

(End of provision)

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## DEPARTMENT OF TRANSPORTATION

### Federal Motor Carrier Safety Administration

**49 CFR Parts 350, 360, 380, 382, 383, 385, 391, 395, 396, and 397**

[Docket No. FMCSA-2022-0149]

RIN 2126-AC47

### General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations

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

**ACTION:** Final rule.

**SUMMARY:** FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that merely align regulatory requirements with the underlying statutory authority, including the Infrastructure Improvement and Jobs Act (IIJA), sometimes referred to as the Bipartisan Infrastructure Law, requirements. Additionally, the Agency makes changes relating to agency management and to FMCSA's rules of organization, procedures, or practice.

**DATES:** This final rule is effective September 29, 2022.

**FOR FURTHER INFORMATION CONTACT:** Mr. Nicholas Warren, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590-0001; (202) 366-6124; [nicholas.warren@dot.gov](mailto:nicholas.warren@dot.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to the United States Department of Transportation (DOT or Department) in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89-670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to the Department the

authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74-255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this (and subsequently enacted) authority became known as the FMCSRs, codified at 49 CFR parts 350-399. The administrative powers to enforce chapter 315 (codified in 49 U.S.C. chapter 5) were also transferred from the ICC to the DOT in 1966, assigned first to the Federal Highway Administration (FHWA), and then to FMCSA. The FMCSA Administrator, whose powers and duties are set forth in 49 U.S.C. 113, has been delegated authority by the Secretary of Transportation (the Secretary) under 49 CFR 1.81 to prescribe regulations and to exercise authority over and with respect to any personnel within the organization, and under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

Between 1984 and 1999, enforcement of the FMCSRs, the Hazardous Materials Regulations, and the Commercial Regulations were added to FHWA's authority. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98-554, Title II, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99-570, Title XII, 100 Stat. 3207-170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101-615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102-143, Title V, 105 Stat. 917, 952, Oct. 28, 1991), codified at 49 U.S.C. 31306; the ICC Termination Act of 1995 (Pub. L. 104-88, 109 Stat. 803, Dec. 29, 1995), codified at 49 U.S.C. chapters 131-149; and the Transportation Equity Act for the 21st Century (Pub. L. 105-178, 112 Stat. 107, June 9, 1998).

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000. Accordingly, since that time the motor carrier safety, and certain commercial, responsibilities previously assigned to both the ICC and FHWA are the jurisdiction of FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107-56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109-59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110-244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112-141, 126 Stat. 405, July 6, 2012); and the Fixing America's Surface Transportation Act (Pub. L. 114-94, 129 Stat. 1312, Dec. 4, 2015). Most recently, Congress amended FMCSA's authorities in the Infrastructure Improvement and Jobs Act (IIJA) (Pub. L. 117-58, 135 Stat. 429, Nov. 15, 2021). Accordingly, FMCSA amends three parts in title 49 of the Code of Federal Regulations (CFR) to align the regulatory text with the new statutory requirements.

The specific regulations amended by this rule are based on the statutes detailed above. Generally, the legal authority for each of those provisions was explained when the requirement was originally adopted and is noted at the beginning of each part in title 49 of the CFR.

The Administrative Procedure Act (APA) specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(3)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or align regulatory standards with the underlying statutory authority. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. The technical amendments do not impose any material new requirements or increase compliance obligations. For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

Moreover, the amendments changing the name of the "Office of Enforcement and Compliance (MC-EC)" to the "Office of Enforcement and Compliance (MC-SE)" and "Office of Safety

Programs (MC–SS)” and additional methods for the public to contact certain Agency offices concern an additional exception to the APA’s notice and comment rulemaking procedures for “rules of agency organization, procedure, or practice” (5 U.S.C. 553(b)(3)(A)). These amendments are, therefore, excepted from the notice and public comment requirements.

The APA also allows agencies to make rules effective immediately with good cause (5 U.S.C. 553(d)(3)), instead of § requiring publication 30 days prior to the effective date. For the reasons already stated, FMCSA finds there is good cause for this rule to be effective immediately.

The Agency is aware of the regulatory requirements concerning public participation in FMCSA rulemaking (49 U.S.C. 31136(g)). These requirements pertain to certain major rules,<sup>1</sup> but, because this final rule is not a major rule, they are not applicable.

## II. Section-by-Section Analysis

This section-by-section analysis describes the changes to the regulatory text in numerical order.

### A. Part 350—Motor Carrier Safety Assistance Program (MCSAP) and High Priority Program

**Section 350.221** How long are MCSAP funds available to a State?

Section 23001(b)(4)(A) of IIJA amends 49 U.S.C. 31104(f)(1) to provide that MCSAP funds are available for the Federal fiscal year that the funds are obligated and for the next 2 fiscal years, instead of just the next fiscal year. Accordingly, FMCSA amends § 350.221 by replacing “next full Federal fiscal year” with “next 2 full Federal fiscal years.”

**Section 350.227** What activities are eligible for reimbursement under MCSAP?

Section 23001(c) of IIJA amends 49 U.S.C. 31102(h)(2)(A) to provide that MCSAP funds may be used for documented enforcement of State traffic laws and regulations if, in part, the number of motor carrier safety activities

<sup>1</sup> A “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

conducted in the State is maintained at a level at least equal to the average level of such activities conducted in the State in fiscal years 2014 and 2015, instead of 2004 and 2005. Accordingly, FMCSA amends § 350.227(c)(2)(ii) by replacing “2004 and 2005” with “2014 and 2015.”

**Section 350.403** What are the High Priority Program objectives?

Section 23003 of IIJA amends 49 U.S.C. 31102(l)(3)(D) by adding a new clause (iv) and clause (v), which provide that High Priority Program funds received to advance the innovative technology deployment of commercial motor vehicle (CMV) information systems and networks may also be used to combat human trafficking. Accordingly, FMCSA adds a clause at the end of paragraph (h) in § 350.403 pertaining to innovative technology deployment that reads, “including technology to detect, and enforce actions taken as a result of, criminal activity (including human trafficking) in a CMV or by any occupant of a CMV, including the operator.”

Similarly, section 23003 of IIJA amends 49 U.S.C. 31102(l)(2) by adding new subparagraphs (H) and (I), which provide that High Priority Program funds may be used to combat human trafficking. Accordingly, FMCSA adds a new paragraph (j) in § 350.403 that provides High Priority Program funds may be used to “Support the recognition, prevention, and reporting of human trafficking in a CMV or by any occupant of a CMV, including the operator, and enforce laws relating to human trafficking; or.” FMCSA makes conforming changes by deleting “or” at the end of paragraph (i) and redesignating the existing paragraph (j) as (k).

**Section 350.405** What conditions must an applicant meet to qualify for High Priority Program funds?

In paragraph (a) of § 350.405, FMCSA makes conforming changes to reflect the addition of a paragraph in § 350.403. Specifically, FMCSA replaces “, (i), and (j)” with “and (i) through (k).”

**Section 350.411** How long are High Priority Program funds available to a recipient?

As above, in paragraph (a) of § 350.411, FMCSA makes conforming changes to reflect the addition of a paragraph in § 350.403. FMCSA replaces “, (i), and (j)” with “and (i) through (k).”

### B. Part 360—Fees for Motor Carrier Registration and Insurance

Sections 360.3 (Suspended) and 360.3T Filing fees.<sup>2</sup>

FMCSA revises paragraph (e)(3)(iii) of § 360.3(suspended) and paragraph (e)(2)(iii) of § 360.3T to replace “Director, Office of Registration and Safety Information (MC–RS)” with “Federal Motor Carrier Safety Administration.” This change is consistent with similar changes made in the final rule titled “General Technical, Organizational, Conforming, and Correcting Amendments to the Federal Motor Carrier Safety Regulations” (86 FR 57060, Oct. 14, 2021). FMCSA made changes in that final rule to replace specific employees and offices in the FMCSRs noting recent vacancies and organizational changes affected the titles of FMCSA employees and office names, which underscored the need for increased flexibility to redelegate functions internally to meet organizational needs. Accordingly, FMCSA simplified many sections across various parts of the CFR removing or updating references to specific titles or offices and replaced them with “FMCSA” and, where necessary, an “ATTN” line showing the subject matter of the petition or request. (See 86 FR 57061). FMCSA inadvertently omitted §§ 360.3(e)(3)(iii) and 360.3T(e)(2)(iii) from the list of sections that were amended under this rationale. FMCSA corrects that omission and amends these sections to be consistent with similar sections of the FMCSRs.

### Part 380—Special Training Requirements

**Section 380.703** Requirements for Listing on the Training Provider Registry (TPR)

FMCSA revises paragraphs (a)(7) and (b) by replacing the words “website” with the word “website.”

**Section 380.717** Training Certification

FMCSA revises the introductory text to § 380.717 by replacing the words “website” with the word “website.”

**Section 380.723** Removal From Training Provider Registry: Procedure

FMCSA revises paragraph (a) by adding “or through the TPR website” to

<sup>2</sup> On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 360.3 was one of the sections suspended and § 360.3T, which is currently in effect, was one of the replacement sections added (82 FR 5299).

the end of the first sentence. This revision reflects that removal from the training provider registry may be accomplished by submitting a notice through the same “TPR website” that is used for other transmittals of documents regarding the registry in part 380. Additionally, in paragraph (b), FMCSA replaces the words “website” with the word “website.”

*C. Part 382—Controlled Substances and Alcohol Use and Testing*

Section 382.119 Stand-Down Waiver Provision

FMCSA revises paragraph (e) to replace “Office of Enforcement and Compliance (MC–EC)” with “Office of Safety Programs (MC–SS).” This change aligns regulatory text with updates to the internal organization of FMCSA and ensures that written requests submitted under this section are directed to the correct office within the Agency.

Section 382.303 Post-Accident Testing

FMCSA replaces “Federal, State, or local official having independent authority to test” with “Federal, State, or local law enforcement or public safety official having independent authority for the test” in paragraphs (g)(1) and (2). The additions to this phrase clarify that the officials that conduct post-accident testing to satisfy the requirements of these paragraphs are only law enforcement or public safety officials. This change is consistent with the original intent of this phrase when part 382 was added by FHWA. The notice of proposed rulemaking explained that the intent of paragraphs (g)(1) and (2), originally paragraph (f), was to “allow motor carriers to accept tests done by law enforcement officials” (57 FR 59516, 59522, Dec. 15, 1992). The final rule also stated that this provision applied to tests by “on-site police or public safety officials” (59 FR 7484, 7497, Feb. 15, 1994). Similar terms were used in guidance issued on section 382.303 (62 FR 16370, 16385, Apr. 4, 1997). Accordingly, FMCSA updates paragraphs (g)(1) and (2) to clarify that the officials referenced are law enforcement and public safety officials as originally intended when part 382 was added to the CFR.

*D. Part 383—Commercial Driver’s License Standards; Requirements and Penalties*

Section 383.3 Applicability

FMCSA revises paragraph (f)(3)(ii) as directed by statute. Section 23019 of IJA directs FMCSA to amend this section to provide that a restricted commercial driver’s license issued to an

employee in a farm-related service industry be limited to the applicable seasonal periods defined by the issuing State, with the condition that the total number of days in any calendar year during which the restricted CDL is valid does not exceed 210. (See IJA section 23019). Accordingly, FMCSA revises the first sentence of paragraph (f)(3)(ii) to read, “Restricted CDLs shall have the same renewal cycle as unrestricted CDLs but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of days in any calendar year for which the restricted CDL is valid does not exceed 210.” The revisions conform the FMCSRs with the language instructed in section 23019 of IJA.

Section 383.73 State procedures

FMCSA revises § 383.73(q) to clarify that, as used in paragraph (q), the term “downgrade” means, specifically, the State’s removal of the commercial learner’s permit (CLP) or CDL privilege from the driver’s license, as set forth in paragraph (4) of the definition of *CDL downgrade* in § 383.5. This amendment conforms to FMCSA’s intent as described in its final rule “Controlled Substances and Alcohol Testing: State Driver’s Licensing Agency Non-issuance/Downgrade of Commercial Driver’s License” (86 FR 55718, Oct. 7, 2021). This revision is made in response to a petition for reconsideration of the October 2021 final rule submitted to FMCSA by the Oregon Department of Transportation (ODOT) on November 1, 2021, requesting that FMCSA clarify the meaning of the term “downgrade” as used in § 383.73(q).

The October 2021 final rule established requirements for State Driver Licensing Agencies (SDLA) to access and use information from FMCSA’s Drug and Alcohol Clearinghouse indicating that a CLP or CDL holder or applicant cannot lawfully operate a CMV because they violated the drug and alcohol use and testing prohibitions in 49 CFR part 382, subpart B. Section 383.73(q) requires that the State, upon receiving notification that the CLP or CDL holder is prohibited from operating a CMV, initiate established State procedures for downgrading the CLP or CDL. The downgrade must be completed and recorded on the Commercial Driver’s License Information System (CDLIS) driver record within 60 days of the State’s receipt of such notification.

The intent of the CLP/CDL downgrade requirement in § 383.73(q), *i.e.*, the removal of the CLP or CDL from the driver’s license, was clearly explained

in the preamble to the October 2021 final rule: “. . .SDLAs must remove the CLP or CDL privilege from the driver’s license of an individual subject to the CMV driving prohibition, which would result in a downgrade of the license until the driver complies with return-to-duty (RTD) requirements” (86 FR 55718). However, as ODOT pointed out, confusion may arise because the current definition of the term *CDL downgrade* in § 383.5 contains four alternative definitions. This revision clarifies that, as used in § 383.73(q), the term “downgrade” refers specifically to the fourth alternative definition, the removal of the CLP or CDL privilege from the driver’s license.

*E. Part 385—Safety Fitness Procedures*

Sections 385.3 Definitions and Acronyms

FMCSA amends subparagraph (3) under the definition of *reviews* by adding a comma after the word “policies.”

Appendix B to Part 385—Explanation of Safety Rating Process

FMCSA revises section VII of appendix B to part 385 by replacing the citation for § 382.305 with a citation to § 382.305(a). Currently, § 382.305 is listed in appendix B to part 385 as the citation for failing to implement a random controlled substances and/or an alcohol testing program. However, § 382.305 is the broad citation that encompasses all random testing violations, while the more specific citation should be § 382.305(a) for no random program. When the regulation was amended to add subsection (a), appendix B to part 385 was never amended. FMCSA now makes this conforming change.

*F. Part 391—Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors*

Sections 391.23 Investigation and Inquiries

FMCSA removes the paragraph headings for paragraphs (c)(4), (g)(5), (m)(2), (m)(2)(i)(C), and (m)(3) to ensure consistency throughout § 391.23. Additionally, FMCSA deletes paragraph (e)(4)(i) and redesignates paragraphs (e)(4)(i)(A) and (B) as (e)(4)(i) and (ii), respectively. Prior to this change paragraph (e)(4) had a subparagraph (i), but no subparagraph (ii) which is not consistent with standard practice for paragraph levels in the CFR. FMCSA also adds the introductory text from paragraph (m)(2)(i) to the introductory text in paragraph (m)(2) and deletes paragraph (m)(2)(i) to remove a

paragraph (i) that was not accompanied by a paragraph (ii). Accordingly, FMCSA redesignates paragraphs (m)(2)(i)(A), (B), (B)(1), (2), and (C) as paragraphs (m)(2)(i), (ii), (ii)(A), (B), and (iii), respectively.

#### Section 391.25 Annual Inquiry and Review of Driving Record

FMCSA deletes the paragraph heading from paragraph (c) for consistency with the rest of § 391.25.

#### G. Part 395—Hours of Service of Drivers

##### Section 395.1 Scope of Rules in This Part

FMCSA revises paragraph (k) to reflect updated statutory authority for this part. Section 23018 of IJA amended section 229(a)(1) of MCSIA (49 U.S.C. 31136 note) by adding a new exemption from the FMCSRs in part 395 regarding hours of service of drivers during planting and harvesting periods. The new exemption in section 229(a)(1)(D) of MCSIA applies to “drivers transporting livestock (as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) including insects) within a 150 air-mile radius from the final destination of the livestock.” The list of exemptions under section 229(a)(1) of MCSIA is currently codified in the FMCSRs at § 395.1(k). FMCSA is adding a new paragraph (4) to § 395.1(k) that mirrors the language from the amended section 229(a)(1)(D) of MCSIA so that the FMCSRs correctly reflect the exemptions from part 395 that are listed in FMCSA’s statutory authority.

##### Section 395.8 Driver’s Record of Duty Status

FMCSA revises a paragraph designation in § 395.8(a)(1)(iii)(A)(3) by italicizing the (3) in accordance with appropriate formatting of fifth level paragraphs in the CFR.<sup>3</sup>

#### H. Part 396—Inspection, Repair, and Maintenance

##### Appendix A to Part 396—Minimum Periodic Inspection Standards

FMCSA revises appendix A by boldening and italicizing the titles for sections 1.1. (Antilock Brake System), 1.m. (Automatic Brake Adjusters), 14 (Motorcoach Seats), and 15 (Rear Impact Guard) for consistency with the rest of the titles in the appendix.

FMCSA also updates the paragraphs in section 15 that were added in the November 9, 2021 final rule titled “Parts and Accessories Necessary for Safe Operation; Rear Impact Guards and Rear Impact Protection” (86 FR 62105). In the amendatory instructions for that final rule, FMCSA inadvertently designated certain paragraphs under section 15 as 1., 2., 3., etc. instead of (1), (2), (3), etc. This resulted in those paragraphs appearing in the CFR as first level paragraphs instead of third level paragraphs as intended. FMCSA redesignates these paragraphs to remedy this inadvertent error.

#### I. Part 397—Transportation of Hazardous Materials; Driving and Parking Rules

##### Section 397.71 Federal Standards

FMCSA revises footnote 1 by replacing “(MC–EC)” with “(MC–SE).” This change aligns regulatory text with updates to the internal organization of FMCSA and ensures that the correct office within the Agency is listed.

##### Section 397.73 Public Information and Reporting Requirements

FMCSA revises paragraph (b)(1)(ii) by replacing “(MC–EC)” with “(MC–SE).” This change aligns regulatory text with updates to the internal organization of FMCSA and ensures that information submitted under this section is directed to the correct office within the Agency.

##### Section 397.103 Requirements for State Routing Designations

FMCSA revises paragraph (c)(1)(ii) by replacing “(MC–EC)” with “(MC–SE).” This change aligns regulatory text with updates to the internal organization of FMCSA and ensures that written notices submitted under this section are directed to the correct office within the Agency.

### III. Regulatory Analyses

#### A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), and DOT Regulatory Policies and Procedures

This final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and this final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, OMB has not reviewed it under that Order. In addition, this rule is not significant

within the meaning of DOT regulations (49 CFR 5.13(a)). The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. None of the changes in this final rule imposes material new requirements or increases compliance obligations; therefore, this final rule imposes no new costs, and a full regulatory evaluation is unnecessary.

#### B. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801–808), the Office of Information and Regulatory Affairs designated this rule as not a “major rule,” as defined by 5 U.S.C. 804(2).

#### C. Regulatory Flexibility Act (Small Entities)

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612), FMCSA is not required to complete a regulatory flexibility analysis because, as discussed earlier in the Legal Basis for the Rulemaking section, this action is not subject to notice and public comment under section 553(b) of the APA.

#### D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), FMCSA wants to assist small entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration’s Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you

<sup>3</sup> See table 3–6 of the Document Drafting Handbook, National Archives and Records Administration (Jan. 7, 2022), available at <https://www.archives.gov/federal-register/write/handbook/msclid=b4c92a20cf9d11ec998402835df7c864>.

wish to comment on actions by employees of FMCSA, call 1-888-REG-FAIR (1-888-734-3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

#### *E. Unfunded Mandates Reform Act of 1995*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$170 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2020 levels) or more in any 1 year. This final rule will not result in such an expenditure.

#### *F. Paperwork Reduction Act (Collection of Information)*

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

#### *G. E.O. 13132 (Federalism)*

A rule has implications for federalism under section 1(a) of E.O. 13132 if it has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." FMCSA has determined that this rule will not have substantial direct costs on or for States, nor will it limit the policymaking discretion of States. Nothing in this document preempts any State law or regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

#### *H. Privacy*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005 (Pub. L. 108-447, 118 Stat. 2809, 3268, Dec. 8, 2004 (5 U.S.C. 552a note)), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. Because this rule does not require the collection of personally identifiable information, the Agency is not required to conduct a privacy impact assessment.

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

The E-Government Act of 2002 (Pub. L. 107-347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

#### *I. E.O. 13175 (Indian Tribal Governments)*

This rule does not have Tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.

#### *J. National Environmental Policy Act of 1969*

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraphs 6.b, 6.c, and 6.t. These Categorical Exclusions address minor amendments and corrections to existing regulations (*e.g.*, concerning internal agency functions, organization, or personnel administration, etc.), and ensuring that States comply with the provisions of the Commercial Motor Vehicle Safety Act of 1986 by having the appropriate laws and policies, etc., concerning the qualification of licensing and persons who apply for or are issued a CDL. Therefore, preparation of an environmental assessment or environmental impact statement is not necessary.

#### **List of Subjects**

##### *49 CFR Part 350*

Grant programs-transportation, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, State and local governments.

##### *49 CFR Part 360*

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Hazardous materials transportation, Highway safety,

Insurance, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

##### *49 CFR Part 380*

Administrative practice and procedure, Highway safety, Motor carriers, Reporting and recordkeeping requirements.

##### *49 CFR Part 382*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

##### *49 CFR Part 383*

Administrative practice and procedure, Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Penalties, Safety, Transportation.

##### *49 CFR Part 385*

Administrative practice and procedure, Highway safety, Mexico, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 391*

Alcohol abuse, Drug abuse, Drug testing, Highway safety, Motor carriers, Reporting and recordkeeping requirements, Safety, Transportation.

##### *49 CFR Part 395*

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

##### *49 CFR Part 396*

Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

##### *49 CFR Part 397*

Administrative practice and procedure, Hazardous materials transportation, Highway safety, Intergovernmental relations, Motor carriers, Parking, Radioactive materials, Reporting and recordkeeping requirements, Rubber and rubber products.

In consideration of the foregoing, FMCSA amends 49 CFR chapter III as set forth below:

#### **PART 350—MOTOR CARRIER SAFETY ASSISTANCE PROGRAM (MCSAP) AND HIGH PRIORITY PROGRAM**

■ 1. The authority citation for part 350 continues to read as follows:

**Authority:** 49 U.S.C. 504, 13902, 31101, 31102, 31104, 31106, 31108, 31136, 31141,

31161, 31310, 31311, 31502; secs. 5106 and 5107, Pub. L. 114–94, 129 Stat. 1312, 1530; and 49 CFR 1.87.

§ 350.221 [Amended]

■ 2. Amend § 350.221 by removing the words “next full Federal fiscal year” and adding in their place “next 2 full Federal fiscal years”.

§ 350.227 [Amended]

■ 3. In § 350.227, amend paragraph (c)(2)(ii) by removing the words “2004 and 2005” and adding the words “2014 and 2015” in their place.

■ 4. Amend § 350.403 by:

- a. Revising paragraph (h);
■ b. In paragraph (i) removing the word “or”;
■ c. Redesignating paragraph (j) as paragraph (k); and
■ d. Adding a new paragraph (j).

The revision and addition read as follows:

§ 350.403 What are the High Priority Program objectives?

\* \* \* \* \*

(h) Advance the technological capability and promote the Innovative Technology Deployment of intelligent transportation system applications for CMV operations by States, including technology to detect, and enforce actions taken as a result of, criminal activity (including human trafficking) in a CMV or by any occupant of a CMV, including the operator;

\* \* \* \* \*

(j) Support the recognition, prevention, and reporting of human trafficking in a CMV or by any occupant of a CMV, including the operator, and enforce laws relating to human trafficking; or

\* \* \* \* \*

§ 350.405 [Amended]

■ 5. In § 350.405, amend paragraph (a) by removing the words “, (i), and (j)” and adding the words “and (i) through (k)” in their place.

§ 350.411 [Amended]

■ 6. In § 350.411, amend paragraph (a) by removing the phrase “, (i), and (j)” and adding the phrase “and (i) through (k)” in its place.

PART 360—FEES FOR MOTOR CARRIER REGISTRATION AND INSURANCE

■ 7. The authority citation for part 360 continues to read as follows:

Authority: 31 U.S.C. 9701; 49 U.S.C. 13908; and 49 CFR 1.87.

■ 8. Amend § 360.3 as follows:

- a. Lift the suspension of the section;
■ b. Revise paragraph (e)(3)(iii); and
■ c. Suspend the section indefinitely.
The revision reads as follows:

§ 360.3 Filing fees.

\* \* \* \* \*

(e) \* \* \*

(3) \* \* \*

(iii) FMCSA action. FMCSA will notify the applicant of the decision to grant or deny the request for waiver or reduction.

■ 9. Amend § 360.3T by revising paragraph (e)(2)(iii) to read as follows:

§ 360.3T Filing fees.

\* \* \* \* \*

(e) \* \* \*

(2) \* \* \*

(iii) Federal Motor Carrier Safety Administration action. The Federal Motor Carrier Safety Administration will notify the applicant of the decision to grant or deny the request for waiver or reduction.

\* \* \* \* \*

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 10. The authority citation for part 360 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31305, 31307, 31308, 31502; sec. 4007(a) and (b), Pub. L. 102–240, 105 Stat. 1914, 2151–2152; sec. 32304, Pub. L. 112–141, 126 Stat. 405, 791; and 49 CFR 1.87.

§ 380.703 [Amended]

■ 11. In § 380.703(a)(7) and (b), remove the words “website” and add, in their place, the word “website”.

§ 380.717 [Amended]

■ 12. In the introductory text to § 380.717, remove the words “website” and add, in their place, the word “website”.

■ 13. Amend § 380.723 by revising paragraphs (a) and (b) to read as follows:

§ 380.723 Removal from training provider registry: procedure.

(a) Voluntary removal. To be voluntarily removed from the Training Provider Registry (TPR), a provider must submit written notice to FMCSA, ATTN: Training Provider Registry Removal, 1200 New Jersey Avenue SE, Washington, DC 20590 or through the TPR website. Upon receiving the written notice, FMCSA will remove the training provider from the TPR. On and after the date of issuance of a notice of proposed removal from the TPR issued in accordance with paragraph (b) of this section, such a voluntary removal notice will not be effective.

(b) Involuntary removal; Notice of proposed removal. Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for involuntary removal of a provider from the TPR by issuing a written notice to the provider, stating the reasons for the proposed removal and setting forth any corrective actions necessary for the provider to remain listed on the TPR. If a notice of proposed removal is issued, the provider must notify current driver-trainees and driver-trainees scheduled for future training of the proposed removal. If a notice of proposed removal is issued to a training provider listed on the TPR website, FMCSA will note on the TPR website that such notice has been issued. FMCSA will remove the notation if the notice is withdrawn.

\* \* \* \* \*

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 14. The authority citation for part 382 continues to read as follows:

Authority: 49 U.S.C. 31133, 31136, 31301 et seq., 31502; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; and 49 CFR 1.87.

§ 382.119 [Amended]

■ 15. Amend § 382.119(e) by removing the words “Office of Enforcement and Compliance (MC–EC)” and adding the words “Office of Safety Programs (MC–SS)” in their place.

■ 16. Amend § 382.303 by revising paragraph (g) to read as follows:

§ 382.303 Post-accident testing.

\* \* \* \* \*

(g)(1) The results of a breath or blood test for the use of alcohol, conducted by Federal, State, or local law enforcement or public safety officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local alcohol testing requirements, and that the results of the tests are obtained by the employer.

(2) The results of a urine test for the use of controlled substances, conducted by Federal, State, or local law enforcement or public safety officials having independent authority for the test, shall be considered to meet the requirements of this section, provided such tests conform to the applicable Federal, State or local controlled substances testing requirements, and that the results of the tests are obtained by the employer.

\* \* \* \* \*

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

■ 17. The authority citation for part 383 is revised 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. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 23019 of Pub. L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

■ 18. Amend § 383.3 by revising paragraph (f)(3)(ii) to read as follows:

**§ 383.3 Applicability.**

\* \* \* \* \*

(f) \* \* \*

(3) \* \* \*

(ii) Restricted CDLs shall have the same renewal cycle as unrestricted CDLs but shall be limited to the seasonal period or periods as defined by the State of licensure, provided that the total number of days in any calendar year for which the restricted CDL is valid does not exceed 210. If a State elects to provide for more than one seasonal period, the restricted CDL is valid for commercial motor vehicle operation only during the currently approved season, and must be revalidated for each successive season. Only one seasonal period of validity may appear on the license document at a time. The good driving record must be confirmed prior to any renewal or revalidation.

\* \* \* \* \*

■ 19. Amend § 383.73 by revising paragraph (q) introductory text to read as follows:

**§ 383.73 State procedures.**

\* \* \* \* \*

(q) *Drug and Alcohol Clearinghouse.* Beginning November 18, 2024, the State must, upon receiving notification that pursuant to § 382.501(a) of this chapter the CLP or CDL holder is prohibited from operating a commercial motor vehicle, initiate established State procedures for downgrading the CLP or CDL. The downgrade must be completed and recorded on the CDLIS driver record within 60 days of the State's receipt of such notification. As used in this paragraph, the term "downgrade" means the State's removal of the CLP or CDL privilege from the driver's license, as set forth in paragraph (4) the definition of *CDL downgrade* in § 383.5.

\* \* \* \* \*

**PART 385—SAFETY FITNESS PROCEDURES**

■ 20. The authority citation for part 385 continues to read as follows:

**Authority:** 49 U.S.C. 113, 504, 521(b), 5105(d), 5109, 5113, 13901–13905, 13908, 31135, 31136, 31144, 31148, 31151, 31502; sec. 113(a), Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 408, Pub. L. 104–88, 109 Stat. 803, 958; sec. 350, Pub. L. 107–87, 115 Stat. 833, 864; sec. 5205, Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

**§ 385.3 [Amended]**

■ 21. In § 385.3 amend the definition of "Reviews" by adding a comma after the word "policies" in paragraph (3).

**Appendix B to Part 385 [Amended]**

■ 22. Amend section VII of appendix B to part 385 by removing the reference "§ 382.305" and adding, in its place, the reference "§ 382.305(a)".

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

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

**Authority:** 49 U.S.C. 504, 508, 31133, 31136, 31149, 31502; sec. 4007(b), Pub. L. 102–240, 105 Stat. 1914, 2152; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; sec. 215, Pub. L. 106–159, 113 Stat. 1748, 1767; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; secs. 5403 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.87.

■ 24. Amend § 391.23 by revising paragraphs (c)(4), (e)(4), (g)(5), (m)(2), and (m)(3) introductory text to read as follows:

**§ 391.23 Investigation and inquiries.**

\* \* \* \* \*

(c) \* \* \*

(4) For drivers with no previous employment experience working for a DOT-regulated employer during the preceding three years, documentation that no investigation was possible must be placed in the driver investigation history file, after October 29, 2004, within the required 30 days of the date the driver's employment begins.

\* \* \* \* \*

(e) \* \* \*

(4) As of January 6, 2023, employers subject to § 382.701(a) of this chapter must use the Drug and Alcohol Clearinghouse to comply with the requirements of this section with respect to FMCSA-regulated employers.

(i) If an applicant who is subject to follow-up testing has not successfully completed all follow-up tests, the employer must request the applicant's

follow-up testing plan directly from the previous employer in accordance with § 40.25(b)(5) of this title.

(ii) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT mode other than FMCSA, the employer must request alcohol and controlled substances information required under this section directly from those employers regulated by a DOT mode other than FMCSA.

\* \* \* \* \*

(g) \* \* \*

(5) Until May 1, 2006, carriers need only provide information for accidents that occurred after April 29, 2003.

(m) \* \* \*

(2) For drivers required to have a commercial driver's license under part 383 of this chapter, beginning January 30, 2015, using the CDLIS motor vehicle record obtained from the current licensing State, the motor carrier must verify and document in the driver qualification file the following information before allowing the driver to operate a CMV:

(i) The type of operation the driver self-certified that he or she will perform in accordance with § 383.71(b)(1) of this chapter.

(ii)(A) Beginning on May 21, 2014, and through June 22, 2025, that the driver was certified by a medical examiner listed on the National Registry of Certified Medical Examiners as of the date of medical examiner's certificate issuance.

(B) If the driver has certified under paragraph (m)(2)(i)(A) of this section that he or she expects to operate in interstate commerce, that the driver has a valid medical examiner's certificate and any required medical variances.

(iii) Beginning on January 30, 2015, and through June 22, 2025, if the driver provided the motor carrier with a copy of the current medical examiner's certificate that was submitted to the State in accordance with § 383.73(b)(5) of this chapter, the motor carrier may use a copy of that medical examiner's certificate as proof of the driver's medical certification for up to 15 days after the date it was issued.

(3) For drivers required to have a commercial learner's permit under part 383 of this chapter:

\* \* \* \* \*

**§ 391.25 [Amended]**

■ 25. Amend § 391.25 by removing the paragraph (c) heading.

**PART 395—HOURS OF SERVICE OF DRIVERS**

■ 26. The authority citation for part 395 continues to read as follows:

**Authority:** 49 U.S.C. 504, 21104(e), 31133, 31136, 31137, 31502; sec. 113, Pub. L. 103–311, 108 Stat. 1673, 1676; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4133, Pub. L. 109–59, 119 Stat. 1144, 1744; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5206(b), Pub. L. 114–94, 129 Stat. 1312, 1537; and 49 CFR 1.87.

■ 27. In § 395.1 amend paragraph (k) by:

■ a. In paragraph (k)(2) removing the word “or”;

■ b. In paragraph (k)(3) removing “.” and adding “; or” in its place; and

■ c. Adding paragraph (k)(4).

The addition reads as follows:

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

\* \* \* \* \*

(k) \* \* \*

(4) Livestock (as defined in section 602 of the Emergency Livestock Feed Assistance Act of 1988 (7 U.S.C. 1471) including insects)) within a 150 air-mile radius from the final destination of the livestock.

**PART 396—INSPECTION, REPAIR, AND MAINTENANCE**

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

**Authority:** 49 U.S.C. 504, 31133, 31136, 31151, 31502; sec. 32934, Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524, Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

■ 29. Amend appendix A to part 396 by:

■ a. In section 1 revising the section heading and the headings of paragraphs 1.l and m;

■ b. In section 14 revising the section heading; and

■ c. Revising section 15.

The revisions read as follows:

**Appendix A to Part 396—Minimum Periodic Inspection Standards**

\* \* \* \* \*

1. *Brake System.*

\* \* \* \* \*

l. *Antilock Brake System*<sup>1 2 3</sup>

\* \* \* \* \*

m. *Automatic Brake Adjusters*

\* \* \* \* \*

14. *Motorcoach Seats.*

\* \* \* \* \*

15. *Rear Impact Guard.*

a. Trailers and semitrailers with a GVWR of 4,536 kg (10,001 lbs.) or more, manufactured on or after January 26, 1998 (see exceptions in § 393.86(a)(1) of this subchapter).

(1) Missing guard.

(2) Guard is not securely attached to trailer, including broken or missing fasteners, any welds or parent metal cracked, or other damage that compromises secure attachment of the guard.

(3) Guard horizontal member does not extend to within 100 mm (4 inches) of each, or extends beyond either, side extremity of the vehicle.

(4) Guard horizontal member is more than 560 mm (22 inches) above the ground.

(5) Guard horizontal member is more than 305 mm (12 inches) forward of the rear extremity of the vehicle.

(6) Guard horizontal member does not have a cross sectional vertical height of at least 100 mm (4 inches) across its entire width.

b. Commercial motor vehicles manufactured after December 31, 1952 (except trailers and semitrailers manufactured on or after January 26, 1998) (see exceptions in § 393.86(b)(1) and 393.86(b)(3) of this subchapter).

(1) Missing guard.

(2) Guard is not securely attached to trailer by bolts, welding, or other comparable means.

(3) Guard horizontal member is more than 762 mm (30 inches) above the ground.

(4) Guard horizontal member does not extend to within 457 mm (18 inches) of each side extremity of the vehicle.

(5) Guard horizontal member is more than 610 mm (24 inches) forward of the rear extremity of the vehicle.

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

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

**Authority:** 49 U.S.C. 322; 49 CFR 1.87. Subpart A also issued under 49 U.S.C. 5103, 31136, 31502, and 49 CFR 1.97. Subparts C, D, and E also issued under 49 U.S.C. 5112, 5125.

**§ 397.71 [Amended]**

■ 31. In § 397.71 amend footnote 1 by removing the words “(MC–EC)” and adding the words “(MC–SE)” in their place.

**§ 397.73 [Amended]**

■ 32. Amend § 397.73(b)(1)(ii) by removing the words “(MC–EC)” and adding the words “(MC–SE)” in their place.

**§ 397.103 [Amended]**

■ 33. Amend § 397.103(c)(1)(ii) by removing the words “(MC–EC)” and adding the words “(MC–SE)” in their place.

Issued under authority delegated in 49 CFR 1.87.

**Robin Hutcheson,**  
*Deputy Administrator.*

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