section 392.8 also requires a driver to use or make use of the emergency equipment required by § 393.95 when

and as needed. Section 393.95 requires all power units to be equipped with a fire extinguisher (except a driven unit in a driveaway-towaway operation), a spare fuse or other overload protection device if the devices used cannot be reset, for each kind and size used, and one of several combinations of warning devices depending on the date the power unit was equipped with the warning devices. Section 392.22(b) stipulates how warning devices must be placed when a CMV is stopped upon the traveled portion or shoulder of a highway and, therefore, covers how warning devices must be used when needed. It is readily evident to a driver when the use of a fire extinguisher or spare fuse would be necessary in an emergency. It is unnecessary for the FMCSRs to impose a general requirement upon drivers to use or make use of a fire extinguisher or spare fuse when and as needed. The FHWA proposes to remove § 392.8 because the requirement that emergency equipment be in place, ready for use, and used when and as needed is adequately addressed by other sections of the FMCSRs.

Drivers of Trucks and Truck Tractors

Section 392.9(b) requires a driver of a truck or truck tractor to assure himself/herself that the motor vehicle's cargo is properly loaded and secured before driving, inspect the motor vehicle's cargo and its securement within the first 25 miles of driving, reexamine the cargo and its securement at a change of duty status or after 3 hours or 150 miles of driving, and make any necessary adjustments to the cargo or load securing devices. These requirements are highly prescriptive and enforcement of them is laborious and burdensome. The regulations for protection against shifting or falling cargo are contained in subpart I of part 393. Section 392.9(a) prohibits a CMV from being driven unless the CMV's cargo is properly distributed and adequately secured in accordance with subpart I of part 393. Section 392.9(b) is therefore unnecessary. The FHWA proposes to remove § 392.9(b) to provide motor carriers the flexibility to develop their own policies and methods to ascertain that a CMV's cargo is properly distributed and adequately secured in accordance with subpart I of part 393. The proposed removal of § 392.9(b) would not lessen the responsibility of a motor carrier or driver to ensure a CMV's cargo is distributed and secured in a suitable manner to prevent shifting and falling.

Section 392.9(c)(1) prohibits a person from driving a bus unless all standees

are rearward of the standee line. This prohibition would be more appropriately located in subpart G, Prohibited Practices, of part 392 because it addresses unsafe driving more than safe loading. The FHWA proposes to move § 392.9(c)(1) to § 392.62 and entitle the section "Driving of buses, standee line or bar."

Section 392.9(c)(2) prohibits a person from driving a bus unless all aisle seats in a bus conform to the requirements of § 393.91. Section 393.91 requires aisle seats in a bus to be securely fastened to the motor vehicle and to automatically fold and leave a clear aisle when unoccupied. Section 393.1 prohibits a CMV from being operated unless it is equipped in accordance with the requirements and specifications contained therein. The FHWA proposes to remove § 392.9(c)(2) because it is redundant.

Section 392.9(c)(3) prohibits a person from driving a bus unless the baggage, freight, and express on the bus is stowed and secured in a safe manner. The FHWA proposes to move § 392.9(c)(3) to § 392.9(b).

Hearing Aid To Be Worn

Section 392.9b requires a driver whose hearing meets the minimum standards in § 391.41(b)(11) only when wearing a hearing aid to wear an operating hearing aid while driving and possess a spare power source. However, if a driver meets the hearing standards only when wearing a hearing aid, § 391.43(g)(1) requires the medical examiner to mark the appropriate place, or to write in the statement "Qualified only when wearing a hearing aid," on the medical examiner's certificate. Therefore, a driver who meets the hearing standards only when wearing a hearing aid is not medically qualified to drive a CMV in interstate commerce when not wearing a hearing aid. A driver who is subject to and does not meet the medical qualification standards is prohibited from driving a CMV in interstate commerce.

Section 392.9b is duplicative of the driver qualification requirements in part 391. The FHWA wants to avoid repetition in the FMCSRs. In addition, the carriage of extra equipment, including spare power sources for hearing aids, to ensure against possible contingencies is best addressed by company policy. The removal of § 392.9b would not affect the requirement that a driver comply with the hearing standards when operating a CMV in interstate commerce. The FHWA proposes to remove § 392.9b.

Railroad Grade Crossing; Stopping Required

Section 392.10 requires the driver of a cargo tank motor vehicle or a CMV transporting passengers, chlorine, or hazardous materials requiring placarding or marking to stop the CMV and ascertain that no train is approaching before crossing a railroad grade. Section 392.10 also prohibits a driver of these types of CMVs from shifting gears when crossing the tracks. The National Transportation Safety Board (NTSB) recommended that the FHWA amend § 392.10 to require CMVs transporting hazardous materials requiring placarding to stop prior to crossing a railroad grade with a warning device only when the device is activated to warn drivers of an approaching train. A warning device includes a functioning highway traffic signal, gate, or a device that uses sound or light(s) to warn drivers of an approaching train. This recommendation would make § 392.10 consistent with the Uniform Vehicle Code. It is not necessary for CMVs to stop immediately prior to crossing a railroad grade when a warning device is present and not activated. The FHWA, therefore, proposes to amend § 392.10 to implement the NTSB's recommendation.

Drawbridges; Slowing Down of Commercial Motor Vehicles

Section 392.13 requires a CMV that is approaching a drawbridge to be driven at a rate of speed which will permit the CMV to be stopped before reaching the lip of the draw and to proceed only when the draw is completely closed. State and local law enforcement officers are responsible for enforcing regulations regarding stopping and slowing of CMVs approaching drawbridges. Section 392.13 is not easily enforced by special agents of the FHWA and is more appropriately addressed by State and local traffic laws. The FHWA proposes to remove § 392.13.

Hazardous Conditions; Extreme Caution

Section 392.14 requires a CMV driver to exercise extreme caution and reduce speed when hazardous conditions adversely affect visibility and traction. If driving conditions become sufficiently dangerous, a CMV driver must discontinue operation of the CMV until driving conditions improve to the point in which the CMV can be safely operated. Whenever compliance with these requirements increases hazard to passengers, however, the CMV may be operated to the nearest point where the safety of the passengers is assured.

These requirements are fundamental safe driving practices and are likely incorporated into the policy manuals of most motor carriers. In addition, most, if not all, State and local authorities prohibit the driving of a motor vehicle at a speed during adverse driving conditions which endangers the safety of the motoring public, even though such speed is at or below the posted speed limit. These requirements are already and more appropriately monitored and enforced by State and local authorities. The FHWA proposes to remove § 392.14.

Required and Prohibited Use of Turn Signals

Section 392.15 contains requirements and prohibitions regarding the use of turn signals which are already and more appropriately monitored and enforced by State and local authorities. The FHWA proposes to remove § 392.15.

Unattended Vehicles; Precautions

Section 392.20 prohibits a CMV from being left unattended until the parking brake has been securely set and all reasonable precautions have been taken to prevent movement. The parking and attendance of a CMV containing no hazardous materials are more appropriately monitored and enforced by State and local authorities. The FHWA proposes to remove § 392.20.

Emergency Signals; Stopped Vehicles

Section 392.22(b) stipulates how warning devices must be placed when a CMV is stopped on the traveled portion or shoulder of a highway. The general rule requires that three warning devices be placed in various directions and at various approximate distances from the stopped CMV. One warning device must be placed at the traffic side of the stopped CMV within 10 feet of the front or rear of the CMV. Another warning device must be placed approximately 100 feet from the stopped CMV in the center of the occupied traffic lane or shoulder in the direction of approaching traffic. A third warning device must be placed approximately 100 feet from the stopped CMV in the center of the occupied lane or shoulder in the opposite direction from the other two warning devices.

The warning devices are often not placed at the correct locations. All three warning devices are often incorrectly placed behind the stopped CMV in the direction toward approaching traffic. The FHWA proposes to amend the regulatory language to promote better understanding of the requirements.

The warning devices are often not placed at the correct distances from the

stopped CMV, in part because of the inability of drivers to determine approximate distances correctly by eye. To address this problem, the FHWA proposes to include the number of paces within parentheses next to the required distances; the proposed rule treats one pace as 2.5 feet. This will aid compliance by providing more guidance on the placement of emergency warning devices.

Emergency Signals; Dangerous Cargoes

Section 392.25 prohibits the use of any flame-producing emergency signal for protecting any CMV transporting Division 1.1, 1.2, and 1.3 explosives; any cargo tank motor vehicle used for the transportation of any flammable liquid or flammable compressed gas, whether loaded or empty; or any CMV using compressed gas as a motor fuel. Section 393.95(g) prohibits any signal produced by a flame, including liquid burning emergency flares, fusees, and oil lanterns, to be carried on the same types of CMVs. It is unnecessary to prohibit the use of such signals when it is already illegal to have them in the CMV. The FHWA proposes to remove § 392.25.

Notification of License Revocation

Section 392.42 requires a driver who receives a notice that his/her license, permit, or privilege to operate a CMV has been revoked, suspended, or withdrawn to notify his/her employing motor carrier of such action before the end of the business day following the day of notification. This notification requirement would be more appropriately included in § 391.15, entitled "Disqualification of drivers," because it addresses the disqualification of drivers more than safe driving. The FHWA proposes to move the notification requirement in § 392.42 to § 391.15(b)(2), and entitle paragraph (b) "Loss of driving privileges."

The FHWA requests comments from State driver licensing agencies regarding whether such agencies send a written notification to the employing motor carrier of a driver who has had his/her license, permit, or privilege to operate a CMV revoked, suspended, or withdrawn. For those agencies that do, the FHWA requests information about whether the driver receives a written notification from the agency stating that the agency has sent written notification

of the revocation, suspension, or withdrawal to his/her employing motor carrier. Upon consideration of comments in response to this request, the FHWA may add additional language to § 391.15(b) which would exempt a driver of his/her notification requirement if the State licensing agency sends written notification to the driver's employing motor carrier of the revocation, suspension, or withdrawal and also sends written notification to the driver that his/her employing motor carrier was sent such written notification.

Reserve Fuel

Section 392.51 prohibits the supply of fuel for the propulsion of a CMV or the operation of its accessories from being carried on the CMV except in a properly mounted fuel tank or tanks. Section 392.51 is intended to address the carriage of small packages containing fuel when the fuel is intended for consumption by the CMV or its accessories. This practice, however, is not prohibited when the fuel is intended for other purposes such as consumption by machinery being transported. The FHWA believes there is no sound reason to prohibit the carriage of small packages containing fuel in some but not all circumstances. The FHWA proposes to remove § 392.51.

Buses; Fueling

Section 392.52 prohibits the fueling of a bus in a closed building with passengers aboard and limits the number of times a bus may be fueled with passengers aboard to the minimum number of times necessary. The fueling of a bus in a closed building with passengers aboard is an extremely rare occurrence which does not warrant a Federal prohibition. The number of times a bus is fueled with passengers aboard has little effect upon highway safety and is not an issue which is properly addressed by the FMCSRs. The FHWA proposes to remove § 392.52.

Motive Power Not To Be Disengaged

Section 392.68 prohibits a CMV from being driven with the source of motive power disengaged from the driving wheels except when such disengagement is necessary to stop or to shift gears. Such a prohibition is more appropriately monitored and enforced

by State and local authorities. The FHWA proposes to remove § 392.68.

Part 395—Hours of Service of Drivers

The primary purpose of part 395 is to prevent a CMV driver from driving while fatigued by establishing hours of service limitations and recordkeeping requirements.

Definitions

On Duty Time

The driver requirements of §§ 392.7 and 392.8 relating to inspection and use of parts, accessories, and emergency equipment is mentioned in paragraph (2) of the definition of *on duty* time in § 395.2. As previously explained, the FHWA proposes to remove §§ 392.7 and 392.8, thereby necessitating a revision of paragraph (2).

Part 396—Inspection, Repair, and Maintenance

The primary purpose of part 396 is to ensure that CMVs are in safe operating condition by requiring motor carriers to systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to their control.

Driver Vehicle Inspection Reports

Section 396.11(c)(3) requires a legible copy of the last DVIR to be carried on the power unit. The reason for this retention requirement is to enable roadside inspectors to determine whether a DVIR was prepared at the completion of the previous day's work. However, the decision to conduct a roadside inspection of the CMV is not influenced by the presence or absence of a DVIR. Furthermore, failure to have a copy of the last DVIR in the power unit is not an out-of-service violation under the North American Out-of-Service Criteria. The FHWA proposes to remove § 396.11(c)(3) because its benefit is outweighed by the burden imposed. This proposed removal is in no way intended to affect the accessibility of the last DVIR which a driver must review before driving a CMV. The FHWA proposes to amend § 396.13(b) by removing the language that the last DVIR is required to be carried on the power unit.

For ease of reference, a distribution table is provided for the current sections and the proposed sections as follows:

| Current section | Proposed section |
|-------------------------|----------------------------|
| 387.5 | 387.5 definitions revised. |
| For-hire carriage | Revised. |
| Motor carrier | Revised. |
| 387.27 | 387.27(b)(4) added. |

| Current section | Proposed section |
|--|------------------------------------|
| 387.29 | 387.29 definitions revised. |
| For-hire carriage | Revised. |
| Motor carrier | Revised. |
| Motor common carrier | Removed. |
| Motor contract carrier | Removed. |
| 390.3(f)(2) | Revised. |
| 390.5 | 390.5 definitions revised. |
| Accident | Revised. |
| Commercial motor vehicle | Revised. |
| Interstate commerce | Revised. |
| Intermittent, casual, or occasional driver | Renamed: Multiple-employer driver. |
| Principal place of business | Revised. |
| Regularly employed driver | Renamed: Single-employer driver. |
| | 390.29 added. |
| 391.11(b)(4) | Removed. |
| 391.11(b)(5) | Removed. |
| 391.11(b)(6) | 391.11(b)(4). |
| 391.11(b)(7) | 391.11(b)(5). |
| 391.11(b)(8) | Removed. |
| 391.11(b)(9) | 391.11(b)(6). |
| 391.11(b)(10) | Removed. |
| 391.11(b)(11) | Removed. |
| 391.15(b) | 391.15(b) (1) and (2). |
| 391.25 | Revised. |
| 391.27 | Removed and reserved. |
| 391.31 | Removed and reserved. |
| 391.33 | Removed and reserved. |
| 391.49(d)(5) | Revised. |
| 391.51(a) | Revised. |
| 391.51(b) | Revised. |
| 391.51(c) | Removed. |
| 391.51(d) | Removed. |
| 391.51(e) | Removed. |
| 391.51(f) | 391.51(c) and revised. |
| 391.51(g) | Removed. |
| 391.51(h) | 391.51(d) and revised. |
| 391.61 | Revised. |
| 391.63 | Revised. |
| 391.65(b) | Revised. |
| 391.65(c) | Revised. |
| 391.67 | Revised. |
| 391.68 | Revised. |
| 391.69 | Removed. |
| 391.71 | Removed and reserved. |
| 391.73 | 391.69 and revised. |
| 392.7 | Removed and reserved. |
| 392.8 | Removed and reserved. |
| 392.9(b) | Removed. |
| 392.9(c)(1) | 392.62. |
| 392.9(c)(2) | Removed. |
| 392.9(c)(3) | 392.9(b). |
| 392.9b | Removed and reserved. |
| 392.10(b)(1) | 392.10(b)(3). |
| 392.10(b)(3) | 391.10(b)(1) and revised. |
| 392.13 | Removed and reserved. |
| 392.14 | Removed and reserved. |
| 392.15 | Removed and reserved. |
| 392.20 | Removed and reserved. |
| 392.22(b)(1) | Revised. |
| 392.25 | Removed and reserved. |
| 392.42 | Removed and reserved. |
| 392.51 | Removed and reserved. |
| 392.52 | Removed and reserved. |
| 392.62 | Added. |
| 392.68 | Removed and reserved. |
| 395.1(g) | Removed. |
| 395.1(h) | 395.1(g). |
| 395.1(i) | 395.1(h). |
| 395.1(j) | 395.1(i). |
| 395.1(k) | 395.1(j). |
| 395.2 | 395.2 definitions revised. |
| On-duty time | Revised. |
| 395.8(k)(1) | Revised. |
| 396.11(b) | Revised. |

| Current section | Proposed section |
|--------------------|------------------|
| 396.11(c) | Revised. |
| 396.11(c)(1) | Revised. |
| 396.11(c)(2) | Revised. |
| 396.11(c)(3) | Removed. |
| 396.11(d) | Revised. |
| 396.13(b) | Revised. |
| 397.19(b) | Revised. |

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

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

The FHWA has determined that this regulatory action is not significant under Executive Order 12866 or regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. In addition, this regulatory action is not expected to cause an adverse effect on any sector of the economy. The regulations which are the subject of this proposed rule are obsolete, redundant, unnecessary, ineffective, burdensome, more appropriately regulated by State and local authorities, better addressed by company policy, in need of clarification, or more appropriately contained in another section. Thus, this rulemaking will actually lessen the burden imposed by these regulations which will be removed, amended, or redesignated as a result. No serious inconsistency or interference with another agency's actions or plans will result because this rulemaking deals exclusively with the FMCSRs. In addition, the rights and obligations of recipients of Federal grants will not be materially affected by this regulatory action. 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 (5 U.S.C. 601-612), the

FHWA has evaluated the effects of this proposed rule on small entities. The FHWA believes that this proposed rule would not have a significant economic impact on a substantial number of small entities. The FHWA intends to further evaluate the economic consequences of this proposal on small entities in light of the comments received in response to this notice.

For the most part, this rulemaking would merely lessen the burden of complying with the FMCSRs by making these regulations clearer and less redundant. As a result, all entities which are subject to these regulations would benefit, regardless of the size of the entity. This regulatory action will also facilitate compliance with the FMCSRs by removing regulations on certain areas that are more appropriately addressed by company policy. This action would thus provide motor carriers with more flexibility to pursue their own attempts at furthering the safety of their operations.

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 proposed rule does not have sufficient federalism impacts to warrant the preparation of a Federalism Assessment.

These proposed changes to the FMCSRs will not preempt any State law or State regulation and no additional costs or burdens will be imposed on the States thereby. In fact, regulatory burdens will be lessened as a result of this rulemaking. In addition, this rule will not have a significant effect on the States' ability to execute 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 do not apply to this program.

Paperwork Reduction Act

The information collection requirements that would be imposed as a result of this rulemaking are being submitted to the OMB for approval in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501-3520. This rulemaking proposes two new required collections of information. The first is a recordkeeping requirement, an annual inquiry into drivers' driving records, which would be included in the following information collection:

Title: Driver Qualification Files.

Affected Public: Approximately 373,000 motor carriers.

Abstract: Motor carriers are required to maintain a driver qualification file for each CMV driver to document that the driver meets the qualification standards to drive in interstate commerce.

Need: To ensure that motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: Based on an estimate of 5,500,000 interstate CMV drivers, annual inquiries into drivers' driving records would impose an estimated annual burden of 398,750 hours. The recordkeeping requirements related to the record of violations impose an estimated annual burden of 159,500 hours. The replacement of these requirements with the proposed recordkeeping requirements related to annual inquiries into drivers' driving records, would increase the total estimated annual burden of driver qualification files (approved by the OMB under control number 2125-0065) by 239,250 hours, from total 836,916 hours to total 1,076,166 hours.

The second proposed information collection is a requirement for motor carriers that use a driver who is furnished by another motor carrier, to obtain information regarding the validity of the driver's qualification certificate. This requirement would be included in the following information collection:

Title: Qualification Certificate.

Affected Public: Approximately 373,000 motor carriers.

Abstract: A motor carrier that employs a driver who is furnished by another motor carrier, is exempt from maintaining a driver qualification file for such driver, provided a qualification certificate is obtained from the furnishing motor carrier.

Need: To ensure that motor carriers employ only qualified interstate CMV drivers.

Requested Time Period of Approval: Three years.

Estimated Annual Burden: The proposed information collection involving contacts to verify the validity of qualification certificates would increase the total estimated annual burden of qualification certificates (approved by the OMB under control number 2125-0081) by 13,750 hours, from 13,750 total hours to 27,500 total hours.

Comments on these proposed collections of information may be submitted to the OMB. Interested parties should send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, Attention: Desk Officer for Federal Highway Administration. The OMB is required to make a decision concerning the proposed recordkeeping requirement between 30 and 60 days after publication of this action. A comment to the OMB will be most effective if the OMB receives it within 30 days of publication.

Comments are invited on any aspect of the proposed collections of information including, but not limited to: (1) The necessity and utility of the information collection for the proper performance of the functions of the FHWA; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the collected information; and (4) ways to minimize the collection burden without reducing the quality of the collected information.

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.

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

49 CFR Part 387

Hazardous materials transportation, Highways and roads, insurance, Motor carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 390

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

49 CFR Part 391

Highways and roads, Motor carriers—driver qualifications, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 392

Highways and roads, Highway safety, Motor carriers—driving practices, Motor vehicle safety.

49 CFR Part 395

Global positioning systems, Highways and roads, Intelligent transportation systems, Motor carriers—driver hours of service, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

49 CFR Part 397

Hazardous materials transportation, Highways and roads, Motor carriers, Motor vehicle safety.

Issued on: January 7, 1997.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, parts 387, 390, 391, 392, 395, 396, and 397 as set forth below:

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

Authority: 49 U.S.C. 31138 and 31139; and 49 CFR 1.48.

2. In § 387.5, the definitions *for-hire carriage* and *motor carrier* are revised to read as follows:

§ 387.5 Definitions.

* * * * *

For-hire carriage means transportation of property by a common, contract, or exempt commodity motor carrier of property.

* * * * *

Motor carrier means a for-hire or private motor carrier of property.

* * * * *

3. Section 387.27 is amended by adding paragraph (b)(4) to read as follows:

§ 387.27 Applicability.

* * * * *

(b) * * *

(4) A motor vehicle operated by a contract motor carrier providing transportation of preprimary, primary, and secondary students for extracurricular trips organized, sponsored, and paid by a school district.

4. In § 387.29, the definitions of the terms *motor common carrier* and *motor contract carrier* are removed; and the definitions of *for-hire carriage* and *motor carrier* are revised to read as follows:

§ 387.29 Definitions.

* * * * *

For-hire carriage means transportation of passengers which is generally available to the public at large and is performed for a commercial purpose by a motor carrier which is directly or indirectly compensated, monetarily or otherwise, for the transportation service provided.

* * * * *

Motor carrier means a person providing for-hire carriage.

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 5901-5907, 31132, 31133, 31136, 31502, and 31504; and 49 CFR 1.48.

6. Section 390.3 is amended by revising paragraph (f)(2) to read as follows:

§ 390.3 General applicability.

* * * * *

(f) * * *

(2) Transportation performed by the Federal government, a State, or any political subdivision of a State, or an agency established under a compact between States that has been approved by the Congress of the United States.

* * * * *

7. In § 390.5, the definition of the term *accident* is revised; the terms

intermittent, casual, or occasional driver and regularly employed driver are removed; the terms multiple-employer driver and single-employer driver are added; and the terms commercial motor vehicle, interstate commerce, and principal place of business are revised. All are placed in alphabetical order and read as follows:

§ 390.5 Definitions.

* * * * *

Accident means:

(1) Except as provided in paragraph (2) of this definition, an occurrence involving a commercial motor vehicle operating on a public road (inclusive of privately owned roads which are accessible to the public) in interstate or intrastate commerce which results in:

- (i) A fatality;
(ii) Bodily injury to a person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or
(iii) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle(s) to be transported away from the scene by a tow truck or other motor vehicle.

(2) The term accident does not include:

- (i) An occurrence involving only boarding and alighting from a stationary motor vehicle; or
(ii) An occurrence involving only the loading or unloading of cargo.

* * * * *

Commercial motor vehicle means any self-propelled or towed vehicle used on public highways in interstate commerce to transport passengers or property if the vehicle:

- (1) Has a gross vehicle weight rating or gross combination weight rating of 10,001 or more pounds; or
(2) Is designed to transport 16 or more passengers, including the driver; or
(3) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 5101 et seq.) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

* * * * *

Interstate commerce means trade, traffic, or transportation in the United States—

- (1) Between a place in a State and a place outside of such State (including a place outside of the United States);
(2) Between two places in a State through another State or a place outside of the United States; or

(3) Between two places in a State as part of trade, traffic, or transportation described in paragraphs (1) or (2) of this definition.

* * * * *

Multiple-employer driver means a driver, who in any period of 7 consecutive days, is employed or used as a driver by more than one motor carrier. The qualification of such a driver shall be determined and recorded in accordance with the provisions of §§ 391.63 or 391.65 of this subchapter, as applicable.

* * * * *

Principal place of business means:

(1) For a motor carrier with a single place of business, the single location where records required by parts 387, 390, 391, and 395 of this subchapter must be maintained and where records required by parts 382 and 396 of this subchapter must be made available for inspection within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Highway Administration.

(2) For a motor carrier with multiple offices or terminals, the single location designated by the motor carrier, normally its headquarters, where records required by parts 382, 387, 390, 391, 395, and 396 must be made available for inspection within 48 hours (Saturdays, Sundays, and Federal holidays excluded) after a request has been made by a special agent or authorized representative of the Federal Highway Administration.

* * * * *

Single-employer driver means a driver who, in any period of 7 consecutive days, is employed or used as a driver solely by a single motor carrier. Such term includes a driver who operates a commercial motor vehicle on an intermittent, casual, or occasional basis.

* * * * *

8. Section 390.29 is added to read as follows:

§ 390.29 Location of records or documents.

(a) A motor carrier with multiple offices or terminals may maintain the records and documents required by this subchapter at a regional office or driver work-reporting location unless otherwise specified in this subchapter.

(b) All records and documents required by this subchapter which are maintained at a regional office or driver work-reporting location shall be made available for inspection upon request by a special agent or authorized representative of the Federal Highway

Administration at the motor carrier's principal place of business or other location specified by the agent or representative within 48 hours after a request is made. Saturdays, Sundays, and Federal holidays are excluded from the computation of the 48-hour period of time.

PART 391—QUALIFICATIONS OF DRIVERS

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

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

§ 391.11 [Amended]

10. Section 391.11 is amended by revising paragraph (b) to read as follows:

§ 391.11 Qualifications of drivers.

* * * * *

(b) Except as provided in subpart G of this part, a person is qualified to drive a motor vehicle if he/she—

- (1) Is at least 21 years old;
(2) Can 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;
(3) Can, by reason of experience, training, or both, safely operate the type of commercial motor vehicle he/she drives;
(4) Is physically qualified to drive a commercial motor vehicle in accordance with subpart E—Physical Qualifications and Examinations of part 391;
(5) Has a currently valid commercial motor vehicle operator's license issued only from one State or jurisdiction; and
(6) Is not disqualified to drive a commercial motor vehicle under the rules in § 391.15.

11. Section 391.15 is amended by revising paragraph (b) to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

- (b) Loss of driving privileges.
(1) A driver is disqualified for the duration of the driver's loss of his/her privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.
(2) A driver who receives a notice that his/her license, permit, or privilege to operate a commercial motor vehicle has been revoked, suspended, or withdrawn shall notify the motor carrier that

employs him/her of the contents of the notice before the end of the business day following the day the driver received it.

* * * * *

12. Section 391.25 is revised to read as follows:

§ 391.25 Annual inquiry and review of driving record.

(a) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, make an inquiry into the driving record of each driver it employs, covering at least the preceding 12 months, to the appropriate agency of every State in which the driver held a commercial motor vehicle operator's license or permit during the time period.

(b) Except as provided in subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a commercial motor vehicle pursuant to § 391.15.

(1) The motor carrier must consider any evidence that the driver has violated any applicable Federal Motor Carrier Safety Regulations or Hazardous Materials Regulations.

(2) The motor carrier must consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public.

(c) Recordkeeping.

(1) A copy of the response by each State agency to the inquiry required by paragraph (a) of this section, showing the driver's driving record or certifying that no driving record exists for the driver, shall be maintained in the driver's qualification file.

(2) A note, including the name of the person who performed the review of the driving record required by paragraph (b) of this section and the date of such review, shall be maintained in the driver's qualification file.

§ 391.27 [Removed and Reserved]

13. Section 391.27 is removed and reserved.

Subpart D of Part 391—[Removed and Reserved]

14. Subpart D of part 391 (§§ 391.31 and 391.33) is removed and reserved.

15. Section 391.49 is amended by revising paragraph (d)(5) to read as follows:

§ 391.49 Waiver of certain physical defects.

* * * * *

(d) * * *

(5) Road test:

(i) A motor carrier coapplicant shall ensure that a driver applicant has successfully completed a road test. The road test shall be given by the motor carrier or a person designated by it. The test shall be given by a person who is competent to evaluate the driver applicant's performance and determine whether he/she can operate the type of commercial motor vehicle, and associated equipment, the motor carrier intends to assign him/her.

(ii) A unilateral driver applicant shall be responsible for having a road test administered by a person who is competent to evaluate the driver applicant's performance and determine whether he/she can operate the type of commercial motor vehicle, and associated equipment, he/she proposes to operate.

(iii) At a minimum, the person who takes the road test must be evaluated on his/her skill at performing each of the following:

(A) Coupling and uncoupling of combination units, if applicable;

(B) Placing the commercial motor vehicle in operation;

(C) Use of the commercial motor vehicle's controls and emergency equipment;

(D) Operating the commercial motor vehicle in traffic including passing other motor vehicles;

(E) Turning the commercial motor vehicle;

(F) Braking and slowing the commercial motor vehicle by means other than braking; and

(G) Backing and parking the commercial motor vehicle.

(iv) If the road test is successfully completed, the person who gave it shall certify in writing that the person tested possesses sufficient driving skill to operate safely the type of commercial motor vehicle in which the test was given. The written certification shall include the date of the road test, the name of person tested; the type of power unit and trailer(s), or type of bus used for the test; and name, signature, occupation, and address of the person who gave the test.

* * * * *

16. Section 391.51 is revised to read as follows:

§ 391.51 General requirements for driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file

may be combined with his/her personnel file.

(b) The qualification file for a driver must include:

(1) The driver's application for employment completed in accordance with § 391.21;

(2) The written record with respect to each past employer who was contacted and a copy of the response by each State agency, pursuant to § 391.23 involving investigation and inquiries;

(3) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(4) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(5) The medical examiner's certificate of his/her physical qualification to drive a commercial motor vehicle as required by § 391.43(f) or a legible photographic copy of the certificate; and

(6) The letter from the Regional Director of Motor Carriers granting a waiver of a physical disqualification, if a waiver was issued under § 391.49.

(c) Except as provided in paragraph (d) of this section, each driver's qualification file shall be retained for as long as a driver is employed by that motor carrier and for 3 years thereafter.

(d) The following records may be removed from a driver's qualification file 3 years after the date of execution:

(1) The response of each State agency to the annual driver record inquiry required by § 391.25(a);

(2) The note relating to the annual review of the driver's driving record as required by § 391.25(c)(2);

(3) The medical examiner's certificate of the driver's physical qualification to drive a commercial motor vehicle or the photographic copy of the certificate as required by § 391.43(f); and

(4) The letter issued under § 391.49 granting a waiver of a physical disqualification.

(Approved by the Office of Management and Budget under control number 2125-0065)

17. Section 391.61 is revised to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment) and § 391.23 (relating to investigations and inquiries) do not apply to a driver who has been a single-employer driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a single-employer driver of that motor carrier.

18. Section 391.63 is revised to read as follows:

§ 391.63 Multiple-employer drivers.

(a) If a motor carrier employs a person as a multiple-employer driver (as defined in § 390.5 of this subchapter), the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

- (1) Require the person to furnish an application for employment in accordance with § 391.21;
- (2) Make the investigations and inquiries specified in § 391.23 with respect to that person;
- (3) Perform the annual driving record inquiry required by § 391.25(a); or
- (4) Perform the annual review of the person's driving record required by § 391.25(b).

(b) Before a motor carrier permits a multiple-employer driver to drive a commercial motor vehicle, the motor carrier must obtain his/her name, his/her social security number, and the identification number, type and issuing State of his/her commercial motor vehicle operator's license. The motor carrier must maintain this information for three years after employment of the multiple-employer driver ceases.

19. Section 391.65 is amended by revising paragraphs (b) and (c) to read as follows:

§ 391.65 Drivers furnished by other motor carriers.

* * * * *

(b) A motor carrier that obtains a certificate in accordance with paragraph (a)(2) of this section shall:

(1) Contact the motor carrier which certified the driver's qualifications under this section to verify the validity of the certificate. This contact may be made in person, by telephone, or by letter.

(2) Retain a copy of that certificate in its files for 3 years.

(c) A motor carrier which certifies a driver's qualifications under this section shall be responsible for the accuracy of the certificate. The certificate is no longer valid if the driver leaves the employment of the motor carrier which issued the certificate or is no longer qualified under the rules in this part.

20. Section 391.67 is revised to read as follows:

§ 391.67 Farm vehicle drivers of articulated commercial motor vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5) who is 18 years of age or older and who drives an articulated commercial motor vehicle:

- (a) Section 391.11(b)(1) (relating to age);
- (b) Subpart C (relating to disclosure of, investigation into, and inquiries

about the background, character, and driving record of, drivers); and

(c) Subpart F (relating to maintenance of files and records).

21. Section 391.68 is revised to read as follows:

§ 391.68 Private motor carrier of passengers (nonbusiness).

The following rules in this part do not apply to a private motor carrier of passengers (nonbusiness) and its drivers:

- (a) Section 391.21 (relating to application for employment);
- (b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers);
- (c) So much of §§ 391.41 and 391.45 require a driver to be medically examined and to have a medical examiner's certificate on his/her person;
- (d) Subpart F (relating to maintenance of files and records); and
- (e) Subpart H (relating to controlled substances testing).

22. Section 391.69 is revised to read as follows:

§ 391.69 Private motor carrier of passengers (business).

The provisions of § 391.21 (relating to applications for employment) and § 391.23 (relating to investigations and inquiries) do not apply to a driver who was a single-employer driver (as defined in § 390.5 of this subchapter) of a private motor carrier of passengers (business) as of July 1, 1994, so long as the driver continues to be a single-employer driver of that motor carrier.

§ 391.71 [Removed and Reserved]

23. Section 391.71 is removed and reserved.

§ 391.73 [Removed and Reserved]

24. Section 391.73 is removed and reserved.

PART 392—DRIVING OF MOTOR VEHICLES

25. The authority citation for part 392 continues to read as follows:

Authority: 49 U.S.C. 31136 and 31502; and 49 CFR 1.48.

§ 392.7 [Removed and Reserved]

26. Section 392.7, Equipment, inspection and use, is removed and reserved.

§ 392.8 [Removed and Reserved]

27. Section 392.8, Emergency equipment, inspection, and use, is removed and reserved.

28. Section 392.9 is revised to read as follows:

§ 392.9 Safe loading.

(a) General. No person shall drive a commercial motor vehicle and a motor carrier shall not require or permit a person to drive a commercial motor vehicle unless—

(1) The commercial motor vehicle's cargo is properly distributed and adequately secured as specified in §§ 393.100—393.106 of this subchapter;

(2) The commercial motor vehicle's tailgate, tailboard, doors, tarpaulins, its spare tire and other equipment used in its operation, and the means of fastening the commercial motor vehicle's cargo are secured; and

(3) The commercial motor vehicle's cargo or any other object does not obscure the driver's view ahead or to the right or left sides, interfere with the free movement of his arms or legs, prevent his free and ready access to accessories required for emergencies, or prevent the free and ready exit of any person from the commercial motor vehicle's cab or driver's compartment.

(b) Buses. No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless the baggage, freight, or express on the bus is stowed and secured in a manner which assures—

(1) Unrestricted freedom of movement to the driver and his proper operation of the bus;

(2) Unobstructed access to all exits by any occupant of the bus; and

(3) Protection of occupants of the bus against injury resulting from the falling or displacement of articles transported in the bus.

§ 392.9b [Removed and Reserved]

29. Section 392.9b, Hearing aid to be worn, is removed and reserved.

30. Section 392.10, Railroad grade crossings; stopping required, is amended by revising paragraph (b) to read as follows:

§ 392.10 Railroad grade crossings; stopping required.

* * * * *

(b) A stop need not be made at:

(1) A railroad grade crossing with an active warning device. For the purposes of this section, an active warning device includes a functioning highway traffic signal, gate, or a device that uses sound or light(s) to warn drivers of an approaching train;

(2) A railroad grade crossing when a police officer or crossing flagman directs traffic to proceed;

(3) A streetcar crossing, or railroad tracks used exclusively for industrial switching purposes, within a business district as defined in § 390.5 of this chapter;

(4) An abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned;

(5) An industrial or spur line railroad grade crossing marked with a sign reading "Exempt." Such "Exempt" signs shall be erected only by or with the consent of the appropriate State or local authority.

§ 392.13 [Removed and Reserved]

31. Section 392.13, Drawbridges; slowing down of commercial motor vehicles, is removed and reserved.

§ 392.14 [Removed and Reserved]

32. Section 392.14, Hazardous conditions; extreme caution, is removed and reserved.

§ 392.15 [Removed and Reserved]

33. Section 392.15, Required and prohibited use of turn signals, is removed and reserved.

§ 392.20 [Removed and Reserved]

34. Section 392.20, Unattended commercial motor vehicles; precautions, is removed and reserved.

35. Section 392.22 is amended by revising paragraph (b)(1) to read as follows:

§ 392.22 Emergency signals; stopped commercial motor vehicles.

* * * * *

(b) Placement of warning devices—

(1) General rule. Except as provided in paragraph (b)(2) of this section, whenever a commercial motor vehicle is stopped upon the traveled portion or the shoulder of a highway for any cause other than necessary traffic stops, the driver shall as soon as possible, but in any event within 10 minutes, place the warning devices required by § 393.95 of this subchapter, in the following manner:

(i) One on the traffic side of and approximately 3 meters (10 feet or 4 paces) from the stopped commercial motor vehicle in the direction of approaching traffic;

(ii) One at approximately 30 meters (100 feet or 40 paces) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction of approaching traffic; and

(iii) One at approximately 30 meters (100 feet or 40 paces) from the stopped commercial motor vehicle in the center of the traffic lane or shoulder occupied by the commercial motor vehicle and in the direction away from approaching traffic.

* * * * *

§ 392.25 [Removed and Reserved]

36. Section 392.25, Emergency signals; dangerous cargoes, is removed and reserved.

§ 392.42 [Removed and Reserved]

37. Section 392.42, Notification of license revocation, is removed and reserved.

§ 392.51 [Removed and Reserved]

38. Section 392.51, Reserve fuel, is removed and reserved.

§ 392.52 [Removed and Reserved]

39. Section 392.52, Buses; fueling, is removed and reserved.

40. Section 392.62 is added to read as follows:

§ 392.62 Driving of buses, standee line or bar.

No person shall drive a bus and a motor carrier shall not require or permit a person to drive a bus unless all standees on the bus are rearward of the standee line or other means prescribed in § 393.90 of this subchapter.

§ 392.68 [Removed and Reserved]

41. Section 392.68, Motive power not to be disengaged, is removed and reserved.

PART 395—HOURS OF SERVICE OF DRIVERS

42. The authority citation for part 395 continues 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.

§ 395.1 [Amended]

43. Section 395.1 is amended by removing paragraph (g) and redesignating paragraphs (h) through (k) to read as (g) through (j), respectively.

§ 395.2 [Amended]

44. In § 395.2, the definition of *on duty time* is revised to read as follows:

§ 395.2 Definitions.

* * * * *

On duty time means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. *On duty time* shall include:

(1) All time at a plant, terminal, facility, or other property of a motor carrier or shipper, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the motor carrier;

(2) All time inspecting, servicing, or conditioning any commercial motor vehicle at any time;

(3) All driving time as defined in the term *driving time*;

(4) All time, other than *driving time*, in or upon any commercial motor vehicle except time spent resting in a *sleeper berth*;

(5) All time loading or unloading a commercial motor vehicle, supervising, or assisting in the loading or unloading, attending a commercial motor vehicle being loaded or unloaded, remaining in readiness to operate the commercial motor vehicle, or in giving or receiving receipts for shipments loaded or unloaded;

(6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled commercial motor vehicle;

(7) All time spent providing a breath sample or urine specimen, including travel time to and from the collection site, in order to comply with the random, reasonable suspicion, post-crash, or follow-up testing required by part 382 or part 391, subpart H, of this subchapter, whichever is applicable, when directed by a motor carrier;

(8) Performing any other work in the capacity of, or in the employ or service of, a motor carrier; and

(9) Performing any compensated work for person who is not a motor carrier.

* * * * *

45. Section 395.8 is amended by revising paragraph (k)(1) to read as follows:

§ 395.8 Driver's record of duty status.

* * * * *

(k) Retention of driver's record of duty status. (1) Each motor carrier shall maintain records of duty status and all supporting documents for each driver it employs for a period of six months from the date of receipt.

* * * * *

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

46. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, and 31502; and 49 CFR 1.48.

47. Section 396.11 is amended by revising paragraphs (b), (c), and (d) to read as follows:

§ 396.11 Driver vehicle inspection report(s).

* * * * *

(b) Report content. The report shall identify the vehicle and list any defect or deficiency discovered by or reported to the driver which would affect the safety of operation of the vehicle or result in its mechanical breakdown. If no defect or deficiency is discovered by or reported to the driver, the report shall so indicate. In all instances, the driver

shall sign the report. On two-driver operations, only one driver needs to sign the driver vehicle inspection report, provided both drivers agree as to the defects or deficiencies identified. If a driver operates more than one vehicle during the day, a report shall be prepared for each vehicle operated.

(c) Corrective action. Prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would be likely to affect the safety of operation of the vehicle.

(1) Every motor carrier or its agent shall certify on a driver vehicle inspection report which lists any defect or deficiency that the defect or deficiency has been repaired or that repair is unnecessary before the vehicle is operated again.

(2) Every motor carrier shall maintain the driver vehicle inspection report and the certification of repairs for three months from the date the written report was prepared.

(d) Exceptions. The rules in this section shall not apply to a private motor carrier of passengers (nonbusiness), a driveaway-towaway operation, or any motor carrier operating only one commercial motor vehicle.

48. Section 396.13 is amended by revising paragraph (b) to read as follows:

§ 396.13 Driver inspection.

* * * * *

(b) Review the last driver vehicle inspection report; and

* * * * *

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

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

Authority: 49 U.S.C. 322; 49 CFR 1.48. Subpart A also issued under 49 U.S.C. 31136, 31502. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

50. Section 397.19 is amended by revising paragraph (b) to read as follows:

§ 397.19 Instructions and documents.

* * * * *

(b) A driver who receives documents in accordance with paragraph (a) of this section must sign a receipt for them. The motor carrier shall maintain the receipt for a period of one year from the date of signature.

* * * * *

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