

not national in scope or significance are most appropriately addressed by the level of government close to the people. This rulemaking does not have substantial direct impact on the States, on the relationship between the federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, this action does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Assessment of Federal Regulations and Policies on Families

Assessment of Federal Regulations and Policies on Families section 654 of the Treasury and General Government Appropriations Act of 2000 requires federal agencies to determine whether a policy or regulation may negatively affect family well-being. If the agency determines a policy or regulation negatively affects family well-being, then the agency must prepare an impact assessment addressing seven criteria specified in the law. HHS believes it is not necessary to prepare a family policymaking assessment (see Pub. L. 105–277) because the action it takes in this final rule will not have any impact on the autonomy or integrity of the family as an institution.

Regulatory Review

We have examined the impacts of the rule under Executive Order 12866, Executive Order 13563, the RFA (5 U.S.C. 601–612), and the UMRA of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all benefits, costs, and transfers of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity).

The Office of Information and Regulatory Affairs has determined that this final rule is not a significant regulatory action under section 3(f)(1) of Executive Order 12866, as amended by Executive Order 14094. This final rule has, however, been designated “a significant regulatory action” under section 3(f) of Executive Order 12866, as amended by Executive Order 14094. Of the nearly \$600 million appropriated for 264 Tribal Lead Agencies in FY 2024, approximately \$422 million was allocated to grantees that already have discretion to take-up the flexibilities included in this rule. The remaining \$173 million is allocated to Tribal Lead

Agencies that could be impacted by the change included in this rule. Further, these Tribal Lead Agencies have discretion on whether to adopt this flexibility based on their unique needs. This final rule does not stipulate any new requirements.

VI. Tribal Consultation Statement

Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, requires agencies to consult with Indian tribes when regulations have substantial direct effects 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. The discussion in sections III and IV of the preamble serves as the Tribal impact statement and contains a detailed description of the consultation and outreach in this final rule.

(Catalog of Federal Domestic Assistance Program Number 93.575, Child Care and Development Block Grant; 93.596, Child Care Mandatory and Matching Funds)

Dated: November 14, 2024.

Xavier Becerra,

Secretary, Department of Health and Human Services.

List of Subjects in 45 CFR Part 98

Child care, Grant programs-social programs.

For the reasons set forth in the preamble, we amend 45 CFR part 98 as follows:

PART 98—CHILD CARE AND DEVELOPMENT FUND

- 1. The authority citation for part 98 continues to read as follows:

Authority: 42 U.S.C. 618, 9858,

- 2. Amend § 98.81 by revising paragraph (b)(1)(ii) to read as follows.

§ 98.81 Application and Plan procedures.

* * * * *

(b) * * *

(1) * * *

(ii) The basis for determining family eligibility may be determined by the Tribe notwithstanding family income or assets as described in § 98.20(a)(2).

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[FR Doc. 2024–26909 Filed 11–15–24; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2024–0201]

RIN 2126–AC66

Federal Motor Carrier Safety Regulations

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

ACTION: Final rule; general technical, organizational, conforming, and correcting amendments.

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 a change to its rules of organization, procedures, and practice. Because the rule does not impose any new material requirements or increase compliance obligations, it is issued without prior notice and opportunity for comment, pursuant to the good cause exception in the Administrative Procedure Act (APA).

DATES: Effective November 18, 2024.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than December 18, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Lockhart, Regulatory Development Division, Office of Policy, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–2219; *nicholas.lockhart@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT 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 DOT 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 authority, as well as subsequently enacted laws, became known as the FMCSRs, codified at 49 Code of Federal Regulations (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 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 was added to FHWA's authority. The statutes granting these authorities 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 (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000, and transferred authorities specifically related to commercial motor vehicle safety to FMCSA. Accordingly, since that time the motor carrier safety, and certain commercial, responsibilities previously assigned to both the ICC and FHWA have been the jurisdiction of FMCSA. These responsibilities also include regulations relating to section 18 of the Noise Control Act of 1972, codified at 42 U.S.C. 4917, which were originally assigned to the Secretary of

Transportation (Pub. L. 92–574, 86 Stat. 1249, Oct. 27, 1972) and delegated to FHWA (39 FR 7791, Feb. 28, 1974), and are now the jurisdiction of FMCSA, as codified at 49 U.S.C. 113(f)(1).¹

Congress subsequently 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); Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015); and the Infrastructure Investment and Jobs Act (Pub. L. 117–58, 135 Stat. 429, Nov. 15, 2021).

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 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)(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. The technical amendments do not impose any new material requirements or increase compliance obligations. For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

In addition to amendments that fall within the APA good cause exception, this rule also contains amendments that fall within the APA exception for rules of agency organization, procedure, or practice. Specifically, the Agency

amends 49 CFR 387.307(e) to align with the service rules in part 386 and to specify the same procedures for Agency review of documents filed by brokers notified of a pending suspension of operating authority due to insufficient financial responsibility as are followed by the Agency when such brokers file documents in support of a reinstatement from suspension. These amendments fall within the exception to the APA's notice and comment rulemaking procedures for “rules of agency organization, procedure, or practice,” (5 U.S.C. 553(b)(A)) because the procedures for filing such documents are already specified in § 387.307(e) and so are made clearer with this amendment. Similarly, an amendment to part 389 also concerns matters of Agency policy. These changes 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.

This rule contains numerous, unrelated provisions that focus on unique aspects of FMCSA's regulations. Therefore, FMCSA finds that the various provisions of this final rule are severable and able to operate functionally if severed from each other. In the event a court were to invalidate one or more of this final rule's unique provisions, the remaining provisions should stand.

II. Section-by-Section Analysis

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

FMCSA amends part 350 to eliminate the current question-and-answer format in favor of standard styling. Thus, all section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content. However, unless specifically described below, this change does not affect the body text of the regulations in this part. FMCSA makes this change because it has determined that the question-and-answer format is cumbersome, difficult to read, and may cause confusion. Moreover, in several instances the title of a section is styled as a question, but the regulatory text does not provide a concise answer to the question asked, somewhat defeating the purpose of the question-and-answer style.

¹ Responsibility for the regulations related to section 18 of the Noise Control Act was given to FMCSA by Congress in section 101 of the Motor Carrier Safety Improvement Act (Pub. L. 106–159, 113 Stat. 1748, 1750, Dec. 9, 1999).

Part 350 previously had section headings styled as brief descriptive phrases, rather than questions, until 2000. That year, FMCSA issued a final rule that comprehensively revised part 350 (65 FR 15092 (March 21, 2000)). The revisions included a series of stylistic changes described in the NPRM: question and answer format, the active voice, and “Plain English” (64 FR 11414, 11416 (March 9, 1999)). The Agency intended for the stylistic changes to logically organize the regulations, clearly format the regulations, and make the regulations easily understood. The Agency continues to pursue these goals when drafting regulations and adopts active voice and “Plain English” where practical, in new and revised regulations, to achieve these goals. However, the Agency no longer uses a question-and-answer format in new and revised regulations. Most of the FMCSRs, and most federal regulations generally, use a short descriptive phrase for section headings instead of a question-and-answer format. Therefore, the Agency amends each section heading in part 350 to use a short descriptive phrase. FMCSA is also making other amendments to part 350, which are described below.

Section 350.305 What specific variances from the FMCSRs are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction?

In addition to revising the title of § 350.305 to use a short descriptive phrase, FMCSA amends the section by adding an introductory sentence specifying that these variances are for State laws and regulations applicable to intrastate commerce and not subject to Federal jurisdiction.

FMCSA also revises § 350.305(d)(3) to eliminate the reference to a 100-air mile radius under § 395.1(e)(1)(i) because it is no longer correct. The regulations in part 350 relate to MCSAP funding, and § 350.305 describes allowable variances in state laws and regulations for States receiving MCSAP funding. Each State that receives MSCAP funds must adopt and enforce laws, regulations, standards, and orders on CMV safety for intrastate commerce that are compatible with the FMCSRs. However, since the early days of MCSAP, some variances for intrastate operations have been allowed. On September 8, 1992, FHWA published what previously had been informal intrastate variances as appendix C to part 350. Section 3(e) provided that exemptions based on the distance traveled from the home terminal were not compatible. However,

the prohibition did not apply to exemptions already in the FMCSRs or to the extension of the short-haul mileage exemption for driver hours of service from 100 to 150 miles (57 FR 40946, 40962; Sept. 8, 1992). The short-haul mileage exemption has been placed in several different sections of the CFR over time; it was located in § 350.341(d) prior to moving to its current location in § 350.305(d)(3) when part 350 was rewritten in 2020 (85 FR 37785, 37804; June 24, 2020). The current short-haul mileage exemption references the short-haul mile radius in the hours-of-service regulations, § 395.1(e)(1)(i). On June 1, 2020, FMCSA revised regulations relating to driver hours of service and extended the short-haul exemption in § 395.1(e)(1)(i) to 150 air-miles, effective September 29, 2020 (85 FR 33396, 33451).

Although the allowed air-mile radius is currently the same in §§ 350.305(d)(3) and 395.1(e)(1)(i), it is nevertheless possible that the radius specified in § 395.1(e)(1)(i) could be either expanded or contracted at some time in the future. To correct the discrepancy that currently exists in the regulation while avoiding unintentional effects on the intrastate variance, FMCSA revises § 350.305(d)(3) to read as follows: “A 150-air mile radius or the air mile radius under § 395.1(e)(1)(i) of this subchapter, whichever is greater.” The revision affords States the benefit of any future expansion of the air-mile radius in § 395.1(e)(1)(i) and also protects against a decrease of the long-standing 150-mile intrastate variance without full consideration of the impact of any change on intrastate commerce through notice and comment rulemaking. Therefore, there is no substantive impact from this revision.

B. Part 369 Reports of Motor Carriers

Section 369.1 Annual Reports of For-Hire, Non-Exempt Motor Carriers of Property, Motor Carriers of Household Goods, and Dual Property Carriers

Section 369.1 requires certain motor carriers to file the Motor Carrier Annual Report Form M (Form M) with the Agency. The website address provided in § 369.1(b), where the Agency has made Form M available, is no longer valid. FMCSA amends § 369.1(b) to provide a correct website address for Form M and to update the phrasing of the regulation to avoid using the word “you.”

Section 369.4 Annual Reports of Class I Carriers of Passengers

Section 369.4 requires certain motor carriers of passengers to file the Motor

Carrier Annual Report Form MP–1 for Motor Carriers of Passengers (Form MP–1). However, this section does not provide a website address where the form is available. FMCSA amends § 369.4(c) to provide a website address where the form is available for the convenience of motor carriers of passengers.

C. Part 371—Brokers of Property

Section 371.2 Definitions

Section 371.2 provides definitions that apply to FMCSA’s property broker regulations in Part 371. FMCSA amends § 371.2 to format the definitions as a list of terms without paragraphs rather than providing the definition for each term in a separate paragraph. The definitions are unchanged by this amendment. This format conforms to the format of other definition sections in Chapter III, Subchapter B, such as § 390.5T, and guidance from the Office of the Federal Register’s Document Drafting Handbook (3–33).

D. Part 380—Special Training Requirements

Section 380.301 General Requirements

Section 380.301 contains general requirements for longer combination vehicle driver-instructors. FMCSA amends the introductory text of § 380.301 to avoid using the word “you,” and thereby clarify to whom the regulation applies.

Section 380.723 Removal From Training Provider Registry: Procedure

Section 380.723 describes the procedures for removing a training provider from FMCSA’s Training Provider Registry, including processes FMCSA follows when it removes a training provider from the registry. In § 380.723, paragraph (b) explains that FMCSA begins the involuntary removal process by issuing a written notice to the provider, and paragraph (c) explains that if the provider wishes to remain on the registry, they must submit a written response to FMCSA within 30 days. Paragraph (c) also explains that the provider can either oppose the notice of proposed removal or take corrective action within 60 days. FMCSA amends paragraph (c) to provide clarification on the timelines for provider responses, as the current regulation may be confusing for providers who choose to take corrective action in response to a notification of proposed removal. Providers that intend to take corrective action must still submit the initial written response described in paragraph (c) within 30 days of the notification. Further, these providers are still

required to submit evidence of corrective action in accordance with (c)(2)(i).

FMCSA also amends section § 380.723 to replace the word “notice” with the word “notification” wherever it refers to a communication from FMCSA to a training provider, as this section also uses the word “notice” to refer to **Federal Register** notices. This change will improve the clarity and readability of the section.

Lastly, FMCSA amends § 380.723(c)(2)(i) to correct an error from a previous amendment. When paragraph (c)(2)(i) was established, it described a 60-day time period that began either on the date the notice of proposed removal was issued or on the date when FMCSA’s Director of the Office of Carrier, Driver, and Vehicle Safety Standards subsequently affirmed or modified the notice of proposed removal (81 FR 88732, 88793, Dec. 8, 2016). FMCSA later amended the section, with the intention to remove the reference to that particular director and replace it with a reference to FMCSA (86 FR 57060, 57062, Oct. 14, 2021). Although the word “Director” was removed, it was not replaced with “FMCSA,” and FMCSA now corrects that inadvertent error by adding the word “FMCSA” in the appropriate place.

E. Part 381—Waivers, Exemptions, and Pilot Programs

Section 381.210 How do I request a waiver?

Part 381 covers waiver and exemptions from the FMCSRs, and § 381.210 sets out the process for requesting a waiver and the required contents of the request. The regulations in § 381.210 are authorized by 49 U.S.C. 31315, which is titled “Waivers, exemptions, and pilot programs.” The authorizing statute requires certain contents in a waiver request, and while the regulation also requires these contents so that it aligns with the statute, the requirements are phrased differently. The statute requires that a person requesting a waiver explain how, if granted a waiver, they would likely achieve an equivalent or greater level of safety as compared to the level of safety they would achieve absent the waiver. Section 381.210 describes this as a requirement that the person requesting a waiver explain how they would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. Though this framing of the requirement has the same effect, FMCSA revises § 381.210 to

use the phrasing from the authorizing statute, to avoid any confusion.

Section 381.310 How do I apply for an exemption?

Section 381.310 sets out the process for requesting an exemption, and FMCSA amends it to better align with the authorizing statute, as with § 381.210. The authorizing statute, 49 U.S.C. 31315, requires that a person requesting an exemption explain how they would likely achieve an equivalent or greater level of safety as compared to the level of safety they would achieve absent the exemption. Section 381.210 describes this as a requirement that the person requesting an exemption explain how they would achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by complying with the regulation. Though this framing of the requirement has the same effect, FMCSA revises § 381.310 to use the phrasing from the authorizing statute, to avoid any confusion.

Section 381.505 What are the minimum elements required for a pilot program?

Section 381.505 sets out the requirement for a pilot program, and FMCSA amends it to better align with the authorizing statute, as with §§ 381.210 and 381.310. The authorizing statute, 49 U.S.C. 31315, requires that FMCSA ensure that the pilot program is designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the applicable regulations. Section 381.210 describes this as a requirement to ensure that the program is designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved by complying with the regulations. Again, though this framing of the requirement has the same effect, FMCSA revises § 381.505 to use the phrasing from the authorizing statute, to avoid any confusion.

F. Part 382—Controlled Substances and Alcohol Use and Testing

Section 382.101 Purpose

Section 382.101 sets out the purpose of part 382 and in doing so, uses the term “commercial motor vehicles.” In later sections of part 382, the term is abbreviated as “CMV,” and so FMCSA revises § 382.101 to provide the abbreviation for “commercial motor vehicle(s)” where it is first used in the part.

Section 382.103 Applicability

Section 382.103 provides the applicability of the controlled

substances and alcohol use and testing regulations in part 382. The section cross-references §§ 390.3(f) and 390.5, which are currently suspended. FMCSA revises § 382.103 to cross-reference the equivalent temporary sections §§ 390.3T(f) and 390.5T.

Section 382.107 Definitions

Section 382.107 defines terms that are used in the controlled substances and alcohol use and testing regulations in part 382. The introductory text of § 382.107 cross-references § 390.5, which is currently suspended. FMCSA revises § 382.107 to cross-reference the equivalent temporary section § 390.5T.

One of the terms defined in § 382.107 is “commercial motor vehicle,” which is abbreviated to “CMV” in the definition of “actual knowledge” in the same section and in the table for § 382.303(a) and (b). FMCSA amends the definition of “commercial motor vehicle” in § 382.107 to add the definition, for clarity.

Section 382.413 Inquiries for Alcohol and Controlled Substances Information From Previous Employers

Section 382.413 requires employers to request alcohol and controlled substances information from the previous employers of their employees. The section references 49 CFR 40.25, titled “Must an employer check on the drug and alcohol testing record of employees it is intending to use to perform safety-sensitive duties?” for specific requirements of the inquiry process. The same requirements are covered within the FMCSRs in § 391.23(e), and so FMCSA amends § 382.413 to reference § 391.23(e) rather than § 40.25, for ease of reference. The amendment also enables paragraph (a) to be simplified. Although paragraph (a) references § 40.25 for the inquiry requirements, it adds that the required time frame for the inquiry of previous employers is 3 years, rather than the 2 years specified in § 40.25. Section 391.23(e) requires a 3-year time frame, and by referencing that section rather than § 40.25, paragraph (a) no longer needs to specify a different time frame.

Section 382.501 Removal From Safety-Sensitive Function

FMCSA revises § 382.501(b) to replace the semicolon after “functions” with a comma. This is a punctuation correction.

Section 382.601 Employer Obligation To Promulgate a Policy on the Misuse of Alcohol and Use of Controlled Substances

Section 382.601 requires employers provide educational materials explaining the alcohol and controlled substances regulations in part 382. The materials are required to cover the post-accident testing requirements, and in stating this requirement, § 382.601 references § 382.303(d). FMCSA amends § 382.601 to change these cross-references to instead reference § 382.303 as a whole because there are post-accident testing requirements in other paragraphs of § 382.303 as well.

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

Section 383.141 General

FMCSA revises § 383.141(b) to change “state” to “State”, to conform with the capitalization used throughout the rest of part 383.

H. Part 384—State Compliance With Commercial Driver’s License Program

Section 384.405 Decertification of State CDL Program

FMCSA amends section 384.405 to align the regulatory requirements with the statutory requirements. Specifically, paragraph (a) of the regulation uses permissive language, stating that the Administrator may prohibit a State found to be in substantial noncompliance from performing certain CLP or CDL transactions, and sets out the conditions the Administrator should consider when making a decertification determination. However, 49 U.S.C. 31312 uses mandatory language, stating, “the Secretary shall issue an order” to prohibit States from carrying out licensing procedures and issuing CDLs if there is a determination of substantial noncompliance.

The regulatory history does not clearly indicate why there is a discrepancy between the statutory text and the regulatory text. It is clear from the statute that the Administrator is required to prohibit noncompliant states from engaging in the enumerated CLP and CDL transactions. FMCSA therefore replaces the word “may” in paragraph (a) with the word “shall,” to harmonize the regulation with the statutory text.

I. Part 385—Safety Fitness Procedures

As with part 350, FMCSA also revises part 385, subparts C, D, and E, to eliminate the current question-and-answer format in favor of standard styling. This set of revisions includes revisions to the currently suspended

§§ 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, and 385.421 to mirror the amendments made to the corresponding temporary sections. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section’s content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA’s reasoning for making this change in part 385 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA also makes other amendments to part 385, which are described below.

Section 385.205 How can an individual who has lost certification to perform a safety audit or investigation, including review, be re-certified?

In addition to revising the heading of § 385.205 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation’s requirements from the heading to the body of the regulation, in order to clarify the regulation.

Section 385.407 What conditions must a motor carrier satisfy for FMCSA to issue a safety permit?

In addition to revising the heading of § 385.407 to be a short descriptive phrase, FMCSA also makes a clarifying revision to the section by adding paragraph (a)(2)(iv) regarding the requirement for carriers to maintain the minimum financial responsibility required by § 387.9 in order to receive a safety permit. This addition does not impose new burdens on carriers because 49 CFR part 387 already imposes financial responsibility requirements on motor carriers, including hazardous materials carriers, and these requirements are referenced in the safety fitness standard described in § 385.5. Safety permits and financial responsibility are already linked by § 385.407(a), which requires achieving a “satisfactory” safety rating as a prerequisite for issuance of a safety permit, and § 385.421T(a)(8), which specifies that failure to maintain the minimum required financial responsibility is grounds for suspending or revoking a safety permit. This revision will eliminate confusion and ensure consistency between these regulations.

Section 385.409 When may a temporary safety permit be issued to a motor carrier?

In addition to revising the heading of § 385.409 to be a short descriptive phrase, FMCSA also amends the section by removing the paragraph heading of § 385.409(a), which is unnecessary given the revised section heading. Although this section is currently suspended, FMCSA is amending it to mirror the amendments to temporary regulation § 385.409T.

Section 385.409T When may a temporary safety permit be issued to a motor carrier?

In addition to revising the heading of § 385.409T to be a short descriptive phrase, FMCSA also amends the section by removing the paragraph heading of § 385.409T(a), which is unnecessary given the revised section heading.

Section 385.411 Must a motor carrier obtain a safety permit if it has a State permit?

In addition to revising the heading of § 385.411 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation’s requirements from the heading to the body of the regulation, in order to clarify the regulation. Finally, § 385.411 contains a cross-reference to § 385.405, which is currently suspended, and FMCSA amends the section to reference § 385.405T instead.

Section 385.413 What happens if a motor carrier receives a proposed safety rating that is less than satisfactory?

In addition to revising the heading of § 385.413 to be a short descriptive phrase, FMCSA also amends the section by moving the context for the regulation’s requirements from the heading to the body of the regulation, in order to clarify the regulation.

Appendix B to Part 385—Explanation of Safety Rating Process

Part 385 covers FMCSA’s safety fitness procedures, and appendix B to part 385 provides an explanation of the safety rating process. Within appendix B, section III.B. explains that proposed safety ratings of “conditional” and “unsatisfactory” will become final 45 days after they are received, and the explanation uses the word “you.” The use of the word “you” is unnecessary and may cause confusion, therefore FMCSA amends the appendix to avoid using it in this instance.

J. Part 387—Minimum Levels of Financial Responsibility for Motor Carriers

Section 387.307 Property Broker Surety Bond or Trust Fund

FMCSA revises § 387.307(e)(5) and (6) to clarify that a broker's or freight forwarder's operating authority registration will be suspended 7 business days after the date a notice of pending suspension is served, not 7 business days after the date printed on the notice. This aligns with the Agency's service rules in part 386 and ensures that, when service is accomplished by mail, brokers and freight forwarders will receive the additional 5 days prescribed in § 386.8(c) to file a response before the suspension takes effect.

FMCSA also revises § 387.307(e)(5) to clarify the Agency's review process when a broker submits information in response to notification from the Agency that the broker's operating authority is pending suspension for failure to maintain adequate financial security. When this rule was issued on November 16, 2023 (88 FR 78656), the procedures specified in § 387.307(e)(6), which apply when a broker seeks reinstatement of its operating authority after being suspended, were also intended to apply to § 387.307(e)(5). However, due to a drafting error, the sentence "FMCSA will consider such evidence and provide written notice to the broker of its determination" was omitted from § 387.307(e)(5). FMCSA is therefore adding this sentence to § 387.307(e)(5), to reflect that the Agency's obligation to review evidence a broker submits and provide a response is consistent, regardless of whether the Agency receives information prior to a suspension or after a suspension has occurred.

K. Part 389—Rulemaking Procedures—Federal Motor Carrier Safety Regulations

Section 389.13 Initiation of Rulemaking

Section 389.13(a) describes how the Administrator may initiate a rulemaking, paragraph (b) describes certain steps the Administrator must take when promulgating a major rule, and paragraph (c) describes exceptions to the requirements of paragraph (b). The last sentence of paragraph (c) explains when a proposed rule should be evaluated to determine whether 49 CFR 5.17 applies. Section 5.17 was a former regulation in the CFR titled "Special procedures for economically significant and high-impact

rulemakings" and was removed in the final rule "Administrative Rulemaking, Guidance, and Enforcement Procedures" published on April 2, 2021 (86 FR 17292). When § 5.17 was removed, § 389.13 should have been amended to remove the last sentence of paragraph (c). FMCSA corrects this oversight by amending § 389.13 to remove the reference to § 5.17.

Section 389.41 Severability

FMCSA adds a new section that sets forth the Agency's policy on the severability of regulatory provisions in its final rules. Rules often address numerous provisions that are not inextricably intertwined. Therefore, FMCSA generally considers such provisions to be severable, meaning that if any provision in a rule is later held to be invalid, the remainder of the rule is not affected. If provisions of a rule are so inextricably intertwined that the invalidation of one provision would affect another, FMCSA generally explains the relationship between those provisions in the rule's preamble. Adding this section will improve rulemaking efficiency by allowing FMCSA to cite to the regulation in future rulemakings. Because this new section relates to Agency policy and practice, notice and comment is not required in order for the Agency to codify these practices in a new section of the regulations.

L. Part 390—Federal Motor Carrier Safety Regulations; General

As with part 350, FMCSA also revises part 390, subpart C, to eliminate the current question-and-answer format in favor of standard styling. This set of revisions includes a revision to the currently suspended § 390.40 to mirror the amendment made to the corresponding temporary section. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section's content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA's reasoning for making this change in part 390 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA also makes other amendments to part 390, which are described below.

Section 390.27 Locations of Motor Carrier Safety Service Centers

Section 390.27 provides the addresses of the motor carrier safety service

centers. FMCSA revises § 390.27 to change the address of the Midwestern Service Center from 4749 Lincoln Mall Drive, Suite 300A, Matteson, Illinois 60443 to 600 Holiday Plaza Drive, Suite 240, Matteson, Illinois 60443. The Midwestern Service Center moved in May 2024, requiring this update to the address.

Section 390.44 What are the procedures to correct the safety record of a motor carrier or an intermodal equipment provider?

In addition to revising the heading of § 390.44 to be a short descriptive phrase, FMCSA also amends the section to relocate the context for the regulation's requirements from the heading to the body.

Section 390.125 Qualified VA Examiner Certification Training

Subpart D of part 390 covers the medical examiner certification requirements for qualified Department of Veterans Affairs (VA) examiners, and § 390.125 requires that they complete certain training as part of the certification process. In June 2018, FMCSA adopted a rule that created an alternative process for certain VA healthcare professionals to be listed on the National Registry of Certified Medical Examiners (National Registry) (83 FR 26846, June 11, 2018). At the time, VA and FMCSA had planned to deliver the training through a web-based system operated by VA. Since that time, the technological capabilities of the National Registry system have been enhanced. Accordingly, VA and FMCSA now plan to deliver the training via the National Registry system, which will be more convenient for the qualified VA examiners. FMCSA revises § 390.125 to reflect this change in training delivery.

Section 390.127 Qualified VA Examiner Certification Testing

Section 390.127 requires that qualified VA examiners pass the medical examiner certification test as part of the certification process. Similar to the training required by § 390.125, the test was previously planned to be administered through a web-based system operated by VA. Because of the enhanced National Registry system capabilities, VA and FMCSA now plan to deliver the testing via the National Registry system, which will be more convenient for the qualified VA examiners. FMCSA revises § 390.127 to reflect this change in test administration.

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

Section 391.45 Persons Who Must Be Medically Examined and Certified

FMCSA revises § 391.45(c) to change “intra-city” to “intracity,” to conform the styling of the term with its use in other FMCSRs, including § 390.5T, “Definitions.”

Section 391.49 Alternative Physical Qualification Standards for the Loss or Impairment of Limbs

FMCSA amends § 391.49(d)(3)(i)(B) and (d)(3)(ii)(C) to clarify the meaning, effect, and effective date of the current requirement that individuals must be capable of demonstrating precision prehension and power grasp prehension with each upper limb separately to be eligible for a skill performance evaluation (SPE) certificate issued by FMCSA. An SPE certificate allows individuals who do not meet FMCSA’s physical qualification standards in § 391.41(b)(1) for limb loss or (b)(2) for limb impairment to operate a CMV in interstate commerce subject to the terms, conditions, and limitations provided on the certificate.

On December 5, 1985, FHWA published a final rule amending § 391.49 to incorporate its policy that required an individual with upper limb loss or impairment “to be capable of demonstrating precision prehension . . . and power grasp prehension . . . in each upper limb separately” (50 FR 49849). FHWA indicated that the requirement was based on the technical expertise and rehabilitation experiences of the personnel of the Krusen Center for Research and Engineering, which developed a report in 1977 for FHWA titled “Limb Prosthetics for the Bureau of Motor Carrier Safety”² (Krusen Study) (50 FR at 49850–51).

The term *prehension* is commonly defined to mean the act of taking hold, seizing, or grasping.³ The more specific medical terms *precision prehension* and *power grasp prehension* were used in the regulation to communicate clearly and effectively with the medical professionals who state whether an individual is capable of demonstrating precision prehension and power grasp

prehension; however, these medical terms often are not understood by individuals applying for SPE certificates.

The Krusen Study explains the terms in the context of a hand on page II–2 as follows:

Grasp, or prehension, activities are of two types: power grip and precision grip. The power grip is especially important in the driver’s ability to grasp the steering wheel. In the power grip, a clamping force is produced by wrapping the fingers around the wheel against the counterpressure offered by the palm and thumb. In a precision grip, an object like a pencil is held just between the tips of the fingers and the opposing thumb.

Accordingly, demonstrating power grasp prehension requires use of the palm and fingers/thumb of a hand, while demonstrating precision prehension requires use of the fingers/thumb of a hand.

FHWA stated that the effect of the requirement that an individual must be capable of demonstrating precision prehension and power grasp prehension in each upper limb separately was that individuals with loss of a hand or arm will be required to be properly fitted with a functional prosthesis and be proficient in its use prior to applying for a waiver⁴ (50 FR at 49849 and 49851). Individuals with upper limb impairment will be required to be fitted with a functional orthotic device and be proficient in its use prior to applying to a waiver, if the individual is not capable of demonstrating precision prehension and power grasp prehension in each upper limb separately without a device (50 FR at 49849 and 49851). Although FHWA included in the regulation that the requirement that an individual must be capable of demonstrating precision prehension and power grasp prehension in each upper limb separately does not apply to an individual who was granted a waiver absent a prosthetic or orthotic device prior to the 1985 amendment, FMCSA has determined that individuals applying for an SPE certificate would benefit from a clearer statement of the effect of the requirement.

For the reasons provided above, FMCSA clarifies § 391.49(d)(3)(i)(B) by changing the explanation of precision prehension from “(e.g., manipulating knobs and switches)” to “(e.g., grasping and manipulating knobs and switches

using the fingers/thumb)” and by changing the explanation of power grasp prehension from “(e.g., holding and maneuvering the steering wheel)” to “(e.g., grasping, holding, and maneuvering the steering wheel using a hand).” Because precision prehension and power grasp prehension are demonstrated by a hand, FMCSA changes “with each upper limb separately” to “with each hand separately” for clarity. To clarify the effect of the current requirement, FMCSA adds the following as a new second sentence: “Prior to applying for an SPE certificate, an applicant with loss of a hand or arm must be fitted and proficient with a proper prosthesis that enables the applicant to demonstrate precision prehension and power grasp prehension with each hand separately.” In the last sentence, FMCSA adds a date for the requirement by changing “prior to the publication of this amendment” to “prior to January 6, 1986, the effective date of the requirement” for clarity and the convenience of the reader.

Similarly, FMCSA clarifies § 391.49(d)(3)(ii)(C) by changing the explanation of precision prehension from “(e.g., manipulating knobs and switches)” to “(e.g., grasping and manipulating knobs and switches using the fingers/thumb)” and by changing the explanation of power grasp prehension from “(e.g., holding and maneuvering the steering wheel)” to “(e.g., grasping, holding, and maneuvering the steering wheel using a hand).” Because precision prehension and power grasp prehension are demonstrated by a hand, FMCSA changes “with each upper limb separately” to “with each hand separately” for clarity. To clarify the effect of the current requirement and FMCSA’s practice of allowing use of either a prosthesis or orthotic device as appropriate when upper limb impairment is present, FMCSA adds the following as a new second sentence: “Prior to applying for an SPE certificate, an applicant with upper limb impairment must be fitted and proficient with a proper prosthesis or orthotic device, if the applicant is not capable of demonstrating precision prehension and power grasp prehension with each hand separately without a prosthesis or orthotic device.” In the last sentence, FMCSA adds a date for the requirement by changing “prior to the publication of this amendment” to “prior to January 6, 1986, the effective date of the requirement” for clarity and the convenience of the reader. FMCSA also changes “an SPE certificate” in the last sentence to “a waiver” to make the

² Moss Rehabilitation Hospital, Krusen Center for Research and Engineering, Limb Prosthetics for the Bureau of Motor Carrier Safety. Washington: Department of Transportation, Federal Highway Administration, Bureau of Motor Carrier Safety, 1977. Available at <https://www.fmcsa.dot.gov/regulations/medical/krusen-study-limb-prosthetics> (last accessed May 28, 2024).

³ Merriam-Webster Dictionary. Available at <https://www.merriam-webster.com/dictionary/prehension> (last accessed May 28, 2024).

⁴ Beginning in 1964, individuals who did not satisfy the physical qualification requirements for limb loss or impairment were allowed to become medically certified through a waiver process (29 FR 14495, Oct. 22, 1964). After a change to FHWA’s waiver authority and the creation of FMCSA in 2000, § 391.49 was amended to reframe the waiver process as an alternative physical qualification standard with SPE certificates instead of waivers (65 FR 25285, May 1, 2000).

sentence factually correct. SPE certificates were not available prior to January 6, 1986. This error occurred in 2000 when a universal change was made to replace “waiver” with “SPE certificate,” or its equivalent, throughout § 391.49 (65 FR 25285, 25286, May 1, 2000).

Section 391.62 Limited Exemptions for Intra-City Zone Drivers

FMCSA revises the title of § 391.62 to change “intra-city” to “intracity,” to conform the styling of the term with its use in the body of the section and other FMCSRs, including § 390.5T, “Definitions.”

N. Part 393—Parts and Accessories Necessary for Safe Operation

As with part 350, FMCSA is also revising part 393, subpart I, to eliminate the current question-and-answer format in favor of standard styling. All section headings that are phrased as questions will be rephrased as brief descriptive phrases pertaining to the section’s content, but the body text of the regulations is unchanged unless otherwise stated below. FMCSA’s reasoning for making this change in part 393 is the same as for part 350. As used in these regulations, the question-and-answer format is cumbersome, difficult to read, and may cause confusion, and the Agency finds the regulations are clearer and more useful when standard styling is used. FMCSA is also making other amendments to part 393, which are described below.

Section 393.5 Definitions

FMCSA amends the § 393.5 definition of “longwood” to expressly include utility poles. This amendment was previously included in a final rule that published June 22, 2006 (71 FR 35819), however, the amendment was not codified in the regulations and utility poles were not expressly included in the definition of “longwood” FMCSA amends § 393.5 to correct this oversight.

O. Part 395—Hours of Service of Drivers

Automatic on-board recording devices (AOBRDs) are electric, electronic, electromechanical, or mechanical device used to record information pertinent to a driver’s duty status information, for the purpose of tracking the driver’s hours of service. As part of the AOBRD final rule, issued on September 30, 1988, § 395.15 codified in the regulations and prescribed the specific requirements for using such devices (53 FR 38670). Subsequently, Congress mandated the use of a different type of device, known as an electronic logging device (ELD), in Section

32301(b) of the Commercial Motor Vehicle Safety Enhancement Act, enacted as part of MAP–21 (Pub. L. 112–141, 126 Stat. 405, 786–788, July 6, 2012). FMCSA implemented this requirement on December 16, 2015, but allowed drivers and motor carriers to continue using certain AOBRDs until December 16, 2019 (80 FR 78292). As this date has passed and all drivers and carriers are now required to use ELDs, FMCSA is now making updates to part 395 to remove the requirements for AOBRDs in § 395.15, as well as multiple references to AOBRDs in other sections.

Section 395.1 Scope of Rules in This Part

Section § 395.1 contains the hours-of-service exceptions for part 395, and paragraph (d) explains the exceptions for oilfield operations. In describing how waiting time should be recorded, paragraph (d) references both §§ 395.8 and 395.15. Since drivers are no longer permitted to use AOBRDs to track hours of service, FMCSA removes the reference to § 395.15 in § 395.1(d).

Section 395.2 Definitions

FMCSA amends § 395.2 by removing the definition for “automatic on board recording device,” for the reasons stated above.

Section 395.8 Driver’s Record of Duty Status

FMCSA amends § 395.8 to remove cross references to AOBRDs and part § 395.15 for the reasons stated above. Specifically, FMCSA removes § 395.8(a)(1)(ii), renumbers the remaining paragraphs, and updates the cross-references to those paragraphs accordingly. Additionally, FMCSA removes current paragraph (a)(1)(iv)(B) and renumbers the remaining paragraphs accordingly.

FMCSA revises § 395.8(e)(2) and (3) by removing the references to AOBRDs.

Section 395.13 Drivers Ordered Out of Service

FMCSA revises § 395.13 to remove the cross-reference to § 395.15, for the reasons stated above.

Section 395.15 Automatic On-Board Recording Devices [Reserved]

FMCSA removes and reserves § 395.15, for the reasons stated above.

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

Section 397.65 Definitions

Section 397.65 provides definitions that apply to part 397, subpart C—Routing of Non-Radioactive Hazardous

Materials, including a definition for the term “commerce.” When that definition was adopted, it contained an error, referring to its paragraph (1) as subparagraph (a) (59 FR 51824, 51830 (Oct. 12, 1994)). FMCSA amends this section to correct the error.

III. Regulatory Analyses

A. *Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563 (Improving Regulation and Regulatory Review), E.O. 14094 (Modernizing Regulatory Review), and DOT Regulatory Policies and Procedures*

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review. The Office of Information and Regulatory Affairs within the Office of Management and Budget (OMB) determined that this final rulemaking is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O. 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. 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 impose new material requirements or increase compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

Changes to §§ 390.125 and 390.127 are expected to result in cost savings. Originally, the Department of Veterans Affairs’ (VA) medical examiner training and certification testing were to be delivered through a web-based platform operated by VA. To facilitate this initiative, FMCSA estimated the cost to develop an information technology (IT) connection between the National Registry and the VA platform to be \$258,000 with the costs split evenly between FMCSA and VA, *i.e.*, \$129,000 each. Because the National Registry has been unavailable, the alternative process

to get VA healthcare providers on the National Registry has not yet been implemented. Under the new approach in which the training and testing are to be delivered via the National Registry, it is no longer necessary to develop the IT connection originally included in the costs of the rule. Therefore, there will be cost savings for VA of at least \$129,000 under the new approach.

As part of the National Registry rebuild, FMCSA is scheduled to build mechanisms to deliver training for medical examiners for two other areas within the National Registry system. Once these two mechanisms are built, there will be a platform in existence to deliver training to medical examiners, and only minor modifications will be necessary to add another training area and an area for testing for the qualified VA examiners. Thus, the costs to FMCSA are expected to be minimal and significantly lower than the \$129,000 allocated to FMCSA for the IT connection that is no longer needed. Therefore, there will be cost savings for FMCSA of up to \$129,000.

B. Congressional Review Act

This rule is not a major rule as defined under the Congressional Review Act (5 U.S.C. 801–808).⁵

C. Regulatory Flexibility Act (Small Entities)

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857), FMCSA is not required to prepare a regulatory flexibility analysis under 5 U.S.C. 604(a) for this final rule because FMCSA has not issued a notice of proposed rulemaking prior to this action.

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), 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 **FOR FURTHER INFORMATION CONTACT**.

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 (Office of the National Ombudsman, see <https://www.sba.gov/about-sba/oversight-advocacy/office-national-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 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) (UMRA) requires Federal agencies to assess the effects of their discretionary regulatory actions. 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 \$200 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2023 levels) or more in any 1 year. Though this final rule would not result in such an expenditure, and the analytical requirements of UMRA do not apply as a result, the Agency discusses the effects of this rule elsewhere in this preamble.

F. Paperwork Reduction Act

This proposed 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

The Consolidated Appropriations Act, 2005,⁶ requires the Agency to assess the privacy impact 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 2002,⁷ requires Federal agencies to conduct a Privacy Impact Analysis (PIA) 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 PIA.

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 (NEPA) (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), appendix 2, paragraph 6.b and c. These Categorical Exclusions address technical amendments and other minor amendments such as those found in this rulemaking, as well as regulations concerning internal agency functions, organization, or personnel administration. Therefore, preparation

⁵ A *major rule* means any rule that the Office of Management and Budget 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, geographic regions, Federal, State, or local government agencies; 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. 802(4)).

⁶ Public Law 108–447, 118 Stat. 2809, 3268, note following 5 U.S.C. 552a (Dec. 4, 2014).

⁷ Public Law 107–347, sec. 208, 116 Stat. 2899, 2921 (Dec. 17, 2002).

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 369

Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 380

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

49 CFR Part 381

Motor carriers.

49 CFR Parts 382 and 383

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

49 CFR Part 384

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

49 CFR Part 385

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

49 CFR Part 387

Buses, Freight, Freight forwarders, Hazardous materials transportation, Highway safety, Insurance, Intergovernmental relations, Motor carriers, Motor vehicle safety, Moving of household goods, Penalties, Reporting and recordkeeping requirements, Surety bonds.

49 CFR Part 389

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 390

Highway safety, Intermodal transportation, 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 393

Highway safety, Motor carriers, Motor vehicle safety.

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 397

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

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.

■ 2. Amend § 350.101 by revising the section heading to read as follows:

§ 350.101 Purpose.

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■ 3. Amend § 350.103 by revising the section heading to read as follows:

§ 350.103 Effective date of changes to financial assistance programs.

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■ 4. Amend § 350.105 by revising the section heading to read as follows:

§ 350.105 Definitions.

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■ 5. Amend § 350.201 by revising the section heading to read as follows:

§ 350.201 MCSAP administration: Goal and purpose.

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■ 6. Amend § 350.203 by revising the section heading to read as follows:

§ 350.203 MCSAP administration: National MCSAP elements.

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■ 7. Amend § 350.205 by revising the section heading to read as follows:

§ 350.205 MCSAP administration: Funding eligibility.

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■ 8. Amend § 350.207 by revising the section heading to read as follows:

§ 350.207 MCSAP administration: Conditions to qualify for funds.

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■ 9. Amend § 350.209 by revising the section heading to read as follows:

§ 350.209 MCSAP administration: Application for funds using a CVSP.

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■ 10. Amend § 350.211 by revising the heading to read as follows:

§ 350.211 MCSAP administration: Requirements for the first year of the CVSP.

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■ 11. Amend § 350.213 by revising the section heading to read as follows:

§ 350.213 MCSAP administration: Requirements for the second and third years of the CVSP.

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■ 12. Amend § 350.215 by revising the section heading to read as follows:

§ 350.215 MCSAP administration: Response to CVSP.

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■ 13. Amend § 350.217 by revising the section heading to read as follows:

§ 350.217 MCSAP administration: Allocation of funds.

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■ 14. Amend § 350.219 by revising the section heading to read as follows:

§ 350.219 MCSAP administration: Award of funds under a continuing resolution or an extension of FMCSA's authorization.

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■ 15. Amend § 350.221 by revising the section heading to read as follows:

§ 350.221 MCSAP administration: Availability of funds.

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■ 16. Amend § 350.223 by revising the section heading to read as follows:

§ 350.223 MCSAP administration: Federal and State shares of costs incurred.

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■ 17. Amend § 350.225 by revising the section heading to read as follows:

§ 350.225 MCSAP administration: Maintenance of effort to qualify for funds.

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■ 18. Amend § 350.227 by revising the section heading to read as follows:

§ 350.227 MCSAP administration: Activities eligible for reimbursement.

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■ 19. Amend § 350.229 by revising the section heading to read as follows:

§ 350.229 MCSAP administration: Specific costs eligible for reimbursement.

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■ 20. Amend § 350.231 by revising the section heading to read as follows:

§ 350.231 MCSAP administration: Consequences for failure to meet conditions.

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■ 21. Amend § 350.301 by revising the section heading to read as follows:

§ 350.301 Compatibility review: Purpose.

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■ 22. Amend § 350.303 by revising the section heading to read as follows:

§ 350.303 Compatibility review: State responsibilities.

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■ 23. Amend § 350.305 by revising the section heading, adding introductory text, and revising paragraph (d)(3) to read as follows:

§ 350.305 Compatibility review: Allowable variances from the FMCSRs

The following variances are allowed for State laws and regulations applicable to intrastate commerce and are not subject to Federal jurisdiction.

* * * * *

(d) * * *

(3) A 150-air mile radius or the air mile radius under § 395.1(e)(1)(i) of this subchapter, whichever is greater.

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■ 24. Amend § 350.307 by revising the section heading to read as follows:

§ 350.307 Compatibility review: Procedures for obtaining a new exemption.

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■ 25. Amend § 350.309 by revising the section heading to read as follows:

§ 350.309 Compatibility review: Consequences of incompatible provisions.

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■ 26. Amend § 350.401 by revising the section heading to read as follows:

§ 350.401 High Priority Program: Purpose.

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■ 27. Amend § 350.403 by revising the section heading to read as follows:

§ 350.403 High Priority Program: Objectives.

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■ 28. Amend § 350.405 by revising the section heading to read as follows:

§ 350.405 High Priority Program: Funding conditions and qualifications.

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■ 29. Amend § 350.407 by revising the section heading to read as follows:

§ 350.407 High Priority Program: Application procedures.

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■ 30. Amend § 350.409 by revising the section heading to read as follows:

§ 350.409 High Priority Program: Responses to applications.

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■ 31. Amend § 350.411 by revising the section heading to read as follows:

§ 350.411 High Priority Program: Availability of funds.

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■ 32. Amend § 350.413 by revising the section heading to read as follows:

§ 350.413 High Priority Program: Federal and recipient shares of costs.

* * * * *

■ 33. Amend § 350.415 by revising the section heading to read as follows:

§ 350.415 High Priority Program: Activities and projects eligible for reimbursement.

* * * * *

■ 34. Amend § 350.417 by revising the section heading to read as follows:

§ 350.417 High Priority Program: Costs eligible for reimbursement.

* * * * *

PART 369—REPORTS OF MOTOR CARRIERS

■ 35. The authority citation for part 369 continues to read as follows:

Authority: 49 U.S.C. 14123; 49 CFR 1.87.

■ 36. Amend § 369.1 by revising paragraph (b) to read as follows:

§ 369.1 Annual reports of for-hire, non-exempt motor carriers of property, motor carriers of household goods, and dual property carriers.

* * * * *

(b) Where to file report. Carriers must file the annual report with the Federal Motor Carrier Safety Administration at the address in § 369.6. Blank copies of the report form are available at the Federal Motor Carrier Safety Administration website https://www.fmcsa.dot.gov/mission/form-m.

■ 37. Amend § 369.4 by revising paragraph (c) to read as follows:

§ 369.4 Annual reports of Class I carriers of passengers.

* * * * *

(c) Where to file report. The annual report shall be filed on or before March 31 of the year following the year to which it relates. The annual report shall be filed with the Federal Motor Carrier Safety Administration at the address in § 369.6. Blank copies of the report form are available at the Federal Motor Carrier Safety Administration website https://www.fmcsa.dot.gov/registration/form-mp-1-annual-report-form-and-

worksheet-class-i-motor-carriers-passengers.

PART 371—BROKERS OF PROPERTY

■ 38. The authority citation for part 371 continues to read as follows:

Authority: 49 U.S.C. 13301, 13501, and 14122; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

■ 39. Section 371.2 is revised and republished to read as follows:

§ 371.2 Definitions.

Unless specifically defined elsewhere, in this part:

Broker means a person who, for compensation, arranges, or offers to arrange, the transportation of property by an authorized motor carrier. Motor carriers, or persons who are employees or bona fide agents of carriers, are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport and which they have accepted and legally bound themselves to transport.

Bona fide agents are persons who are part of the normal organization of a motor carrier and perform duties under the carrier's directions pursuant to a preexisting agreement which provides for a continuing relationship, precluding the exercise of discretion on the part of the agent in allocating traffic between the carrier and others.

Brokerage or brokerage service is the arranging of transportation or the physical movement of a motor vehicle or of property. It can be performed on behalf of a motor carrier, consignor, or consignee.

Non-brokerage service is all other service performed by a broker on behalf of a motor carrier, consignor, or consignee.

PART 380—SPECIAL TRAINING REQUIREMENTS

■ 40. The authority citation for part 380 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.

■ 41. Amend § 380.301 by revising the introductory text to read as follows:

§ 380.301 General requirements.

There are two types of LCV driver-instructors: Classroom instructors and Skills instructors. Except as provided in § 380.303, an individual must meet the conditions under paragraph (a) or

paragraph (b) of this section to qualify as an LCV driver-instructor.

* * * * *

■ 42. Amend § 380.723 by:

- a. Revising paragraphs (c) introductory text, (c)(1)(iii), and the first sentence of paragraph (c)(2)(i); and
- b. Removing the word “notice” wherever it appears and adding in its place the word “notification”.

The revisions read as follows:

§ 380.723 Removal from training provider registry: procedure.

* * * * *

(c) *Response to notification of proposed removal and corrective action.* A training provider that has received a notification of proposed removal and wishes to remain on the TPR must submit a written response to FMCSA no later than 30 days after the date of issuance of the notification. The response must explain why the provider believes that FMCSA has relied on erroneous information in proposing removal from the TPR, in accordance with paragraph (c)(1) of this section, or the response must state that the provider intends to comply with this subpart and complete the corrective action(s) specified in FMCSA’s notification of proposed removal, in accordance with paragraph (c)(2) of this section. If the provider responds to the notification of proposed removal by indicating the provider intends to comply and take corrective action, the provider must submit documentation of completion of corrective action(s) in accordance with paragraph (c)(2)(i) of this section.

(1) * * *

(iii) If the provider does not respond in writing within 30 days of the date of issuance of a notification of proposed removal, explaining why the decision is not proper or stating that the provider will complete the corrective actions in accordance with paragraph (c)(2) of this section, the removal becomes effective immediately and the provider will be removed from the TPR. Any training conducted after the removal date is invalid.

(2) * * *

(i) The provider must comply with this subpart and complete the corrective actions specified in the notification of proposed removal no later than 60 days after either the date of issuance of the notification of proposed removal or the date FMCSA subsequently affirms or modifies the notification of proposed removal. * * *

* * * * *

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

■ 43. The authority citation for part 381 continues to read as follows:

Authority: 49 U.S.C. 31136(e), 31315; and 49 CFR 1.87.

■ 44. Amend § 381.210 by revising paragraph (c)(4) to read as follows:

§ 381.210 How do I request a waiver?

* * * * *

(c) * * *

(4) Explains how you would ensure that you could likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained in the absence of the waiver.

■ 45. Amend § 381.310 by revising paragraph (c)(5) to read as follows:

§ 381.310 How do I apply for an exemption?

* * * * *

(c) * * *

(5) Explains how you would ensure that you could likely achieve a level of safety that is equivalent to, or greater than, the level of safety that would be achieved absent such exemption; and

* * * * *

■ 46. Amend § 381.505 by revising paragraph (a) to read as follows:

§ 381.505 What are the minimum elements required for a pilot program?

(a) *Safety measures.* Before granting exemptions for a pilot program, the FMCSA will ensure that the safety measures in a pilot program are designed to achieve a level of safety that is equivalent to, or greater than, the level of safety that would otherwise be achieved through compliance with the regulations prescribed.

* * * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

■ 47. 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.

§ 382.101 [Amended]

■ 48. Amend § 382.101 by adding “(CMVs)” to the end of sentence.

§ 382.103 [Amended]

- 49. Amend § 382.103 by:
 - a. Removing “§ 390.3(f)” wherever it appears and adding in its place “§ 390.3T(f)”; and
 - b. Removing “§ 390.5” wherever it appears and adding in its place “§ 390.5T”.

■ 50. Amend § 382.107 by:

- a. Revising the introductory text; and
- b. Revising the defined term of “Commercial motor vehicle” to read as “Commercial motor vehicle (CMV)”.

The revisions read as follows:

§ 382.107 Definitions.

Words or phrases used in this part are defined in §§ 386.2 and 390.5T of this subchapter, and § 40.3 of this title, except as provided in this section—

* * * * *

Commercial motor vehicle (CMV)

* * *

* * * * *

■ 51. Revise § 382.413 to read as follows:

§ 382.413 Inquiries for alcohol and controlled substances information from previous employers.

(a) Employers must request alcohol and controlled substances information from previous employers in accordance with the requirements of § 391.23(e).

(b) As of January 6, 2023, employers must use the Drug and Alcohol Clearinghouse in accordance with § 382.701(a) to comply with the requirements of § 391.23(e) with respect to FMCSA-regulated employers. Exception: When an employee who is subject to follow-up testing has not successfully completed all follow-up tests, employers must request the employee’s follow-up testing plan directly from the previous employer in accordance with § 391.23(e)(4)(i).

(c) If an applicant was subject to an alcohol and controlled substance testing program under the requirements of a DOT Agency other than FMCSA, the employer must request the alcohol and controlled substances information required under this section and § 391.23(e) directly from those employers regulated by a DOT Agency other than FMCSA.

§ 382.501 [Amended]

■ 52. Amend § 382.501 paragraph (b) by removing the semicolon and adding in its place a comma.

§ 382.601 [Amended]

■ 53. Amend § 382.601 by removing “§ 382.303(d)” wherever it appears and adding in its place “§ 382.303”.

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

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

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 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.

§ 383.141 [Amended]

■ 55. Amend § 383.141 by removing in the introductory text of paragraph (b) the word “state” and adding in its place the word “State”.

PART 384—STATE COMPLIANCE WITH COMMERCIAL DRIVER’S LICENSE PROGRAM

■ 56. The authority citation for part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301, et seq., and 31502; secs. 103 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 5524 of Pub. L. 114–94, 129 Stat. 1312, 1560; and 49 CFR 1.87.

§ 384.405 [Amended]

■ 57. Amend § 384.405 in paragraph (a) introductory text by removing the word “may” and adding in its place the word “shall”.

PART 385—SAFETY FITNESS PROCEDURES

■ 58. 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.

■ 59. Amend § 385.201 by revising the section heading to read as follows:

§ 385.201 Qualifications for performing a safety audit or investigation.

* * * * *

■ 60. Amend § 385.203 by revising the section heading to read as follows:

§ 385.203 Certification requirements for performing a safety audit or investigation.

* * * * *

■ 61. Revise § 385.205 to read as follows:

§ 385.205 Requirements for re-certification.

An individual who has lost certification to perform a safety audit or investigation, including review, can only be re-certified if they successfully complete the requirements of § 385.203(a) and (b).

■ 62. Amend § 385.207 by revising the section heading to read as follows:

§ 385.207 Requirements to obtain and maintain certification to conduct driver or vehicle inspections.

* * * * *

■ 63. Amend § 385.301 by:

- a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.301 Requirements before beginning interstate operations.

* * * * *

■ 64. Amend § 385.301T by revising the section heading to read as follows:

§ 385.301T Requirements before beginning interstate operations.

* * * * *

■ 65. Amend § 385.303 by:

- a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.303 How to Register with FMCSA.

* * * * *

■ 66. Amend § 385.303T by revising the section heading to read as follows:

§ 385.303T How to Register with FMCSA.

* * * * *

■ 67. Amend § 385.305 by:

- a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.305 Completing the registration process.

* * * * *

■ 68. Amend § 385.305T by revising the section heading to read as follows:

§ 385.305T Completing the registration process.

* * * * *

■ 69. Amend § 385.306 by revising the section heading to read as follows:

§ 385.306 Consequences of furnishing misleading information or making a false statement.

* * * * *

■ 70. Amend § 385.307 by revising the section heading to read as follows:

§ 385.307 New entrant safety monitoring procedures.

* * * * *

■ 71. Amend § 385.308 by revising the section heading to read as follows:

§ 385.308 Expedited safety audits and compliance reviews of new entrants.

* * * * *

■ 72. Amend § 385.309 by revising the section heading to read as follows:

§ 385.309 Safety audit: Purpose.

* * * * *

■ 73. Amend § 385.311 by revising the section heading to read as follows:

§ 385.311 Safety audit: Scope.

* * * * *

■ 74. Amend § 385.313 by revising the section heading to read as follows:

§ 385.313 Safety audit: Auditor.

* * * * *

■ 75. Amend § 385.315 by revising the section heading to read as follows:

§ 385.315 Safety audit: Location.

* * * * *

■ 76. Amend § 385.317 by revising the section heading to read as follows:

§ 385.317 Safety audit: Safety fitness determination.

* * * * *

■ 77. Amend § 385.319 by revising the section heading to read as follows:

§ 385.319 Safety audit: Completion.

* * * * *

■ 78. Amend § 385.321 by revising the section heading to read as follows:

§ 385.321 Safety audit: Failure.

* * * * *

■ 79. Amend § 385.323 by revising the section heading to read as follows:

§ 385.323 Safety audit: Extensions for corrective action.

* * * * *

■ 80. Amend § 385.325 by revising the section heading to read as follows:

§ 385.325 Safety audit: Outcomes of a corrective action notice.

* * * * *

■ 81. Amend § 385.327 by revising the section heading to read as follows:

§ 385.327 Safety audit: Administrative review.

* * * * *

■ 82. Amend § 385.329 by:

- a. Lifting the suspension of the section;
■ b. Revising the section heading; and
■ c. Suspending the section indefinitely.
The revision reads as follows:

§ 385.329 Re-application.

* * * * *

■ 83. Amend § 385.329T by revising the section heading to read as follows:

§ 385.329T Re-application.

* * * * *

■ 84. Amend § 385.331 by revising the section heading to read as follows:

§ 385.331 New entrant violation of out-of-service order.

* * * * *

- 85. Amend § 385.333 by revising the section heading to read as follows:

§ 385.333 Conclusion of 18-month safety monitoring period.

* * * * *

- 86. Amend § 385.335 by revising the section heading to read as follows:

§ 385.335 Compliance review in lieu of safety audit.

* * * * *

- 87. Amend § 385.337 by revising the section heading to read as follows:

§ 385.337 New entrant refusal to permit safety audit.

* * * * *

- 88. Amend § 385.401 by revising the section heading to read as follows:

§ 385.401 Hazardous materials safety permits: Purpose and scope.

* * * * *

- 89. Amend § 385.402 by revising the section heading to read as follows:

§ 385.402 Hazardous materials safety permits: Definitions.

* * * * *

- 90. Amend § 385.403 by revising the section heading to read as follows:

§ 385.403 Prohibited transportation without safety permit.

* * * * *

- 91. Amend § 385.405 by:

- a. Lifting the suspension of the section;
 - b. Revising the section heading; and
 - c. Suspending the section indefinitely.
- The revision reads as follows:

§ 385.405 Application for safety permit.

* * * * *

- 92. Amend § 385.405T by revising the section heading to read as follows:

§ 385.405T Application for safety permit.

* * * * *

- 93. Amend § 385.407 by revising the section heading and revising and republishing paragraph (a)(2) to read as follows:

§ 385.407 Requirements for a safety permit.

(a) * * *

(2) FMCSA will not issue a safety permit to a motor carrier that:

(i) Does not certify that it has a satisfactory security program as required in § 385.407(b);

(ii) Has a crash rate in the top 30 percent of the national average as indicated in the FMCSA Motor Carrier

Management Information System (MCMIS);

(iii) Has a driver, vehicle, hazardous materials, or total out-of-service rate in the top 30 percent of the national average as indicated in the MCMIS; or

(iv) Does not have the minimum financial responsibility required by § 387.9 of this chapter or an applicable State requirement.

* * * * *

- 94. Amend § 385.409 by:

- a. Lifting the suspension of the section;
- b. Revising the section heading;
- c. Revising and republishing paragraph (a); and
- d. Suspending the section indefinitely.

The revision reads as follows:

§ 385.409 Temporary safety permit.

(a) If a motor carrier does not meet the criteria of § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit, a motor carrier must certify on Form MCSA-1, the URS online application, that it is operating in full compliance with the HMRs, with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this subchapter or in State regulations, whichever is applicable.

* * * * *

- 95. Amend § 385.409T by revising the section heading and revising and republishing paragraph (a) to read as follows:

§ 385.409T Temporary safety permit.

(a) If a motor carrier does not meet the criteria in § 385.407(a), FMCSA may issue it a temporary safety permit. To obtain a temporary safety permit a motor carrier must certify on Form MCS-150B that it is operating in full compliance with the HMRs; with the FMCSRs, and/or comparable State regulations, whichever is applicable; and with the minimum financial responsibility requirements in part 387 of this chapter or in State regulations, whichever is applicable.

* * * * *

- 96. Revise § 385.411 to read as follows:

§ 385.411 State-issued safety permit.

A motor carrier must comply with the requirements of this subpart even if it has a State-issued safety permit. However, if FMCSA is able to verify that a motor carrier has a safety permit issued by a State under a program that FMCSA has determined to be equivalent

to the provisions of this subpart, FMCSA will immediately issue a safety permit to the motor carrier upon receipt of an application in accordance with § 385.405T, without further inspection or investigation.

- 97. Revise § 385.413 to read as follows:

§ 385.413 Proposed safety rating less than Satisfactory.

(a) If a motor carrier receives a proposed safety rating that is less than Satisfactory and does not already have a safety permit, it will not be issued a safety permit (including a temporary safety permit) unless and until a Satisfactory safety rating is issued to the motor carrier.

(b) If a motor carrier receives a proposed safety rating that is less than Satisfactory and holds a safety permit (including a temporary safety permit), the safety permit will be subject to revocation or suspension (see § 385.421).

- 98. Amend § 385.415 by revising the section heading to read as follows:

§ 385.415 Operational requirements for the transportation of a hazardous material for which a permit is required.

* * * * *

- 99. Amend § 385.417 by revising the section heading to read as follows:

§ 385.417 Availability of motor carrier's safety permit number.

* * * * *

- 100. Amend § 385.419 by:

- a. Lifting the suspension of the section;
 - b. Revising the section heading; and
 - c. Suspending the section indefinitely.
- The revision reads as follows:

§ 385.419 Effective period of safety permit.

* * * * *

- 101. Amend § 385.419T by revising the section heading to read as follows:

§ 385.419T Effective period of safety permit.

* * * * *

- 102. Amend § 385.421 by:

- a. Lifting the suspension of the section;
 - b. Revising the section heading; and
 - c. Suspending the section indefinitely.
- The revision reads as follows:

§ 385.421 Revocation or suspension of safety permit.

* * * * *

- 103. Amend § 385.421T by revising the section heading to read as follows:

§ 385.421T Revocation or suspension of safety permit.

* * * * *

■ 104. Amend § 385.423 by revising the section heading to read as follows:

§ 385.423 Administrative review of a denial, suspension, or revocation of a safety permit.

* * * * *

Appendix B to Part 385 [Amended]

■ 105. Amend Appendix B in section III.B. by removing the words “you receive” wherever it appears and adding in its place the words “receipt of”.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

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

Authority: 49 U.S.C. 13101, 13301, 13906, 13908, 14701, 31138, 31139; sec. 204(a), Pub. L. 104–88, 109 Stat. 803, 941; and 49 CFR 1.87.

■ 107. Amend § 387.307 by revising and republishing paragraphs (e)(5) and (6) to read as follows:

§ 387.307 Property broker surety bond or trust fund.

* * * * *

(e) * * *

(5) Upon notification by the surety company or financial institution in accordance with paragraphs (e)(1) through (4) of this section, FMCSA will provide written notice to the broker that its operating authority registration issued pursuant to part 365 of this chapter will be suspended within 7 business days of service of the notice unless the broker provides written

evidence to FMCSA that the notification was sent in error, the surety bond or trust fund has been restored to the \$75,000 amount required by this section, or the pending claims have been satisfied without the use of surety bond or trust fund assets. FMCSA will consider such evidence and provide written notice to the broker of its determination.

(6) If the broker fails to respond to the notice within 7 business days of service of the notice, FMCSA will enter a suspension of the broker’s authority and provide written notice to the broker that the suspension is in effect. A broker whose authority has been suspended may request that FMCSA lift the suspension by providing written evidence that the notification was sent in error; the surety bond or trust fund has been restored to the \$75,000 amount required by this section; or the pending claims have been satisfied without the use of surety bond or trust fund assets. FMCSA will consider such evidence and provide written notice to the broker of its determination.

* * * * *

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

■ 108. The authority citation for part 389 continues to read as follows:

Authority: 49 U.S.C. 113, 501 *et seq.*, subchapters I and III of chapter 311, chapter 313, and 31502; sec. 5204 of Pub. L. 114–94, 129 Stat. 1312, 1536; 42 U.S.C. 4917; and 49 CFR 1.87.

§ 389.13 [Amended]

■ 109. Amend § 389.13 by removing the last sentence of paragraph (c).

■ 110. Add § 389.41 to subpart B to read as follows:

§ 389.41 Severability.

If any provision of a rule issued under this part is held invalid, the remaining provisions are not affected unless specifically stated otherwise in the rule.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; 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. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

■ 112. Amend § 390.27 by revising in the table the entry for “Midwestern” to read as follows:

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
* * * * *	* * * * *	* * * * *
Midwestern	Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, Ohio, Wisconsin.	600 Holiday Plaza Drive, Suite 240, Matteson, Illinois 60443.
* * * * *	* * * * *	* * * * *

* * * * *

■ 113. Amend § 390.40 by:
 ■ a. Lifting the suspension of the section;
 ■ b. Revising the section heading; and
 ■ c. Suspending the section indefinitely.
 The revision reads as follows:

§ 390.40 Intermodal equipment providers.

* * * * *

■ 114. Amend § 390.40T by revising the section heading to read as follows:

§ 390.40T Intermodal equipment providers.

* * * * *

■ 115. Amend § 390.42 by revising the section heading to read as follows:

§ 390.42 Drivers and motor carriers operating intermodal equipment.

* * * * *

■ 116. Amend § 390.44 by revising the section heading to read as follows:

§ 390.44 Correcting the safety record of a motor carrier or an intermodal equipment provider.

* * * * *

■ 117. Amend § 390.46 by revising the section heading to read as follows:

§ 390.46 Preemption of State and local laws and regulations on the inspection, repair, and maintenance of intermodal equipment.

* * * * *

■ 118. Revise § 390.125 to read as follows:

§ 390.125 Qualified VA examiner certification training.

A qualified VA examiner applying for certification under §§ 390.123 through 390.135 must complete training developed and provided by FMCSA through the National Registry of Certified Medical Examiners system.

■ 119. Revise § 390.127 to read as follows:

§ 390.127 Qualified VA examiner certification testing.

To receive medical examiner certification from FMCSA under §§ 390.123 through 390.135, a qualified VA examiner must pass the medical examiner certification test developed and provided by FMCSA through the National Registry of Certified Medical Examiners system.

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

■ 120. 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.

§ 391.45 [Amended]

■ 121. Amend § 391.45 by removing the word “intra-city” wherever it appears and adding in its place the word “intracity”.

■ 122. Amend § 391.49 by revising paragraphs (d)(3)(i)(B) and (d)(3)(ii)(C) to read as follows:

§ 391.49 Alternative physical qualification standards for the loss or impairment of limbs.

* * * * *

- (d) * * *
- (3) * * *
- (i) * * *

(B) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., grasping and manipulating knobs and switches using the fingers/thumb) and power grasp prehension (e.g., grasping, holding, and maneuvering the steering wheel using a hand) with each hand separately. Prior to applying for an SPE certificate, an applicant with loss of a hand or arm must be fitted and proficient with a proper prosthesis that enables the applicant to demonstrate precision prehension and power grasp prehension with each hand separately. This requirement does not apply to an individual who was granted a waiver, absent a prosthetic device, prior to January 6, 1986, the effective date of the requirement.

- (ii) * * *

(C) A statement by the examiner that the applicant is capable of demonstrating precision prehension (e.g., grasping and manipulating knobs and switches using the fingers/thumb)

and power grasp prehension (e.g., grasping, holding, and maneuvering the steering wheel using a hand) with each hand separately. Prior to applying for an SPE certificate, an applicant with upper limb impairment must be fitted and proficient with a proper prosthesis or orthotic device, if the applicant is not capable of demonstrating precision prehension and power grasp prehension with each hand separately without a prosthesis or orthotic device. This requirement does not apply to an individual who was granted a waiver, absent an orthotic device, prior to January 6, 1986, the effective date of the requirement.

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■ 123. Amend § 391.62 by revising the section heading to read as follows:

§ 391.62 Limited exemptions for intracity zone drivers.

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PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 124. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, 31502; sec. 1041(b), Pub. L. 102–240, 105 Stat. 1914, 1993; secs. 5301 and 5524, Pub. L. 114–94, 129 Stat. 1312, 1543, 1560; and 49 CFR 1.87.

■ 125. Amend § 393.5 by revising the definition of “Longwood” to read as follows:

§ 393.5 Definitions.

* * * * *

Longwood. All logs, including utility poles, that are not shortwood, i.e., are over 4.9 m (16 feet) long. Such logs are usually described as long logs or treelength.

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■ 126. Amend § 393.100 by revising the section heading to read as follows:

§ 393.100 Applicability and general requirements of cargo securement standards.

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■ 127. Amend § 393.102 by revising the section heading to read as follows:

§ 393.102 Minimum performance criteria for cargo securement devices and systems.

* * * * *

■ 128. Amend § 393.104 by revising the section heading to read as follows:

§ 393.104 Standards for cargo securement devices and systems.

* * * * *

■ 129. Amend § 393.106 by revising the section heading to read as follows:

§ 393.106 General requirements for securing articles of cargo.

* * * * *

■ 130. Amend § 393.108 by revising the section heading to read as follows:

§ 393.108 Determining the working load limit of a tiedown or the load restraining value of a friction mat.

* * * * *

■ 131. Amend § 393.110 by revising the section heading to read as follows:

§ 393.110 Additional requirements for determining the minimum number of tiedowns.

* * * * *

■ 132. Amend § 393.112 by revising the section heading to read as follows:

§ 393.112 Adjustability of tiedowns.

* * * * *

■ 133. Amend § 393.114 by revising the section heading to read as follows:

§ 393.114 Requirements for front end structures used as part of a cargo securement system.

* * * * *

■ 134. Amend § 393.116 by revising the section heading to read as follows:

§ 393.116 Specific securement requirements for logs.

* * * * *

■ 135. Amend § 393.118 by revising the section heading to read as follows:

§ 393.118 Specific securement requirements for dressed lumber and similar building products.

* * * * *

■ 136. Amend § 393.120 by revising the section heading to read as follows:

§ 393.120 Specific securement requirements for metal coils.

* * * * *

■ 137. Amend § 393.122 by revising the section heading to read as follows:

§ 393.122 Specific securement requirements for paper rolls.

* * * * *

■ 138. Amend § 393.124 by revising the section heading to read as follows:

§ 393.124 Specific securement requirements for concrete pipe.

* * * * *

■ 139. Amend § 393.126 by revising the section heading to read as follows:

§ 393.126 Specific securement requirements for intermodal containers.

* * * * *

■ 140. Amend § 393.128 by revising the section heading to read as follows:

§ 393.128 Specific securement requirements for automobiles, light trucks, and vans.

* * * * *

■ 141. Amend § 393.130 by revising the section heading to read as follows:

§ 393.130 Specific securement requirements for heavy vehicles, equipment, and machinery.

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■ 142. Amend § 393.132 by revising the section heading to read as follows:

§ 393.132 Specific securement requirements for flattened or crushed vehicles.

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■ 143. Amend § 393.134 by revising the section heading to read as follows:

§ 393.134 Specific securement requirements for roll-on/roll-off and hook lift containers.

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■ 144. Amend § 393.136 by revising the section heading to read as follows:

§ 393.136 Specific securement requirements for large boulders.

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PART 395—HOURS OF SERVICE OF DRIVERS

■ 145. 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.

■ 146. Amend § 395.1 by revising and republishing paragraph (d)(2) to read as follows.

§ 395.1 Scope of rules in this part.

* * * * *

(d) * * *

(2) In the case of specially trained drivers of commercial motor vehicles that are specially constructed to service oil wells, on-duty time shall not include waiting time at a natural gas or oil well site. Such waiting time shall be recorded as “off duty” for purposes of § 395.8, with remarks or annotations to indicate the specific off-duty periods that are waiting time, or on a separate “waiting time” line on the record of duty status to show that off-duty time is also waiting time. Waiting time shall not be included in calculating the 14-hour period in § 395.3(a)(2). Specially trained

drivers of such commercial motor vehicles are not eligible to use the provisions of paragraph (e)(1) of this section.

* * * * *

§ 395.2 [Amended]

■ 147. Amend § 395.2 by removing the definition of “Automatic on-board recording device”.

■ 148. Amend § 395.8 by revising paragraphs (a)(1) and (e)(2) and (3) to read as follows:

§ 395.8 Driver’s record of duty status.

(a) (1) Except for a private motor carrier of passengers (nonbusiness), as defined in § 390.5 of this subchapter, a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver’s duty status for each 24-hour period using the method prescribed in paragraphs (a)(1)(i) through (iii) of this section, as applicable.

(i) Subject to paragraph (a)(1)(ii) of this section, a motor carrier operating commercial motor vehicles must install and require each of its drivers to use an ELD to record the driver’s duty status in accordance with subpart B of this part no later than December 18, 2017.

(ii)(A) A motor carrier may require a driver to record the driver’s duty status manually in accordance with this section, rather than require the use of an ELD, if the driver is operating a commercial motor vehicle:

(1) In a manner requiring completion of a record of duty status on not more than 8 days within any 30-day period;

(2) In a driveaway-towaway operation in which the vehicle being driven is part of the shipment being delivered;

(3) In a driveaway-towaway operation in which the vehicle being transported is a motor home or a recreation vehicle trailer; or

(4) That was manufactured before model year 2000, as reflected in the vehicle identification number as shown on the vehicle’s registration.

(B) The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required. The duty status shall be recorded on a specified grid, as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form.

(iii) Subject to paragraphs (a)(1)(i) and (ii) of this section, until December 18, 2017, a motor carrier operating commercial motor vehicles shall require each of its drivers to record the driver’s record of duty status:

(A) Using an ELD that meets the requirements of subpart B of this part; or

(B) Manually, recorded on a specified grid as shown in paragraph (g) of this section. The grid and the requirements of paragraph (d) of this section may be combined with any company form. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

* * * * *

(e) * * *

(2) No driver or motor carrier may disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an ELD so that the device does not accurately record and retain required data.

(3) No driver or motor carrier may permit or require another person to disable, deactivate, disengage, jam, or otherwise block or degrade a signal transmission or reception, or reengineer, reprogram, or otherwise tamper with an ELD so that the device does not accurately record and retain required data.

* * * * *

§ 395.13 [Amended]

■ 149. Amend § 395.13 in paragraph (b)(2) by removing the words “or § 395.15 of this part”.

§ 395.15 [Removed and Reserved]

■ 150. Remove and reserve § 395.15.

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

■ 151. 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.

§ 397.65 [Amended]

■ 152. Amend § 397.65 in paragraph (s) of the definition of “Commerce”, by removing the words “subparagraph (a)” and adding in their place the words “paragraph (1) of this definition”.

Issued under authority delegated in 49 CFR 1.87.

Vincent G. White,
Deputy Administrator.

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