

(i) Of the right to file a concise statement of the reasons for disagreeing with the decision of the Department;

(ii) Of the procedures for filing the statement of disagreement;

(iii) That any statement of disagreement that is filed will be made available to anyone to whom the record is subsequently disclosed, together with, at the discretion of the Department, a brief statement by the Department summarizing its reasons for refusing to amend the record;

(iv) That prior recipients of the disputed record will be provided a copy of any statement of disagreement, to the extent that an accounting of disclosures was maintained.

(3) If the appellant files a statement under paragraph (e)(2) of this section, the Department will clearly annotate the record so that the fact that the record is disputed is apparent to anyone who may subsequently have access to the record. When information that is the subject of a statement of dispute filed by an individual is subsequently disclosed, the Department will note that the information is disputed and provide a copy of the individual's statement. The Department may also include a brief summary of reasons for not amending the record when disclosing disputed information. Copies of the Department's statement shall be treated as part of the individual's record for granting access; however, it will not be subject to amendment by an individual under these regulations.

Dated: February 27, 2004.

William A. Eaton,
Assistant Secretary for Administration,
Department of State.

[FR Doc. 04-6119 Filed 3-30-04; 8:45 am]

BILLING CODE 4710-24-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA-04-17326]

RIN 2127-AI45

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document proposes to amend the agency's National Driver Register (NDR) regulations to implement changes mandated by the Motor Carrier Safety Improvement Act of 1999 (MCSIA). MCSIA amended the NDR Act to require that a State, before issuing or renewing a motor vehicle operator's license, must verify an individual's driving record through informational checks of both the NDR and the Commercial Driver's License Information System (CDLIS).

This document proposes to amend the NDR regulations to reflect this statutory change. This document proposes also to update the NDR reporting codes located in the Appendix to reflect those codes currently in use by the States and the NDR. In addition, this document proposes to clarify that records should be reported to the NDR only regarding individuals who have been convicted or whose license has been denied, canceled, revoked, or suspended for one of the offenses identified in the Appendix. Finally, the document proposes to add a definition for the term "employers or prospective employers of motor vehicle operators."

DATES: Written comments may be submitted to this agency and must be received by June 1, 2004.

ADDRESSES: Comments should refer to the docket number and be submitted (preferably in two copies) to: Docket Management, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590. Alternatively, you may submit your comments electronically by logging onto the Docket Management System (DMS) Web site at <http://dms.dot.gov>. Click on "Help & Information" or "Help/Info" to view instructions for filing your comments electronically. Regardless of how you submit your comments, you should mention the Docket number of this document. You may call the docket at (202) 366-9324. Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues: Mr. Sean McLaurin, Chief, National Driver Register, NPO-124, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4800. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Office of the Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION:

The National Driver Register

The National Driver Register (NDR) is a central file of information on individuals whose license to operate a motor vehicle has been denied, revoked, suspended, or canceled, for cause, or who have been convicted of certain serious traffic-related violations, such as racing on the highway or driving while impaired by alcohol or other drugs. The NDR was designed to prevent a driver whose license was suspended, revoked, or withdrawn in one State from obtaining a driver's license in another State.

As provided in the NDR Act of 1982, as amended, 49 U.S.C. 30301, *et seq.*, State chief driver licensing officials are authorized to request and receive information from the NDR for driver licensing and driver improvement purposes. When an individual applies for a driver's license, for example, these State officials are authorized to request and receive NDR information to determine whether the applicant's driver's license has been withdrawn for cause or if the applicant has been convicted of specific offenses in any other State.

State chief driver licensing officials are also authorized under the NDR Act to request NDR information on behalf of other NDR users for specific transportation safety purposes. Other authorized NDR users include Federal agencies involved in transportation safety and the employers and prospective employers of certain transportation workers. These authorized users may receive NDR information under limited circumstances and only for specific transportation safety purposes. The NDR Act also provides that individuals may request information from the NDR about themselves.

States participate in the NDR by sending information to the NDR regarding individuals who have been subject to specified licensing actions and convictions. States can also request information from the NDR about driver license applicants. In this way, States can avoid issuing licenses to those drivers whose driving record contains violations or whose license has been denied, revoked, suspended, or canceled, for cause.

Originally, the NDR was designed to provide the actual adverse driving record for these problem drivers. However, the volume of information associated with each driver kept the NDR from operating efficiently. Congress sought to improve the NDR system and enacted the NDR Act of 1982, Pub. L. 97-364. The Act directed

the National Highway Traffic Safety Administration to implement a revised NDR system known as the Problem Driver Pointer System (PDPS). (See Final Rule, Procedures for Participating In and Receiving Data From the National Driver Register Problem Driver Pointer System, 56 FR 41394 (1991)). Under the PDPS, the NDR has been simplified to maintain only certain identifying information on problem drivers contained in “pointer” records. These records “point” to the State where the substantive adverse records can be obtained. The PDPS system is fully automated and enables State driver licensing officials to determine instantaneously whether another State has taken adverse action against a license applicant.

The Commercial Driver License (CDL) and the Commercial Driver License Information System (CDLIS)

“[T]o help prevent truck accidents * * * by establishing national standards for commercial drivers’ licenses and requiring drivers to have a single commercial driver license and driving record,” Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), Pub. L. 99-570, which created the Commercial Driver’s License (CDL) Program. (See S. Rep. No. 99-411, at 1 (1986)). The CMVSA also mandated the creation of the Commercial Driver’s License Information System (CDLIS) to serve as a national database for commercial driver licensing and conviction information. The CDLIS operates under an agreement between the Federal Motor Carrier Safety Administration (FMCSA) and the American Association of Motor Vehicle Administrators (AAMVA) and allows each State to quickly access commercial driver information. The CDLIS, like the NDR, is a pointer system. When an individual applies for a CDL, the State queries the CDLIS to determine whether the applicant has already been issued a CDL or whether the applicant’s CDL has been revoked, suspended, or canceled. If a match is returned, the CDLIS indicates to the inquiring jurisdiction where more complete information on the applicant’s commercial driving record can be found. The NDR operates in much the same way as the CDLIS, except that its recordkeeping function is limited to problem drivers. Individuals with a commercial driving record have a record maintained on the CDLIS, while the NDR keeps records only on those drivers with serious traffic offenses. To enforce the CMVSA requirement that a commercial motor vehicle operator hold only one license, States are required to access the CDLIS and the NDR before

issuing a CDL. NDR regulations currently require States to check the NDR before issuing a motor vehicle operator’s license. Prior to the statutory changes addressed in this notice, there was no requirement that a State check both informational databases before issuing a motor vehicle operator’s license.

In an effort to measure the effectiveness of the CDL program and its general benefit to highway safety, the Office of Motor Carriers (OMC) of the Federal Highway Administration (FHWA) commissioned an effectiveness study in 1994. The study indicated that the CDL program had indeed been very successful in limiting commercial motor vehicle operators to a single license. However, the study also indicated that vulnerabilities existed in enforcing the single license requirement. States were not required to check the CDLIS when a CDL holder applied for a non-commercial driver’s license (non-CDL), allowing a CDL holder to apply for a second license without detection. In contravening the single license requirement under the CMVSA, a commercial motor vehicle operator had the opportunity to “spread” traffic-related violations among various driver licenses. The study recommended that all States modify their licensing procedures to require that all CDL and non-CDL applicants have their records verified against both the NDR and the CDLIS. (See Commercial Driver License Effectiveness Study, Volume Two, Technical Report, at 24 (Feb. 1999)).

Statutory Change

Congress adopted the study’s recommendation in the Motor Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106-159, Section 204), which amended Section 30304 of title 49, United States Code by creating a new subsection that provides:

(e) Driver Record Inquiry—Before issuing a motor vehicle operator’s license to an individual or renewing such a license, a State shall request from the Secretary information from the National Driver Register under section 30302 and the commercial driver’s license information system under section 31309 on the individual’s driving record.

The amendment requires all States to check both the NDR and the CDLIS before issuing any type of driver’s license to an applicant. This statutory change was designed to curtail commercial motor vehicle operators from using multiple licenses to avoid the consequences of a traffic violation.

Agency Proposal

In view of the changes made by MCSIA, the agency is proposing amendments to the regulations implementing the NDR. Additional amendments, as noted below, provide clarification and updated information to improve program implementation.

Proposed Amendment to Section 1327.3

The current regulations use, but do not specifically define, the term “employers or prospective employers of motor vehicle operators.” An “employer or a prospective employer of motor vehicle operator” is a term used to describe a person who employs individuals that may be subject to NDR checks. (See 23 CFR 1327.6(c)). The lack of definition for this term could lead to inconsistent practices by States or employers who participate in and receive information from the NDR.

In order to more easily identify when a check of the NDR is appropriate, the agency has received informal requests from employers and State licensing officials to provide guidance on the term “employer or prospective employer of motor vehicle operators.” The agency proposes to define the term to include only those persons who hire or plan to hire individuals with a primary job function of operating a motor vehicle in the normal course of their employment. The proposed definition is intended to reduce burdens to employers by narrowing the class of employees subject to an NDR check. For instance, an employer that hires an individual to make regular business deliveries would be covered under this definition, whereas an employer that allows an employee to use a company-owned vehicle or to rent a vehicle (and receive reimbursement) to attend a business conference or take an occasional business trip would not. By meeting the definition of an employer or prospective employer of a motor vehicle operator, the employer is allowed to receive NDR information regarding the types of employees covered by the definition, pursuant to the procedures outlined in the existing regulation.

Proposed Notification Requirement Under 23 CFR 1327.4 and Conforming Amendments to 23 CFR 1327.3(m) and 1327.5(b)(1)

As a condition of participation in the NDR, Section 30303(a) of Title 49, United States Code requires a State to notify the Secretary of Transportation (by delegation, the NHTSA administrator (49 CFR 1.51(e))) of its “intention to be bound by section 30304” of title 49 with notification to be

"in the form and way the Secretary prescribes by regulation." (49 U.S.C. 30303(c)). To implement this statutory provision, the agency promulgated a regulation that requires a State to notify the agency of its intention to participate in the PDPS. If the State is judged by the agency to be in compliance with the requirements of the NDR Act of 1982 and 23 CFR 1327.5, it is certified as a participating State. (23 CFR 1327.3(m) and 1327.4(a)). Under the existing regulation, all 50 States and the District of Columbia received the required certification, and are currently considered active participants in the NDR.

The existing certification procedures, however, do not account for the above-referenced statutory changes to Section 30304 (see "Statutory Change" section above). With these MCSIA-mandated changes, the earlier certifications are outdated, and no longer reflect an intention by the States to be bound by all provisions of the statutory reporting requirements. Significantly, the agency has determined, through statistics about queries to the NDR that identify the type of license checked, that as many as fifty percent of the currently participating States are not, in fact, following the amended provisions of Section 30304, requiring a check of both the NDR and the CDLIS.

Under these circumstances, the highway safety benefits associated with the new requirements are not being fully realized, as States run the risk of failing to identify problem drivers who are ineligible for a license. Stated differently, the possibility is increased that a problem driver will successfully use the licensing process of one State to evade the penalties of a criminal conviction or license suspension of another State, in contravention of Congressional intent. Additionally, since States that check the NDR and the CDLIS as part of their commercial driver's license program receive Federal funds, the continued receipt of these funds may be placed in jeopardy in circumstances of non-compliance.

To address this situation, the agency is proposing to amend 23 CFR 1327.4 to provide that, with each change to 49 U.S.C. 30304, a participating State may be required to submit a new notification to the agency. This proposed change would ensure that the agency obtains the proper notification expressing the State's intent to be bound by all current requirements of Section 30304, as required by the statute. The agency anticipates requiring new notifications only when statutory changes affect the participating State reporting or inquiry requirements under section 30304 of

title 49. Since the NDR Act of 1982 created the current PDPS system and set forth the requirements of participating States, the agency finds that MCSIA's statutory changes are the first changes that would necessitate a new notification. Statutory changes that involve minor language changes or otherwise result in no substantive addition to the list of actions that must be carried out by a State to remain as an active participant in the NDR would not necessitate a new notification. Under the agency's proposal, a State failing to provide the required notification would be subject to a termination of its participating State status 90 days after receiving a request for a new notification from the agency. This termination provision is consistent with existing termination provisions in the regulation, except for the inclusion of a longer time period to achieve compliance.

The agency is also proposing conforming amendments to 23 CFR 1327.5, to set forth the new statutory requirements for convenient reference. These proposed amendments follow the statutory changes made by MCSIA that require the chief driver licensing official of a State to submit an inquiry to the NDR and the CDLIS before issuing any type of license. The agency's proposal would include clarification that issuance of a license includes, but is not limited to, any original, renewal, temporary, or duplicate license. In addition, the definition of "participating State" under Section 1327.3(m) would be revised to conform to the new requirement that participating State status would be contingent on the State's compliance with Section 30304 of Title 49, United States Code and the agency's implementing regulations.

Proposed Amendment to 23 CFR Part 1327.5(a)

To act as a participating State in the NDR, the State's chief driver licensing official is required to transmit to the NDR a report, in the form of a pointer record, on any individual classified as a problem driver. The agency proposes to add a paragraph in section 1327.5(a), clarifying that pointer records transmitted to the NDR must be based on the violation codes appearing in the Appendix. (Proposed changes to violation codes are discussed under "Proposed Amendment to Appendix A to 23 CFR part 1327," below.)

Accordingly, these codes would serve as a comprehensive list of offenses the agency would deem to be proper grounds for establishing a pointer record regarding an individual. If an individual has not been convicted or the

individual's driver's license has not been denied, canceled, revoked or suspended for an offense identified in these codes, then a pointer record should not be transmitted to the NDR regarding that individual. If a pointer record is transmitted to the NDR that is not based on one of these codes, the agency would contact the participating State responsible for the record and request its removal from the NDR.

Proposed Amendment to Appendix A to 23 CFR Part 1327 and Conforming Amendment to 23 CFR 1327.3(g)

Appendix A to Part 1327 (23 CFR 1327, Appendix A (2001)) currently contains a listing of traffic violation codes that are used by States in their motor vehicle operations. States that participate in the NDR Problem Driver Pointer System (PDPS) are required to transmit pointer records, based on the offenses identified in these codes, to the NDR when they deny, cancel, revoke, or suspend, for cause, a motor vehicle operator's license or convict an individual of certain serious traffic offenses, such as driving recklessly or driving while intoxicated. Appendix A presently contains the ANSI D20 code listings that were first developed in 1979. In 1996, AAMVA developed the AAMVA Code Dictionary (ACD) to help States share driver licensing information. Codes from the ACD were later incorporated into the ANSI D20 coding system, and are the violation codes currently used by the States and the NDR. The agency proposes to amend appendix A to part 1327 to update the code list to be consistent with the current ACD reporting codes.¹ Additionally, we propose to divide the Appendix into two parts to make it easy for a participating State to identify what codes correspond to "for cause" licensing actions and traffic offense convictions. The agency is also proposing to revise the definition of "for cause" under section 1327.3(g) to conform to the proposed revised Appendix.

Comments

Interested persons are invited to comment on this notice of proposed rulemaking. It is requested, but not required, that two copies be submitted. All comments must be limited to 15 pages in length. Necessary attachments may be appended to those submissions without regard to the 15-page limit. (See

¹ The agency acknowledges that AAMVA is currently considering a revision to the ACD. When that revision is finalized, the agency will determine whether corresponding changes should be made to the Appendix as a result. Any changes would be published in the *Federal Register*.

49 CFR 553.21). This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

You may submit your comments by one of the following methods:

(1) By mail to: Docket Management Facility, Docket No. NHTSA-04-XXXX, DOT, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC 20590;

(2) By hand delivery to: Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday;

(3) By fax to the Docket Management Facility at (202) 493-2251; or

(4) By electronic submission: log onto the DMS Web site at <http://dms.dot.gov> and click on "Help and Information" or "Help/Info" to obtain instructions.

All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the above address before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agency will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

You may review submitted comments in person at the Docket Management Facility located at Room PL-401 on the Plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday.

You may also review submitted comments on the Internet by taking the following steps:

(1) Go to the DMS Web page at <http://dms.dot.gov/search/>.

(2) On that page, click on "search".

(3) On the next page (<http://dms.dot.gov/search/>) type in the four digit docket number shown at the beginning of this notice. Click on "search".

(4) On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may also download the comments. Although the comments are imaged documents, instead of word processing documents, the "pdf" versions of the documents are word searchable.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if

submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://dms.dot.gov>.

Those persons who wish to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Analyses and Notices

Executive Order 12988 (Civil Justice Reform)

This proposed rule would not have any preemptive or retroactive effect. 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 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations on whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The agency has considered the impact of this proposed rule under Executive Order 12866 and determined that the notice is not significant. The notice is also treated as not significant under the Department of Transportation's regulatory policies and procedures. OMB has not reviewed this notice under Executive Order 12866.

In this document, the agency is revising the NDR implementing regulations to conform to the NDR Act. Checks would now be required of both the NDR and CDLIS databases before all license issuances. Although these new requirements may increase the number of inquiries that States are required to make and the number of responses they receive as a result, the agency believes that the additional checks and the revisions proposed will not create any significant or adverse economic effect on the States. The newly required checks of both the NDR and the CDLIS for CDL renewals and non-CDLs simply adds another verification in a process that States already perform when first issuing a CDL. Any additional maintenance fees associated with access to the CDLIS should not occur as States

already pay a fee based on the number of CDL records on the CDLIS. Since the agency believes that the impacts of this rulemaking would be minimal, a preliminary regulatory evaluation has not been prepared.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 5 U.S.C. 601-612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Employers who hire motor vehicle operators may qualify as small businesses. This document, however, does not change the procedure that employers must use to request a driver license check of an employee or prospective employee. Employers would still be required to contact the respective State chief driver licensing official. Further, as explained above in the section on Executive Order 12866 and DOT Regulatory Policies and Procedures, the agency believes that the impacts of this rulemaking would be minimal. Therefore, I hereby certify that it would not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

There are reporting requirements contained in the regulation that this proposed rule would be amending that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. Accordingly, these requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3500, *et seq.*). These requirements have been approved through July 30, 2006, under OMB No. 2127-0001.

National Environmental Policy Act

The agency has reviewed this rulemaking action for the purposes of the National Environmental Policy Act (42 U.S.C. 4321, *et. seq.*) and has determined that it would not have a significant impact on the quality of the human environment.

The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed rules that include a Federal mandate likely to result in the

expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. This proposed rule does not require an assessment under this law. The costs to States to make an additional check of the CDLIS and the NDR before issuing a license would not result in expenditures that exceed the \$100 million threshold.

Executive Order 13132 (Federalism)

Executive Order 13132 requires the agency to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” The Executive Order defines “policies that have Federalism implications” to include regulations 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 various levels of government.”

Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that this proposed rule would not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, this proposed rule would not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions.

Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

The agency has analyzed this proposed rule under Executive Order 13175, and has determined that the proposed action would not have a

substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

Regulation Identifier Number (RIN)

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

List of Subjects in 23 CFR Part 1327

Driver licensing, Driver records, Highway safety, National Driver Register, Transportation safety.

In consideration of the foregoing, the agency proposes to amend 23 CFR part 1327 as follows:

PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM

1. The authority citation for part 1327 continues to read as follows:

Authority: Pub. L. 97-364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

2. Amend § 1327.3 by redesignating paragraphs (g) through (x) as paragraphs (h) through (y) and by adding new paragraph (g) and revising paragraphs (h) and (n) to read as follows:

§ 1327.3 Definitions.

* * * * *

(g) *Employer or Prospective Employer of Motor Vehicle Operators* means a person that hires one or more individuals to operate motor vehicles on a regular basis during their normal course of employment.

(h) *For Cause* as used in § 1327.5(a) means that an adverse action taken by a State against an individual was based on any violation listed in Part I, Appendix A, an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, which is used by the NDR for recording license denials and withdrawals.

* * * * *

(n) *Participating State* means a State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of

Section 30304 of Title 49, United States Code and § 1327.5 of this part.

* * * * *

3. Amend § 1327.4 by revising paragraph (c)(1) and adding new paragraph (d) to read as follows:

§ 1327.4 Certifications, termination and reinstatement procedures.

* * * * *

(c) *Reinstatement.* (1) The chief driver licensing official of a State that wishes to be reinstated as a participating State in the NDR under the PDPS shall send a letter certifying that the State wishes to be reinstated as a participating State and that it intends to be bound by the requirements of section 30304 of title 49, United States Code and § 1327.5 of this part. It shall also describe the changes necessary to meet the statutory and regulatory requirements of PDPS.

* * * * *

(d) *Notification.* (1) NHTSA may, at its discretion, require in writing that a participating State submit a new notification evidencing an intention to be bound by the requirements of section 30304 of title 49, United States Code and § 1327.5 of this part. The agency will exercise its discretion to require this notification when statutory changes have altered a participating States reporting or inquiry requirements under section 30304 of title 49, United States Code.

(2) After receiving a written request from NHTSA under paragraph (d)(1) of this Section, a participating State will have 90 days to submit the requested notification. If a participating State does not submit the requested notification within the 90-day time period, NHTSA will send a letter to the chief driver licensing official of a State canceling its status as a participating State.

4. Amend § 1327.5 by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding new paragraph (a)(2) and by revising paragraph (b)(1) to read as follows:

§ 1327.5 Conditions for becoming a participating State.

(a) * * *

(2) A report shall not be transmitted by the chief driver licensing official of a participating State, regarding an individual, unless that individual has had his or her motor vehicle operator's license denied, canceled, revoked, or suspended for cause as represented by the codes in Part I of Appendix A or been convicted of a motor vehicle-related offense as represented by the codes in Part II of Appendix A. Unless the report transmitted to the NDR is based on these codes, NHTSA will

contact the participating State responsible for the record and request its removal from the NDR.

* * * *

(b) * * *

(1) The chief driver licensing official of a participating State shall submit an inquiry to both the NDR and the Commercial Driver's License

Information System for each driver license applicant before issuing a license to that applicant. The issuance of a license includes but is not limited to any original, renewal, temporary, or duplicate license.

* * * *

5. Revise Appendix A to part 1327 to read as follows:

CODE

Part I—For Cause Withdrawals

A04	Driving under the influence of alcohol with BAC at or over .04.
A08	Driving under the influence of alcohol with BAC at or over .08.
A10	Driving under the influence of alcohol with BAC at or over .10.
A11	Driving under the influence of alcohol with BAC at or over __ (detail field required).
A12	Refused to submit to test for alcohol—Implied Consent Law.
A20	Driving under the influence of alcohol or drugs.
A21	Driving under the influence of alcohol.
A22	Driving under the influence of drugs.
A23	Driving under the influence of alcohol and drugs.
A24	Driving under the influence of medication not intended to intoxicate.
A25*	Driving while impaired.
A26	Drinking alcohol while operating a vehicle.
A31	Illegal possession of alcohol.
A33	Illegal possession of drugs (controlled substances).
A35	Possession of open alcohol container.
A41	Driver violation of ignition interlock or immobilization device.
A50*	Motor vehicle used in the manufacturing, distributing, or dispensing of a controlled substance.
A60	Underage Convicted of Drinking and Driving at .02 or higher BAC.
A61	Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC.
A90	Administrative Per Se for .10 BAC.
A94	Administrative Per Se for .04 BAC.
A98	Administrative Per Se for .08 BAC.
B01	Hit and run—failure to stop and render aid after accident.
B02	Hit and run—failure to stop and render aid after accident—Fatal accident.
B03	Hit and run—failure to stop and render aid after accident—Personal injury accident.
B04	Hit and run—failure to stop and render aid after accident—Property damage accident.
B05	Leaving accident scene before police arrive.
B06	Leaving accident scene before police arrive—Fatal accident.
B07	Leaving accident scene before police arrive—Personal injury accident.
B08	Leaving accident scene before police arrive—Property damage accident.
B10*	Refusal to reveal identity after accident—Fatal accident.
B11*	Refusal to reveal identity after accident—Personal injury accident.
B20	Driving while license withdrawn.
B21	Driving while license barred.
B22	Driving while license canceled.
B23	Driving while license denied.
B24	Driving while license disqualified.
B25	Driving while license revoked.
B26	Driving while license suspended.
B27*	Driving while an out of service order is in effect.
B41	Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID.
B51	Expired or no driver license (includes DL, CDL, and Instruction Permit).
B63	Failed to file future proof of financial responsibility.
B91	Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit).
D02	Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit).
D06	Misrepresentation of identity or other facts to obtain alcohol.
D07	Possess multiple driver licenses (includes DL, CDL, and Instruction Permit).
D16	Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit).
D27	Violate limited license conditions.
D29	Violate restrictions of driver license (includes DL, CDL, and Instruction Permit).
D35	Failure to comply with financial responsibility law.
D38	Failure to post security or obtain release from liability.
D39	Unsatisfied judgment.
D45*	Failure to appear for trial or court appearance.
D53*	Failure to make required payment of fine and costs.
D72	Inability to control vehicle.
D74	Operating a motor vehicle improperly because of drowsiness.
D75	Operating a motor vehicle improperly due to physical or mental disability.
D76*	Perjury.
E03	Operating without HAZMAT safety equipment as required by law.
F02	Child or youth restraint not used properly as required.

Appendix A to Part 1327—Abridged Listing of the American Association of Motor Vehicle Administrators Violations Exchange Code, Used by the NDR for Recording Driver License Denials, Withdrawals, and Convictions of Motor Vehicle-Related Offenses

CODE—Continued

F03	Motorcycle safety equipment not used properly as required.
F04	Seat belt not used properly as required.
F05	Carrying unsecured passengers in open area of vehicle.
F06	Improper operation of or riding on a motorcycle.
M09	Failure to obey railroad crossing restrictions.
M10	Failure to obey railroad gates, signs or signals.
M20	For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
M21	For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear.
M22	For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing.
M23	For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping.
M24	For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance.
M80	Reckless, careless, or negligent driving.
M81	Careless driving.
M82	Inattentive driving.
M83	Negligent driving.
M84	Reckless driving.
S01	01–05 > Speed limit (detail optional).
S06	06–10 > Speed limit (detail optional).
S11*	11–15 > Speed limit (detail optional).
S15	Speeding 15 mph or more above speed limit (detail optional).
S16	16–20 > Speed limit (detail optional).
S21	21–25 > Speed limit (detail optional).
S26	26–30 > Speed limit (detail optional).
S31	31–35 > Speed limit (detail optional).
S36	36–40 > Speed limit (detail optional).
S41	41+ > Speed limit (detail optional).
S50	Speeding in a school zone (detail optional).
S51	01–10 > Speed limit (detail optional).
S61	11–20 > Speed limit (detail optional).
S71	21–30 > Speed limit (detail optional).
S81	31–40 > Speed limit (detail optional).
S91	41+ > Speed limit (detail optional).
S92	Speeding—Speed limit and actual speed (detail required).
S93	Speeding.
S94	<i>Prima Facie</i> speed violation or driving too fast for conditions.
S95	Speed contest (racing) on road open to traffic.
S97	Operating at erratic or suddenly changing speeds.
U01	Fleeing or evading police or roadblock.
U02	Resisting arrest.
U03	Using a motor vehicle in connection with a felony (not traffic offense).
U05	Using a motor vehicle to aid and abet a felon.
U06	Vehicular assault.
U07	Vehicular homicide.
U08	Vehicular manslaughter.
U31	Violation resulting in fatal accident.
W01	Accumulation of convictions (including point systems and/or being judged a habitual offender or violator).
W14	Physical or mental disability.
W20	Unable to pass DL test(s) or meet qualifications.
W30	Two serious violations within three years.
W31	Three serious violations within three years.
W60	The accumulation of two RRGC violations within three years.
W61	The accumulation of three or more RRGC violations within three years.

Part II—Convictions

A04	Driving under the influence of alcohol with BAC at or over .04.
A08	Driving under the influence of alcohol with BAC at or over .08.
A10	Driving under the influence of alcohol with BAC at or over .10.
A11	Driving under the influence of alcohol with BAC at or over _____ (detail field required).
A12	Refused to submit to test for alcohol—Implied Consent Law.
A20	Driving under the influence of alcohol or drugs.
A21	Driving under the influence of alcohol.
A22	Driving under the influence of drugs.
A23	Driving under the influence of alcohol and drugs.
A24	Driving under the influence of medication not intended to intoxicate.
A25*	Driving while impaired.
A26	Drinking alcohol while operating a vehicle.
A31	Illegal possession of alcohol.
A33	Illegal possession of drugs (controlled substances).
A35	Possession of open alcohol container.
A41	Driver violation of ignition interlock or immobilization device.
A50*	Motor vehicle used in the manufacturing, distributing, or dispensing of a controlled substance.

CODE—Continued

A60	Underage Convicted of Drinking and Driving at .02 or higher BAC.
A61	Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC.
A90	Administrative Per Se for .10 BAC.
A94	Administrative Per Se for .04 BAC.
A98	Administrative Per Se for .08 BAC.
B01	Hit and run—failure to stop and render aid after accident.
B02	Hit and run—failure to stop and render aid after accident—Fatal accident.
B03	Hit and run—failure to stop and render aid after accident—Personal injury accident.
B04	Hit and run—failure to stop and render aid after accident—Property damage accident.
B05	Leaving accident scene before police arrive.
B06	Leaving accident scene before police arrive—Fatal accident.
B07	Leaving accident scene before police arrive—Personal injury accident.
B08	Leaving accident scene before police arrive—Property damage accident.
B10*	Refusal to reveal identity after accident—Fatal accident.
B11*	Refusal to reveal identity after accident—Personal injury accident.
B20	Driving while license withdrawn.
B21	Driving while license barred.
B22	Driving while license canceled.
B23	Driving while license denied.
B24	Driving while license disqualified.
B25	Driving while license revoked.
B26	Driving while license suspended.
B27*	Driving while an out of service order is in effect.
B41	Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID.
B51	Expired or no driver license (includes DL, CDL, and Instruction Permit).
B91	Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit).
D02	Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit).
D06	Misrepresentation of identity or other facts to obtain alcohol.
D07	Possess multiple driver licenses (includes DL, CDL, and Instruction Permit).
D16	Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit).
D27	Violate limited license conditions.
D29	Violate restrictions of driver license (includes DL, CDL, and Instruction Permit).
D72	Inability to control vehicle.
D76*	Perjury.
E03	Operating without HAZMAT safety equipment as required by law.
M10	Failure to obey railroad gates, signs or signals.
M20	For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
M21	For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear.
M22	For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing.
M23	For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping.
M24	For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance.
M80	Reckless, careless, or negligent driving.
M81	Careless driving.
M82	Inattentive driving.
M83	Negligent driving.
M84	Reckless driving.
S95	Speed contest (racing) on road open to traffic.
U07	Vehicular homicide.
U08	Vehicular manslaughter.
U31	Violation resulting in fatal accident.

* AAMVA is currently considering a change to this code on the ACD. When revisions to the ACD are finalized, the agency will determine whether corresponding changes should be made to the Appendix.

Issued on: March 26, 2004.

Jeffrey W. Runge,

Administrator, National Highway Traffic Safety Administration.

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DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CGD01-04-017]

RIN 1625-AA00

Safety and Security Zones; Boston Harbor, MA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to remove the safety and security zones around the Pacific Gas and Electric (PG & E) Power Plant Terminal Wharf, Salem, Massachusetts, because the Captain of the Port Boston has determined that these zones are no longer needed. If this proposed rule is adopted as final, those seeking to enter these waters in Salem Harbor around the PG & E facility would no longer need to seek permission of the Captain of the Port.