



FEDERAL REGISTER

Vol. 76

Monday,

No. 89

May 9, 2011

Part III

Department of Transportation

Federal Motor Carrier Safety Administration

49 CFR Parts 383, 384 and 385
Commercial Driver's License Testing and Commercial Learner's Permit
Standards; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Motor Carrier Safety Administration****49 CFR Parts 383, 384, and 385**

[Docket No. FMCSA–2007–27659]

RIN 2126–AB02

Commercial Driver's License Testing and Commercial Learner's Permit Standards**AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Final rule.

SUMMARY: FMCSA amends the commercial driver's license (CDL) knowledge and skills testing standards and establishes new minimum Federal standards for States to issue the commercial learner's permit (CLP). The rule requires that a CLP holder meet virtually the same requirements as those for a CDL holder, meaning that a driver holding a CLP will be subject to the same driver disqualification penalties that apply to a CDL holder. This final rule also implements section 4019 of the Transportation Equity Act for the 21st Century (TEA–21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act). It will enhance safety by ensuring that only qualified drivers are allowed to operate commercial motor vehicles on our nation's highways.

DATES: *Effective date:* This final rule is effective on July 8, 2011.

Compliance Date: States must be in compliance with the requirements in subpart B of Part 384 (49 CFR part 384) by July 8, 2014.

Petitions for Reconsideration of any amendment made by this final rule must be received on or before June 8, 2011. Any petition for reconsideration submitted after this date will not be considered.

ADDRESSES: Petitions for reconsideration should refer to Docket ID Number FMCSA–2007–27659 or RIN 2126–AB02, and be submitted to the Administrator, Federal Motor Carrier Safety Administration, by any of the following methods:

• *Mail to:* Administrator, Federal Motor Carrier Safety Administration (MC–A), West Building–6th Floor, Room W60–308, 1200 New Jersey Avenue, SE., Washington, DC 20590.

• *Hand-Deliver:* Docket Operations Unit, U.S. Department of Transportation, West Building–Ground

Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Federal eRulemaking portal* at <http://www.regulations.gov>. All petitions for reconsideration will be posted on the Federal eRulemaking portal in Docket “FMCSA–2007–27659”. This final rule and all background documents and material related to this rule may be viewed and copied at <http://www.regulations.gov>, by typing “FMCSA–2007–27659”. The docket may also be viewed and copied for a fee at the U.S. Department of Transportation, Docket Operations, West Building–Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT:

Robert Redmond, Office of Safety Programs, Commercial Driver's License Division, telephone (202) 366–5014 or e-mail robert.redmond@dot.gov. Office hours are from 8 a.m. to 4:30 p.m.

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I. Legal Basis

This rule is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99-570, Title XII, 100 Stat. 3207-170, 49 U.S.C. chapter 313); the Motor Carrier Safety Act of 1984 (MCSA) (Pub. L. 98-554, Title II, 98 Stat. 2832, 49 U.S.C. 31136); and the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, 49 U.S.C. 31502). It is also based on section 4019 of the Transportation Equity Act for the 21st Century (TEA-21), section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, at 1734, 49 U.S.C. 31302, 31308, and 31309); and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347, 120 Stat. 1884, at 1944).

The CMVSA required the Secretary of Transportation, after consultation with the States, to prescribe regulations on minimum uniform standards for the issuance of commercial driver's licenses (CDLs) by the States and for information to be contained on each license (49 U.S.C. 31305, 31308). The CMVSA also authorized the Secretary to adopt regulations for a learner's permit (49 U.S.C. 31305(b)(2)). Paragraph (c) of 49 CFR 383.23 addresses the learner's permit by ratifying the States' regulations on this subject, provided they comply with certain Federal requirements. This final rule establishes a Federal requirement for a commercial learner's permit (CLP) as a pre-condition for issuing a CDL and also adopts various other changes to enhance the CDL program.

The MCSA conferred authority to regulate drivers, motor carriers, and commercial motor vehicles (CMVs). It required the Secretary of Transportation to "prescribe regulations on commercial motor vehicle safety. The regulations shall prescribe minimum safety standards for commercial motor vehicles. At a minimum, the regulations shall ensure that: (1) Commercial motor vehicles are maintained, equipped, loaded, and operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely; (3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor

vehicles does not have a deleterious effect on the physical condition of the operators" (49 U.S.C. 31136(a)).

This final rule, like the CDL regulations, is based in part on the requirements of 49 U.S.C. 31136(a)(1) and (2) that CMVs be "operated safely" and that "the responsibilities imposed on [CMV drivers] do not impair their ability to operate the vehicles safely." The changes to 49 CFR part 383 of this rule will help to ensure that drivers who operate CMVs are licensed to do so and that they do not operate CMVs without having passed the requisite tests.

The MCA authorized the Secretary of Transportation to prescribe requirements for the "qualifications * * * of employees" of for-hire and private motor carriers (49 U.S.C. 31502(b)). This rule, like the CDL regulations, is based in part on that authority and is intended to enhance the qualifications of CMV drivers by ensuring that they obtain a CLP before applying for a CDL.

Section 4019 of TEA-21 required the Department of Transportation (DOT) to complete a review of the CDL testing system to determine if the current CDL system is an accurate measure of an individual's knowledge and skills as an operator of a CMV. It also authorized the Agency to issue regulations reflecting the results of its review. This rule includes new or enhanced requirements adopted in response to the Agency's review.

Section 4122 of SAFETEA-LU required the DOT to prescribe regulations on minimum uniform standards for the issuance of CLPs, as it has already done for CDLs (49 U.S.C. 31308(2)). More specifically, section 4122 provided that an applicant for a CLP must first pass a knowledge test which complies with minimum standards prescribed by the Secretary and may have only one CLP at a time; that the CLP document must have the same information and security features as the CDL; and that a driver's record must be created for each CLP holder in the Commercial Driver's License Information System (CDLIS).¹ This rule includes each of those requirements, as explained in more detail in the preamble to this rule.

Section 703(a) of the SAFE Port Act required the Secretary of Transportation to issue regulations implementing the recommendations contained in a memorandum issued by the DOT's

¹ CDLIS is an information system that allows the exchange of commercial driver licensing information among all the States. CDLIS includes the databases of fifty-one licensing jurisdictions and the CDLIS Central Site, all connected by a telecommunications network.

Office of the Inspector General (OIG) on June 4, 2004, concerning verification of the legal status of commercial drivers. Section 703(b) required the Secretary, in cooperation with the Department of Homeland Security, to issue a regulation to implement the recommendations contained in a report issued by the OIG on February 7, 2006 ["Oversight of the Commercial Driver's License Program"] that set forth steps needed to improve anti-fraud measures in the CDL program. In a 2002 CDL audit report, the OIG recommended that FMCSA require testing protocols and performance oriented requirements for English language proficiency. This final rule incorporates all of the OIG's recommendations. A discussion of these recommendations can be found in the preamble to the NPRM for this rule. Many of the operational procedures suggested by the OIG for carrying out the recommendations have also been adopted.

In addition to the specific legal authorities discussed above, FMCSA is required, before prescribing regulations, to consider the "costs and benefits" of any proposal (49 U.S.C. 31136(c)(2)(A), 31502(d)). The Regulatory Flexibility Analysis prepared for this rule discusses those issues more comprehensively in a separate document filed in the docket.

II. Background

Acronyms and Terms Used in This Document

AAMVA—American Association of Motor Vehicle Administrators
CDL—Commercial Driver's License
CDLIS—Commercial Driver's License Information System
CLP—Commercial Learner's Permit
CMV—Commercial Motor Vehicle
CMVSA—Commercial Motor Vehicle Safety Act of 1986
CFR—Code of Federal Regulations
DHS—Department of Homeland Security
FHWA—Federal Highway Administration
FMCSA—Federal Motor Carrier Safety Administration
GCWR—Gross Combination Weight Rating
GVWR—Gross Vehicle Weight Rating
IBR—Incorporated by Reference
N—Tank Vehicle Endorsement
Non-CDL—Non-Commercial Driver's License
NPRM—Notice of Proposed Rulemaking
OIG—Office of Inspector General
P—Passenger Endorsement
PDPS—Problem Driver Pointer System
S—School Bus Endorsement
SDLA—State Driver Licensing Agency
SSA—Social Security Administration
SSN—Social Security Number

A. Summary of This Rule

FMCSA adopts the following revisions to the CDL knowledge and skills testing standards in response to

the statutory mandates and OIG recommendations:

(1) *Knowledge and skills testing requirements.*

Successful completion of the knowledge test, currently a prerequisite for the CDL, is required before issuance of the CLP. This rule requires States to use driver and examiner reference materials, State testing questions and exercises, and State testing methodologies (herein referred to as State Testing System) that FMCSA has pre-approved. The State Testing System must be comparable to AAMVA's 2005 CDL Test System (July 2010 Version) for knowledge and skill standards, which FMCSA approves in this rule. It includes a prohibition on use of foreign language interpreters in the administration of the knowledge and skills tests, to reduce the potential for fraud.

(2) *Standards for issuing CLPs and CDLs.*

This rule specifically requires that each applicant obtain a CLP and hold it for a minimum of 14 days before applying for a CDL. It establishes a minimum age of 18 for issuance of a CLP. The CLP must be a separate document from the CDL or non-CDL,² must be tamperproof to the extent possible, and must include the same information as the CDL. The only endorsements allowed on the CLP are a restricted passenger (P) endorsement, a school bus (S) endorsement, and a tank vehicle (N) endorsement. Each State is required to create a CDLIS record for each CLP it issues.

Before issuing a CLP, the issuing State is required to perform a check of the driver's previous driving record using both CDLIS and the PDPS to ensure the driver is not subject to the sanctions of § 383.51, based on previous motor vehicle violations. If the State discovers that the driver is subject to such sanctions, it must refuse to issue a CLP to the driver.

This rule strengthens the legal presence requirements and increases the documentation required for CLP and CDL applicants to demonstrate their legal presence in the United States. For example, SDLAs are required to verify the applicant's SSN with the SSA. The rule also addresses applicants who wish to attend a driver training school in a State other than the applicant's State of domicile. States are required to recognize CLPs issued by other States for training purposes. The rule limits the initial and renewal periods for both

CLPs and CDLs. It clarifies under what circumstances an applicant must surrender his/her CLP, CDL, or non-CDL. It also requires all States to use standardized endorsement and restriction codes on CDLs.

Many of the program areas and issues dealt with in this rule are also addressed in DHS's final rule implementing the REAL ID Act ("Minimum Standards for Driver's Licenses and Identification Cards Acceptable by Federal Agencies for Official Purposes," 73 FR 5272, January 29, 2008, codified in 6 CFR part 37). FMCSA and DHS have coordinated efforts to write regulations that neither overlap nor conflict. The two agencies and the relevant statutory authority underlying these two rules serve different purposes. Although in some limited instances FMCSA has incorporated similar or identical requirements into this final rule, it does not adopt REAL ID or incorporate it by reference either wholly or in part.

(3) *Measures for prevention of fraud.*

This rule includes requirements to improve the ability of States to detect and prevent fraudulent testing and licensing activity in the CDL program. These measures include the following:

- Requiring verification of social security numbers.
- Requiring CLP and CDL applicants to prove legal presence in the United States.
- Requiring that a digitized photo of the driver be preserved by the State driver licensing agency.
- Requiring computer system controls to allow overrides by supervisory personnel only.
- Requiring background checks and formal training for all test examiners.
- Requiring the establishment of oversight systems for all examiners and testers (including third parties).
- Disallowing the use of language interpreters for the knowledge and skills tests.

In addition, amendments to part 384 require these items to be reviewed whenever FMCSA conducts a CDL compliance review of a State program. States found in substantial non-compliance with these fraud control measures, as well as the other requirements of part 384, may be subject to the loss of Federal-aid highway funds.

(4) *Other regulatory changes.*

The rule specifically prohibits a motor carrier from using a driver who does not hold a current and appropriate CLP or CDL to operate a CMV and from using a driver to operate a vehicle in violation of the restrictions on the CLP or CDL. It also incorporates into the regulations current FMCSA guidance related to

issues addressed by this rulemaking (currently available on the Internet at "Guidance for Regulations," at http://www.fmcsa.dot.gov/rules-regulations/administration/fmcsr/fmcsrguide.asp?section_type=G). Finally, this rule includes minor editorial corrections and updates.

B. History

The CDL program was established by the CMVSA of 1986. Parts 383 and 384 of Title 49, Code of Federal Regulations, implement the CMVSA requirements. The CMVSA prohibits any person who does not hold a valid CDL or learner's permit issued by his/her State of domicile from operating a CMV that requires a driver with a CDL. The prohibition further affects driver training activities by limiting trainees to their State of domicile to (1) receive training and behind-the-wheel experience, and (2) take the knowledge and skills tests necessary to be issued a CDL. This has caused problems because commercial driver training facilities and the type of training needed are not equally available in all States.

To address this and other issues, such as a lack of uniformity in the duration of learner's permits, associated driver history recordkeeping, and test reciprocity among States, the FHWA published an NPRM on August 22, 1990 (55 FR 34478). (In the discussion below, the responsible agency is referred to as the FMCSA, regardless of whether the action described occurred before or after the transfer of responsibility from FHWA to FMCSA in January 2000.)

Since the 1990 NPRM, major changes have occurred in the CDL program through legislation, other rulemakings, regulatory guidance, and policy decisions. For example, in response to the Sept. 11, 2001 terrorist attacks, and because issuance of CDLs to unqualified persons and persons with false identities significantly complicated detection and prevention of fraud, Congress and FMCSA expanded the scope of the CDL program to include issues related to fraud and security. All of these major changes made the 1990 proposal obsolete. Thus, FMCSA withdrew the 1990 NPRM on February 23, 2006 (71 FR 42741). FMCSA issued a new NPRM on April 9, 2008 (73 FR 19282) to address these issues and establish regulatory changes to implement section 4019 of TEA-21, section 4122 of SAFETEA-LU, and section 703 of the SAFE Port Act.

III. Discussion of Comments on the NPRM

On April 9, 2008 FMCSA published an NPRM (73 FR 19282) to revise the

² A "non-CDL" is any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

standards for CDL testing and to require new standards for a CLP. Comments were initially due by June 9, 2008. However, in response to several requests, FMCSA extended the comment period until July 9, 2008

(73 FR 32520). In response to the NPRM, FMCSA received 103 comments. Commenters included representatives from Federal, State, and local government and enforcement agencies, industry, trade associations, advocacy

groups, driver trainers, commercial motor vehicle drivers, individuals and national associations representing various transportation interests. Table 1 presents a commenter name and abbreviation list.

TABLE 1—LIST OF COMMENTERS

Name of commenter	Abbreviated name
Advocates for Highway and Auto Safety	Advocates.
Alabama Department of Public Safety	Alabama.
American Moving and Storage Association	AMSA.
Arkansas Department of Finance and Administration	Arkansas.
U.S. Department of the Army	Army.
American Trucking Associations	ATA.
B–J School Buses, Inc	B–J School Bus.
California Department of Motor Vehicles	California.
C.R. England, Inc	CR England.
CRST Van Expedited, Inc	CRST.
California Trucking Association	CTA.
Commercial Vehicle Training Association, Inc	CVTA.
Delaware Department of Transportation, DMV	Delaware.
Driver Holdings, LLC	Driver Holdings.
Elgin Community College	Elgin CC.
Farris Brothers, Inc	Farris Bros.
Florence School District One	Florence S–D.
Florida Dept of Highway Safety and Motor Vehicles	Florida.
Georgia Department of Driver Services	Georgia.
Idaho Department of Motor Vehicles	Idaho.
Illinois Fertilizer and Chemical Assoc	IFCA.
Driver Services Dept—Illinois Office of the Secretary of State	Illinois.
Indiana Association of Rural Electric Cooperatives	Indiana Rural Electrics.
International Union of Operating Engineers National Training Fund	IUOE.
Joint School District #2, Idaho 2	Joint School District.
John Wood Community College	Wood CC.
Louisiana Office of Motor Vehicles	Louisiana.
Michigan Department of State	Michigan.
Minnesota Department of Public Safety	Minnesota.
Missouri Department of Revenue & Missouri State Highway Patrol; Missouri Department of Transportation	Missouri.
National Automobile Dealers Association	NADA.
Nebraska Agri-Business Association	NE Agri-Business.
Nebraska Department of Motor Vehicles	Nebraska.
New York DMV Motor Carrier Bureau	New York.
North Dakota Department of Transportation	North Dakota.
National School Transportation Association	NSTA.
Ohio State Highway Patrol	Ohio.
Oklahoma Department of Public Safety	Oklahoma.
Owner-Operator Independent Drivers Association, Inc	OOIDA.
Oregon DMV	Oregon.
Pennsylvania Department of Transportation	Pennsylvania.
Schneider National, Inc	Schneider.
South Carolina DMV	South Carolina.
South Dakota Driver Licensing Program	South Dakota.
Truckload Carriers Association	TCA.
Tennessee Department of Safety	Tennessee.
Texas Dept of Public Safety	Texas.
Commonwealth of Virginia DMV	Virginia.
Washington State Dept of Licensing	Washington.
Wisconsin Dept of Transportation	Wisconsin.
Winkle Bus Company	Winkle.
Wyoming Joint Transportation, Highways & Military Affairs Committee	Wyoming.

This final rule responds to the comments received on the 17 issues addressed in the NPRM preamble. The 18th section addresses issues related to fraud prevention and the 19th section addresses miscellaneous comments not specifically associated with any of the 17 original issues or fraud prevention.

1. Strengthen Legal Presence Requirement

a. Required Forms/Documents

FMCSA proposed amending § 383.71 to include a list of acceptable documents to prove citizenship or legal presence.

Comments. Advocates, CRST, Elgin CC and the State of Tennessee supported the proposed change. DHS recommended either using the list of acceptable documents for establishing lawful status, which it published as a part of the REAL ID rule, or adopting REAL ID's method for verifying lawful

status. Michigan supported harmonizing requirements with REAL ID.

FMCSA Response. The final rule adopts the appropriate documents from the most recent list that DHS adopted for proof of citizenship or legal presence under REAL ID. (See 73 FR 5272; January 29, 2008.) Use of this list will ensure greater compatibility with DHS programs including REAL ID.

b. Nonresident CDL

FMCSA proposed amending §§ 383.5, 383.23, 383.71 and 383.73 to reinforce "State of domicile," as previously defined in the regulations, by specifying that a State may only issue a CLP or CDL to an applicant who is a U.S. citizen or lawful permanent resident. Under the proposal, applicants domiciled either in a foreign country other than those granted reciprocity by the Administrator, or in a State that had its CDL program decertified may be issued a Nonresident CLP or CDL.

Comments. DHS objected to the term "Nonresident" because it is used differently for immigration purposes and could cause confusion. Under their current systems, Florida and New York already issue licenses to drivers who would qualify for Nonresident CLPs and CDLs under the proposed rule, but object to the change on the grounds that it would be burdensome to create a new category of license. Virginia does not currently issue CDLs to drivers domiciled in foreign countries and is opposed to expending resources to create this new category of license. Tennessee objected to Nonresident CLPs and CDLs without explanation.

FMCSA Response. The final rule changes the term "Nonresident" to "Non-domiciled" for both CLPs and CDLs. This change will provide greater consistency with FMCSA's authorizing statute, which bases jurisdictional authority to issue CDLs on domicile, not residency. In addition, the change to "Non-domiciled" will avoid confusion and eliminate any actual or perceived conflicts with DHS' immigration programs. Other than the change to "Non-domiciled," the rule remains as proposed in the final rule.

2. Social Security Number Verification Before Issuing a CLP or CDL

FMCSA proposed amending § 383.73(g) to require States to verify certain identifying information (e.g., name, date of birth, and SSN) submitted on the license application with the information on file with the SSA. The States would be prohibited from issuing, renewing, upgrading, or transferring a CDL if the information in the SSA database does not match applicant-

provided data. FMCSA proposed that the SSN verification would only have to be performed once for each CLP or CDL applicant if a notation is placed on the driver record that the verification was done and the results matched information provided by the applicant.

Comments. Georgia, Michigan, NADA, AMSA, and a community college support the proposal. Minnesota commented that the proposal may not consistently protect against or identify those applicants presenting false identities and that the process is burdensome and cost prohibitive. CRST supports the proposal only if the States are capable of managing the process without delays. Farris Bros. expressed concerns about privacy and information security. New York requested an exemption to this provision when an applicant presents a letter confirming the applicant has resolved a problem with a name or date of birth not matching the information in the SSA database.

FMCSA Response. The SSN verification requirement remains as proposed in the NPRM. FMCSA views this requirement as a basic yet critical fraud prevention measure. FMCSA disagrees that this requirement is burdensome. Approximately 45 States currently conduct SSN verification for CDL applicants. Furthermore, verification is neither a lengthy process nor expensive (approximately \$.025 for batch and \$.03 for online transactions). FMCSA declines to adopt New York's exemption request. Verifying directly with the SSA that an applicant's name, date of birth and SSN all match after a discrepancy has been resolved is necessary to prevent fraud.

3. Surrender Of CLP, CDL and Non-CDL Documents

a. Surrender of Documents

FMCSA proposed amending §§ 383.71, 383.73 and 384.211 and adding § 383.25 to expand the current CLP and CDL surrender requirements to include any transaction where a CLP is being upgraded or a CDL is being initially issued, upgraded, or transferred.

Comments. Florida and a community college support the proposal. Advocates supports the proposal but states that the language is ambiguous as to whether it is mandatory or optional. Georgia commented that 49 CFR 384.211 requires CDL applicants to surrender all previously issued CDLs and, therefore, it already complies with the proposed rule. Delaware commented that the proposal is unnecessary because an applicant's identity can be verified

through other documents and electronic systems. New York commented that since it does not issue over-the-counter documents, applicants could be without any photo identification until the new or replaced CLP or CDL arrives in the mail. New York suggested perforating instead of surrendering documents. Michigan suggested that the Agency adopt a standardized document invalidation process such as clipping the corner of the prior document. Minnesota complained that finding a vendor to perforate old documents with the word "VOID" would be expensive.

FMCSA Response. The surrender requirement is mandatory and remains as proposed. FMCSA disagrees that it is unnecessary to surrender prior documents. The surrender requirement is necessary to prevent fraud in the form of a driver holding more than one CDL document. Moreover, the rules recognize that not all States issue CDL documents over-the-counter and include an alternative standardized document invalidation process. As proposed in the NPRM, FMCSA is incorporating its guidance on stewardship requirements for surrendered documents into the final rule. As a result, the final rule provides for an alternative to surrender: Perforating old documents with the word "VOID."

b. Mailing of Initial License

FMCSA proposed amending § 383.73 to require that States may only issue an initial CDL or CLP by mailing it to the address a driver provided on his/her application form.

Comments. South Dakota opposed issuing CLPs by mail because States with over-the-counter procedures would have to develop special procedures. Florida claimed that the benefits associated with this change do not justify the costs required to establish a mailing system. North Dakota and Oklahoma argued that the proof of domicile requirement renders the mailing requirement unnecessary. Oklahoma further complained that forcing States to adopt central issuance would be costly. Tennessee questioned whether FMCSA is in fact requiring all States to change to a central issuance system. Georgia commented that if mailing is required, then States should be able to issue interim temporary CDLs over-the-counter. Illinois stated that unless the States are permitted to choose between mailing and implementing an address verification program, FMCSA is essentially mandating that the State adopt central issuance. Michigan does not believe that its practice of issuing CDLs and CLPs

over-the-counter contributes to fraud. ATA, Driver Holdings and CR England complained that mailing will cause unnecessary delays for CLP holders entering driving schools. ATA further noted that DHS does not require mailing in the REAL ID rules.

FMCSA Response. FMCSA has removed the requirement that States issue initial CLPs and CDLs by mail. This change is consistent with DHS's REAL ID rules and provides States with more flexibility, without a demonstrated reduction in fraud prevention, because, presumably, the same documents that are presented to prove domicile are used to verify mailing addresses. In addition, this change will prevent delays in applicants receiving CDLs and CLPs and will reduce the States' cost of compliance.

4. CDL Testing Requirements for Out-of-State Driver Training School Students

FMCSA proposed to add § 383.79 to provide that a person who holds a CLP would be able to take the CDL skills test outside of his/her State of domicile. The testing State would then send the skills test results to the State of domicile. The State of domicile would accept the results of the skills test and, if the applicant passed, would issue a CDL.

Comments. Advocates and an individual driver supported this proposal because reciprocity would increase national uniformity. NADA and AMSA also supported the concept of reciprocity. However, this proposal generated significant negative comments. CVTA commented that lack of uniform State testing standards would promote shopping for a State with the lowest testing standards. It also commented that many States do not grant reciprocity for CDLs, instead requiring even experienced drivers to retest. ATA, CVTA and CTA preferred temporary nonresident CDLs as an alternative. These associations, a number of carriers, a driver trainer and an individual driver commented that the proposed rule would require costly and time-consuming travel as well as delays to starting company-administered training and employment. Several trainers praised Illinois's high standards and objected to any rule that would inhibit the State's ability to do what it deemed necessary.

All of the State agencies that submitted comments had issues with the proposal. The principal complaint was that the individual States would lose control over the integrity of the testing process. States that employ stringent anti-fraud measures in the testing process object to being required to accept results from States that are

relatively lax. States that had previous experience with testing fraud were particularly opposed. Texas commented that the proposal had the potential for a significant increase in fraud because the State that issued the CDL would have no recourse against testers outside its jurisdiction. Several States suggested that FMCSA change the requirement to permit, but not require, reciprocity. Several States also complained that the proposed rule would increase costs in terms of program, procedure and training changes. A number of States had specific concerns about the electronic transmission of information between States and the costs associated with implementing an electronic system.

FMCSA Response. After careful consideration of these comments, FMCSA has determined that the final rule will remain as proposed. States are required to accept the results of a skills test administered to an applicant by any other State. FMCSA is confident that the upgraded skills test and anti-fraud standards required and implemented by this rule will improve and standardize both skills testing and fraud prevention, creating more uniformity across all States' CDL programs.

In addition, FMCSA believes that the new rule will help reduce barriers to entry into the driver labor market. Under current law and regulations, a driver may only obtain a CDL or CLP from his/her State of domicile. The new rule will facilitate driver training for applicants unable to train in the State of domicile. In addition, training schools often provide applicants with use of a truck for testing purposes. For many applicants, this is the only feasible option for testing. If applicants are required to return to their States of domicile for testing, they would have to secure use of a truck, obtain insurance and/or incur the cost of renting a truck simply to take the test. For many this is logistically or financially prohibitive.

The travel costs raised by carriers in their comments are not related to the proposed rule change. Currently, many States do not enforce the requirement that only the State of domicile may issue a CDL or CLP. As a result, drivers are avoiding the travel costs associated with the return to the State of domicile by obtaining CDLs from States other than their States of domicile, in violation of federal statute and FMCSA's rules. With or without the rule change, these costs exist. It does not appear unreasonable to require a driver applicant to return to his/her State of domicile because this is where, by definition, he/she makes his/her

permanent home and is the jurisdiction to which he/she intends to return.

FMCSA leaves it to the States to determine what secure electronic method of transmitting test scores works best for them. At least one State currently has an electronic database that can be used for the transmission of test results between States. Other States may prefer to use more basic methods of electronic transmission such as e-mail.

5. State Reciprocity for CLPs

FMCSA proposed amending § 384.214 to allow a person to obtain a CLP from his/her jurisdiction of licensure and then engage in CMV driver training located in whole or part in any State, similar to the reciprocity States grant other States' CDL holders who travel across State lines.

Comments. South Carolina, Michigan, Advocates, NADA, CTA and two carriers support CLP reciprocity. CTA and a carrier commented that CLP reciprocity would reduce training and licensing costs and increase flexibility, but also suggested that States be able to issue temporary CLPs to driver-trainees domiciled in other States. OOIDA supports the proposed rule so long as it does not create an additional burden on the States or compromise the one driver/one license/one record principle.

FMCSA Response. The final rule will remain as proposed: States will be required to grant reciprocity to CLPs issued in other States. This will permit a CLP holder to train in States other than his/her State of domicile. FMCSA believes that issuing temporary CLPs to driver-trainees domiciled out-of-State would violate the one driver/one license/one record principle.

6. Minimum Uniform Standards for Issuing a CLP

a. Passing the General Knowledge Test To Obtain a CLP

FMCSA proposed adding new § 383.25 and amending §§ 383.71 and 383.73 to require that every applicant successfully complete the CDL knowledge test before being issued a CLP. A driver who holds a valid non-CDL in his/her State of domicile would obtain a CLP from the State of domicile upon successful completion of a general CDL knowledge test.

Comments. Advocates, two associations, two driver-trainers, a carrier and five States generally supported this proposal.

FMCSA Response. The final rule will remain as proposed with the following clarification: A driver holding a valid CDL who seeks an upgrade for which a skills test is required must also pass the

appropriate knowledge test prior to obtaining a CLP. This is consistent with the new § 383.25(d) which requires a CDL holder seeking an upgrade to his/her CDL to obtain a CLP if the upgrade requires a skills test.

b. Requiring the CLP To Be a Separate Document From the CDL or Non-CDL

FMCSA proposed adding new § 383.25 and amending §§ 383.151 and 383.153 to require that the CLP be a separate document from either the CDL or the non-CDL; contain the words "Commercial Learner's Permit" or "CLP" displayed prominently; and include a statement that it is not valid for driving a CMV unless presented with the underlying CDL or non-CDL.

Comments. Advocates strongly supports the proposal. New York and Alabama commented that there is not enough room for the proposed language on the CLP. Tennessee commented that a two-part license would cause problems with tracking expiration dates, software upgrades and law enforcement officials having to review two documents. Georgia commented that the proposal may not be compatible with REAL ID because a driver may only hold one REAL ID-compliant identification document. Texas suggested having CLP holders surrender their underlying non-CDL documents and requiring States to issue one integrated document that would serve as both a CLP and non-CDL. Washington supports the proposal but notes that it will require changes to its document issuing process.

FMCSA Response. The requirement remains as proposed—that the CLP be a separate document from the underlying license. This rule is not inconsistent with REAL ID because the license and the CLP are not two separate licenses; they are two parts of the same license. As a result, the CLP is not valid unless presented with the underlying license. Furthermore, the two documents share the same driver's license or record number. FMCSA believes that one integrated document would create problems since the CLP and non-CDL would likely have different expiration dates. Tracking expiration dates on separate documents should not present a significant problem because most States appear to do this under the current system. The standard language is necessary so that all parties checking the license (law enforcement, *etc.*) understand the purpose and limitations of the CLP.

c. CLP Document Should Be Tamperproof

In accordance with section 4122 of SAFETEA-LU, FMCSA proposed

amending §§ 383.153 and 383.155 to require that CLP documents be tamperproof and that the content of the CLP documents be the same as the content of the CDL documents.

Comments. Georgia and Florida support the proposal. Delaware commented that tamperproofing is expensive and that it is not necessary because the CLP is only used for a short period of time. Michigan described its current system, which pairs a secure underlying license with a paper CLP, as more than adequate and does not believe it is cost-effective to expend resources to tamperproof a temporary document.

FMCSA Response. The tamperproofing requirement, which Congress required in SAFETEA-LU, remains as proposed.

d. Photograph on CLP

FMCSA proposed amending § 383.153 and adding new § 384.227 to require that States include a color photograph or digitized color image of the driver on CLPs.

Comments. Advocates asked FMCSA to provide data or information showing that a photograph or digitized image will substantially deter fraud. Pennsylvania and Michigan do not currently require a photograph on the CLP and object on the grounds that the change would be burdensome. Michigan argued that a photograph on the CLP would be unnecessary if the underlying CDL or non-CDL has a photograph. DHS objected to having a State issue two photograph IDs to a single person, stating that it would violate the one driver/one license/one record principle.

FMCSA Response. After studying these comments and further considering the risk of fraud, FMCSA has decided not only to remove the requirement for a color photo on the CLP document, but also to *prohibit* a photo on the CLP document. FMCSA has determined that eliminating the photo makes the CLP more secure. Otherwise, a State would be issuing a single person two State-issued photo IDs and someone other than the record holder could present the CLP document as a photo ID to establish identity or for other purposes. This change also complies with the spirit and intent of one driver/one license principle: Drivers will not be issued more than one photo ID. The CLP is a two-part license comprised of the CLP document and the underlying CDL or non-CDL *together*, and the CLP document must be presented with the underlying CDL or non-CDL to be valid. The CLP document will have the same driver's license number as the underlying CDL or non-CDL as well as

language stating the two-part nature of the document, making this relationship clear.

e. Recording the CLP in CDLIS

FMCSA proposed amending §§ 383.71, 383.73(h), 384.205, 384.206, 284.207, and 384.225 to require States to create a CDLIS record for a CLP and to require States to post all CLP transactions to CDLIS.

Comments. Advocates, Tennessee and Georgia supported the proposal, as did South Carolina, which already complies with the proposal. Delaware objected to the requirement because of additional costs. CTA generally supported the idea behind the proposal but noted that it would be burdensome to the States. Arkansas commented that the proposal would require it to perform CDLIS checks before issuing a CLP, which would result in longer lines and additional expense.

FMCSA Response. The rule's provisions requiring recording the CLP in CDLIS, which Congress required in SAFETEA-LU, remain as proposed.

7. Maximum Initial Validity and Renewal Periods for CLP and CDL

a. Initial Validity and Renewal Periods for a CLP

FMCSA proposed adding new § 383.25 to require that States make the initial CLP valid for 180 days and that they may renew it for an additional 90 days without requiring the CLP holder to retake the general and endorsement knowledge tests.

Comments. NADA and CRST supported the proposal. Florida supported the proposal as long as it does not allow unlimited re-issuance of CLPs where applicants continue to pass the knowledge tests. Michigan requested clarification as to whether an applicant would have to take the knowledge test again to reset the cycle. California, New York, Virginia and the Army commented that the initial period was too short. Oregon, Illinois, Georgia and Wood CC suggested a one-year, initial non-renewable period. Minnesota specifically recommended a 9-month validity period. Advocates and CR England suggested a 90-day initial period with a 90-day renewal period. South Dakota, Georgia and Elgin CC commented that the renewal period was too short. Idaho and Washington supported a 6-month renewal period. The Florence S-D recommended two 6-month renewal periods. Wisconsin complained that the validity cycle was too short. South Carolina objected because it would require a change to existing systems.

FMCSA Response. The FMCSA is making no change to the initial CLP validity period of 180 days but is changing the final rule to allow the CLP to be renewed for an additional 180 days (instead of 90 days) without requiring the CLP holder to retake the general and/or endorsement knowledge tests. This will give CLP holders more time to train and take the CDL skills test, and is generally in line with the majority of the comments, which recommend some combination of initial validity and renewal periods to a maximum of one year. Also, the longer validity period will ease the burden on DMV resources. The number of times a State permits re-issuance of a CLP after an applicant passes the knowledge test is not addressed in this rulemaking and is left to the States' discretion.

b. Initial Validity and Renewal Periods for a CDL

FMCSA proposed amending § 383.73 to establish maximum initial and renewal periods of 8 years for CDLs.

Comments. ATA, AMSA and CRST support this provision. Advocates opposed it on the basis that this period will increase the potential for unsafe drivers to evade detection and magnify the possibility of fraud and the amount of time that fraudulent CDL actions can continue undetected. Missouri commented that because CDL drivers must be medically examined and certified every two years, the disparity between the duration of the CDL and the medical examination could prove to be cumbersome for SDLAs, if the medical certification is ultimately linked to CDL issuance. Georgia and Michigan support the proposal, but suggested that the final rule incorporate REAL ID by reference. Texas recommended that the term be for five years so it matches the CDL expiration date to the TSA Hazardous Materials Endorsement background check requirement.

FMCSA Response. The requirement for maximum issuance and renewal periods of 8 years remains in the final rule. Some commenters misunderstood the proposal: Under the new rule 8 years is the maximum, but States are free to set shorter validity periods. This will affect only a small number of States that currently permit validity periods longer than 8 years. Finally, although FMCSA declines to adopt REAL ID by reference wholly or in part, this provision is consistent with maximum validity periods required by REAL ID.

8. Establish a Minimum Age for CLP

FMCSA proposed amending § 383.71(a) to require that a CLP holder be at least 18 years old, the minimum

age to operate a CMV in intrastate commerce. The Agency also proposed to apply the exceptions and exemptions from the age requirements for interstate commerce, granted in §§ 390.3(f) and 391.2 and subpart G of part 391, to the issuance of a CLP.

Comments. ATA and two carriers, a citizen, a driver and a driver trainer supported the proposal. Six States commented that they are already in compliance with the proposed rule. AMSA endorsed the proposal, saying it would help enforce the current age limit on driving of CMVs. Advocates and the Transportation Defense Lawyers Network were concerned that allowing CLPs for driver as young as 18 when they could not drive in interstate commerce until the age of 21 would be used to justify lowering the age of interstate CDL driving. TCA urged FMCSA to develop an experimental program to determine the feasibility of using drivers 18 to 20 years old in interstate commerce. California and Illinois commented that the rule will create hardship in the agricultural community.

FMCSA Response. The proposed requirement remains in the final rule. In the NPRM, FMCSA only proposed setting the minimum age for CLPs at 18. Lowering the minimum age for CDLs is beyond the scope of this rulemaking. For a discussion of the rule's applicability to the agricultural community, please see Section 19.a. below (Applicability to agricultural sector).

9. Preconditions to Taking the CDL Skills Test

a. CLP Prerequisite for CDL

FMCSA proposed adding new § 383.25(d) to require that obtaining a CLP is a precondition to the issuance or upgrade of a CDL.

Comments. Idaho suggested that there should be an exclusion for drivers seeking upgrades or who have previously held CDLs. Delaware recommended that this requirement apply only to those who have never held a CDL. Florida did not oppose the requirement, but commented that it may adversely affect school districts and other organizations from hiring new people. New York and Wisconsin commented that this requirement would entail modifications to State systems. A carrier commented that CLPs are unnecessary, without further explanation.

FMCSA Response. FMCSA has modified the final rule to state that, with respect to upgrades, a CLP is a precondition to the issuance only if the

upgrade requires a skills test (as opposed to a knowledge test). Where skills testing is a part of the licensing process, FMCSA believes it is important for drivers to have the opportunity to practice on the public roads in a CMV under the supervision of an experienced driver. FMCSA believes that a CLP is an important document to distinguish between CDL holders and driver-trainees who must be accompanied by CDL holders.

b. CLP Holder Accompanied by CDL Holder

FMCSA proposed adding new § 383.25(a) to require that the CLP holder be accompanied by the holder of a valid CDL with the proper CDL group and endorsement.

Comments. Wisconsin opposes this requirement and commented that permitting unaccompanied CLP holders can facilitate driver training. Advocates does not believe that having a CDL holder accompany a CLP holder provides sufficient assurances of safety because no standards exist for the accompanying CDL holder's driving skills, qualifications or length of time he/she has had his/her CDL.

FMCSA Response. The final rule remains as proposed. Safety considerations outweigh convenience during driver training. FMCSA does not believe that it is safe to permit inexperienced drivers who have not yet passed the CDL skills test to drive unaccompanied. Because qualifications of the accompanying CDL holder were not addressed in the NPRM, they are beyond the scope of this rulemaking.

c. Waiting Period To Take Skills Test

FMCSA proposed adding new § 383.25(e) to require that the CLP holder is not eligible to take the CDL skills test within 30 days of issuance of the CLP.

Comments. Tennessee, Georgia, Michigan and Advocates supported the 30-day waiting period. Twenty-one commenters opposed the 30-day waiting period. ATA and CVTA argued that the 30-day waiting period penalizes driver-trainees who successfully complete their training less than a month after obtaining their CLPs. ATA, NE Agri-Business, and NSTA commented that delaying the skills testing also means that driver training graduates will be forced to postpone their employment and subsequent ability to begin earning wages. It also will be costly for employers, who must either pay the drivers they have trained for not working while they wait to be licensed or risk losing them to another industry. NE Agri-Business and CVTA argued

FMCSA offered no empirical evidence that trainees are better drivers or are better prepared for the skills test after 30 days' practice. Schneider recommended that FMCSA change the waiting period to 14 days, to avoid skills degradation between training and testing. The Joint School District recommended a waiting period of 10 days between taking the written exam and the skills test. Several commenters opposed the 30-day waiting period because classroom training is usually before a student applies for the CLP and, based on the hours in the proposed entry level training rule, the behind the wheel training will take no more than two weeks.

FMCSA Response: FMCSA has amended the provision in the final rule to grant eligibility to take the CDL skills test 14 days after obtaining a CLP. FMCSA understands that some CLP holders may acquire driving skills more quickly than others. Regardless, FMCSA encourages CLP holders to train for as long as necessary to gain sufficient CDL driving skills. However, those who feel ready are eligible, but not required, to take the skills test 14 days after obtaining the CLP. FMCSA does not believe this will compromise safety because only qualified drivers will be able to pass the skills tests given in accordance with the enhanced standards mandated elsewhere in this rule.

d. Relationship to Entry Level Driver Training Rulemaking

On December 17, 2007, FMCSA published a Notice of Proposed Rulemaking addressing Entry Level Driver Training. This proposed rule would require both classroom and behind-the-wheel training for drivers seeking a CDL for the first time.

Comments. Commenters requested clarification about the relationship between this rule and the Entry-Level Driver Training rule.

FMCSA Response. The final rule for Entry Level Driver Training is still under development. While these are separate rules, FMCSA will ensure that any future requirements for driver training are completely compatible with the requirements of this rule.

10. Limit Endorsements on CLP to Passenger (P) Only

FMCSA proposed adding new § 383.25 and amending § 383.93 to require that CLP holders not be eligible for any endorsement other than the passenger (P) endorsement.

Comments. Advocates and CRST support the proposal. A number of entities supported a prohibition on hazardous material endorsements on

CLPs but objected to prohibiting other endorsements. Six associations commented that the proposed limit on CLP endorsements would cause delays in providing employees necessary tanker, hazardous material, and school bus training, and would compound the problems the industry has in hiring and keeping full-time CDL employees. CVTA and ATA stated that this prohibition would create problems for drivers who wish to add an endorsement to their license as well as the motor carriers that employ them. They further commented that it would require a costly, time-consuming, two-stage training process and could have an unintended consequence of shifting endorsement training away from more standardized means of instruction such as at driver training schools. A driver trainer commented that the limit on CLP endorsements would make training very difficult. Schneider commented that in its experience, training CLP holders with tanker endorsements produces safer drivers. CR England asked FMCSA to clarify that the prohibition against a CLP driver carrying passengers does not apply to "trainers, trainees and Federal/State Auditors/Inspectors." California commented that drivers should be able to train on the type of vehicle they will eventually be driving. Georgia supports additional endorsements so that drivers could get more behind-the-wheel training. New York, Oregon, and a school district recommended permitting a tanker endorsement. Illinois wants more flexibility in allowing training on tankers and double/triple trailers. Two driver trainers objected to prohibiting training on vehicles requiring endorsements because it sets up a two-step training process. One driver trainer suggested permitting CLP holders to obtain knowledge test endorsements, but that they should not be valid until the driver obtains a full CDL. A number of States had concerns about school bus drivers not being able to train on school buses without an endorsement. New York expressed concern about not having the school bus (S) endorsement on the CLP. The State said the presence of the S endorsement would be proof of the applicant passing the knowledge test before taking the skills test.

FMCSA Response. The final rule includes the following in addition to maintaining the P endorsement FMCSA originally proposed:

A CLP holder may obtain a school bus (S) endorsement with a no-passenger restriction. This change promotes consistency because the P and the S endorsements both require knowledge and skills testing. Also, it is logical to permit an S endorsement because it will

provide proof that the CLP holder passed the S endorsement knowledge test before taking the S endorsement skills test. The final rule clarifies that the no-passenger restriction on the P and S endorsements does not apply to instructors, examiners, other trainees or Federal/State auditors/inspectors.

A CLP holder may also obtain a tank vehicle (N) endorsement with the restriction that the tanker must be empty and must have been purged if it previously contained hazardous materials. An N endorsement on the CLP with an "empty" restriction balances safety concerns with industry needs to train drivers on the type of vehicles they will eventually be driving, but does not allow them to train under cargo-laden conditions until they have learned the basics of operating the vehicle. By limiting endorsements on the CLP, FMCSA intends for drivers to learn how to operate a CMV safely before taking on more dangerous operations requiring higher skill levels. It is permissible to take the knowledge test for endorsements at the same time as the knowledge test for the CLP, however, the driver must obtain a CDL before driving vehicles requiring endorsements (other than those set forth above).

11. Methods of Administering CDL Tests

FMCSA proposed amending § 383.133 to prohibit the use of interpreters during the administration of the knowledge and skills tests, and to require that applicants be able to understand and respond to verbal commands in English by the skills test examiner.

Comments. South Carolina, New York, Tennessee, Georgia, Alabama, Michigan, Texas, ATA, Advocates, CVTA, CR England, Elgin CC, Driver Holdings, three individuals and two drivers all support the proposal. OOIDA commented that understanding basic commands in English does not sufficiently demonstrate proficiency. Washington requested that FMCSA clarify whether the definition of "interpreter" includes bilingual testers and whether the NPRM proposed that skills testing be conducted in English only. Florida opposed that portion of the proposal that requires that the skills test be given in English only. Although it already prohibits the use of interpreters during skills tests, it permits examiners to interact with applicants in other languages.

FMCSA Response. FMCSA has modified the final rule to make clear that examiners may interact with applicants only in English during the skills test. The OIG's 2002 report on

improving CDL testing and standards noted that some States permit bilingual testers to test in languages other than English, while other States do not permit this practice. Under the final rule this practice is prohibited; bilingual or multilingual examiners are not permitted to test in languages other than English. This clarification is consistent with 49 CFR 391.11(b)(2), which requires drivers to have certain minimum English language skills and will promote national uniformity in testing standards. It is worth noting that § 391.11(b)(2) is currently under Agency review. If the Agency makes changes to § 391.11(b)(2), it may also propose corresponding changes to § 383.133.

12. Update Federal Knowledge and Skills Test Standards

Some modifications to part 383, subparts G and H, were proposed to match the knowledge and skills test standards set forth in the AAMVA 2005 CDL Test System.

Comments. CRST, Advocates, Indiana Rural Electric, and AMSA were generally supportive of the rule's changes to Federal standards for CDL knowledge and skills testing. AMSA stated that its support was based on the fact that substantial input was taken from those in the affected industry and that the rule would promote uniformity across States.

a. Incorporate by Reference AAMVA 2005 CDL Test System

FMCSA proposed to add new § 383.9 to incorporate the AAMVA 2005 CDL Test System by reference into the Federal regulations for CDL knowledge and skills standards.

Comments. NADA, Florida, Georgia and New York support adopting the 2005 CDL Test System. Georgia and Florida stated that they have already adopted the 2005 CDL Test System. Missouri supported the rule change but suggested that States be able to use paper versions of the tests to accommodate those testing sites that are not computerized. Oregon commented that although the new test system is good, it has limitations and flaws and that AAMVA has been slow to correct errors and issue updates. Oregon further commented on proposed § 383.133(b)(2)(i), which would require the total difficulty level of questions used in each version of a knowledge test to fall within a set range, by asking that AAMVA and FMCSA reconsider the way difficulty levels are used and remove reference to them. Oregon and Idaho both commented that the States should be given limited flexibility to deviate from the Test System.

Minnesota suggested that the rule establish the AAMVA Test System as a minimum standard and that FMCSA allow States to alter the test as long as they satisfy this minimum. TCA objected to the new test system on the basis that endorsement of a single test was not necessarily in the interest of highway safety. Virginia, Illinois, California and Nebraska all expressed concern that the new standards would require expansion or reconfiguration of skills testing areas. New York expressed concern that it would not be able to test the required maneuvers in urban areas such as New York City. A community college expressed concern that not all existing testing centers could conform to the new standards, creating an economic hardship on applicants through increased travel costs. South Carolina commented that compliance with the computer generated test requirements would require significant IT solutions and substantial cost.

FMCSA Response. In the final rule, FMCSA does not incorporate by reference the AAMVA 2005 CDL Test System, because doing so would have allowed examinees access to sensitive testing information. As a result, proposed § 383.9 is not included in the final rule. The final rule requires States to use an FMCSA pre-approved State Testing System that meets the minimum requirements established in this rule and that is comparable to the AAMVA 2005 CDL Test System (July 2010 version), which FMCSA approves in this rule. FMCSA will provide all State Driver Licensing Agencies with a copy of the Test System prior to the effective date of this rule. The July 2010 version contains minor, non-substantive revisions to the original (December 2005) version. FMCSA does not believe that the new test standards will be burdensome to the States. In fact, by the end of 2009, approximately 50 percent of States had adopted the 2005 CDL Test System. The 2005 CDL Test System, unmodified, is the appropriate standard to use because it has been rigorously pilot-tested and evaluated for validity and consistency.

States concerned about the challenges of automating the generation of multiple versions of the knowledge test may consider relying on vendors who will make appropriate software available. Even though automated generation is the preferred method, States may nonetheless prepare the tests manually using the algorithm required by the standards.

Although the testing standards for the skills test were upgraded to make performance of off-road maneuvers harder, States do not have to build new

sites to test all of the maneuvers. The 2005 CDL Test System provides more flexibility to States in choosing driving skill components than previous versions. Instead they can choose the skills and maneuvers in the testing standards that are appropriate for their current sites, rendering significant reconfiguration or expansion of skills testing sites unnecessary.

States using AAMVA's 2005 CDL Test System (Version July 2010) without modification do not need pre-approval from FMCSA. States seeking pre-approval to use other State Test Systems (including any modification to AAMVA's 2005 CDL Test System (Version July 2010)), must submit a request for approval to FMCSA's CDL Division.

b. Pre-Trip Inspection

In addition, modifications to part 383, subparts G and H, were proposed to make the entire pre-trip inspection (not just the air brake inspection) part of the skills testing standard, rather than the knowledge testing standard as it is currently.

Comments. South Carolina supported making the pre-trip inspection part of the skills testing. Texas and Nebraska opposed making the pre-trip inspection part of the skills testing. Texas commented that administering the pre-trip inspection as a knowledge exam will not reduce safety. Nebraska commented that changing the pre-trip inspection back to a skills test would add 45 minutes to each skills test, thus increasing costs to the State.

FMCSA Response. The pre-trip inspection will remain in the final rule as part of the skills test. The AAMVA 2005 CDL Test System includes the pre-trip inspection as part of the skills test because it is important to demonstrate the applicant's ability to inspect the vehicle for any defects. This should not be a burden to the States, because they now have the option of randomly administering one of three partial pre-trip inspection test options to the applicants, which will reduce the time needed to administer the pre-trip inspection as part of the skills test.

c. Skills Test Banking Prohibition

Modifications to part 383, subparts G and H, were proposed to prohibit the banking of parts of the skills test (for example, an applicant who passes the pre-trip and off-road maneuvers, but fails the on-road part of test must retake all three parts of the skills test).

Comments. North Dakota supported the proposal to prohibit banking. New York said that it does not currently allow banking. However, most

commenters who addressed “test banking” were opposed to the proposed prohibition of this practice. They either stated that FMCSA had not explained the intended safety benefits of the provision or asserted that there would be no safety benefits. Specifically, twelve State agencies objected to this change, arguing that it would lengthen the amount of time it takes to re-test a driver who fails the exam but has passed some portions of the test. States also commented that greater resources will have to be dedicated to skills testing drivers if banking is prohibited due to the increased length of time needed to re-test drivers who fail. Four associations, three carriers and four driver trainers expressed similar concerns. States also commented that the prohibition would increase administrative costs by making it difficult to schedule tests efficiently; requiring greater effort for examining personnel; requiring changes to testing systems, forms and process; and requiring staff retraining.

FMCSA Response. After careful consideration of the many comments, FMCSA has decided to eliminate the proposed banking prohibition. FMCSA has introduced a number of new rules in this proceeding designed to improve the quality of CDL testing. Considering the number of negative comments and concerns about increased costs, the Agency has determined that, at this time, the safety benefits derived from this particular section do not justify States’ anticipated costs of compliance. States remain, however, free to prohibit this practice. FMCSA has simply decided not to mandate that States prohibit banking.

d. Gross Vehicle Weight Rating (GVWR) Issues

Modifications to part 383, subparts G and H, were proposed to adopt the expanded definition of CMV in section 4011(a) of TEA–21 to include both “gross vehicle weight rating and gross vehicle weight,” “whichever is greater” and “gross combination weight rating and gross combination weight,” “whichever is greater.”

Comments. Idaho commented that the expanded definition of CMV in section 4011(a) of TEA–21 combines overweight vehicle issues with CDL classifications. Illinois stated that it allows a person legally to register a vehicle for a greater amount than the manufacturer’s GVWR/GCWR (the GVWR/GCWR of a vehicle is less than 26,001 pounds, but the plate displayed on the vehicle covers a weight more than 26,000 pounds).

FMCSA Response. The proposed expanded definition of CMV remains in

the final rule. The expanded definition of CMV in section 4011(a) of TEA–21 was not intended to allow overweight vehicles with a GVWR/GCWR of less than 26,001 pounds to be used as a representative vehicle for the purpose of taking a CDL skills test. The intent of including the actual gross vehicle weight and the gross combination weight in the expanded definition of CMV is to allow roadside enforcement against drivers who do not have a CDL, but are operating vehicles with an actual weight of more than 26,000 pounds. Therefore, the expanded definition of CMV is to be used for roadside enforcement, but only the GVWR and GCWR must be used for skills testing in order to maintain the representative vehicle concept.

Allowing a person to register a vehicle for a greater amount than the manufacturer’s GVWR/GCWR does not affect the expanded definition of CMV. Registered weight has never been a valid way of determining a representative vehicle.

e. Removal of § 383.77 (Substitution of Experience for Skills Tests)

Modifications to part 383, subparts G and H, were proposed to eliminate § 383.77, because the substitute for a driving skills test was intended only for the initial testing cycle prior to April 1, 1992.

Comments. Several commenters, including New York, Florida, CTA, ATA and the Army complained that the proposed change would preclude States from granting the CDL skills test waivers to drivers with military CMV experience. ATA further stated that it is currently working with the Department of Defense to align the military’s licensing standards more closely with commercial standards but is concerned that the proposed change would adversely affect the future ability of military CMV drivers to transition to a commercial setting. ATA and New York recommended keeping the CDL skills test waiver for holders of military driver’s licenses with CMV experience.

FMCSA Response. The final rule amends § 383.77 to limit the substitution of experience for the skills test to eligible drivers with military CMV experience. The skills test waiver provision in § 383.77 was promulgated in 1988 as a temporary “grandfathering” transition measure when FMCSA first adopted CDL regulations. Although this provision has been associated with fraudulent activities, including the falsification of documents to prove that the applicant has the experience and clean driving record necessary to qualify for the waiver, FMCSA believes this

provision serves an important function for military personnel returning to the civilian work force. Limiting this provision to drivers who have military CMV experience should significantly reduce the fraudulent activities associated with this provision. Regardless, FMCSA continues to encourage military units to train their recruits as CMV drivers and have them obtain State-issued CDLs while still in active duty status to minimize any adverse effect on their future ability to transition to the civilian workforce. FMCSA will continue to work with the armed services to identify other ways to facilitate military drivers getting CDLs.

f. Covert Monitoring of State and Third Party Skills Test Examiners

Modifications to part 383, subparts G and H, were also proposed to adopt the OIG recommendation to require covert monitoring of State and third party skills test examiners.

Comments. Missouri supported the proposal and recommended that federal funding be made available for implementation. Driver Holdings supported the proposal so long as the objective is to detect fraud, not mistakes or errors in judgment. Michigan complained that the proposal would increase State employees’ work load significantly. Virginia commented that unannounced or covert monitoring is logistically difficult and burdensome—without advance notice, the necessary or appropriate people or documentation may not be available. The Army wants to have its CDL program certified in the future, and does not believe that covert monitoring can be conducted under current military installation and security requirements. South Carolina commented that it currently engages in covert monitoring of State employees. North Dakota does not think it should have to engage in covert monitoring of its own employees. Florida commented that the proposals are generally consistent with its programs, but that it finds unannounced visits more efficient than unannounced visits because, with the latter, key personnel can be unavailable. CTA commented that retesting a sample of drivers previously tested by a third party is burdensome. Several States object to all the monitoring being required and want funding from FMCSA.

FMCSA Response. As proposed, covert monitoring of State and third party skills test examiners will remain in the final rule. In addition to the covert and overt monitoring of State and third party skills test examiners required at § 384.229(b), § 383.75(a)(5) requires States to perform one of the

three alternative skills test exercises (covert test taking, co-scoring, and retesting) on third party examiners. FMCSA has determined that increased monitoring of State and third party skills test examiners' records and administration of skills tests, using both covert and overt methods, is an important part of both fraud prevention and quality control. Fraud prevention and quality control are, in turn, critical to achieving the goal of national uniformity in testing standards. Furthermore, the Agency adopts these monitoring requirements in accordance with the OIG's recommendation in its 2002 Report that it require covert monitoring of State and third party skills test examiners. FMCSA does not believe that these requirements are unreasonably burdensome. Although States may experience some inconveniences in the short term as they adjust their programs, FMCSA's goal is to improve the quality of testing standards over the long-term.

13. New Standardized Endorsements and Restriction Codes

a. Uniform Endorsement Codes

FMCSA proposed to amend § 383.153 to include uniform codes for all endorsements and restrictions on CDLs.

Comments. Tennessee, Georgia, NADA, two carriers and a trainer supported the proposal. Wisconsin stated that this change would require legislation and a reconfiguration of the DMV's driver license data processing system. Virginia commented that it would require modifications to the DMV's automated system and was concerned it would require immediate reissuance of all CDLs. Delaware stated that this would be burdensome and commented that if a phased approach is acceptable to the FMCSA (change the license upon renewal), there will be some CDL holders who have the new endorsements and restrictions and others who have the old ones. If not, the DMV will have difficulty handling the volume of customers who would be required, within a limited time-frame, to have their licenses changed. Florida commented that the adoption of the new codes would be prohibitively expensive and that several of the proposed standard restriction codes are already in use for other purposes, while some of the proposed restrictions are represented by other codes. Florida and Minnesota suggested that the rule require CDLs to display explanations for the codes. New York commented that it would have to change its codes and that it would be burdensome. North Dakota and Illinois found the wording of the

restrictions confusing in that some are restrictions and others are endorsements. Pennsylvania commented that current regulations are adequate. Michigan opposed the new codes because of the cost of implementation. Texas supported the proposal generally, but suggested that FMCSA establish a working group consisting of representatives from all States and jurisdictions, including AAMVA, to review this proposal and make a final recommendation on standardizing these codes to minimize the impact all States.

FMCSA Response. The proposed changes remain in the final rule with minor modifications to clarify that the L, Z, E, O, M and N codes are restrictions, not endorsements. These comments demonstrate the need for standardizing the codes: States are using many inconsistent codes and have not, in many cases, followed the existing codes assigned by AAMVA. It is essential to have the new standardized codes on the licenses so that law enforcement officials across State lines can determine whether drivers have proper qualifications. FMCSA will not require CDLs with old codes to be reissued; the new codes will be used when the license is next renewed or reissued. FMCSA recognizes that during the transition period, law enforcement officials may encounter multiple sets of endorsement and restriction codes. However, this is no different than what is currently happening when CDL holders cross State lines. In the long term, the rule will correct this problem and promote national uniformity. An Agency outreach campaign to coincide with implementation should alleviate many of the States' concerns about the transition to the new codes.

FMCSA disagrees that standardizing restriction codes will be prohibitively expensive. This rule does not require States to add endorsements or restrictions to their database or license. It only requires them to standardize the letter codes associated with the endorsements or restrictions they currently use. Thus, in some cases, States will have to replace one letter with another on the CDL license and in their SDLA data code. However, this is primarily a computer programming change limited to reassigning letter codes and should not result in the need to redesign CDL documents significantly. While the States will be required to adopt three new restriction codes, the majority of the mandated restriction codes in this final rule are the existing standardized national restriction codes that AAMVA adopted many years ago. These standardized

codes were created by AAMVA so States would have uniform codes if they needed to use them as part of their licensing program. For those States that currently enforce these restrictions, but chose to use non-standardized codes, there will be a short-term burden in converting to the standardized codes. In the long run, it will benefit the CDL program by having all States use standardized codes for national restrictions.

b. Testing Drivers on Vehicles With Air Brakes, Automatic Transmissions, and Non-Fifth Wheel Combination Vehicles

FMCSA proposed to amend the Federal restrictions at §§ 383.5, 383.93, 383.95, and 383.153 for applicants who use a vehicle in the skills test that is equipped with (1) an automatic transmission; (2) air over hydraulic brakes; or (3) a trailer with a non-fifth wheel (pintle hook) connection. All three restrictions would be assigned standardized restriction codes, along with a standardized code for the current air brake restriction.

Comments. Florida and South Carolina support the proposal. Pennsylvania questioned whether current CDL holders who do not have the new restrictions or endorsements would be grandfathered. Idaho commented that the new restrictions are unnecessary, costly and burdensome on the driver and was concerned about there being enough room on the CDL for the increasing number of restrictions. Oregon supported the automatic transmission restriction but, with respect to the other new restrictions, believes that regulatory objectives would be better served by establishing standard restrictions for small Class A CMVs. A carrier asked whether it would have to bring several trucks to the tests to gain all of the needed endorsements.

FMCSA Response. The proposed new standardized endorsements and restrictions remain unchanged in the final rule. A CDL applicant will be licensed with restrictions based on the type of vehicle and equipment he/she uses for the skills test. FMCSA believes that it is an important safety objective to require applicants to demonstrate their ability to operate the vehicles and equipment covered by this section prior to licensure.

Beginning 3 years after the effective date of this final rule, current CLP and CDL holders who do not have the standardized endorsement and restriction codes, and applicants for a CLP or CDL, are to be issued CLPs and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

Current CDL holders will not be required to be retested to determine whether they need any of the new restrictions for no full air brakes, no manual transmission and no tractor-trailer. They are, in effect, grandfathered from this requirement. These new restrictions only apply to CDL applicants who take skills tests beginning 3 years after the effective date of this final rule (even if those applicants previously held a CDL before the new restrictions went into effect).

c. Automatic Transmission Restriction

FMCSA proposed amending §§ 383.95 and 383.153 to require a restriction on applicants who use a vehicle in the skills test that is equipped with an automatic transmission.

Comments. Florida, Oregon and South Carolina support the proposal. CRST generally supports the entire standardized endorsement proposal. However, Idaho commented that the automatic transmission restriction was unnecessary, costly and burdensome and that employers are in the best position to determine a driver's proficiency on manual transmissions. Farris Brothers does not think the restriction is necessary. North Dakota found the proposed language confusing.

FMCSA Response. To clarify how the automatic transmission restriction will be applied, the final rule includes a definition for "manual transmission" in § 383.5. This definition will clarify what constitutes a manual transmission and promote national uniformity in the application of this restriction. It will promote highway safety by only allowing qualified drivers to operate CMVs with manual transmissions. A CDL holder with the automatic transmission restriction is restricted from driving any class CMV with a manual transmission.

d. Definition of Tank Vehicle

FMCSA proposed to amend § 383.5 to set an aggregate rated capacity threshold of 1,000 or more gallons for all tanks (permanent and portable) before a driver would need a tank endorsement.

Comments. Advocates strongly opposed this change. It commented that FMCSA did not adequately justify this change, indicating that it believed that this change would exempt CMV operators from the tank endorsement requirement when transporting certain hazardous materials of less than 1,000 gallons. Oregon supports the change for tank vehicles, but suggested changing the threshold to 500 gallons. CVSA supports the change for tank vehicles and the clarification that the tank capacity threshold for needing a tank

vehicle endorsement should be the aggregate capacity of tanks being transported.

FMCSA Response. While the proposed amendment setting a 1,000 gallon aggregate capacity threshold will remain in the final rule, there is also a need to retain a minimum individual rated tank capacity for the purpose of determining the aggregate capacity of the vehicle carrying multiple tanks. In the current definition of tank vehicle, reference is made to cargo tanks and portable tanks as defined in 49 CFR 171. Both of these types of tanks are defined as "bulk packaging" which is further defined in part 171 as having a capacity greater than 119 gallons. Therefore, only tanks being transported with a rated capacity greater than 119 gallons will be considered for the purpose of determining the aggregate capacity threshold for needing a tank vehicle endorsement.

The requirement for an endorsement for tank vehicles designed to transport 1,000 gallons or more is separate from the hazardous materials requirements. This rule does not affect any pre-existing hazardous material restrictions that might apply.

14. Previous Driving Offenses by CLP Holders and CLP Applicants

FMCSA proposed amending §§ 383.5; 383.51; 383.71; and 383.73 to subject a CLP holder and CLP applicant to the same disqualification requirements as a CDL holder and CDL applicant.

Comments. Michigan, Georgia, Texas, Advocates, ATA, AMSA and a training school commented that they had no objection. Texas also suggested that the proposed rule add drug offenses and certain felonies committed by CDL holders in non-CMV to the list of offenses for which the States must disqualify persons from operating CMVs, as well as impose a lifetime disqualification for persons convicted of an offense under 8 U.S.C. 1323 and 1324 related to the transportation of undocumented aliens. Although not opposed to the basic requirements of the proposed regulations, Tennessee requested clarification of several issues. Tennessee asked specifically if a person with disqualifying offenses in his/her history would be able to obtain a CLP, or if he/she would be required to serve out the disqualification prior to training on a CMV. Delaware stated that the Agency should not force States to take action on a driver before he/she has full CDL privileges and that a driver should be removed from CDLIS if he/she does not convert the CLP to a CDL. Oregon commented that full implementation will require statutory revision,

administrative rule revision and numerous procedural revisions, and will place additional stress on limited programming resources that are already fully dedicated to projects to comply with current and projected Federal regulations. Oregon also questions whether CDLIS is capable of handling the CLP holder information. Idaho opposed not permitting CLP holders to train during the disqualification period. California commented that it would be difficult to impose disqualifications on CLP holders. California currently has no reliable method of determining whether a driver cited for offenses on a non-CDL is a CLP holder for purposes of disqualification. The State would have to undertake major programming changes to its citation and conviction procedures to accommodate the rule change. New York commented that it already disqualifies CLP holders for certain non-CMV violations, but that implementing the proposed rule would require legislative changes. CVTA opposes the rule change because various States treat moving violations involving a non-CDL license in different ways, and the rules for license suspensions vary. CVTA also commented that the rule would impose a retrospective evaluation of CLP applicants' records that is not consistent with the manner in which SDLAs handle licensing actions. CRST commented that States would not be willing to assume the additional responsibility of performing background checks.

FMCSA Response. The proposed CLP disqualification provisions remain in the final rule. CLP holders and applicants, like CDL holders and applicants, are authorized to drive on public roads. FMCSA believes that this rule implements an important safety objective that justifies changes to existing State programs. FMCSA does not believe that CLP holders and applicants, who generally have less driving experience, should be subjected to lower standards than the generally more experienced CDL holders and applicants. As for the issue raised by Tennessee, the answer is that a person disqualified from operating either a non-CMV or a CMV at the time he/she applies for a CLP would be required to serve out that disqualification period before receiving a CLP. Because the CLP is a two-part license, the underlying non-CDL or CDL must be valid at the time the CLP is issued and remain valid in order for the CLP to be valid. With regard to Delaware's comment, a driver with an expired CLP that is not converted to a CDL can be removed from CDLIS if there are no convictions

for a disqualifying offense under 49 CFR 383.51. If there are disqualifying convictions, the rules for retaining these convictions must be followed before removal of the driver from CDLIS.

The purpose of this rule is simply to extend the pre-existing list of CDL disqualification offenses to CLP holders. Because the NPRM did not contemplate expanding the list of disqualifying offenses, such measures are beyond the scope of this rulemaking.

15. Motor Carrier Prohibitions

FMCSA proposed amending § 383.37 and appendix B to part 385 to include a specific prohibition against motor carriers using drivers who do not have a current CLP or CDL or who do not have a CDL with the proper class or endorsements, or using a driver to operate a CMV in violation of a restriction on the driver's CDL.

Comments. Georgia, Michigan, Advocates, CRST, NADA and a community college supported the proposal. AMSA, ATA and CR England opposed the assessment of an "acute violation" under the Safety Rating Process for violations of proposed § 383.37 unless the Agency takes into account the number of such violations as compared against the number of drivers in a fleet. Otherwise, larger carriers could be unfairly penalized on a proportional or violation-per-driver basis. CR England and CTA commented that the Agency should implement a program to notify a motor carrier when a license has been suspended, downgraded, or otherwise adjusted.

FMCSA Response. The proposed changes remain in the final rule. Motor carriers of all sizes bear the same responsibility for ensuring that all drivers are qualified to operate CMVs. Even one unlicensed or disqualified driver on the roads can present a serious risk to safety. Carriers are in the best position to determine that their own drivers are properly licensed. Implementation of a central database for monitoring and notifying carriers of status changes to CDL holders is beyond the scope of this rulemaking.

16. Incorporate CLP-Related Regulatory Guidance Into Regulatory Text

FMCSA proposed codifying regulatory guidance related to this rulemaking and eliminating regulatory guidance made obsolete by the changes in this rulemaking. This includes regulatory guidance under § 383.23 (CLP), questions 1, 2, and 4; part 383, Subparts G and H, all questions (knowledge and skills testing); and § 383.153, questions 1–7 (CLP and CDL documents). FMCSA proposed to amend

§§ 383.25, 383.73, 383.77, 383.95, 383.113, 383.131, 383.133 and 383.153.

Comments. Elgin CC supports the proposal. Michigan and Georgia support the proposal so long as the Agency gives opportunity for comment. Advocates complained that there was not adequate explanation of why certain interpretations were slated for either incorporation into the rule text or deletion.

FMCSA Response. The regulatory guidance proposed to be eliminated as obsolete in the NPRM will be eliminated without change in the final rule. In the NPRM, the Agency proposed a number of rule changes and solicited public comment. The regulatory guidance that will be codified in the final rule was explained as part of the rule changes in the NPRM. When these changes are implemented, some previously issued interpretive statements will no longer be appropriate because (a) they will repeat what is newly incorporated in the regulatory text, or (b) the new rules will create changes to the CDL program that render the old guidance inaccurate. Thus, having already given notice and opportunity for comment on the substantive issues as a part of this rulemaking proceeding as well as identifying the interpretive statements that would be affected by the rule, the Agency does not believe that further notice or opportunity for comment on rescinding redundant or obsolete guidance is necessary.

The Agency inadvertently omitted from the NPRM additional regulatory guidance that will be rendered redundant and obsolete by the final rule. That guidance includes the following interpretations: Question 11, interpreting § 383.73 and Questions 2 and 3, interpreting § 383.95. In the NPRM, the Agency proposed incorporating the substance of Question 11, interpreting § 383.73 into § 383.73(i), but inadvertently omitted it from the list of interpretations that would be rendered redundant by this rule. In addition, the Agency proposed changes to § 383.95 that render questions 2 and 3 obsolete, but inadvertently omitted that guidance from the list of interpretations that would be eliminated as obsolete. To avoid any confusion, the Agency will eliminate these interpretations in addition to those identified in the NPRM.

17. Incorporate Safe Port Act Provisions

In response to the requirements of the SAFE Port Act, FMCSA proposed to amend §§ 383.73 and 383.75, and to add §§ 384.227, 384.228, and 384.229.

a. CDLs Obtained Through Fraud

FMCSA proposed in § 383.73(k) that States be required to cancel or revoke a CDL if the holder has been convicted of fraud related to the CDL application or testing process. In addition, where States receive credible information that a CLP or CDL holder is suspected, but not convicted, of fraud related to the issuance of his/her CLP or CDL, the State must require the driver to be re-tested within 30 days.

Comments. Oregon commented that the term "suspend" is more appropriate than "cancel or revoke." California commented that the term "cancellation" was not sufficiently punitive where fraud is suspected. California also commented that each State should have the flexibility to investigate suspected fraud according to the circumstances and that the 30-day re-testing time frame was overly restrictive. Illinois requested a definition of "fraud," "convicted" and "credible information." Michigan requested that the rule be revised so that States must act within 30 days of notification of a conviction of fraud.

FMCSA Response. In the final rule, FMCSA will remove the terms "cancel" and "revoke" and replace them with "disqualify." This change is consistent with other parts of the rule: part 383 defines "disqualification" to include, among other things, the suspension, revocation or cancellation of a CLP or CDL. FMCSA believes that this change will give States the flexibility to manage their programs within the parameters of their existing rules.

In addition, instead of requiring that States re-test drivers suspected of fraud within 30 days, the final rule will require the CLP or CDL holder, within 30 days of being notified to re-test, to make an appointment for and take the test at the next available appointment or testing time. This will give States as well as drivers more flexibility to schedule re-testing. New § 383.73(k)(1) requires States to "have policies in effect which result * * * in the disqualification of the CLP or CDL of a person who has been convicted of fraud * * *" The new rules require States to develop policies, but do not specify that the disqualification take place within 30 days of the conviction. Finally, FMCSA declines to create a special definition of "fraud," "convicted" or "credible information."

b. Computer System Controls—Supervisor Involvement

FMCSA proposed to amend § 383.73(m) to require that only supervisory level personnel may continue the CDL or CLP issuance

process when driver record checks return suspect results.

Comments. Idaho commented that this requirement is a burden on management staff, and that there is no guarantee that fraud or errors would be eliminated. Oregon commented that implementation would present significant programming challenges and costs. Oregon also commented that supervisory personnel may not always be available and that this proposal exceeds the intent of the OIG's 2006 Report. Wisconsin commented that, under its current system, its non-supervisory employees are well-trained on how to handle suspect results. Nebraska commented that it has fifteen one-person exam offices and 81 multiple-person offices that do not have full-time supervisory personnel on site full-time. Michigan currently has a two-tiered process that sends all suspect results to a separate group of subject matter experts located in a separate facility, but noted that they are not, technically, supervisory staff. Although Michigan supports the concept of the proposed amendment, it believes that its current system achieves the intended objective.

FMCSA Response. In the final rule, FMCSA renumbers this section to be § 383.73(n)(2). In addition, in response to comments, FMCSA changes this section to require each State to demonstrate that it has a plan to prevent and detect fraud when a driver record check returns suspect results. FMCSA takes fraud prevention and detection seriously and the intent behind the proposed change was for all States to improve their standards for fraud prevention and detection. However, FMCSA recognizes that many States have developed anti-fraud measures tailored to their own systems and that they may combat fraud as well as or better than the proposed change. This change allows States more flexibility in implementing improved anti-fraud measures.

c. Background Checks

FMCSA proposed adding new § 384.228 to require background checks on all State and third party CDL examiners.

Comments. Florida commented that this would increase costs without corresponding benefit. Oregon questioned whether the proposed rule applied to both skills and knowledge test examiners. If it applies to both, Oregon commented, this would increase costs. Wisconsin commented that it "fails" examiners with felony convictions only within the past four years, not ten years as proposed in the

rule. Delaware opposes background checks of staff members with long, credible histories of government service and requested a grandfathering provision. Missouri questioned whether the proposal requires a nationwide or a State-wide background check. For the former, Missouri commented that States may vary in the way they define felony and fraudulent activity convictions. Missouri further requested special consideration for employees who report their convictions in a timely manner. Alabama requested information on what constitutes failure of a background check. Illinois questioned whether the background check is required to be a fingerprint- or a name-based check and commented that a fingerprint-based check should be considered sufficient. Minnesota currently conducts background checks at the time of hiring and requested that the costs of administering the rule be evaluated. Michigan requested an exemption if the state has a criminal history monitoring system that provides the regulatory agencies with the desired information on a more timely basis.

FMCSA Response. The proposed background check requirement will remain in the final rule. This requirement applies to all test examiners, including both skills and knowledge test examiners. It also leaves the criteria and methods for the criminal background check to the States' discretion, so long as they include the minimum criteria set forth at § 384.228(j)(2). However, as § 383.228(j) clearly contemplates decertifying examiners who fail the test, it does not create any exemption for current examiners. Similarly, the rule prohibits certification (and requires decertification) of examiners with any conviction involving fraudulent activities or any felony conviction within the past ten years. Since no exception is made for convictions received out-of-State, States are required to conduct nationwide criminal background checks. Finally, this rule sets *minimum* standards for background checks. States are free to implement systems that provide criminal background checks on a continuing or more frequent basis than required under this rule.

As stated above, FMCSA takes fraud prevention and detection seriously. At approximately \$60 per background check, FMCSA acknowledges that these changes may impose additional financial requirements on the States in the short term. However, these changes are important to the implementation of uniform national standards proposed in this rulemaking docket.

d. Training Requirements for Knowledge and Skills Examiners

FMCSA proposed adding new § 384.228 to require mandatory training standards for all CDL knowledge and skills test examiners.

Comments. Oregon strongly opposes requiring knowledge examiners to undergo the proposed training standards. Missouri commented that knowledge and skills examiners require different training and requested federal funding to cover costs. Oregon, Missouri and IUOE noted that proposed § 384.228(d) requires refresher training every four years, but proposed § 384.228(h)(1) appears to require it annually. IUOE also commented that the training standards could cause significant delays in the administration of CDL examinations. Florida commented that refresher training every four years would increase both the costs and the complexity of administering the CDL program without a corresponding benefit. California supports strengthening the certification and training requirements, but feels the proposed rules are overly prescriptive. New York suggested requiring refresher training every two years instead of annually. Alabama asked the Agency to clarify how many hours of training are required. Michigan generally opposes the requirement and commented that States should be free to set their own standards. B-J School Buses opposes the requirement as unnecessary.

FMCSA Response. In the final rule, FMCSA establishes separate training standards for CDL knowledge test examiners and skills test examiners. Examiners that *only* administer standardized knowledge tests do not need extensive CDL skills test training. The previously proposed paragraphs (b)(1), (2), and (4) through (6) of § 384.228, have been redesignated as § 384.228(d), which now applies to skills test examiners. The previously proposed paragraphs (b)(1) through (3) of § 384.228, have been redesignated as § 384.228(c), which now applies to examiners who administer the knowledge test only. This change will allow for a more efficient allocation of State resources. In addition, FMCSA has corrected the discrepancy between proposed §§ 384.228(d) and 384.228(h)(1) by amending § 383.228(f) to reflect that refresher training is required once every four years.

A number of changes in this rule are intended to promote national uniformity. In order to achieve that goal, all States must achieve consistent standards. Ensuring the continued qualifications of knowledge and skills

test examiners is a critical part of achieving uniform national standards. Although certain States may experience some additional burdens in the short-term, FMCSA's goal is to improve the quality of testing standards over the long-term.

e. Minimum Number of Tests Conducted (Minimum Skills Tests for Testers and Examiners)

FMCSA proposed adding new § 384.228 to require that each company (tester) with a contract to perform third party testing would be decertified if it did not conduct at least 50 skills test examinations per calendar year and that each individual examiner's authority would be revoked if he/she did not conduct at least 10 skills test examinations per year.

Comments. Michigan agrees that testers and examiners should be required to conduct a minimum number of tests per year, but thinks that each State should be able to set its own standards. Ten States commented that the proposed requirement would be very difficult to achieve, potentially putting third party testers out of business and increasing the burden on State testers. Most of the 10 States recognize the need to maintain skills, but do not support these minimum requirements. Oregon, Oklahoma and Minnesota objected to annual examination minimums for testers, but do not object to minimums for individual examiners. Wisconsin comments that its examiners are currently required to perform at least 12 tests per year, but that many testers cannot meet the 50-test minimum. South Carolina objected to the 10-test minimum because it has an annual evaluation system for examiners to make sure examiners maintain skills. Nebraska commented that a significant number of its testers and examiners would not be able to meet the minimums. Florida prefers its own system which requires a minimum of one test for testers and six for examiners. California objected to the focus on quantitative as opposed to qualitative qualifications. Missouri, three school districts, one school bus company and NTSA were concerned that the proposed rule would affect school districts or school bus contractors that test only their own employees. IUOE complained that the proposed rule does not take into account the diversity of circumstances across regions and industries.

FMCSA Response. After considering these comments, FMCSA has made the following changes to the final rule: (a) Examiners who do not meet the 10-test

minimum must either take refresher training or have a State examiner ride along to observe the third party examiner administer a skills test in order to maintain certification; and (b) the 50 tests per year minimum for testers is eliminated. The final rule will thus focus on the examiners' skills, which is the intent of the rule, and will not penalize small third party testers. It also provides an alternative for small, rural or in-house examiners who conduct fewer than 10 tests per year.

f. Third Party Testing (Annual Inspection; Advance Scheduling of Tests; Separation of Training and Testing Functions)

FMCSA proposed amending § 383.75 to require States to conduct an annual on-site inspection of each third party test site and to require that each third party tester submit a weekly schedule of skills test appointments no later than the last business day of the prior week.

Comments. Schneider generally supports the proposed rule. With respect to the annual inspection requirement, Oregon and Michigan objected to an annual inspection of every site at which third party testers administer skills tests, saying that this would be burdensome.

Five States commented on the submission of weekly schedules. All had concerns over the additional administrative and logistical burden that this requirement would create. Oregon, California, two carriers, two associations and an advocacy group all objected to the requirement that third party testers submit their schedules to the State a week in advance, on the grounds that it does not provide sufficient flexibility for scheduling. Minnesota commented that the proposed requirement is not compatible with the existing system, would interfere with its ability to plan its testing schedule efficiently and would require administrative rules for implementation. Nebraska commented that many drivers cannot schedule their tests a week in advance and that the proposed rule would place a burden on state examiners, shifting applicants away from third party testers. Florida complained that it would increase its administrative burden unnecessarily because it already has an effective fraud detection program and does not need any advance notice of test scheduling.

Oregon and OOIDA recommended prohibiting third party testers (for example, commercial driver training schools) from testing CDL applicants trained by that tester.

FMCSA Response. In consideration of these comments, FMCSA has made the following changes to the final rule:

Each third party tester (not testing site) is required to be inspected once every two years. Annual inspection of every testing site would be impractical and overly burdensome because many third party testers administer skills tests at a variety of different sites. Also, some third party testers may not have tests scheduled regularly throughout the year, making it difficult to schedule annual inspections.

Each third party tester must submit a schedule of CDL skills test appointments no later than two business days in advance of administering the test. Many testing sites do not have their weekly schedules fixed by the end of the prior week, so a two-business-day notification will give third party testers more flexibility in scheduling tests.

Third party skills examiners are prohibited from administering skills tests to applicants they skill-train. A conflict of interest may arise when a trainer at a commercial training school is also a State-certified skills test examiner. In order to reduce both the opportunity for fraud and unintended bias in skills testing, the rule prohibits third party skills testers from administering skills tests to applicants their training school skill-trains. However, FMCSA has provided an exception to this prohibition when the nearest alternative third party tester or State skills testing facility is over 50 miles from the training school.

g. Third Party Bond Requirements

FMCSA proposed to amend § 383.75 to require that third party testers maintain bonds in an amount sufficient to pay for re-testing drivers in the event the examiners are involved in fraudulent activities related to skills testing.

Comments. South Carolina commented that it evaluates its third party testers extensively, and that the additional bond requirement may drive participants from the program. Florida currently has a bond requirement that covers reimbursement to the State and to individual drivers and is concerned that the language of the rule restricts it from reimbursing individual drivers. California recommended that the regulations provide an exemption from the bond requirement for governmental or quasi-government agencies such as public utilities and transit authorities that participate in a State's third party testing program. Illinois commented that the bond requirement would be burdensome in the current economic environment and may cause a reduction

in the number of third parties that participate in its program. IUOE opposes the requirement and commented that FMCSA has not provided any evidence that fraud is a problem in third party testing.

FMCSA Response. The bond requirement remains as proposed in the final rule. FMCSA is aware of a number of third party testers whose examiners have been engaging in fraudulent activities. As a result, a number of CDL holders were required to be re-tested, causing States and individuals to incur additional expenses. The bond requirement will provide States and individuals an opportunity to recoup these expenses. This requirement does not prohibit States from providing for recovery of costs for individual drivers. Finally, if a tester is properly characterized as a third party examiner, as opposed to a State examiner, this requirement applies nevertheless.

18. Other Issues Related to Fraud Prevention

a. Black and White Photograph

FMCSA proposed amending § 383.153 and adding new § 384.227 to require that the photograph or digitized image that is placed on the CDL and now recorded as a part of the driver history continue to be captured in color.

Comments. Virginia wants to use black and white laser engraved technology and claims it is equally as secure or more secure than color photographs or digital images.

FMCSA Response. The final rule permits black and white laser engraved images in addition to color photographs and digital images. Today's black and white laser engraved technology is just as secure against alteration as color photography or digital images, and perhaps more secure. Further, in the REAL ID rule published on January 29, 2008, DHS approved black and white laser engraved technology as an alternative to color photographs. FMCSA has already acknowledged the acceptability of black and white laser engraved images by granting Virginia a two-year exemption from the prohibition on using black and white laser engraved images on March 9, 2009, and by permitting it to use such photos in lieu of color photographs on CDLs.

b. Check Photograph on File

FMCSA proposed adding new § 384.227 to require that States record the digital color image or photograph that is captured as a part of the application process and include it as a part of the driver history. FMCSA also proposed that States be required to

check the photograph or digital image they must maintain on file for every CDL or CLP holder against the applicant in person whenever the CDL or CLP is renewed, upgraded or transferred and when a duplicate is issued.

Comments. Missouri commented that retaining a digital photo of every CLP and CDL applicant could result in increased costs. California objected to comparing the applicant's photo to the person because it would require the applicant to appear in person at the field office and would eliminate the option of processing a CDL renewal application by mail or Internet.

FMCSA Response. FMCSA has decided that the final rule will require States to check the photograph on file against the applicant in person only when the applicant appears in person. This will allow for processing by mail, and will lessen the burden of compliance on the States. The final rule will include the requirement that a digital color image or photograph or black and white laser engraved photograph be kept on file. FMCSA believes that this is an important measure to combat fraud. However, in accordance with § 383.153(b)(1) of the final rule, which prohibits States from placing a photo or other image on the CLP, States will not be required to capture a photograph, digital image or other representation of the applicant during the CLP application process. Instead, States are required to check the photograph or digital image on record against the CLP applicant when he/she appears in person. To the extent that there is no photograph or digital image on record to make sure the person on the license and the applicant are the same, States are to check the photograph or image on the base-license against the CLP applicant when he/she appears in person.

c. Two Staff Members Verify Test Scores and Other Documents

FMCSA proposed amending § 383.73(m) to require that two DMV staff members verify CLP and CDL applicants' test scores and completed application forms and documents to prove legal presence.

Comments. Delaware, Nebraska, North Dakota, Tennessee, Texas, Washington, Wisconsin and South Dakota all made similar comments complaining that the proposed change would be time-consuming and expensive and would disrupt current licensing systems in remote areas, resulting in closures of SDLA offices or other inconveniences for States and drivers. Texas also commented that FMCSA should give States the

discretion to conduct documentation reviews either before or after issuance of the license. Michigan complained that the proposal was vague and unmanageable, without further explanation. Farris Brothers expressed concern about the impact of the proposed rule on rural communities.

FMCSA Response. In the final rule the FMCSA has provided an exception for DMV offices with only one staff member on duty. In such cases the documents must be verified by a supervisor before issuance or, when the supervisor is not available, copies must be made of the documents used to prove legal presence and domicile for a supervisor to verify along with the completed application form within one business day of issuance of a CLP or CDL. This change will provide protection against the risk of applicants presenting fraudulent documents, without affecting States' ability to maintain one-person satellite DMV offices to serve applicants in remote locations. This provision may involve some costs to States by increasing the amount of time and resources required to process CDLs. The requirement does not mean that two SDLA employees must each go through the entire CDL issuance process for a particular driver-applicant. For example, one person might review the legal presence and other documentation the driver presents, while a second SDLA employee would conduct the required driving record check for driving violations, take the applicant's photograph and issue the license. This splitting of driver processing may take additional time, but it will not double either the time or effort needed to issue a CDL.

19. Miscellaneous Comments

a. Applicability to Agricultural Sector

Comments. Several commenters raised questions about the rule's applicability to the agricultural segment of the industry. Five agricultural entities asked for an agricultural exemption from the rule.

FMCSA Response. Many agricultural operations are exempt from the current CDL regulations, as well as the proposed rule. This rule does not affect any of these current agricultural exemptions. The request by farm suppliers for exemption from all CDL rules is beyond the scope of the NPRM.

b. Relation to REAL ID

Comments. New York commented that it has not decided whether to implement REAL ID and objects to any requirement that would force the State to do so through its CDL program.

California, Pennsylvania and Missouri commented that if FMCSA adopted REAL ID as a standard for the CDL program, it would essentially convert a voluntary Federal program into a mandatory one. Texas commented that if FMCSA ties its CDL rules to REAL ID, States that decide not to adopt REAL ID will refuse to comply with CDL rules. Conversely, Michigan encourages FMCSA to link the two rules.

FMCSA Response. FMCSA expressly declines to require States to adopt REAL ID in whole or in part. However, FMCSA has taken care not to implement any rules that conflict with REAL ID. Where FMCSA has implemented certain elements of the CDL program that contain provisions similar or identical to those of REAL ID, it does so on an independent basis driven by safety considerations, congressional mandate, OIG recommendations and general principles of fraud prevention.

c. Domicile

Comments. A number of commenters objected to FMCSA's use of the State of domicile as the *only* jurisdiction for licensure. Many suggested amending this requirement to permit licensure in the State of residency.

FMCSA Response. Congress mandated that the State of licensure for CDLs be the State of domicile. As this is a statutory requirement, FMCSA does not have the authority to make the requested changes.

d. State Compliance Issues

Comments. ATA commented that States may not have the resources to implement the new requirements of this rule in addition to others FMCSA has indicated it will promulgate such as the Medical Certification as Part of the CDL and Entry Level Driver Training. ATA opposes implementation of this rule until FMCSA can demonstrate that the States are consistently showing substantial compliance with the pre-existing CDL program rules. Rather than adoption of new rules, ATA suggests that the Agency should focus on enforcement actions against non-compliant States under existing CDL rules.

FMCSA Response. FMCSA disagrees with ATA's position. The creation of a uniform, national CDL program is an important safety objective that is designed to facilitate improved safety performance and reduce instances of fraud. Many of these program features are mandated by Congress, recommended by the OIG or both. FMCSA believes that implementation of these rules in conjunction with improved enforcement activities will

greatly enhance the effectiveness of the CDL program.

IV. Changes to the Proposed Rule in This Final Rule

This final rule makes the following changes to the NPRM, consistent with the discussion of public comments in this preamble, and as further explained below.

Changes To Conform Rule With Medical Certification Final Rule

The NPRM for this final rule was published on April 9, 2008 (73 FR 18272). On December 1, 2008, FMCSA published a final rule to incorporate certain medical certification requirements into the CDL process (73 FR 73096). The medical certification final rule made changes to many of the CFR sections that are affected by this final rule. Therefore the rule language that was proposed has been updated to include those amendments made on December 1, 2008, so that today's amendments make changes to the current rule language. The sections that were updated for this purpose are §§ 383.71, 383.73, 384.206, 384.225, 384.226, and 384.301.

Terminology Changes Throughout

The final rule removes the terms "suspension," "cancellation," and "revocation," in reference to CDLs and CLPs, and replaces them with the term "disqualification." See "CDLs obtained through fraud" in the discussion of comments above for an explanation of this change.

The final rule replaces "nonresident" CDLs and CLPs with "Non-domiciled" CDLs and CLPs in accordance with the definition change at § 383.5. See "Nonresident CDL" in the discussion of comments above for an explanation of this change.

The final rule abbreviates "commercial driver's license" with CDL and "commercial learner's permit" with CLP where appropriate.

Part 383—Commercial Driver's License Standards; Requirements and Penalties

Section 383.5. The final rule changes the proposed rule by adding a definition for "manual transmission" and by changing "nonresident CLP or CDL" to "Non-domiciled CLP or CDL." See "Automatic transmission restriction," "Definition of tank vehicle," and "Nonresident CDL" in the discussion of comments above for an explanation of these changes.

Section 383.9. The final rule does not adopt this section. See "Incorporate by reference AAMVA 2005 CDL Test

System" in the discussion of comments above for an explanation of this change.

Section 383.23. The final rule changes paragraph (a) to clarify that the driving tests in question are for a CLP or CDL.

Section 383.25. The final rule changes paragraph (a)(5) by adding subparagraphs (i)–(iv) to allow for a school bus (S) endorsement or a tank vehicle (N) endorsement, under certain circumstances. These subparagraphs also clarify that test examiners, other trainees, or the CDL holder accompanying the CLP holder are not considered passengers with respect to the prohibition of a CLP holder operating a CMV carrying passengers. See "10. LIMIT ENDORSEMENTS ON CLP TO PASSENGER (P) ONLY" in the discussion of comments above for an explanation of these changes. Paragraph (d) is changed to clarify that a CDL holder seeking an upgrade of his/her CDL needs a CLP only if the upgrade requires a skills test. See "CLP prerequisite for CDL" in the discussion of comments above for an explanation of this change.

Table 2 in Section 383.51(c). Our review of the 2008 NPRM (73 FR 19282, 19303), revealed that we made an inadvertent omission with respect to *Table 2 to § 383.51*, in two instances. The headings for columns 2 and 4 should conclude with the phrase: "if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges," as they do in the current regulations. This does not create any changes to § 383.51(c), Table 2, and merely corrects a typographical error made in the NPRM. As background information, FMCSA published a final rule that implemented the sanctions containing the phrase on January 29, 2003 (68 FR 4394).

Section 383.71. The final rule changes paragraph (a)(8) to reflect the addition of S and N to the list of endorsements available to CLP holders. Changes to paragraph (b)(9), Table 1, reflect the updated list of documents that are acceptable to show legal status for a CDL or CLP. See "Required forms/documents" in the discussion of comments above for an explanation of this change. The final rule changes paragraph (b)(10) to require the applicant to present two documents, instead of one, to establish domicile. Paragraph (f) is changed to clarify that requirements for obtaining Non-domiciled CDLs also apply to Non-domiciled CLPs. Subparagraph (f)(2)(i) sets forth the updated list of documents that are acceptable to show legal status for a Non-domiciled CDL or CLP.

Section 383.73. The final rule changes paragraph (a)(3) to extend a CLP's renewal period to 180 days. For an explanation of this change, see "Initial validity and renewal periods for a CLP" in the discussion of comments above. Changes to paragraph (a)(4) reflect the addition of S and N to the list of endorsements available to CLP holders. The addition of paragraph (c)(9) makes clear that the initial validity period of any CDL transferred from another jurisdiction must also be limited to eight years. The addition of paragraph (e)(9) makes clear that the initial validity period of any CDL that is upgraded is limited to eight years. Paragraph (f) is changed to clarify that requirements for issuing Non-domiciled CDLs also apply to Non-domiciled CLPs. Changes to paragraph (h)(1) remove the requirement that the State must mail a CDL or CLP to an applicant. See "Mailing of initial license" in the discussion of comments above for an explanation of this change. Changes to paragraph (k)(2) remove the requirement that the State must re-test a suspect driver within 30 days of notifying the driver, and replace it with a requirement that, within 30 days of notification, the driver make an appointment for re-testing for the next available appointment. See "CDLs obtained through fraud" in the discussion of comments above for an explanation of this change. Changes to paragraph (m) provide an exception to the rule that two persons check and verify all documents. See "Two staff members verify test scores and other documents" in the discussion of comments above for an explanation of this change.

Section 383.75. The final rule changes paragraphs (a)(2) and (a)(5) to provide that States must conduct inspections and oversight of third party testers and examiners once every 2 years, instead of annually. Changes to paragraph (a)(7) specify that a third party skills tester that is also a driver training school may not administer skills tests to applicants who were trained by that training school. An exception is provided when the nearest alternative third party tester or State skills testing facility is over 50 miles from the training school. Changes to paragraph (a)(8)(ii) clarify its application to skills test examiners. Changes to paragraph (a)(8)(viii) require that third party testers must submit a schedule of upcoming CDL skills test appointments to the State at least two business days before each test, instead of a week in advance. See "Third party testing (annual inspection; advance scheduling of tests; separation of training and testing functions)" in the

discussion of comments above for an explanation of these changes. The final rule changes eliminate paragraph (c)(1), removing the requirement that each third party tester must conduct at least 50 skills tests per calendar year. Changes to paragraph (c)(2) provide an alternative for skills test examiners who cannot meet the requirement to conduct at least 10 skills test examinations per year. See "Minimum number of tests conducted (minimum skills tests for testers and examiners)" in the discussion of comments above for an explanation of these changes.

Section 383.93. The final rule changes paragraph (a) to allow for the school bus (S) and tank vehicle (N) endorsements. See "10. LIMIT ENDORSEMENTS ON CLP TO PASSENGER (P) ONLY" in the discussion of comments above for an explanation of these changes.

Section 383.95. The final rule changes paragraph (c)(2) to reflect the definition of "manual transmission" added to § 383.5. See "Automatic transmission restriction" in the discussion of comments above for an explanation of this change. Paragraph (g) is removed because it duplicates text that appears in § 383.25(a)(5).

Section 383.131. The final rule changes paragraphs (a) and (b) to require States to use an FMCSA pre-approved State Testing System. To be approved by FMCSA, the State Testing System must be comparable to AAMVA's "2005 CDL Test System (July 2010 Version)," which FMCSA approves in this rule and will provide to all State Driver Licensing Agencies. Paragraph (c) is moved from this section to § 383.135(c).

Section 383.133. The final rule changes paragraph (b) to require the States to use a pool of test questions, pre-approved by FMCSA, to develop knowledge tests for each vehicle group and endorsement. The pool of questions must be comparable to those in AAMVA's "2005 CDL Test System (July 2010 Version) 2005 Test Item Summary Forms," which FMCSA approves in this rule and will provide to all State Driver Licensing Agencies. Changes to paragraph (c)(5) clarify that examiners may interact with applicants only in English during the skills test. See "11. METHODS OF ADMINISTERING CDL TESTS" in the discussion of comments above for an explanation of this change. Changes to paragraph (c)(6) concern the provision in the proposed rule that prohibits the practice of banking skills test scores. See "Skills test banking prohibition" in the discussion of comments above for an explanation of this change. New subparagraph (c)(6)(iii) specifies that an applicant may only bank test scores during the initial

validity period of the CLP. Paragraph (d) is removed because it duplicates § 383.113(c).

Section 383.135. The final rule changes paragraph (b)(2) to reflect the changes in § 383.131(a) and (b). Paragraph (c) is moved from § 383.131(c).

Section 383.153. The final rule changes paragraph (a)(4) to allow States to use black and white engraved photographs on a CDL, as well as color photographs or images. See "Black and white photograph" in the discussion of comments above for an explanation of this change. Changes to paragraph (a)(10) clarify the new restriction codes. See "Uniform endorsement codes" in the discussion of comments above for an explanation of this change. Proposed subparagraph (a)(10)(viii), which is related to exceptions to the CDL and CLP rules is removed because it duplicates text added in accordance with the Medical Certification rule. New subparagraph (a)(10)(viii) adds code V for medical variance. The final rule reverses proposed paragraph (b) by forbidding the inclusion of a photograph or image of the driver on the CLP, instead of requiring the CLP to include this. See "No photograph on CLP" in the discussion of comments above for an explanation of this change. Changes to paragraph (b)(viii) reflect the changes to the endorsements and restrictions applicable to CLPs that are established elsewhere in the final rule.

Part 384—State Compliance With Commercial Driver's License Program

Section 384.201. The final rule provides State Driver Licensing Agencies contact information to obtain a copy of the FMCSA-approved AAMVA 2005 CDL Test System (Version July 2010).

Section 384.217. The final rule clarifies that disqualification offenses are applicable to CLP as well as CDL holders.

Section 384.227. The final rule changes paragraph (a) to permit States to use black and white engraved photographs, as well as color photographs or images, for recording the information. Changes to paragraph (b) require States to check the photograph or image whenever the CLP or CDL is renewed, upgraded, or transferred, or when a duplicate is issued, only when the applicant appears in person. See "Black and white photograph" and "Check photograph on file" in the discussion of comments above for an explanation of these changes.

Section 384.228. The final rule changes this section to split the training requirements into separate standards for

knowledge test examiners and skills test examiners. See “Training requirements for knowledge and skills examiners” in the discussion of comments above for an explanation of this change.

Section 384.229. The final rule changes paragraph (a) to require unannounced on-site inspections once every two years instead of annually. For testers and examiners who are granted the training and skills testing exception under section 383.75(a)(7), the inspections will be annual. The covert and overt monitoring of these excepted testers and examiners in paragraph (b) will be annual. This provision is included to help reduce the opportunity for fraud.

Part 385—Safety Fitness Procedures

The proposals for part 385 are adopted without change in the final rule.

V. Regulatory Analyses and Notices

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

The final rule regulatory evaluation estimates the benefits and costs associated with revisions to the Agency’s CDL knowledge and skills testing standards. This section of the preamble summarizes the findings of that analysis. For full details the reader is referred to the Regulatory Evaluation contained in the docket. The measures incorporated into this rule are intended to reduce fraud, improve safety, and facilitate entrance into the CMV driver occupation. Many of the provisions of this rule impose minimal costs on the

States or industry members, either because many States are already complying with the requirements contained in this rule, or because the requirements have minimal impact on the SDLA or industry operations or procedures. We estimate the following provisions to be of minimal significance: Strengthening the legal presence requirements; Social Security number verification; surrender of the CLP, CDL, and non-CDL documents; establishing maximum issuance and renewal periods for the CLP and CDL; establishing a minimum age for CLP; limiting endorsements on the CLP to passenger, school bus, or tanker only; implementing new standardized endorsement and restriction codes; implementing motor carrier prohibitions; and incorporating regulatory guidance into text. The other provisions in this rule have greater cost implications and include: Minimum standards for issuing a CLP; previous driving offenses by a CLP holder; requirements for out-of-State CDL testing; reciprocal State recognition of CLPs; updating Federal knowledge and skills test standards; and incorporating the SAFE Port Act provisions.

Many of the requirements implemented by this rule impact the States by requiring extra steps to process CLPs and CDLs. These include: Recording CLPs on CDLIS and making the CLP a tamperproof document (under minimum uniform standards for issuing CLPs); checking for previous driving offenses by CLP/CDL holders (which would require an additional search of PDPS records); and implementing one

provision of the SAFE Port Act requirements that involves the processing of CDLs and CLPs. We estimate that these provisions, taken together, will add 10 minutes to the amount of time it takes a State to process a license document. It will cost an additional \$1.40 per CLP for tamperproofing, plus an additional \$1 cost for each CLP placed on CDLIS that is not eventually converted into a CDL. This \$1 fee is an annual per-record fee charged by the AAMVA for maintaining the CDLIS. Taking all of these costs together, the estimated cost of these provisions is \$2.97 million annually.

FMCSA estimates that those provisions of the SAFE Port Act which require training programs and covert monitoring of skills test examiners will result in additional costs to the States. We estimate that the annual cost of these training requirements vary between \$1.35 million to \$1.74 million.

Table 1 below presents the total cost of these provisions over 10 years. In addition to the cost of specific provisions contained in this rule, we budgeted \$400,000 per State for the IT system development and upgrades that are needed to comply with these requirements. These costs are presented in the IT Upgrades row. Years 6–10 mimic years 2–5 with respect to cost, and are therefore aggregated in one column. As can be seen, the discounted total cost of these provisions varies between \$13.2 and \$35.3 million per year. The 10 year cost of this rule is estimated at \$156.5 million, or \$122.9 million discounted at 7 percent.

TABLE 1—COSTS OF RULE
[In thousands]

	Year 1	Year 2	Year 3	Year 4	Year 5	Years 6—10	Total
CDL Processing	\$2,965	\$2,965	\$2,965	\$2,965	\$2,965	\$14,827	\$29,654
Skills Test Training	1,740	0	0	0	1,354	1,354	4,448
Driver Travel and Lost Wages	10,200	10,200	10,200	10,200	10,200	51,000	102,000
IT Upgrades	20,400	0	0	0	0	0	20,400
Total	35,306	13,165	13,165	13,165	14,519	67,181	156,502
Total, 7 percent discount	35,306	12,304	11,499	10,747	11,077	41,970	122,902

Safety Benefits

Although it is difficult to fully quantify the safety benefits of this rule, the Agency believes that reducing fraud in the CDL system will improve safety on public roads. We estimated monetized safety benefits of the rule at the NPRM stage. Although some commenters expressed doubt that the provisions of the rule would in fact reduce fraud, no commenters took issue

with our assertion that drivers who obtain CDLs fraudulently are likely to pose a public safety risk when compared to drivers who legitimately pass the CDL skills test. Drivers who obtain CDLs fraudulently either lack the skills or knowledge to pass the CDL skills or knowledge test, or have some other reason (such as plans to engage in criminal activity) for concealing their true identity. The Agency believes that drivers who have fraudulently obtained

CDLs are significantly more dangerous to the public than those who obtain CDLs properly. Fraudulent CDL holders have failed to demonstrate that they can control their vehicle properly, and hence pose an increased safety risk. We have estimated that the annual discounted safety benefits of this rule vary approximately between \$10.5–\$57.2 million. Total 10 year net benefits are approximately \$267.8 million.

Regulatory Flexibility Act

The Regulatory Flexibility Act requires Federal agencies to take small businesses' particular concerns into account when developing, writing, publicizing, promulgating and enforcing regulations. To achieve this, the Act requires that agencies detail how they have met these concerns, by including a Regulatory Flexibility Analysis (RFA), which includes the following five elements:

(1) A succinct statement of the need for and objectives of the rule;

(2) A summary of the significant issues raised during public comments in response to the initial regulatory flexibility analysis, a summary of the Agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments;

(3) A description and, where feasible, an estimate of the number of small entities to which the rule applies;

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

(5) A description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives.

A discussion of these requirements follows.

(1) A succinct statement of the need for and objectives of the rule.

This action is being taken in response to OIG recommendations for preventing fraud in the CDL system. In at least one case, a driver who obtained a CDL fraudulently has been involved in a fatal crash. The SAFE Ports Act requires the Agency to adopt the OIG recommendations for combating fraud in the CDL system, and this rule fulfills that mandate. In addition, the current domicile requirement poses a potential barrier to entry to the CMV driver occupation. The changes in this rule enable drivers to choose the most convenient, cost-effective training option available to them regardless of whether it is in their State of domicile.

The objectives of this rule are to improve public safety by preventing fraud in the CLP/CDL licensing system, to standardize testing and CLP and CDL

issuance across the States, and to facilitate the ability of drivers to seek the most convenient, cost effective training, thereby facilitating entry into the CMV driver occupation. This rulemaking is based on the broad authority of the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Title XII of Pub. L. 99-570, 100 Stat. 3207-170, codified at 49 U.S.C. chapter 313), the Motor Carrier Safety Act of 1984 (MCSA) (Title II of Pub. L. 98-554, 98 Stat. 2832, codified at 49 U.S.C. 31136), and the safety provisions of the Motor Carrier Act of 1935 (MCA) (Chapter 498, 49 Stat. 543, codified at 49 U.S.C. 31502). It is also based on the specific directives of section 4122 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, at 1734, codified at 49 U.S.C. 31302, 31308, and 31309), and section 703 of the Security and Accountability For Every Port Act of 2006 (SAFE Port Act) (Pub. L. 109-347, 120 Stat. 1884, at 1944).

(2) A summary of the significant issues raised during public comments in response to the initial regulatory flexibility analysis, a summary of the Agency's assessment of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

The Agency did not receive any comments on the initial regulatory flexibility analysis.

(3) A description and, where feasible, an estimate of the number of small entities to which the rule applies.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601-612), FMCSA considered the effects of this regulatory action on small entities, as defined by the U.S. Small Business Administration's (SBA's) Office of Size Standards.

SBA regulations (13 CFR part 121) require Federal agencies to analyze the impact of proposed and final rules on small entities. The regulations define a "small entity" in the motor carrier industry by average annual receipts, which are currently set at \$25.5 million per firm. FMCSA has used data on revenue generated per power unit to determine that a carrier with approximately 145 power units would exceed the small business revenue level set by the SBA. Ninety-nine percent of motor carriers have fewer than 145 power units, and therefore could be expected to fall under the SBA's definition of a small business for this industry, with annual receipts of less than \$25.5 million.

A recent (June 2010) data query of the Agency's MCMIS database indicates a

total of approximately 498,465 active interstate motor carriers. This number includes both for-hire and private carriers, and includes some intrastate drivers as well as interstate drivers, because some interstate motor carriers conduct intrastate operations, and employ both types of drivers. For the purposes of this analysis, we rounded this figure up to the nearest 5,000, to thus 500,000 active motor carriers. A lack of activity is defined as carriers that have not had a crash, roadside vehicle or driver inspection, or compliance review, or have not updated their MCS-150 form in the past three years. Approximately 99 percent of these carriers are estimated to be small businesses as defined by the SBA, or approximately 495,000 currently active motor carriers ($500,000 \times 0.99 = 495,000$).

While this rule applies to drivers and does not affect motor carriers directly, owner-operators would be directly affected by the new driver licensing requirements because in these businesses the owner and driver are the same person. As a result, any regulations that affect the driver affect the small business owner as well. According to Professor Lafontaine of the University of Michigan, there are approximately 300,000 owner-operators currently in business in the U.S.³ In a recent report for the ATA, Global Insight estimated a similar number of owner-operators.⁴ As of May 2008, our MCMIS database shows approximately 340,000 owner-operators.

The Agency believes that all owner-operators would qualify as small businesses under the SBA's definition. This rule would therefore apply to approximately 340,000 owner-operator firms. These firms would have to supply more extensive proof of legal presence under this rule, but otherwise would not be affected greatly by additional reporting or recordkeeping requirements. This extra documentation would require extra time spent at SDLAs every time a driver sought a new license or permit, license transfer, or upgrade. In the regulatory evaluation, the opportunity cost of this time was estimated to be \$18.62 per hour per driver. It is estimated that approximately 10 extra minutes would

³ Francine Lafontaine, Incentive Contracting in Practice: A Detailed Look at Owner Operator Leases in the US Truckload Trucking Industry, Working Paper, June 2000, available at: <http://webuser.bus.umich.edu/Departments/BusEcon/research/workingpapers.html#lafontaine>.

⁴ Global Insight, The U.S. Truck Driver Shortage: Analysis and Forecasts, Prepared for ATA, May 2005, available at <http://www.truckline.com/NR/rdonlyres/E2E789CF-F308-463F-8831-0F7E283A0218/0/ATADriverShortageStudy05.pdf>.

be required to obtain a CDL, and that the value of this extra time would therefore be \$3.10 per driver obtaining a CDL ($\$18.62 \times 10/60 = \3.10). Given that few owner-operators would have to obtain a CDL in any particular year, and the low cost involved, this rule has been deemed by the Agency not to have a significant impact on small trucking companies.

Third party skills test examiners would also be affected by this rule. These examiners would undergo periodic covert monitoring, but assuming they are administering the skills test properly, this monitoring would be costless to them. In addition, the employees who conduct skills testing may have to participate in additional training in order to remain eligible to conduct skills test examinations. The Agency estimates that there are approximately 1,200 third party skills testing organizations currently in operation in the U.S. Most of these skills testing organizations are also motor carriers, educational institutions, or municipalities that train their own drivers. For most skills-testers, the revenue generated by offering skills testing is a small portion of the total revenue generated by the business. Information on these organizations is difficult to obtain, but the Agency is aware that some are affiliated with larger motor carriers. Others would qualify as small businesses, but the Agency is currently unsure of how many might fall into the small business category. We estimate that at least half, or 600, skills testing organizations are small businesses. These organizations would have to bear the cost of enhanced training of the examiners they employ. These costs were estimated in the Regulatory Impact Analysis at \$200 per examiner per day of training, at an average of one-half day of training every year. The cost to these entities would therefore be approximately \$100 per year per skills test examiner employed. The Agency believes that each skills test examiner organization would have between 1 and 2 skills test examiners. This rule would therefore cost the 600 affected entities a maximum of \$90,000 per year ($600 \text{ entities} \times 1.5 \text{ skills test examiners} \times \$100 = \$90,000 \text{ per year}$), or \$150 per year per entity.

Given these costs, the Agency does not believe that this rule has a significant impact on a substantial number of small businesses.

(4) A description of the reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities which are subject to the requirements

and the type of professional skills necessary for preparation of the report or record.

This rule requires drivers to present their social security number, one proof of citizenship or legal presence, and a proof of current address to their SDLA when applying for a new CLP, CDL or a CDL transfer or upgrade. The Agency believes that most U.S. citizens possess these documents and will be able to provide them to the SDLA. No specialized skills are required to obtain these documents or present them to an SDLA agent. We therefore do not believe that this rule poses an undue recordkeeping burden on small businesses in the motor carrier industry.

Third party test examiners must, under current regulations, transmit to SDLAs the results of the skills tests they have conducted, including both information identifying the driver-applicant and the examiner who conducted the test. This rule will require examiners to obtain periodic training on conducting the skills test. The third party testing organizations will have to maintain records of their examiners' participation in this mandatory training. The Agency believes that keeping these records will be a minimal burden on skills test examiners.

(5) A description of the steps the agency has taken to minimize the significant economic impacts on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy and legal reasons for selecting the alternative adopted in the final rule, and the reasons for rejecting each of the other significant alternatives.

The agency has taken all steps it deems practical to minimize the impact of this rule on both large and small entities. The impacts of this rule on various entities, and attempts to mitigate them, are described in full in the rule preamble and the regulatory analysis. The Agency has, among other steps, reduced the third party skills tester monitoring proposed in the NPRM, and has chosen the alternative that imposes the smallest barrier, given statutory limitations, for entry into the motor carrier industry or CMV operator occupation. All of the alternatives considered in this rule would have similar impacts on small skills test examiners. This rule does not impact motor carriers directly, so it has no disproportional impact on smaller businesses in that industry.

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), FMCSA has considered the effects of this proposed regulatory action on small

entities and determined that this final rule does not have a significant impact on a substantial number of small entities, as defined by the SBA's Office of Size Standards. As described above, this rule not have a direct impact on motor carriers, *unless* those motor carriers also operate as third party testers. The requirements primarily affect States, drivers—during the CDL application and testing process—before they are employed by motor carriers, and third party CDL skills testers. Most carriers that operate driver training schools and conduct third party testing would be too large to qualify as small businesses. In addition, the requirements on third party skills testers are fairly minimal and require primarily that skills test examiners undergo periodic training to stay up to date on their knowledge of the CDL skills test. The costs of these requirements are estimated to be approximately \$150 per year per skills test examiner. In order for this amount to exceed one percent of the revenue of a skills testing organization, the gross revenue for the firm would have to be less than \$15,000. Although we do not have revenue figures for third party testers, we are confident that most of these organizations would have revenues exceeding this amount, and that impacts on these entities would therefore not be substantial.

The other affected entities are drivers. Drivers however are affected prior to being employed in the industry, and therefore, impacts on them are, by and large, not impacts on motor carriers and hence not impacts on small entities. The one possible exception to this rule might be a prospective owner-operator, but most owner-operators have experience in the industry working for a larger carrier prior to purchasing their own truck and engaging in business for themselves. The instances of newly trained and tested drivers becoming owner-operators, before gaining industry experience, are very rare. As a result, this rule does not have direct impacts on small entities in the motor carrier industry. For these reasons, the Agency does not believe that this rule would have a substantial impact on a substantial number of small entities in the motor carrier industry.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act requires new Federal regulations to be accompanied by an analysis of their fiscal impacts on State, local, and tribal governments and on private industry. Although the attached regulatory evaluation provides much of this information, it will be summarized here, with an emphasis on effects on State

and local governments, since this final rule does not have any major effects on private industry. Many of the provisions in this final rule affect the States, but the size of this impact is small. The total annual cost of the rule is estimated to vary between approximately \$13 million and \$35 million, undiscounted. These costs are imposed primarily upon the States, which bear the increased cost of processing driver's licenses, training and monitoring skills test examiners, and implementing any changes to computer systems required to implement these changes.

The quantified benefits of this rule are the reduced cost to public safety and society due to avoidance of crashes that would otherwise occur. These benefits accrue primarily to active CDL licensed drivers, motor carriers and their insurers, and other users of the nation's public highways. These benefits have been estimated to grow annually from approximately \$10 million in the first year to \$57 million in the 10th year (undiscounted). These benefits outweigh the costs to the States. Although we cannot quantify them, we expect that facilitation of access to training schools and testing will yield benefits to the industry and prospective drivers.

Given the modest cost of this rule, the Agency finds that it will not have a significant impact on the States because this rule will not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532, *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$140.8 million (as adjusted by DOT Guidance, April 28, 2010, to reflect inflation) or more in any one year.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

FMCSA has analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. We have determined that this rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

FMCSA has analyzed this rule in accordance with the principles and criteria of Executive Order 13132, "Federalism," and has determined that it does not have federalism implications.

The Federalism Order applies to "policies that have federalism implications," which it defines as regulations and other actions that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Sec. 1(a). The key concept here is "substantial direct effects on the States." Sec. 3(b) of the Federalism Order provides that "[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance."

The rule amends the commercial driver's license (CDL) program authorized by the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. chapter 313). States have been issuing CDLs in accordance with Federal standards for well over a decade. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal-aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes only small, though numerous, incremental changes to the requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Nonetheless, FMCSA recognizes that this rule has an impact on the States and their commercial driver licensing operations. Most significantly, it requires all participating States to implement a CLP and prohibit the issuance of a CDL unless the applicant has first obtained a CLP and held it for a minimum of 14 days. The Agency hopes drivers will use this interval to

obtain formal training. States also are required to use a State Testing System pre-approved by FMCSA to administer knowledge and skills tests. To be approved by FMCSA, the State Testing System must be comparable to AAMVA's "2005 CDL Test System (July 2010 Version)," which FMCSA approves in this rule and will provide to all State Driver Licensing Agencies. Over the years, FMCSA and the States have identified CDL program deficiencies that need to be addressed. The OIG has focused attention on measures to prevent licensing fraud. Measures to address these issues, and others included in this rule, improve the effectiveness of the CDL program, but also require participating States to change their programs in a variety of ways. By letter dated October 31, 2007, the Agency notified the National Governor's Association (NGA) that it was developing these proposals to provide State and local governments the opportunity to raise Federalism issues during the comment period for the NPRM. The NGA did not file comments in this docket. No Federalism issues were otherwise brought to the Agency's attention during the comment period.

Privacy Impact Assessment

Section 522 of the FY 2005 Omnibus Appropriations Act, enacted December 8, 2004, (Note to 5 U.S.C. 552a) requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the privacy of individuals. This rulemaking requires new minimum Federal standards for States to issue CLPs as a pre-condition for a CDL. It requires that an applicant for a CLP must first pass a knowledge test which complies with prescribed minimum standards and may have only one CLP at a time. It further requires that the data on each CLP holder must be added to the driver's record in CDLIS. Therefore, the information will be held to the same level of security as other information contained in CDLIS.

Although each State is required to create a CDLIS record for each CLP it issues, the Privacy Act applies only to Federal agencies and any non-Federal agency which receives records contained in a system of records from a Federal agency for use in a matching program. The CDLIS records, however, are not transferred from FMCSA to the States; they are created and maintained by the States. FMCSA has determined this rule would not result in a new or revised Privacy Act System of Records for FMCSA.

*Executive Order 12372
(Intergovernmental Review)*

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. This rulemaking will affect a currently-approved information collection covered by the OMB Control No. 2126-0011 titled, "Commercial Driver Licensing and Test Standards." The currently approved information

collection has an annual burden of 1,391,456 hours and will expire on May 31, 2012.

This action updates and provides more uniform procedures for ensuring that the applicant has the appropriate knowledge and skills to operate a commercial motor vehicle. It also establishes the minimum information that must be on the CLP document and the electronic driver's record in CDLIS, makes it a tamperproof document, and establishes maximum issuance and renewal periods for the CLP and CDL. The FMCSA believes this rule will result in a significant increase in the annual burden hours for this information collection.

The following table summarizes the annual information collection burden hours for current and future information collection activities for the first 3 years of implementation of the new

requirements and for the 4th and subsequent years of maintaining the CDL program with the new requirements. The increase in annual burden hours for the first 3 years of 25,216 hours is due to knowledge and skills test examiner training and certification. The increase in annual burden hours of 595,348 hours for the 4th and subsequent years is due to a combination of activities, including the full implementation of the merging of the medical certification and CDL processes (211,910 hours) and the implementation of the new requirements for CDL testing and the issuance of CLPs (383,438 hours). A detailed analysis of the annual burden hour changes for each information collection activity can be found in the Supporting Statement of OMB Control Number 2126-0011.

CURRENT AND FUTURE INFORMATION COLLECTION BURDENS

Current and future information collection activities for states and CDL drivers	Currently approved annual burden hours	Future annual burden hours for first 3 years (program change)	Future annual burden hours for 4th and subsequent years (program change)
State to obtain and record the medical certificate information	0	0	* 205,333
State recording of medical certification status	0	0	* 3,984
State to verify the medical certification status of all interstate CDL drivers	0	0	* 2,593
Driver to notify employer of convictions/disqualifications	640,000	640,000	640,000
Driver to complete previous employment paperwork	403,200	403,200	403,200
States to complete compliance certification documents	1,632	1,632	1,632
State to complete compliance review documents	2,400	2,400	2,400
Data/document checks and CDLIS recordkeeping	212,224	212,224	582,285
Drivers to complete the CDL application	48,000	48,000	56,486
CDL tests recordkeeping	84,000	84,000	77,910
Knowledge and skills test examiner certification	0	25,216	7,658
Skills test examiner monitoring and auditing	0	0	28,539
Total Burden Hours	1,391,456	1,416,672	2,012,020

Note: * See currently approved (May 13, 2009) Information Collection Supporting Statement.

National Environmental Policy Act

The FMCSA analyzed this rulemaking for the purpose of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under its environmental procedures Order 5610.1, published March 1, 2004 in the **Federal Register** (69 FR 9680), that this action is categorically excluded (CE) under Paragraph 4.s of the Order from further environmental documentation. That CE relates to establishing regulations and actions taken pursuant to these regulations concerning requirements for drivers to have a single commercial motor vehicle driver's license. In addition, the Agency believes that the action includes no extraordinary circumstances that will have any effect on the quality of the environment. Thus,

the action does not require an environmental assessment or an environmental impact statement.

The FMCSA has also analyzed this rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it involves rulemaking and policy development and issuance.

Executive Order 13211 (Energy Effects)

The FMCSA has analyzed this action under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use. The Agency has

determined that it is not a "significant energy action" under that Executive Order because it will not be economically significant and will not be likely to have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

49 CFR Part 383

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

49 CFR Part 384

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

49 CFR Part 385

Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Safety fitness procedures.

The Final Rule

Accordingly, FMCSA amends parts 383, 384, and 385 of title 49 of the Code of Federal Regulations as set forth below:

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

■ 1. The authority citation for part 383 continues to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 et seq., and 31502; secs. 214 and 215 of Pub. L. 106-159, 113 Stat. 1766, 1767; sec. 1012(b) of Pub. L. 107-56, 115 Stat. 397; sec. 4140 of Pub. L. 109-59, 119 Stat. 1144, 1726; and 49 CFR 1.73.

■ 2. Amend § 383.5 by:

■ a. Removing the definitions for nonresident CDL and serious traffic violation;

■ b. Revising the definitions for commercial driver's license (CDL), commercial motor vehicle (CMV), disqualification, driver applicant, endorsement, imminent hazard, tank vehicle, and United States; and
■ c. Adding new definitions for CDL driver, non-CDL, commercial learner's permit (CLP), manual transmission, non-domiciled CLP or Non-domiciled CDL, third party skills test examiner, and third party tester.

The revisions and additions read as follows:

§ 383.5 Definitions.

* * * * *

CDL driver means a person holding a CDL or a person required to hold a CDL.
* * * * *

Commercial driver's license (CDL) means a license issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a commercial motor vehicle.
* * * * *

Commercial learner's permit (CLP) means a permit issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which, when carried with a valid driver's license issued by the same State or jurisdiction, authorizes the individual to operate a class of a commercial motor vehicle when accompanied by a holder of a valid CDL for purposes of behind-the-wheel training. When issued to a CDL holder, a CLP serves as

authorization for accompanied behind-the-wheel training in a CMV for which the holder's current CDL is not valid.

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

(1) Has a gross combination weight rating or gross combination weight of 11,794 kilograms or more (26,001 pounds or more), whichever is greater, inclusive of a towed unit(s) with a gross vehicle weight rating or gross vehicle weight of more than 4,536 kilograms (10,000 pounds), whichever is greater; or

(2) Has a gross vehicle weight rating or gross vehicle weight of 11,794 or more kilograms (26,001 pounds or more), whichever is greater; or

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

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

Disqualification means any of the following three actions:

(1) The suspension, revocation, or cancellation of a CLP or CDL by the State or jurisdiction of issuance.

(2) Any withdrawal of a person's privileges to drive a CMV by a State or other jurisdiction as the result of a violation of State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

(3) A determination by the FMCSA that a person is not qualified to operate a commercial motor vehicle under part 391 of this subchapter.

Driver applicant means an individual who applies to a State or other jurisdiction to obtain, transfer, upgrade, or renew a CDL or to obtain or renew a CLP.
* * * * *

Endorsement means an authorization to an individual's CLP or CDL required to permit the individual to operate certain types of commercial motor vehicles.
* * * * *

Imminent hazard means the existence of a condition relating to hazardous material that presents a substantial likelihood that death, serious illness, severe personal injury, or a substantial endangerment to health, property, or the environment may occur before the reasonably foreseeable completion date of a formal proceeding begun to lessen the risk of that death, illness, injury or endangerment.

Manual transmission (also known as a stick shift, stick, straight drive or

standard transmission) means a transmission utilizing a driver-operated clutch that is activated by a pedal or lever and a gear-shift mechanism operated either by hand or foot. All other transmissions, whether semi-automatic or automatic, will be considered automatic for the purposes of the standardized restriction code.
* * * * *

Non-CDL means any other type of motor vehicle license, such as an automobile driver's license, a chauffeur's license, or a motorcycle license.

Non-domiciled CLP or Non-domiciled CDL means a CLP or CDL, respectively, issued by a State or other jurisdiction under either of the following two conditions:

(1) To an individual domiciled in a foreign country meeting the requirements of § 383.23(b)(1).

(2) To an individual domiciled in another State meeting the requirements of § 383.23(b)(2).
* * * * *

Tank vehicle means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank or tanks having an individual rated capacity of more than 119 gallons and an aggregate rated capacity of 1,000 gallons or more that is either permanently or temporarily attached to the vehicle or the chassis. A commercial motor vehicle transporting an empty storage container tank, not designed for transportation, with a rated capacity of 1,000 gallons or more that is temporarily attached to a flatbed trailer is not considered a tank vehicle.
* * * * *

Third party skills test examiner means a person employed by a third party tester who is authorized by the State to administer the CDL skills tests specified in subparts G and H of this part.

Third party tester means a person (including, but not limited to, another State, a motor carrier, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) authorized by the State to employ skills test examiners to administer the CDL skills tests specified in subparts G and H of this part.

United States means the 50 States and the District of Columbia.
* * * * *

■ 3. Revise § 383.23 to read as follows:

§ 383.23 Commercial driver's license.

(a) General rule. (1) No person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests for a

CLP or CDL that meet the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Except as provided in paragraph (b) of this section, no person may legally operate a CMV unless such person possesses a CDL which meets the standards contained in subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* (1) If a CMV operator is not domiciled in a foreign jurisdiction that the Administrator has determined tests drivers and issues CDLs in accordance with, or under standards similar to, the standards contained in subparts F, G, and H of this part,¹ the person may obtain a Non-domiciled CLP or Non-domiciled CDL from a State that does comply with the testing and licensing standards contained in such subparts F, G, and H of this part, so long as that person meets the requirements of § 383.71(f).

(2) If an individual is domiciled in a State while that State is prohibited from issuing CDLs in accordance with § 384.405 of this subchapter, that individual is eligible to obtain a Non-domiciled CLP or Non-domiciled CDL from any State that elects to issue a Non-domiciled CDL and which complies with the testing and licensing standards contained in subparts F, G, and H of this part, so long as that person meets the requirements of § 383.71(f).

(3) If an individual possesses a CLP, as defined in § 383.5, the individual is authorized to operate a class of CMV as provided by the CLP in accordance with § 383.25.

■ 4. Add § 383.25 to subpart B to read as follows:

§ 383.25 Commercial learner's permit (CLP).

(a) A CLP is considered a valid CDL for purposes of behind-the-wheel training on public roads or highways, if all of the following minimum conditions are met:

(1) The CLP holder is at all times accompanied by the holder of a valid

CDL who has the proper CDL group and endorsement(s) necessary to operate the CMV. The CDL holder must at all times be physically present in the front seat of the vehicle next to the CLP holder or, in the case of a passenger vehicle, directly behind or in the first row behind the driver and must have the CLP holder under observation and direct supervision.

(2) The CLP holder holds a valid driver's license issued by the same jurisdiction that issued the CLP.

(3) The CLP holder must have taken and passed a general knowledge test that meets the Federal standards contained in subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(4) The CLP holder must be 18 years of age or older.

(5) Endorsements:

(i) A CLP holder with a passenger (P) endorsement must have taken and passed the P endorsement knowledge test. A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers, other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by paragraph (a)(1) of this section. The P endorsement must be class specific.

(ii) A CLP holder with a school bus (S) endorsement must have taken and passed the S endorsement knowledge test. A CLP holder with an S endorsement is prohibited from operating a school bus with passengers other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by paragraph (a)(1) of this section.

(iii) A CLP holder with a tank vehicle (N) endorsement must have taken and passed the N endorsement knowledge test. A CLP holder with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

(iv) All other Federal endorsements are prohibited on a CLP.

(6) The CLP holder does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) The CLP must be valid for no more than 180 days from the date of issuance. The State may renew the CLP for an additional 180 days without requiring

the CLP holder to retake the general and endorsement knowledge tests.

(d) The issuance of a CLP is a precondition to the initial issuance of a CDL. The issuance of a CLP is also a precondition to the upgrade of a CDL if the upgrade requires a skills test.

(e) The CLP holder is not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP.

■ 5. Revise § 383.37 to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States in any of the following circumstances:

(a) During any period in which the driver does not have a current CLP or CDL or does not have a CLP or CDL with the proper class or endorsements. An employer may not use a driver to operate a CMV who violates any restriction on the driver's CLP or CDL.

(b) During any period in which the driver has a CLP or CDL disqualified by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV.

(c) During any period in which the driver has more than one CLP or CDL.

(d) During any period in which the driver, or the CMV he/she is driving, or the motor carrier operation, is subject to an out-of-service order.

(e) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

■ 6. In § 383.51:

■ a. Revise paragraph (a);

■ b. Revise paragraph (b) introductory text and the column headings for Table 1;

■ c. Revise paragraph (c) introductory text and the column headings for Table 2;

■ d. Revise paragraph (d) introductory text and the column headings for Table 3; and

■ e. Revise paragraph (e) introductory text and the column headings for Table 4.

The revisions read as follows:

§ 383.51 Disqualification of drivers.

(a) *General.* (1) A person required to have a CLP or CDL who is disqualified must not drive a CMV.

(2) An employer must not knowingly allow, require, permit, or authorize a driver who is disqualified to drive a CMV.

(3) A holder of a CLP or CDL is subject to disqualification sanctions designated in paragraphs (b) and (c) of this section, if the holder drives a CMV or non-CMV and is convicted of the violations listed in those paragraphs.

(4) Determining first and subsequent violations. For purposes of determining

¹ Effective December 29, 1988, the Administrator determined that commercial driver's licenses issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code are in accordance with the standards of this part. Effective November 21, 1991, the Administrator determined that the new Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of this part. Therefore, under the single license provision of § 383.21, a driver holding a commercial driver's license issued under the Canadian National Safety Code or a new Licencia Federal de Conductor issued by Mexico is prohibited from obtaining a non-domiciled CDL, or any other type of driver's license, from a State or other jurisdiction in the United States.

first and subsequent violations of the offenses specified in this subpart, each conviction for any offense listed in Tables 1 through 4 to this section resulting from a separate incident, whether committed in a CMV or non-CMV, must be counted.

(5) The disqualification period must be in addition to any other previous periods of disqualification.

(6) Reinstatement after lifetime disqualification. A State may reinstate

any driver disqualified for life for offenses described in paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) after 10 years, if that person has voluntarily entered and successfully completed an appropriate rehabilitation program approved by the State. Any person who has been reinstated in accordance with this provision and who is subsequently convicted of a disqualifying offense described in

paragraphs (b)(1) through (8) of this section (Table 1 to § 383.51) must not be reinstated.

(b) *Disqualification for major offenses.* Table 1 to § 383.51 contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is disqualified, depending upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 1 TO § 383.51

If a driver operates a motor vehicle and is convicted of:	For a first conviction or refusal to be tested while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a first conviction or refusal to be tested while operating a CMV transporting hazardous materials required to be placarded under the Hazardous Materials Regulations (49 CFR part 172, subpart F), a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction or refusal to be tested in a separate incident of any combination of offenses in this Table while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV for * * *
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(c) *Disqualification for serious traffic violations.* Table 2 to § 383.51 contains

a list of the offenses and the periods for which a person who is required to have a CLP or CDL is disqualified, depending

upon the type of vehicle the driver is operating at the time of the violation, as follows:

TABLE 2 TO § 383.51

If the driver operates a motor vehicle and is convicted of:	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period while operating a non-CMV, a CLP or CDL holder must be disqualified from operating a CMV, if the conviction results in the revocation, cancellation, or suspension of the CLP or CDL holder's license or non-CMV driving privileges, for * * *
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(d) *Disqualification for railroad-highway grade crossing offenses.*

Table 3 to § 383.51 contains a list of the offenses and the periods for which a person who is required to have a CLP

or CDL is disqualified, when the driver is operating a CMV at the time of the violation, as follows:

TABLE 3 TO § 383.51

If the driver is convicted of operating a CMV in violation of a Federal, State or local law because * * *	For a first conviction a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction of any combination of offenses in this Table in a separate incident within a 3-year period, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
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* * * * *
 (e) *Disqualification for violating out-of-service orders.* Table 4 to § 383.51

contains a list of the offenses and periods for which a person who is required to have a CLP or CDL is

disqualified when the driver is operating a CMV at the time of the violation, as follows:

TABLE 4 TO § 383.51

If the driver operates a CMV and is convicted of * * *	For a first conviction while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a second conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *	For a third or subsequent conviction in a separate incident within a 10-year period while operating a CMV, a person required to have a CLP or CDL and a CLP or CDL holder must be disqualified from operating a CMV for * * *
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* * * * *
 ■ 7. Revise § 383.71 to read as follows:

§ 383.71 Driver application and certification procedures.

(a) *Commercial Learner's Permit.* Prior to obtaining a CLP, a person must meet the following requirements:

(1) *Commercial learner's permit applications submitted prior to July 8, 2014.* CLPs issued prior to July 8, 2014 for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(i) The learner's permit holder is at all times accompanied by the holder of a valid CDL;

(ii) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automotive drivers' licenses; and

(iii) He/she does not operate a commercial motor vehicle transporting hazardous materials as defined in § 383.5.

(2) *Commercial learner's permit applications submitted on or after July 8, 2014.* Any person applying for a CLP on or after July 8, 2014 must meet the following conditions:

(i) The person must be 18 years of age or older and provide proof of his/her age.

(ii) The person must have taken and passed a general knowledge test that meets the Federal standards contained

in subparts F, G, and H of this part for the commercial motor vehicle group that person operates or expects to operate.

(iii) The person must certify that he/she is not subject to any disqualification under § 383.51, or any license disqualification under State law, and that he/she does not have a driver's license from more than one State or jurisdiction.

(iv) The person must provide to the State of issuance the information required to be included on the CLP as specified in subpart J of this part.

(v) The person must provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section or obtain a Non-domiciled CLP as specified in paragraph (f) of this section.

(vi) The person must provide proof that the State to which application is made is his/her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(vii) The person must provide the names of all States where the applicant has been licensed to drive any type of motor vehicle during the previous 10 years.

(viii) A person seeking a passenger (P), school bus (S) or tank vehicle (N) endorsement must have taken and passed the endorsement knowledge test for the specific endorsement.

(ix) The person must provide the State the certification contained in paragraph (b)(1) of this section.

(b) *Initial Commercial Driver's License.* Prior to obtaining a CDL, a person must meet all of the following requirements:

(1)(i) *Initial Commercial Driver's License applications submitted prior to January 30, 2012.* Any person applying for a CDL prior to January 30, 2012, must meet the requirements set forth in paragraphs (b)(2) through (10) of this section, and make the following applicable certification in paragraph (b)(1)(i)(A), (B), or (C) of this section:

(A) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to 49 CFR part 391, must certify that he/she meets the qualification requirements contained in part 391 of this title; or

(B) A person who operates or expects to operate in interstate commerce, but is not subject to part 391 due to an exception under § 390.3(f) or an exemption under § 391.2, must certify that he/she is not subject to part 391.

(C) A person who operates or expects to operate entirely in intrastate commerce and is not subject to part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to part 391.

(ii) *Initial Commercial Driver's License applications submitted on or after January 30, 2012.* Any person applying for a CDL on or after January 30, 2012, must meet the requirements set forth in paragraphs (b)(2) through (10), and (h) of this section, and make one of the following applicable certifications in paragraph (b)(1)(ii)(A), (B), (C), or (D) of this section:

(A) *Non-excepted interstate.* A person must certify that he/she operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR part 391, and is required to obtain a medical examiner's certificate by § 391.45 of this chapter;

(B) *Excepted interstate.* A person must certify that he/she operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR 390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 CFR part 391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR 391.45 of this chapter;

(C) *Non-excepted intrastate.* A person must certify that he/she operates only in intrastate commerce and therefore is subject to State driver qualification requirements; or

(D) *Excepted intrastate.* A person must certify that he/she operates in

intrastate commerce, but engages exclusively in transportation or operations excepted from all or parts of the State driver qualification requirements.

(2) The person must pass a driving or skills test in accordance with the standards contained in subparts F, G, and H of this part taken in a motor vehicle that is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party.

(3) The person must certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate.

(4) The person must provide the State the information required to be included on the CDL as specified in subpart J of this part.

(5) The person must certify that he/she is not subject to any disqualification under § 383.51, or any license disqualification under State law, and

that he/she does not have a driver's license from more than one State or jurisdiction.

(6) The person must surrender his/her non-CDL driver's licenses and CLP to the State.

(7) The person must provide the names of all States where he/she has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(8) If the person is applying for a hazardous materials endorsement, he/she must comply with Transportation Security Administration requirements codified in 49 CFR part 1572. A lawful permanent resident of the United States requesting a hazardous materials endorsement must additionally provide his/her U.S. Citizenship and Immigration Services (USCIS) Alien registration number.

(9) The person must provide proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

TABLE 1 TO § 383.71—LIST OF ACCEPTABLE PROOFS OF CITIZENSHIP OR LAWFUL PERMANENT RESIDENCY

Status	Proof of status
U.S. Citizen	<ul style="list-style-type: none"> • Valid, unexpired U.S. Passport. • Certified copy of a birth certificate filed with a State Office of Vital Statistics or equivalent agency in the individual's State of birth, Puerto Rico, the Virgin Islands, Guam, American Samoa or the Commonwealth of the Northern Mariana Islands. • Consular Report of Birth Abroad (CRBA) issued by the U.S. Department of State. • Certificate of Naturalization issued by the U.S. Department of Homeland Security (DHS). • Certificate of Citizenship issued by DHS.
Lawful Permanent Resident	<ul style="list-style-type: none"> • Valid, unexpired Permanent Resident Card, issued by USCIS or INS.

(10) The person must provide proof that the State to which application is made is his/her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(c) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State of domicile, an applicant must apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant must:

(1) Provide to the new State of domicile the certifications contained in paragraphs (b)(1) and (5) of this section;

(2) Provide to the new State of domicile updated information as specified in subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and State requirements as specified in § 383.73(c)(4);

(4) Surrender the CDL from the old State of domicile to the new State of domicile; and

(5) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(6) Provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(7) Provide proof to the State that this is his/her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document with the person's name and residential address within the State, such as a government issued tax form.

(d) *License renewal.* When applying for a renewal of a CDL, all applicants must:

(1) Provide to the State certifications contained in paragraphs (b)(1) and (5) of this section;

(2) Provide to the State updated information as specified in subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, he/she must comply with the requirements specified in paragraph (b)(8) of this section and pass the test specified in § 383.121 for such endorsement.

(4) Provide the names of all States where the applicant has previously been licensed to drive any type of motor vehicle during the previous 10 years.

(5) Provide to the State proof of citizenship or lawful permanent residency as specified in Table 1 of this section, or be registered under paragraph (f) of this section.

(6) Provide proof to the State that this is his/her State of domicile, as the term is defined in § 383.5. Acceptable proof of domicile is a document, such as a government issued tax form, with the person's name and residential address within the State.

(e) *License upgrades.* When applying for a CDL or an endorsement

authorizing the operation of a CMV not covered by the current CDL, all applicants must:

(1) Provide the certifications specified in paragraph (b) of this section;

(2) Pass all the knowledge tests in accordance with the standards contained in subparts F, G, and H of this part and all the skills tests specified in paragraph (b)(2) of this section for the new vehicle group and/or different endorsements;

(3) Comply with the requirements specified in paragraph (b)(8) of this section to obtain a hazardous materials endorsement; and

(4) Surrender the previous CDL.

(f) *Non-domiciled CLP and CDL.* (1) A person must obtain a Non-domiciled CLP or CDL:

(i) If the applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, and the Administrator has not determined that the commercial motor vehicle operator testing and licensing standards of that jurisdiction meet the standards contained in subparts G and H of this part.

(ii) If the applicant is domiciled in a State that is prohibited from issuing CLPs and CDLs in accordance with § 384.405 of this subchapter. That person is eligible to obtain a Non-domiciled CLP or CDL from any State that elects to issue a Non-domiciled CLP or CDL and that complies with the testing and licensing standards contained in subparts F, G, and H of this part.

(2) An applicant for a Non-domiciled CLP and CDL must do both of the following:

(i) Complete the requirements to obtain a CLP contained in paragraph (a) of this section or a CDL contained in paragraph (b) of this section. *Exception:* An applicant domiciled in a foreign jurisdiction must provide an unexpired employment authorization document (EAD) issued by USCIS or an unexpired foreign passport accompanied by an approved I-94 form documenting the applicant's most recent admittance into the United States. No proof of domicile is required.

(ii) After receipt of the Non-domiciled CLP or CDL, and for as long as it is valid, notify the State which issued the Non-domiciled CLP or CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions include, but are not limited to, license disqualification or disqualification from operating a commercial motor vehicle for the convictions described in § 383.51.

Notifications must be made within the time periods specified in § 383.33.

(3) An applicant for a Non-domiciled CLP or CDL is not required to surrender his/her foreign license.

(g) Existing CLP and CDL Holder's Self-Certification. Every person who holds a CLP or CDL must provide to the State on or after January 30, 2012, but not later than January 30, 2014, the certification contained in § 383.71(b)(1)(ii).

(h) Medical Certification Documentation Required by the State. An applicant or CLP or CDL holder who certifies to non-excepted, interstate driving operations according to § 383.71(b)(1)(ii)(A) must comply with applicable requirements in paragraphs (h)(1) through (3) of this section:

(1) New CLP and CDL applicants. After January 30, 2012, a new CLP or CDL applicant who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of a medical examiner's certificate prepared by a medical examiner, as defined in § 390.5 of this chapter, and the State will post a certification status of "certified" on the Commercial Driver's License Information System (CDLIS) driver record for the driver;

(2) Existing CLP and CDL holders. By January 30, 2014, provide the State with an original or copy (as required by the State) of a current medical examiner's certificate prepared by a medical examiner, as defined in 49 CFR 390.5, and the State will post a certification status of "certified" on CDLIS driver record for the driver. If the non-excepted, interstate CLP or CDL holder fails to provide the State with a current medical examiner's certificate, the State will post a certification status of "not-certified" in the CDLIS driver record for the driver, and initiate a CLP or CDL downgrade following State procedures in accordance with section 383.73(j)(4); and

(3) Maintaining the medical certification status of "certified." In order to maintain a medical certification status of "certified," after January 30, 2012, a CLP or CDL holder who certifies that he/she will operate CMVs in non-excepted, interstate commerce must provide the State with an original or copy (as required by the State) of each subsequently issued medical examiner's certificate.

■ 8. Revise § 383.72 to read as follows:

§ 383.72 Implied consent to alcohol testing.

Any person who holds a CLP or CDL or is required to hold a CLP or CDL is

considered to have consented to such testing as is required by any State or jurisdiction in the enforcement of §§ 383.51(b), Table 1, item (4) and 392.5(a)(2) of this subchapter. Consent is implied by driving a commercial motor vehicle.

■ 9. Revise § 383.73 to read as follows:

§ 383.73 State procedures.

(a) *Commercial Learner's Permit.*

(1) Prior to July 8, 2014. When issuing a CLP to a person prior to July 8, 2014, a State must meet the requirements in § 383.71(a)(1):

(2) On or after July 8, 2014. Prior to issuing a CLP to a person on or after July 8, 2014, a State must:

(i) Require the applicant to make the certifications, pass the tests, and provide the information as described in § 383.71(a)(2);

(ii) Initiate and complete a check of the applicant's driving record as described in paragraph (b)(3) of this section.

(iii) Make a CLP valid for no more than 180 days from the date of issuance and provide for renewal of a CLP for no more than an additional 180 days without the CLP holder having to retake the general and endorsement knowledge tests;

(iv) Allow only a group-specific passenger (P) and school bus (S) endorsement and tank vehicle (N) endorsement on a CLP, provided the applicant has taken and passed the knowledge test for the specified endorsement. All other Federal endorsements are prohibited on a CLP; and

(v) Complete the Social Security Number verification required by paragraph (g) of this section.

(vi) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(a)(2)(vi).

(vii) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CLP applicant submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the CDLIS driver record in accordance with paragraph (o) of this section.

(b) *Initial CDL.* Prior to issuing a CDL to a person, a State must:

(1) Require the driver applicant to certify, pass tests, and provide information as described in § 383.71(b);

(2) Check that the vehicle in which the applicant takes his/her test is

representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license disqualification under State law, and that the person does not have a driver's license from more than one State or jurisdiction. The record check must include, but is not limited to, the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle;

(iii) A check with the Problem Driver Pointer System (PDPS) to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) disqualified for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in 49 U.S.C. 30304(a)(3);

(iv) A request for the applicant's complete driving record from all States where the applicant was previously licensed over the last 10 years to drive any type of motor vehicle. *Exception:* A State is only required to make the request for the complete driving record specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after September 30, 2002, provided a notation is made on the driver's record confirming that the driver record check required by this paragraph has been made and noting the date it was done;

(v) Beginning January 30, 2012, a check that the medical certification status of a driver that self-certified according to § 383.71(b)(1)(ii)(A) of this chapter (non-excepted interstate) is "certified;"

(4) Require the driver applicant to surrender his/her non-CDL driver's license and CLP;

(5) Beginning January 30, 2012, for drivers who certified their type of driving according to § 383.71(b)(1)(ii)(A) (non-excepted interstate) and, if the CDL driver submits a current medical examiner's certificate, date-stamp the medical examiner's certificate, and post all required information from the medical examiner's certificate to the

CDLIS driver record in accordance with paragraph (o) of this section.

(6) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is only required to check the proof of citizenship or legal presence specified in this paragraph for initial issuance of a CLP or Non-domiciled CDL, transfer of CDL from another State or for drivers renewing a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(7) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(8) For persons applying for a hazardous materials endorsement, require compliance with the standards for such endorsement specified in §§ 383.71(b)(8) and 383.141; and

(9) Make the CDL valid for no more than 8 years from the date of issuance.

(c) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b)(1) and (5);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(6) Require the applicant to surrender the CDL issued by the applicant's previous State of domicile;

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10). *Exception:* A State is

only required to check the proof of citizenship or legal presence specified in this paragraph for initial issuance of a CLP or Non-domiciled CDL, transfer of CDL from another State or for drivers renewing a CDL or Non-domiciled CDL for the first time after July 8, 2011, provided a notation is made on the driver's record confirming that the proof of citizenship or legal presence check required by this paragraph has been made and noting the date it was done;

(8) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status of driver is "certified" for those who certified according to § 383.71(b)(1)(ii)(A).

Exception: A driver who certified according to § 383.71(b)(1)(ii)(A) that he/she plans to operate in non-excepted interstate commerce may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section and:

(9) Make the CDL valid for no more than 8 years from the date of issuance.

(d) *License Renewals.* Prior to renewing any CDL a State must:

(1) Require the driver applicant to make the certifications contained in § 383.71(b);

(2) Complete a check of the driver applicant's record as contained in paragraph (b)(3) of this section;

(3) Request and receive updates of information specified in subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test specified in § 383.121 and comply with the standards specified in §§ 383.71(b)(8) and 383.141 for such endorsement;

(5) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(6) Make the renewal of the CDL valid for no more than 8 years from the date of issuance;

(7) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10); and

(8) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to § 383.71(b)(1)(ii)(A). *Exception:* A driver who certified according to § 383.71(b)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided

by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section.

(e) *License upgrades.* Prior to issuing an upgrade of a CDL, a State must:

(1) Require such driver applicant to provide certifications, pass tests, and meet applicable hazardous materials standards specified in § 383.71(e);

(2) Complete a check of the driver applicant's record as described in paragraph (b)(3) of this section;

(3) If not previously done, complete the Social Security Number verification required by paragraph (g) of this section;

(4) Require the driver applicant to surrender his/her previous CDL;

(5) Require compliance with the standards for providing proof of citizenship or lawful permanent residency specified in § 383.71(b)(9) and proof of State of domicile specified in § 383.71(b)(10);

(6) Beginning January 30, 2012, verify from the CDLIS driver record that the medical certification status is "certified" for drivers who self-certified according to § 383.71(b)(1)(ii)(A). *Exception:* A driver who certified according to § 383.71(b)(1)(ii)(A) may present a current medical examiner's certificate issued prior to January 30, 2012. The medical examiner's certificate provided by the driver must be posted to the CDLIS driver record in accordance with paragraph (o) of this section and:

(7) Make the CDL valid for no more than 8 years from the date of issuance.

(f) *Non-domiciled CLP and CDL.* (1) A State may only issue a Non-domiciled CLP or CDL to a person who meets one of the circumstances described in § 383.71(f)(1).

(2) State procedures for the issuance of a non-domiciled CLP and CDL, for any modifications thereto, and for notifications to the CDLIS must at a minimum be identical to those pertaining to any other CLP or CDL, with the following exceptions:

(i) If the applicant is requesting a transfer of his/her Non-domiciled CDL, the State must obtain the Non-domiciled CDL currently held by the applicant and issued by another State;

(ii) The State must add the word "non-domiciled" to the face of the CLP or CDL, in accordance with § 383.153(b); and

(iii) The State must have established, prior to issuing any Non-domiciled CLP or CDL, the practical capability of disqualifying the holder of any Non-domiciled CLP or CDL, by withdrawing or disqualifying his/her Non-domiciled CLP or CDL as if the Non-domiciled CLP or CDL were a CLP or CDL issued to a person domiciled in the State.

(3) The State must require compliance with the standards for providing proof of legal presence specified in § 383.71(b)(9) and § 383.71(f)(2)(i).

(g) *Social Security Number verification.* (1) Prior to issuing a CLP or a CDL to a person the State must verify the name, date of birth, and Social Security Number provided by the applicant with the information on file with the Social Security Administration. The State is prohibited from issuing, renewing, upgrading, or transferring a CLP or CDL if the Social Security Administration database does not match the applicant-provided data.

(2) *Exception.* A State is only required to perform the Social Security Number verification specified in this paragraph for initial issuance of a CLP, transfer of CDL from another State or for drivers renewing a CDL for the first time after July 8, 2011 who have not previously had their Social Security Number information verified, provided a notation is made on the driver's record confirming that the verification required by this paragraph has been made and noting the date it was done.

(h) *License issuance.* After the State has completed the procedures described in paragraphs (a) through (g) of this section, as applicable, it may issue a CLP or CDL to the driver applicant. The State must notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(i) *Surrender procedure.* A State may return a surrendered license to a driver after physically marking it so that it cannot be mistaken for a valid document. Simply punching a hole in the expiration date of the document is insufficient. A document perforated with the word "VOID" is considered invalidated.

(j) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CLP or CDL, or at any time after the CLP or CDL is issued, that the applicant has falsified information contained in subpart J of this part, in any of the certifications required in § 383.71(b) or (g), or in any of the documents required to be submitted by § 383.71(h), the State must at a minimum disqualify the person's CLP or CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

(k) *Drivers convicted of fraud related to the testing and issuance of a CLP or CDL.* (1) The State must have policies in effect that result, at a minimum, in the disqualification of the CLP or CDL of a

person who has been convicted of fraud related to the issuance of that CLP or CDL. The application of a person so convicted who seeks to renew, transfer, or upgrade the fraudulently obtained CLP or CDL must also, at a minimum, be disqualified. The State must record any such withdrawal in the person's driving record. The person may not reapply for a new CDL for at least 1 year.

(2) If a State receives credible information that a CLP- or CDL-holder is suspected, but has not been convicted, of fraud related to the issuance of his/her CLP or CDL, the State must require the driver to re-take the skills and/or knowledge tests. Within 30 days of receiving notification from the State that re-testing is necessary, the affected CLP- or CDL-holder must make an appointment or otherwise schedule to take the next available test. If the CLP- or CDL-holder fails to make an appointment within 30 days, the State must disqualify his/her CLP or CDL. If the driver fails either the knowledge or skills test or does not take the test, the State must disqualify his/her CLP or CDL. Once a CLP- or CDL-holder's CLP or CDL has been disqualified, he/she must reapply for a CLP or CDL under State procedures applicable to all CLP and CDL applicants.

(l) *Reciprocity.* A State must allow any person who has a valid CLP, CDL, Non-domiciled CLP, or Non-domiciled CDL and who is not disqualified from operating a CMV, to operate a CMV in the State.

(m) *Document verification.* The State must require at least two persons within the driver licensing agency to check and verify all documents involved in the licensing process for the initial issuance, renewal, upgrade, or transfer of a CLP or CDL. The documents being checked and verified must include, at a minimum, those provided by the applicant to prove legal presence and domicile, the information filled out on the application form, and knowledge and skills test scores. *Exception:* For offices with only one staff member, the documents must be checked and verified by a supervisor before issuance or, when a supervisor is not available, copies must be made of the documents used to prove legal presence and domicile and a supervisor must verify the documents and the filled out application form and test scores within one business day of issuance of the CLP or CDL.

(n) *Computer system controls.* The State must establish computer system controls that will:

(1) Prevent the issuance of an initial, renewed, upgraded, or transferred CLP or CDL when the results of transactions indicate the applicant is unqualified. These controls, at a minimum, must be established for the following transactions: State, CDLIS, and PDPS driver record checks; Social Security Number verification; and knowledge and skills test scores verification.

(2) Suspend the issuance process whenever State, CDLIS, and/or PDPS driver record checks return suspect results. The State must demonstrate that it has a system to detect and prevent fraud when a driver record check returns suspect results. At a minimum, the system must ensure that:

(i) The results are not connected to a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations);

(ii) The name of the persons performing the record check and authorizing the issuance, and the justification for the authorization are documented by the State; and

(iii) The person performing the record check and the person authorizing the issuance are not the same.

(o) *Medical recordkeeping.* (1) *Status of CDL holder.* Beginning January 30, 2012, for each operator of a commercial motor vehicle required to have a CLP or CDL, the current licensing State must:

(i) Post the driver's self-certification of type of driving under § 383.71(b)(1)(ii),

(ii) Retain the original or a copy of the medical certificate of any driver required to provide documentation of physical qualification for 3 years beyond the date the certificate was issued, and

(iii) Post the information from the medical examiner's certificate within 10 calendar days to the CDLIS driver record, including:

(A) Medical examiner's name;

(B) Medical examiner's telephone number;

(C) Date of medical examiner's certificate issuance;

(D) Medical examiner's license number and the State that issued it;

(E) Medical examiner's National Registry identification number (if the National Registry of Medical Examiners, mandated by 49 U.S.C. 31149(d), requires one);

(F) The indicator of medical certification status, i.e., "certified" or "not-certified";

(G) Expiration date of the medical examiner's certificate;

(H) Existence of any medical variance on the medical certificate, such as an exemption, Skill Performance Evaluation (SPE) certification, or grandfather provisions;

(I) Any restrictions (e.g., corrective lenses, hearing aid, required to have possession of an exemption letter or SPE certificate while on-duty, etc.); and

(J) Date the medical examiner's certificate information was posted to the CDLIS driver record.

(2) *Status update.* Beginning January 30, 2012, the State must, within 10 calendar days of the driver's medical certification status expiring or a medical variance expiring or being rescinded, update the medical certification status of that driver as "not-certified."

(3) *Variance update.* Beginning January 30, 2012, within 10 calendar days of receiving information from FMCSA regarding issuance or renewal of a medical variance for a driver, the State must update the CDLIS driver record to include the medical variance information provided by FMCSA.

(4) *Downgrade.* (i) Beginning January 30, 2012, if a driver's medical certification or medical variance expires, or FMCSA notifies the State that a medical variance was removed or rescinded, the State must:

(A) Notify the CLP or CDL holder of his/her CLP or CDL "not-certified" medical certification status and that the CMV privileges will be removed from the CLP or CDL unless the driver submits a current medical certificate and/or medical variance, or changes his/her self-certification to driving only in excepted or intrastate commerce (if permitted by the State);

(B) Initiate established State procedures for downgrading the CLP or CDL. The CLP or CDL downgrade must be completed and recorded within 60 days of the driver's medical certification status becoming "not-certified" to operate a CMV.

(ii) Beginning January 30, 2014, if a driver fails to provide the State with the certification contained in § 383.71(b)(1)(ii), or a current medical examiner's certificate if the driver self-certifies according to § 383.71(b)(1)(ii)(A) that he/she is operating in non-excepted interstate commerce as required by § 383.71(h), the State must mark that CDLIS driver record as "not-certified" and initiate a CLP or CDL downgrade following State procedures in accordance with paragraph (o)(4)(i)(B) of this section.

(5) FMCSA Medical Programs is designated as the keeper of the list of State contacts for receiving medical variance information from FMCSA. Beginning January 30, 2012, States are responsible for insuring their medical variance contact information is always up-to-date with FMCSA's Medical Programs.

■ 10. Revise § 383.75 to read as follows:

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a third party tester to administer the skills tests as specified in subparts G and H of this part, if the following conditions are met:

(1) The skills tests given by the third party are the same as those that would otherwise be given by the State using the same version of the skills tests, the same written instructions for test applicants, and the same scoring sheets as those prescribed in subparts G and H of this part;

(2) The State must conduct an on-site inspection of each third party tester at least once every 2 years, with a focus on examiners with irregular results such as unusually high or low pass/fail rates;

(3) The State must issue the third party tester a CDL skills testing certificate upon the execution of a third party skills testing agreement.

(4) The State must issue each third party CDL skills test examiner a skills testing certificate upon successful completion of a formal skills test examiner training course prescribed in § 384.228.

(5) The State must, at least once every 2 years, do one of the following for each third party examiner:

(i) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(ii) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(iii) Re-test a sample of drivers who were examined by the third party to compare pass/fail results;

(6) The State must take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;

(7) A skills tester that is also a driver training school is prohibited from administering a skills test to an applicant who was trained by that training school. *Exception:* When the nearest alternative third party tester or State skills testing facility is over 50 miles from the training school, the SDLA may allow the training school to skills test the applicant it trained provided the individual skills test examiner did not train the applicant; and

(8) The State has an agreement with the third party containing, at a minimum, provisions that:

(i) Allow the FMCSA, or its representative, and the State to conduct

random examinations, inspections, and audits of its records, facilities, and operations without prior notice;

(ii) Require that all third party skills test examiners meet the qualification and training standards of § 384.228;

(iii) Allow the State to do any of the following:

(A) Have State employees covertly take the tests administered by the third party as if the State employee were a test applicant;

(B) Have State employees co-score along with the third party examiner during CDL skills tests to compare pass/fail results; or

(C) Have the State re-test a sample of drivers who were examined by the third party;

(iv) Reserve unto the State the right to take prompt and appropriate remedial action against a third party tester that fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third party contract;

(v) Require the third party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing for applicants for a CDL.

(vi) Require the third party tester to use only CDL skills examiners who have successfully completed a formal CDL skills test examiner training course as prescribed by the State and have been certified by the State as a CDL skills examiner qualified to administer CDL skills tests;

(vii) Require the third party tester to use designated road test routes that have been approved by the State;

(viii) Require the third party tester to submit a schedule of CDL skills testing appointments to the State no later than two business days prior to each test; and

(ix) Require the third party tester to maintain copies of the following records at its principal place of business:

(A) A copy of the State certificate authorizing the third party tester to administer a CDL skills testing program for the classes and types of commercial motor vehicles listed;

(B) A copy of each third party examiner's State certificate authorizing the third party examiner to administer CDL skills tests for the classes and types of commercial motor vehicles listed;

(C) A copy of the current third party agreement;

(D) A copy of each completed CDL skills test scoring sheet for the current year and the past two calendar years;

(E) A copy of the third party tester's State-approved road test route(s); and

(F) A copy of each third party examiner's training record.

(b) *Proof of testing by a third party.* The third party tester must notify the State driver licensing agency through secure electronic means when a driver applicant passes skills tests administered by the third party tester.

(c) *Minimum number of tests conducted.*

The State must revoke the skills testing certification of any examiner who does not conduct skills test examinations of at least 10 different applicants per calendar year. *Exception:* Examiners who do not meet the 10-test minimum must either take the refresher training specified in § 384.228 of this chapter or have a State examiner ride along to observe the third party examiner successfully administer at least one skills test.

■ 11. Revise § 383.77 to read as follows:

§ 383.77 Substitute for driving skills tests for drivers with military CMV experience.

At the discretion of a State, the driving skills test as specified in § 383.113 may be waived for a CMV driver with military CMV experience who is currently licensed at the time of his/her application for a CDL, and substituted with an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except for a military license);

(2) Has not had any license suspended, revoked, or cancelled;

(3) Has not had any convictions for any type of motor vehicle for the disqualifying offenses contained in § 383.51(b);

(4) Has not had more than one conviction for any type of motor vehicle for serious traffic violations contained in § 383.51(c); and

(5) Has not had any conviction for a violation of military, State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that he/she:

(1) Is regularly employed or was regularly employed within the last 90 days in a military position requiring operation of a CMV;

(2) Was exempted from the CDL requirements in § 383.3(c); and

(3) Was operating a vehicle representative of the CMV the driver applicant operates or expects to operate, for at least the 2 years immediately preceding discharge from the military.

■ 12. Add § 383.79 to subpart E to read as follows:

§ 383.79 Skills testing of out-of-State students.

(a) A State may administer its skills test, in accordance with subparts F, G, and H of this part, to a person who has taken training in that State and is to be licensed in another United States jurisdiction (i.e., his/her State of domicile). Such test results must be transmitted electronically directly from the testing State to the licensing State in an efficient and secure manner.

(b) The State of domicile of a CDL applicant must accept the results of a skills test administered to the applicant by any other State, in accordance with subparts F, G, and H of this part, in fulfillment of the applicant's testing requirements under § 383.71, and the State's test administration requirements under § 383.73.

■ 13. Amend § 383.93 by revising paragraph (a) to read as follows:

§ 383.93 Endorsements.

(a) *General.* (1) In addition to passing the knowledge and skills tests described in subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section must pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(2) The only endorsements allowed on a CLP are the following:

(i) Passenger (P);

(ii) School bus (S); and

(iii) Tank vehicle (N).

(3) The State must use the codes listed in § 383.153 when placing endorsements on a CLP or CDL.

* * * * *

■ 14. Revise § 383.95 to read as follows:

§ 383.95 Restrictions.

(a) *Air brake.* (1) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State must indicate on the CLP or CDL, if issued, that the person is restricted from operating a CMV equipped with any type of air brakes.

(2) For the purposes of the skills test and the restriction, air brakes include

any braking system operating fully or partially on the air brake principle.

(b) *Full air brake.* (1) If an applicant performs the skills test in a vehicle equipped with air over hydraulic brakes, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with any braking system operating fully on the air brake principle.

(2) For the purposes of the skills test and the restriction, air over hydraulic brakes includes any braking system operating partially on the air brake and partially on the hydraulic brake principle.

(c) *Manual transmission.* (1) If an applicant performs the skills test in a vehicle equipped with an automatic transmission, the State must indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with a manual transmission.

(2) For the purposes of the skills test and the restriction, an automatic transmission includes any transmission other than a manual transmission as defined in § 383.5.

(d) *Tractor-trailer.* If an applicant performs the skills test in a combination vehicle for a Group A CDL with the power unit and towed unit connected with a pintle hook or other non-fifth wheel connection, the State must indicate on the CDL, if issued, that the person is restricted from operating a tractor-trailer combination connected by a fifth wheel that requires a Group A CDL.

(e) *Group A passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group B CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A CDL.

(f) *Group A and B passenger vehicle.* If an applicant applying for a passenger endorsement performs the skills test in a passenger vehicle requiring a Group C CDL, the State must indicate on the CDL, if issued, that the person is restricted from operating a passenger vehicle requiring a Group A or B CDL.

(g) *Medical Variance Restrictions.* If the State is notified according to § 383.73(o)(3) that the driver has been issued a medical variance, the State must indicate the existence of such a medical variance on the CDLIS driver record and the CDL document, if issued, using the restriction code "V" to indicate there is information about a medical variance on the CDLIS driver record.

Note: In accordance with the agreement between Canada and the United States (see footnote to § 391.41 of this chapter),

drivers with a medical variance restriction code on their CDL are restricted from operating a CMV in the other country.

■ 15. Revise § 383.110 to read as follows:

§ 383.110 General requirement.

All drivers of CMVs must have the knowledge and skills necessary to operate a CMV safely as contained in this subpart. The specific types of items that a State must include in the knowledge and skills tests that it administers to CDL applicants are included in this subpart.

■ 16. Revise § 383.111 to read as follows:

§ 383.111 Required knowledge.

(a) All CMV operators must have knowledge of the following 20 general areas:

(1) *Safe operations regulations.*

Driver-related elements of the regulations contained in parts 391, 392, 393, 395, 396, and 397 of this subchapter, such as:

- (i) Motor vehicle inspection, repair, and maintenance requirements;
- (ii) Procedures for safe vehicle operations;
- (iii) The effects of fatigue, poor vision, hearing impairment, and general health upon safe commercial motor vehicle operation;
- (iv) The types of motor vehicles and cargoes subject to the requirements contained in part 397 of this subchapter; and
- (v) The effects of alcohol and drug use upon safe commercial motor vehicle operations.

(2) *Safe vehicle control systems.* The purpose and function of the controls and instruments commonly found on CMVs.

(3) *CMV safety control systems.* (i) Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions.

(ii) CMV drivers must have knowledge of the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(4) *Basic control.* The proper procedures for performing various basic maneuvers, including:

- (i) Starting, warming up, and shutting down the engine;
- (ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and
(iv) Turning the vehicle, e.g., basic rules, off tracking, right/left turns and right curves.

(5) *Shifting.* The basic shifting rules and terms for common transmissions, including:

- (i) Key elements of shifting, e.g., controls, when to shift, and double clutching;
- (ii) Shift patterns and procedures; and
- (iii) Consequences of improper shifting.

(6) *Backing.* The procedures and rules for various backing maneuvers, including:

- (i) Backing principles and rules; and
- (ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(7) *Visual search.* The importance of proper visual search, and proper visual search methods, including:

- (i) Seeing ahead and to the sides;
- (ii) Use of mirrors; and
- (iii) Seeing to the rear.

(8) *Communication.* The principles and procedures for proper communications and the hazards of failure to signal properly, including:

- (i) Signaling intent, e.g., signaling when changing direction in traffic;
- (ii) Communicating presence, e.g., using horn or lights to signal presence; and

(iii) Misuse of communications.

(9) *Speed management.* The importance of understanding the effects of speed, including:

- (i) Speed and stopping distance;
- (ii) Speed and surface conditions;
- (iii) Speed and the shape of the road;
- (iv) Speed and visibility; and
- (v) Speed and traffic flow.

(10) *Space management.* The procedures and techniques for controlling the space around the vehicle, including:

- (i) The importance of space management;
- (ii) Space cushions, e.g., controlling space ahead/to the rear;
- (iii) Space to the sides; and
- (iv) Space for traffic gaps.

(11) *Night operation.* Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors (vision, glare, fatigue, inexperience);

(ii) Roadway factors (low illumination, variation in illumination, unfamiliarity with roads, other road users, especially drivers exhibiting erratic or improper driving); and

(iii) Vehicle factors (headlights, auxiliary lights, turn signals, windshields and mirrors).

(12) *Extreme driving conditions.* The basic information on operating in

extreme driving conditions and the hazards encountered in such conditions, including:

(i) Bad weather, e.g., snow, ice, sleet, high wind;

(ii) Hot weather; and

(iii) Mountain driving.

(13) *Hazard perceptions*. The basic information on hazard perception and clues for recognition of hazards, including:

(i) Road characteristics; and

(ii) Road user activities.

(14) *Emergency maneuvers*. The basic information concerning when and how to make emergency maneuvers, including:

(i) Evasive steering;

(ii) Emergency stop;

(iii) Off road recovery;

(iv) Brake failure; and

(v) Blowouts.

(15) *Skid control and recovery*. The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(16) *Relationship of cargo to vehicle control*. The principles and procedures for the proper handling of cargo, including:

(i) Consequences of improperly secured cargo, drivers' responsibilities, and Federal/State and local regulations;

(ii) Principles of weight distribution; and

(iii) Principles and methods of cargo securement.

(17) *Vehicle inspections*. The objectives and proper procedures for performing vehicle safety inspections, as follows:

(i) The importance of periodic inspection and repair to vehicle safety.

(ii) The effect of undiscovered malfunctions upon safety.

(iii) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

(iv) Pre-trip/enroute/post-trip inspection procedures.

(v) Reporting findings.

(18) *Hazardous materials*. Knowledge of the following:

(i) What constitutes hazardous material requiring an endorsement to transport;

(ii) Classes of hazardous materials;

(iii) Labeling/placarding requirements; and

(iv) Need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(19) *Mountain driving*. Practices that are important when driving upgrade and downgrade, including:

(i) Selecting a safe speed;

(ii) Selecting the right gear; and

(iii) Proper braking techniques.

(20) *Fatigue and awareness*. Practices that are important to staying alert and safe while driving, including:

(i) Being prepared to drive;

(ii) What to do when driving to avoid fatigue;

(iii) What to do when sleepy while driving; and

(iv) What to do when becoming ill while driving.

(b) *Air brakes*. All CMV drivers operating vehicles equipped with air brakes must have knowledge of the following 7 areas:

(1) General air brake system nomenclature;

(2) The dangers of contaminated air supply (dirt, moisture, and oil);

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

(i) Automatic fail-safe devices;

(ii) System monitoring devices; and

(iii) Low pressure warning alarms.

(6) Procedures for conducting en route and post-trip inspections of air-actuated brake systems, including:

(i) Ability to detect defects that may cause the system to fail;

(ii) Tests that indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(iii) Tests that indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(7) General operating practices and procedures, including:

(i) Proper braking techniques;

(ii) Antilock brakes;

(iii) Emergency stops; and

(iv) Parking brake.

(c) *Combination vehicles*. All CMV drivers operating combination vehicles must have knowledge of the following 3 areas:

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to a semi-trailer;

(2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles; and

(3) General operating practices and procedures, including:

(i) Safely operating combination vehicles; and

(ii) Air brakes.

■ 17. Revise § 383.113 to read as follows:

§ 383.113 Required skills.

(a) *Pre-trip vehicle inspection skills*. Applicants for a CDL must possess the following basic pre-trip vehicle inspection skills for the vehicle class that the driver operates or expects to operate:

(1) *All test vehicles*. Applicants must be able to identify each safety-related part on the vehicle and explain what needs to be inspected to ensure a safe operating condition of each part, including:

(i) Engine compartment;

(ii) Cab/engine start;

(iii) Steering;

(iv) Suspension;

(v) Brakes;

(vi) Wheels;

(vii) Side of vehicle;

(viii) Rear of vehicle; and

(ix) Special features of tractor trailer, school bus, or coach/transit bus, if this type of vehicle is being used for the test.

(2) *Air brake equipped test vehicles*.

Applicants must demonstrate the following skills with respect to inspection and operation of air brakes:

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) With the engine running, make sure that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

(b) *Basic vehicle control skills*. All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for the vehicle class that the driver operates or expects to operate:

(1) Ability to start, warm up, and shut down the engine;

(2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;

(3) Ability to bring the motor vehicle to a smooth stop;

(4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;

(5) Ability to position the motor vehicle to negotiate safely and then make left and right turns;

(6) Ability to shift as required and select appropriate gear for speed and highway conditions; and

(7) Ability to back along a curved path.

(c) *Safe on-road driving skills.* All applicants for a CDL must possess and demonstrate the following safe on-road driving skills for their vehicle class:

(1) Ability to use proper visual search methods;

(2) Ability to signal appropriately when changing direction in traffic;

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side, as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, visibility, and vehicle weight;

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes, and following distance to maintain control; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

■ 18. Revise § 383.115 to read as follows:

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a double/triple trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback,

braking, oscillatory sway, rollover in steady turns, and yaw stability in steady turns;

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades, longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement; and

(e) Operating practices and procedures not otherwise specified.

■ 19. Revise § 383.117 to read as follows:

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad-highway grade crossings and drawbridges;

(5) Proper braking procedures; and

(6) Operating practices and procedures not otherwise specified.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle class, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that vehicle group as defined in § 383.91.

■ 20. Revise § 383.119 to read as follows:

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a tank vehicle endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full, and partially full;

(c) Differences in handling of baffled/compartmented tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled, and empty tanks;

(g) Proper use of emergency systems;

(h) For drivers of DOT specification tank vehicles, retest and marking requirements; and

(i) Operating practices and procedures not otherwise specified.

■ 21. Revise § 383.121 to read as follows:

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a hazardous materials endorsement, each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR parts 171, 172, 173, 177, 178, and 397, on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions

and preparation;

(8) Other regulated material (e.g.,

ORM-D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

(1) Forbidden materials and packages;

(2) Loading and unloading materials;

(3) Cargo segregation;

(4) Passenger carrying buses and

hazardous materials;

(5) Attendance of motor vehicles;

(6) Parking;

(7) Routes;

(8) Cargo tanks; and

(9) "Safe havens."

(c) Operation of emergency equipment including:

(1) Use of equipment to protect the

public;

(2) Special precautions for equipment to be used in fires;

(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

(1) Special care and precautions for different types of accidents;

(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class 1.1 and 1.2 explosives.

(e) Operating practices and procedures not otherwise specified.

■ 22. Revise § 383.123 to read as follows:

§ 383.123 Requirements for a school bus endorsement.

(a) An applicant for the school bus endorsement must satisfy the following three requirements:

(1) *Qualify for passenger vehicle endorsement.* Pass the knowledge and skills test for obtaining a passenger vehicle endorsement.

(2) *Knowledge test.* Must have knowledge covering the following topics:

(i) Loading and unloading children, including the safe operation of stop signal devices, external mirror systems, flashing lights, and other warning and passenger safety devices required for school buses by State or Federal law or regulation.

(ii) Emergency exits and procedures for safely evacuating passengers in an emergency.

(iii) State and Federal laws and regulations related to safely traversing railroad-highway grade crossings; and

(iv) Operating practices and procedures not otherwise specified.

(3) *Skills test.* Must take a driving skills test in a school bus of the same vehicle group (see § 383.91(a)) as the school bus applicant will drive.

(b) *Exception.* Knowledge and skills tests administered before September 30, 2002 and approved by FMCSA as meeting the requirements of this section, meet the requirements of paragraphs (a)(2) and (3) of this section.

Appendix to Subpart G of Part 383 [Removed]

■ 23. Remove the appendix to subpart G.

■ 24. Revise § 383.131 to read as follows:

§ 383.131 Test manuals.

(a) *Driver information manual.* (1) A State must provide an FMCSA pre-approved driver information manual to a CLP or CDL applicant. The manual must be comparable to the American Association of Motor Vehicle Administrators' (AAMVA's) "2005 CDL Test System (July 2010 Version) Model Commercial Driver Manual", which FMCSA has approved and provides to all State Driver Licensing Agencies. The driver information manual must include:

(i) Information on how to obtain a CDL and endorsements;

(ii) Information on the requirements described in § 383.71, the implied consent to alcohol testing described in

§ 383.72, the procedures and penalties contained in § 383.51(b) to which a CLP or CDL holder is exposed for refusal to comply with such alcohol testing, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(iii) Information on vehicle groups and endorsements as specified in subpart F of this part;

(iv) The substance of the knowledge and skills that drivers must have, as outlined in subpart G of this part for the different vehicle groups and endorsements; and

(v) Details of testing procedures, including the purpose of the tests, how to respond, and directions for taking the tests.

(2) A State may include any additional State-specific information related to the CDL testing and licensing process.

(b) *Examiner information manual.* (1) A State must provide an FMCSA pre-approved examiner information manual that conforms to model requirements in paragraphs (b)(1)(i–xi) of this section to all knowledge and skills test examiners. To be pre-approved by FMCSA, the examiner information manual must be comparable to AAMVA's "2005 CDL Test System (July 2010 Version) Model CDL Examiner's Manual," which FMCSA has approved and provides to all State Driver Licensing Agencies. The examiner information manual must include:

(i) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in subpart E of this part;

(ii) Details on information that must be given to the applicant;

(iii) Details on how to conduct the knowledge and skills tests;

(iv) Scoring procedures and minimum passing scores for the knowledge and skills tests;

(v) Information for selecting driving test routes for the skills tests;

(vi) List of the skills to be tested;

(vii) Instructions on where and how the skills will be tested;

(viii) How performance of the skills will be scored;

(ix) Causes for automatic failure of skills tests;

(x) Standardized scoring sheets for the skills tests; and

(xi) Standardized driving instructions for the applicants.

(2) A State may include any additional State-specific information related to the CDL testing process.

■ 25. Revise § 383.133 to read as follows:

§ 383.133 Test methods.

(a) All tests must be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) Knowledge tests:

(1) States must use the FMCSA pre-approved pool of test questions to develop knowledge tests for each vehicle group and endorsement. The pool of questions must be comparable to those in AAMVA's "2005 CDL Test System (July 2010 Version) 2005 Test Item Summary Forms," which FMCSA has approved and provides to all State Driver Licensing Agencies.

(2) The State method of generating knowledge tests must conform to the requirements in paragraphs (b)(2)(i) through (iv) of this section and be pre-approved by FMCSA. The State method of generating knowledge tests must be comparable to the requirements outlined in AAMVA's "2005 CDL Test System (July 2010 Version) 2005 Requirements Document For Use In Developing Computer-Generated Multiple-Choice CDL Knowledge Tests", which FMCSA has approved and provides to all State Driver Licensing Agencies to develop knowledge tests for each vehicle group and endorsement. These requirements include:

(i) The total difficulty level of the questions used in each version of a test must fall within a set range;

(ii) Twenty-five percent of the questions on a test must be new questions that were not contained in the previous version of the test;

(iii) Identical questions from the previous version of the test must be in a different location on the test and the three possible responses to the questions must be in a different order; and

(iv) Each test must contain a set number of questions with a prescribed number of questions from each of the knowledge areas.

(3) Each knowledge test must be valid and reliable so as to ensure that driver applicants possess the knowledge required under § 383.111. The knowledge tests may be administered in written form, verbally, or in automated format and can be administered in a foreign language, provided no interpreter is used in administering the test.

(4) A State must use a different version of the test when an applicant retakes a previously failed test.

(c) Skills tests:

(1) A State must develop, administer and score the skills tests based solely on

the information and standards contained in the driver and examiner manuals referred to in § 383.131(a) and (b).

(2) A State must use the standardized scores and instructions for administering the tests contained in the examiner manual referred to in § 383.131(b).

(3) An applicant must complete the skills tests in a representative vehicle to ensure that the applicant possess the skills required under § 383.113. In determining whether the vehicle is a representative vehicle for the skills test and the group of CDL for which the applicant is applying, the vehicle's gross vehicle weight rating or gross combination weight rating must be used, not the vehicle's actual gross vehicle weight or gross combination weight.

(4) Skills tests must be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(5) Interpreters are prohibited during the administration of skills tests. Applicants must be able to understand and respond to verbal commands and instructions in English by a skills test examiner. Neither the applicant nor the examiner may communicate in a language other than English during the skills test.

(6) The skills test must be administered and successfully completed in the following order: Pre-trip inspection, basic vehicle control skills, on-road skills. If an applicant fails one segment of the skills test:

(i) The applicant cannot continue to the next segment of the test; and

(ii) Scores for the passed segments of the test are only valid during initial issuance of the CLP. If the CLP is renewed, all three segments of the skills test must be retaken.

(d) Passing scores for the knowledge and skills tests must meet the standards contained in § 383.135.

■ 26. Revise § 383.135 to read as follows:

§ 383.135 Passing knowledge and skills tests.

(a) *Knowledge tests.* (1) To achieve a passing score on each of the knowledge tests, a driver applicant must correctly answer at least 80 percent of the questions.

(2) If a driver applicant who fails the air brake portion of the knowledge test (scores less than 80 percent correct) is issued a CLP or CDL, an air brake restriction must be indicated on the CLP or CDL as required in § 383.95(a).

(3) A driver applicant who fails the combination vehicle portion of the

knowledge test (scores less than 80 percent correct) must not be issued a Group A CLP or CDL.

(b) *Skills Tests.* (1) To achieve a passing score on each segment of the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113 and attain the scores listed in Appendix A of the examiner manual referred to in § 383.131(b) for the type of vehicle being used in the test.

(2) A driver applicant who does not obey traffic laws, causes an accident during the test, or commits any other offense listed as a reason for automatic failure in the standards contained in the driver and examiner manuals referred to in §§ 383.131(a) and (b), must automatically fail the test.

(3) If a driver applicant who performs the skills test in a vehicle not equipped with any type of air brake system is issued a CDL, an air brake restriction must be indicated on the license as required in § 383.95(a).

(4) If a driver applicant who performs the skills test in a vehicle equipped with air over hydraulic brakes is issued a CDL, a full air brake restriction must be indicated on the license as required in § 383.95(b).

(5) If a driver applicant who performs the skills test in a vehicle equipped with an automatic transmission is issued a CDL, a manual transmission restriction must be indicated on the license as required in § 383.95(c).

(6) If a driver applicant who performs the skills test in a combination vehicle requiring a Group A CDL equipped with any non-fifth wheel connection is issued a CDL, a tractor-trailer restriction must be indicated on the license as required in § 383.95(d).

(7) If a driver applicant wants to remove any of the restrictions in paragraphs (b)(3) through (5) of this section, the applicant does not have to retake the complete skills test. The State may administer a modified skills test that demonstrates that the applicant can safely and effectively operate the vehicle's full air brakes, air over hydraulic brakes, and/or manual transmission. In addition, to remove the air brake or full air brake restriction, the applicant must successfully perform the air brake pre-trip inspection and pass the air brake knowledge test.

(8) If a driver applicant wants to remove the tractor-trailer restriction in paragraph (b)(6) of this section, the applicant must retake all three skills tests in a representative tractor-trailer.

(c) *State recordkeeping.* States must record and retain the knowledge and skills test scores of tests taken by driver

applicants. The test scores must either be made part of the driver history record or be linked to the driver history record in a separate file.

■ 27. Revise the heading for subpart J to read as follows:

Subpart J—Commercial Learner's Permit and Commercial Driver's License Documents

* * * * *

■ 28. Revise § 383.151 to read as follows:

§ 383.151 General.

(a) The CDL must be a document that is easy to recognize as a CDL.

(b) The CLP must be a separate document from the CDL or non-CDL.

(c) At a minimum, the CDL and the CLP must contain the information specified in § 383.153.

■ 29. Revise § 383.153 to read as follows:

§ 383.153 Information on the CLP and CDL documents and applications.

(a) *Commercial Driver's License.* All CDLs must contain all of the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in paragraph (c) of this section.

(2) The full name, signature, and mailing or residential address in the licensing State of the person to whom such license is issued.

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(4) Color photograph, digitized color image, or black and white laser engraved photograph of the driver. The State may issue a temporary CDL without a photo or image, if it is valid for no more than 60 days.

(5) The driver's State license number.

(6) The name of the State which issued the license.

(7) The date of issuance and the date of expiration of the license.

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

- (i) A for Combination Vehicle;
- (ii) B for Heavy Straight Vehicle; and
- (iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

- (i) T for double/triple trailers;
- (ii) P for passenger;
- (iii) N for tank vehicle;
- (iv) H for hazardous materials;
- (v) X for a combination of tank vehicle and hazardous materials endorsements;

(vi) S for school bus; and
 (vii) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(10) The restriction(s) placed on the driver from operating certain equipment or vehicles, if any, indicated as follows:

(i) L for No Air brake equipped CMV;
 (ii) Z for No Full air brake equipped CMV;

(iii) E for No Manual transmission equipped CMV;

(iv) O for No Tractor-trailer CMV;

(v) M for No Class A passenger vehicle;

(vi) N for No Class A and B passenger vehicle;

(vii) K for Intrastate only;

(viii) V for medical variance; and

(ix) At the discretion of the State, additional codes for additional restrictions, as long as each such restriction code is fully explained on the front or back of the CDL document.

(b) *Commercial Learner's Permit.* (1) A CLP must not contain a photograph, digitized image or other visual representation of the driver.

(2) All CLPs must contain all of the following information:

(i) The prominent statement that the permit is a "Commercial Learner's Permit" or "CLP," except as specified in paragraph (c) of this section, and that it is invalid unless accompanied by the underlying driver's license issued by the same jurisdiction.

(ii) The full name, signature, and mailing or residential address in the permitting State of the person to whom the permit is issued.

(iii) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height.

(iv) The driver's State license number.

(v) The name of the State which issued the permit.

(vi) The date of issuance and the date of expiration of the permit.

(vii) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

(A) A for Combination Vehicle;
 (B) B for Heavy Straight Vehicle; and
 (C) C for Small Vehicle.

(viii) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

(A) *P for passenger endorsement.* A CLP holder with a P endorsement is prohibited from operating a CMV carrying passengers, other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL

holder accompanying the CLP holder as prescribed by § CFR 383.25(a)(1) of this part;

(B) *S for school bus endorsement.* A CLP holder with an S endorsement is prohibited from operating a school bus with passengers other than Federal/State auditors and inspectors, test examiners, other trainees, and the CDL holder accompanying the CLP holder as prescribed by § 383.25(a)(1) of this part; and

(C) *N for tank vehicle endorsement.* A CLP holder with an N endorsement may only operate an empty tank vehicle and is prohibited from operating any tank vehicle that previously contained hazardous materials that has not been purged of any residue.

(ix) The restriction(s) placed on the driver, if any, indicated as follows:

(A) P for No passengers in CMV bus;

(B) X for No cargo in CMV tank vehicle;

(C) L for No Air brake equipped CMV;

(D) V for medical variance;

(E) M for No Class A passenger vehicle;

(F) N for No Class A and B passenger vehicle;

(G) K for Intrastate only.

(H) Any additional jurisdictional restrictions that apply to the CLP driving privilege.

(c) If the CLP or CDL is a Non-domiciled CLP or CDL, it must contain the prominent statement that the license or permit is a "Non-domiciled Commercial Driver's License," "Non-domiciled CDL," "Non-domiciled Commercial Learner's Permit," or "Non-domiciled CLP," as appropriate. The word "Non-domiciled" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License," "CDL," "Commercial Learner's Permit," or "CLP."

(d) If the State has issued the applicant an air brake restriction as specified in § 383.95, that restriction must be indicated on the CLP or CDL.

(e) Except in the case of a Non-domiciled CLP or CDL holder who is domiciled in a foreign jurisdiction:

(1) A driver applicant must provide his/her Social Security Number on the application of a CLP or CDL.

(2) The State must provide the Social Security Number to the CDLIS.

(3) The State must not display the Social Security Number on the CLP or CDL.

(f) The State may issue a multipart CDL provided that:

(1) Each document is explicitly tied to the other document(s) and to a single driver's record.

(2) The multipart license document includes all of the data elements specified in this section.

(f) Current CDL holders are not required to be retested to determine whether they need any of the new restrictions for no full air brakes, no manual transmission and no tractor-trailer. These new restrictions only apply to CDL applicants who take skills tests on or after July 8, 2014 (including those applicants who previously held a CDL before the new restrictions went into effect).

(g) On or after July 8, 2014 current CLP and CDL holders who do not have the standardized endorsement and restriction codes and applicants for a CLP or CDL are to be issued CLPs and CDLs with the standardized codes upon initial issuance, renewal, upgrade or transfer.

■ 30. Revise § 383.155 to read as follows:

§ 383.155 Tamperproofing requirements.

States must make the CLP and CDL tamperproof to the maximum extent practicable. At a minimum, a State must use the same tamperproof method used for noncommercial drivers' licenses.

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

■ 31. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106-159, 113 Stat. 1753, 1767; and 49 CFR 1.73.

■ 32. Amend § 384.105(b) by revising the definition of *issue and issuance* to read as follows:

§ 384.105 Definitions.

* * * * *

(b) * * *

Issue and issuance mean initial issuance, transfer, renewal, or upgrade of a CLP or CDL and Non-domiciled CLP or CDL, as described in § 383.73 of this subchapter.

* * * * *

■ 33. Revise § 384.201 to read as follows:

§ 384.201 Testing program.

(a) The State shall adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles (CMVs) in accordance with the minimum Federal standards contained in part 383 of this title.

(b) To obtain a copy of FMCSA pre-approved State Testing System referenced in §§ 383.131, 383.133 and

383.135, State Driver Licensing Agencies may contact: FMCSA, CDL Division, 1200 New Jersey Avenue, SE, Washington DC 20590.

- 34. Revise § 384.204 to read as follows:

§ 384.204 CLP or CDL issuance and information.

(a) General rule. The State shall authorize a person to operate a CMV only by issuance of a CLP or CDL, unless an exception in § 383.3(c) or (d) applies, which contains, at a minimum, the information specified in part 383, subpart J, of this subchapter.

(b) Exceptions—(1) Training. The State may authorize a person who does not hold a CDL valid for the type of vehicle in which training occurs to undergo behind-the-wheel training in a CMV only by means of a CLP issued and used in accordance with § 383.25 of this subchapter.

(2) *Confiscation of CLP or CDL pending enforcement.* A State may allow a CLP or CDL holder whose CLP or CDL is held in trust by that State or any other State in the course of enforcement of the motor vehicle traffic code, but who has not been convicted of a disqualifying offense under § 383.51 of this subchapter based on such enforcement, to drive a CMV while holding a dated receipt for such CLP or CDL.

- 35. Revise § 384.205 to read as follows:

§ 384.205 CDLIS information.

Before issuing a CLP or a CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Commercial Driver's License Information System (CDLIS) in accordance with § 383.73(b)(3)(ii) of this subchapter, and, based on that information, issue the license or, in the case of adverse information, promptly implement the disqualifications, licensing limitations, denials, and/or penalties that are called for in any applicable section(s) of this subpart.

- 36. Revise § 384.206 to read as follows:

§ 384.206 State record checks.

(a) *Issuing State's records.* (1) Before issuing, renewing, upgrading, or transferring a CLP or CDL to any person, the driver's State of record must, within the period of time specified in § 384.232, check its own driver records as follows:

(i) The driver record of the person in accordance with § 383.73(b)(3)(i) of this chapter; and

(ii) For a driver who certifies that his/her type of driving is non-excepted, interstate commerce according to § 383.71(b)(1)(ii)(A) of this chapter, the medical certification status information on the person's CDLIS driver record.

(2) Based on the findings of its own State record check, the State of record must do one of the following as appropriate:

(i) Issue, renew, upgrade, or transfer the applicant's CLP or CDL;

(ii) In the event the State obtains adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable section(s) of this subpart; or

(iii) In the event there is no information regarding the driver's self-certification for driving type required by § 383.71(b)(1)(ii), or for a driver who is required by § 383.71(h) to be "certified," if the medical certification status of the individual is "non-certified," the State must deny the CDL action requested by the applicant and initiate a downgrade of the CDL, if required by § 383.73(j)(4) of this chapter.

(b) *Other States' records.* (1) Before the initial or transfer issuance of a CLP or CDL to a person, and before renewing or upgrading a CLP or CDL held by any person, the issuing State must:

(i) Require the applicant to provide the names of all States where the applicant has previously been licensed to operate any type of motor vehicle during the previous 10 years.

(ii) Within the time period specified in § 384.232, request the complete driver record from all States where the applicant was licensed within the previous 10 years to operate any type of motor vehicle.

(2) States receiving a request for the driver record of a person currently or previously licensed by the State must provide the information within 30 days.

(3) Based on the findings of the other State record checks, the issuing State must, in the case of adverse information regarding the applicant, promptly implement the disqualifications, licensing limitations, denials, or penalties that are called for in any applicable section(s) of this subpart.

- 37. Amend § 384.207 by revising the introductory text and paragraph (a) to read as follows:

§ 384.207 Notification of licensing.

Within the period defined in § 383.73(h) of this subchapter, the State must:

(a) Notify the operator of the CDLIS of each CLP or CDL issuance;

* * * * *

- 38. Amend § 384.208 by revising paragraph (a) to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State, or disqualifying an out-of-State CLP or CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State that issued the license of the disqualification.

* * * * *

- 39. Amend § 384.209 by revising paragraph (a) to read as follows:

§ 384.209 Notification of traffic violations.

(a) *Required notification with respect to CLP or CDL holders.* Whenever a person who holds a CLP or CDL from another State is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

* * * * *

- 40. Revise § 384.210 to read as follows:

§ 384.210 Limitation on licensing.

A State must not knowingly issue a CLP, a CDL, or a commercial special license or permit (including a provisional or temporary license) permitting a person to drive a CMV during a period in which:

(a) A person is disqualified from operating a CMV, as disqualification is defined in § 383.5 of this subchapter, or under the provisions of § 383.73(j) or § 384.231(b)(2) of this subchapter;

(b) The CLP or CDL holder's noncommercial driving privilege has been disqualified; or

(c) Any type of driver's license held by such person is disqualified by the State where the driver is licensed for any State or local law related to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations).

- 41. Revise § 384.211 to read as follows:

§ 384.211 Surrender of old licenses.

The State may not initially issue, upgrade, or transfer a CDL to a person unless such person first surrenders any previously issued driver's license and CLP.

- 42. Revise § 384.212 to read as follows:

§ 384.212 Domicile requirement.

(a) The State may issue CDLs or CLPs only to persons for whom the State is the State of domicile as defined in § 383.5 of this subchapter; except that the State may issue a Non-domiciled CLP or CDL under the conditions specified in §§ 383.23(b), 383.71(f), and 383.73(f) of this subchapter.

(b) The State must require any person holding a CLP or CDL issued by another State to apply for a transfer CLP or CDL from the State within 30 days after establishing domicile in the State, as specified in § 383.71(c) of this subchapter.

■ 43. Revise § 384.214 to read as follows:

§ 384.214 Reciprocity.

The State must allow any person to operate a CMV in the State who is not disqualified from operating a CMV and who holds a CLP or CDL that is—

(a) Issued to him or her by his/her State or jurisdiction of domicile in accordance with part 383 of this subchapter;

(b) Not disqualified; and

(c) Valid, under the terms of part 383, subpart F, of this subchapter, for the type of vehicle being driven.

■ 44. Revise § 384.217 to read as follows:

§ 384.217 Drug offenses.

The State must disqualify from operating a CMV for life any person who is convicted, as defined in § 383.5 of this subchapter, in any State or jurisdiction of a first offense of using a CMV (or, in the case of a CLP or CDL holder, a CMV or a non-CMV) in the commission of a felony described in item (9) of Table 1 to § 383.51 of this subchapter. The State shall not apply the special rule in § 384.216(b) to lifetime disqualifications imposed for controlled substance felonies as detailed in item (9) of Table 1 to § 383.51 of this subchapter.

■ 45. Revise § 384.220 to read as follows:

§ 384.220 Problem Driver Pointer System information.

Before issuing a CLP or CDL to any person, the State must, within the period of time specified in § 384.232, perform the check of the Problem Driver Pointer System in accordance with § 383.73(b)(3)(iii) of this subchapter, and, based on that information, promptly implement the disqualifications, licensing limitations, and/or penalties that are called for in any applicable section(s) of this subpart.

■ 46. Amend § 384.225 by revising paragraphs (a) and (b) to read as follows:

§ 384.225 CDLIS driver recordkeeping.

* * * * *

(a) *CLP or CDL holder.* Post and maintain as part of the CDLIS driver record:

(1) All convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations) committed in any type of vehicle.

(2) The following medical certification status information:

(i) Driver self-certification for the type of driving operations provided in accordance with § 383.71(b)(1)(ii) of this chapter, and

(ii) Information from medical certification recordkeeping in accordance with § 383.73(o) of this chapter.

(b) *A person required to have a CLP or CDL.* Record and maintain as part of the CDLIS driver record all convictions, disqualifications and other licensing actions for violations of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight, or vehicle defect violations) committed while the driver was operating a CMV.

* * * * *

■ 47. Revise § 384.226 to read as follows:

§ 384.226 Prohibition on masking convictions.

The State must not mask, defer imposition of judgment, or allow an individual to enter into a diversion program that would prevent a CLP or CDL holder's conviction for any violation, in any type of motor vehicle, of a State or local traffic control law (other than parking, vehicle weight, or vehicle defect violations) from appearing on the CDLIS driver record, whether the driver was convicted for an offense committed in the State where the driver is licensed or another State.

■ 48. Add § 384.227 to read as follows:

§ 384.227 Record of digital image or photograph.

The State must:

(a) Record the digital color image or photograph or black and white laser engraved photograph that is captured as part of the application process and placed on the licensing document of every person who is issued a CDL, as required under § 383.153. The digital color image or photograph or black and white laser engraved photograph must either be made part of the driver history or be linked to the driver history in a separate file.

(b) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CDL applicant or holder appears in person to renew, upgrade, or transfer a CDL and when a duplicate CDL is issued.

(c) Check the digital color image or photograph or black and white laser engraved photograph on record whenever the CLP applicant or holder appears in person to renew, upgrade, or transfer a CLP and when a duplicate CLP is issued. If no digital color image or photograph or black and white laser engraved photograph exists on record, the State must check the photograph or image on the base-license presented with the CLP application.

■ 49. Add § 384.228 to read as follows:

§ 384.228 Examiner training and record checks.

For all State and third party CDL test examiners, the State must meet the following 10 requirements:

(a) Establish examiner training standards for initial and refresher training that provides CDL test examiners with a fundamental understanding of the objectives of the CDL testing program, and with all of the knowledge and skills necessary to serve as a CDL test examiner and assist jurisdictions in meeting the Federal CDL testing requirements.

(b) Require all State knowledge and skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL knowledge and skills tests.

(c) The training course for CDL knowledge test examiners must cover at least the following three units of instruction:

(1) Introduction to CDL Licensing System:

(i) The Commercial Motor Vehicle Safety Act of 1986.
(ii) Drivers covered by CDL program.
(iii) CDL vehicle classification.
(iv) CDL endorsements and restrictions.

(2) Overview of the CDL tests:
(i) CDL test, classifications, and endorsements.

(ii) Different examinations.
(iii) Representative vehicles.
(iv) Validity and reliability.
(v) Test maintenance.

(3) Knowledge tests:

(i) General knowledge tests.
(ii) Specialized knowledge tests.
(iii) Selecting the appropriate tests and test forms.

(iv) Knowledge test administration.
(d) The training course for CDL skills test examiners must cover at least the following five units of instruction:

(1) Introduction to CDL Licensing System:

- (i) The Commercial Motor Vehicle Safety Act of 1986.
- (ii) Drivers covered by CDL program.
- (iii) CDL vehicle classification.
- (iv) CDL endorsements and restrictions.
- (2) Overview of the CDL tests:
 - (i) CDL test, classifications, and endorsements.
 - (ii) Different examinations.
 - (iii) Representative vehicles.
 - (iv) Validity and reliability.
 - (v) Test maintenance.
- (3) Vehicle inspection test:
 - (i) Test overview.
 - (ii) Description of safety rules.
 - (iii) Test scoring procedures.
 - (iv) Scoring standards.
 - (v) Calculating final score.
- (4) Basic control skills testing:
 - (i) Setting up the basic control skills course.
 - (ii) Description of safety rules.
 - (iii) General scoring procedures.
 - (iv) Administering the test.
 - (v) Calculating the score.
- (5) Road test:
 - (i) Setting up the road test.
 - (ii) Required maneuvers.
 - (iii) Administering the road test.
 - (iv) Calculating the score.

(e) Require all third party skills test examiners to successfully complete a formal CDL test examiner training course and examination before certifying them to administer CDL skills tests. The training course must cover at least the five units of instruction in paragraph (d) of this section.

(f) Require State and third party CDL test examiners to successfully complete a refresher training course and examination every four years to maintain their CDL test examiner certification. The refresher training course must cover at least the following:

- (1) For CDL knowledge test examiners, the three units of training described in paragraph (c) of this section.
- (2) For CDL skills test examiners, the five units of training described in paragraph (d) of this section.
- (3) Any State specific material and information related to administering CDL knowledge and skills tests.
- (4) Any new Federal CDL regulations, updates to administering the tests, and new safety related equipment on the vehicles.
- (g) Complete nationwide criminal background check of all skills test examiners prior to certifying them to administer CDL skills tests.
- (h) Complete annual nationwide criminal background check of all test examiners.

(i) Maintain a record of the results of the criminal background check and CDL examiner test training and certification of all CDL test examiners.

(j) Rescind the certification to administer CDL tests of all test examiners who:

- (1) Do not successfully complete the required refresher training every four years; or
- (2) Do not pass annual nationwide criminal background checks. Criteria for not passing the criminal background check must include at least the following:
 - (i) Any felony conviction within the last 10 years; or
 - (ii) Any conviction involving fraudulent activities.
- (k) The six units of training described in paragraphs (c) and (d) of this section may be supplemented with State-specific material and information related to administering CDL knowledge and skills tests.

■ 50. Add § 384.229 to read as follows:

§ 384.229 Skills test examiner auditing and monitoring.

To ensure the integrity of the CDL skills testing program, the State must:

(a) At least once every 2 years, conduct unannounced, on-site inspections of third party testers' and examiners' records, including comparison of the CDL skills test results of applicants who are issued CDLs with the CDL scoring sheets that are maintained in the third party testers' files. For third party testers and examiners who were granted the training and skills testing exception under section 383.75(a)(7), the record checks must be performed at least once every year;

(b) At least once every two years, conduct covert and overt monitoring of examinations performed by State and third party CDL skills test examiners. For third party testers and examiners who were granted the training and skills testing exception under § 383.75(a)(7), the covert and overt monitoring must be performed at least once every year;

(c) Establish and maintain a database to track pass/fail rates of applicants tested by each State and third party CDL skills test examiner, in order to focus covert and overt monitoring on examiners who have unusually high pass or failure rates;

(d) Establish and maintain a database of all third party testers and examiners, which at a minimum tracks the dates and results of audits and monitoring actions by the State, the dates third party testers were certified by the State, and name and identification number of

each third party CDL skills test examiner;

(e) Establish and maintain a database of all State CDL skills examiners, which at a minimum tracks the dates and results of monitoring action by the State, and the name and identification number of each State CDL skills examiner; and

(f) Establish and maintain a database that tracks skills tests administered by each State and third party CDL skills test examiner's name and identification number.

■ 51. Amend § 384.231 by revising paragraph (b) to read as follows:

§ 384.231 Satisfaction of State disqualification requirement.

* * * * *

(b) *Required action*—(1) *CLP or CDL holders*. A State must satisfy the requirement of this subpart that the State disqualify a person who holds a CLP or a CDL by, at a minimum, disqualifying the person's CLP or CDL for the applicable period of disqualification.

(2) *A person required to have a CLP or CDL*. A State must satisfy the requirement of this subpart that the State disqualify a person required to have a CLP or CDL who is convicted of an offense or offenses necessitating disqualification under § 383.51 of this subchapter. At a minimum, the State must implement the limitation on licensing provisions of § 384.210 and the timing and recordkeeping requirements of paragraphs (c) and (d) of this section so as to prevent such a person from legally obtaining a CLP or CDL from any State during the applicable disqualification period(s) specified in this subpart.

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■ 52. Amend § 384.301 by revising paragraph (e) to read as follows:

§ 384.301 Substantial compliance—general requirements.

* * * * *

(e) A State must come into substantial compliance with the requirements of subpart B of this part in effect as of July 8, 2011 as soon as practical but, unless otherwise specifically provided in this part, not later than July 8, 2014.

■ 53. Revise § 384.405 to read as follows:

§ 384.405 Decertification of State CDL program.

(a) *Prohibition on CLP or CDL transactions*. The Administrator may prohibit a State found to be in substantial noncompliance from performing any of the following CLP or CDL transactions:

- (1) Initial issuance.

- (2) Renewal.
 (3) Transfer.
 (4) Upgrade.

(b) *Conditions considered in making decertification determination.* The Administrator will consider, but is not limited to, the following five conditions in determining whether the CDL program of a State in substantial noncompliance should be decertified:

(1) The State computer system does not check the Commercial Driver's License Information System (CDLIS) and/or National Driver Registry Problem Driver Pointer System (PDPS) as required by § 383.73 of this subchapter when issuing, renewing, transferring, or upgrading a CLP or CDL.

(2) The State does not disqualify drivers convicted of disqualifying offenses in commercial motor vehicles.

(3) The State does not transmit convictions for out-of-State drivers to the State where the driver is licensed.

(4) The State does not properly administer knowledge and/or skills tests to CLP or CDL applicants or drivers.

(5) The State fails to submit a corrective action plan for a substantial compliance deficiency or fails to implement a corrective action plan within the agreed time frame.

(c) *Standard for considering deficiencies.* The deficiencies described in paragraph (b) of this section must affect a substantial number of either CLP and CDL applicants or drivers.

(d) *Decertification: Preliminary determination.* If the Administrator finds that a State is in substantial noncompliance with subpart B of this part, as indicated by the factors specified in paragraph (b) of this section, among other things, the FMCSA

will inform the State that it has made a preliminary determination of noncompliance and that the State's CDL program may therefore be decertified. Any response from the State, including factual or legal arguments or a plan to correct the noncompliance, must be submitted within 30 calendar days after receipt of the preliminary determination.

(e) *Decertification: Final determination.* If, after considering all material submitted by the State in response to the FMCSA preliminary determination, the Administrator decides that substantial noncompliance exists, which warrants decertification of the CDL program, he/she will issue a decertification order prohibiting the State from issuing CLPs and CDLs until such time as the Administrator determines that the condition(s) causing the decertification has (have) been corrected.

(f) *Recertification of a State.* The Governor of the decertified State or his/her designated representative must submit a certification and documentation that the condition causing the decertification has been corrected. If the FMCSA determines that the condition causing the decertification has been satisfactorily corrected, the Administrator will issue a recertification order, including any conditions that must be met in order to begin issuing CLPs and CDLs in the State.

(g) *State's right to judicial review.* Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. Chapter 7.

(h) *Validity of previously issued CLPs or CDLs.* A CLP or CDL issued by a State prior to the date the State is prohibited from issuing CLPs or CDLs in accordance with provisions of paragraph (a) of this section, will remain valid until its stated expiration date.

PART 385—SAFETY FITNESS PROCEDURES

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

Authority: 49 U.S.C. 113, 504, 521(b), 5105(e), 5109, 5113, 13901–13905, 31136, 31144, 31148, and 31502; Sec. 350 of Pub. L. 107–87; and 49 CFR 1.73.

■ 55. Amend appendix B, section VII, List of Acute and Critical Regulations, by redesignating the entries for §§ 383.37(a) and 383.37(b) as §§ 383.37(b) and 383.37(c) and adding a new entry for § 383.37(a) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

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VII. List of Acute and Critical Regulations.

* * * * *

§ 383.37(a) Knowingly allowing, requiring, permitting, or authorizing an employee who does not have a current CLP or CDL, who does not have a CLP or CDL with the proper class or endorsements, or who operates a CMV in violation of any restriction on the CLP or CDL to operate a CMV (acute).

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Issued on: March 28, 2011.

Anne S. Ferro,
 Administrator.

[FR Doc. 2011–10510 Filed 5–5–11; 8:45 am]

BILLING CODE 4910–EX–P