

0.361, 1.3, the petition for reconsideration filed by Sorenson Communications, LLC, is *granted* in part and *dismissed* in part.

List of Subjects in 47 CFR Part 64

Incorporation by reference, Individuals with disabilities, Telecommunications, Telecommunications relay services.

Federal Communications Commission.

Gregory Haledjian,

Legal Advisor, Consumer and Governmental Affairs Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

■ 1. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 154, 201, 202, 217, 218, 220, 222, 225, 226, 227, 227b, 228, 251(a), 251(e), 254(k), 262, 276, 403(b)(2)(B), (c), 616, 620, 1401–1473, unless otherwise noted; Pub. L. 115–141, Div. P, sec. 503, 132 Stat. 348, 1091.

■ 2. Amend § 64.621 by

■ a. Revising paragraph (a)(3); and

■ b. Removing and reserving (c)(2)(ii).

The revision reads as follows:

§ 64.621 Interoperability and portability.

(a) * * *

(3) All VRS providers must ensure that their VRS access technologies and their video communication service platforms are interoperable with the VRS Access Technology Reference Platform, including for point-to-point calls. No VRS provider shall be compensated for minutes of use involving their VRS access technologies or video communication service platforms that are not interoperable with the VRS Access Technology Reference Platform.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 381, 382, 383, 384, 385, 390, and 391

[Docket No. FMCSA–2020–0135]

RIN 2126–AC33

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

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

ACTION: Final rule.

SUMMARY: FMCSA amends its regulations by making technical corrections throughout the Federal Motor Carrier Safety Regulations (FMCSRs). The Agency makes minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. The Agency also makes nondiscretionary, ministerial changes that are statutorily mandated and changes that merely align regulatory requirements with the underlying statutory authority. Finally, this rule contains two minor changes to FMCSA's rules of agency procedure or practice that relate to separation of functions and allowing FMCSA and State personnel to conduct off-site compliance reviews of motor carriers following the same safety fitness determination criteria used in on-site compliance reviews.

DATES: This final rule is effective July 7, 2021, except for amendatory instruction 31 which is effective September 7, 2021.

FOR FURTHER INFORMATION CONTACT: Mr. Nicholas Warren, Regulatory Development Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–6124; *nicholas.warren@dot.gov*.

SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

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

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

Between 1984 and 1999, several statutes added to FHWA's authority. Various statutes authorize the enforcement of the FMCSRs, the Hazardous Materials Regulations, and the Commercial Regulations, and provide both civil and criminal penalties for violations of these requirements. These statutes include the Motor Carrier Safety Act of 1984 (Pub. L. 98–554, Title II, 98 Stat. 2832, Oct. 30, 1984), codified at 49 U.S.C. chapter 311, subchapter III; the Commercial Motor Vehicle Safety Act of 1986 (Pub. L. 99–570, Title XII, 100 Stat. 3207–170, Oct. 27, 1986), codified at 49 U.S.C. chapter 313; the Hazardous Materials Transportation Uniform Safety Act of 1990, as amended (Pub. L. 101–615, 104 Stat. 3244, Nov. 16, 1990), codified at 49 U.S.C. chapter 51; the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. 102–143, Title V, 105 Stat. 917, 952, Oct. 28, 1991), codified at 49 U.S.C. 31306; and 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.

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. The motor carrier safety responsibilities previously assigned to both the ICC and FHWA are now assigned to FMCSA.

Congress expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity

Act: A Legacy for Users (SAFETEA-LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA-LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP-21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012); and the Fixing America’s Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015).

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 Code of Federal Regulations.

The Administrative Procedure Act (APA) specifically provides exceptions to its notice and comment rulemaking procedures when an agency finds there is good cause to dispense with them, and incorporates the finding, and a brief statement of reasons therefore, in the rules issued (5 U.S.C. 553(b)(3)(B)). Good cause exists when an agency determines that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest. The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. The technical amendments do not impose any material new requirements or increase compliance obligations. In addition, the amendments removing the word “on-site” from the definitions of *Compliance review* and *Roadability review* in § 385.3 recognize the technological advances that allow FMCSA to perform the same investigative functions remotely in some cases that it could perform previously only by in-person reviews of the motor carrier’s files. The regulatory standards are not changing as a result of this minor procedural adjustment. Moreover, the APA provides an additional exception to its notice and comment rulemaking procedures for “rules of agency organization, procedure, or practice” (5 U.S.C. 553(b)(3)(A)). For these reasons, FMCSA finds good cause that notice and public comment on this final rule are unnecessary.

The amendment adding a separation of functions provision in new § 385.21

also concerns the APA exception for “rules of agency organization, procedure, or practice.” The amendment is, therefore, exempted 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, except as noted in amendatory instruction 31, concerning the revised Medical Examination Report Form, MCSA–5875, in § 391.43(f).

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

II. Section-by-Section Analysis

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

A. Section 381.110 What definitions are applicable to this part?

FMCSA adds parts 380 and 384 to the definition of *FMCSRs* in § 381.110. Through this amendment, in conjunction with the following amendments to §§ 381.200, 381.300, and 381.400, FMCSA adds parts 380 and 384 to the list of parts and sections of the *FMCSRs* from which, pursuant to part 381, FMCSA may grant a waiver, an exemption, or an exemption for a pilot program. This change is in accordance with 49 U.S.C. 31136(e) and 49 U.S.C. 31315(a), (b), and (c), which provide for waivers and exemptions from regulations prescribed under 49 U.S.C. 31136 and chapter 313, and for pilot programs, respectively. As all regulations set forth in parts 380 and 384 were promulgated under that authority, this change merely aligns the regulatory requirements in part 381 with the authority set forth in those statutes. FMCSA also changes the punctuation for the list in the parenthetical text.

¹ A “major rule” means any rule that the Administrator of the Office of Information and Regulatory Affairs of 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, Federal agencies, State agencies, local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 804(2)).

B. Section 381.200 What is a waiver?

In § 381.200(d), FMCSA adds parts 380 and 384 to the *FMCSRs* from which entities and individuals can request waivers pursuant to part 381, subpart B. This change is authorized as stated above in section II.A.

C. Section 381.300 What is an exemption?

In § 381.300(c), FMCSA adds parts 380 and 384 to the *FMCSRs* from which entities and individuals can request exemptions pursuant to part 381, subpart C. This change is authorized as stated above in section II.A.

D. Section 381.400 What is a pilot program?

In § 381.400(f), FMCSA adds parts 380 and 384 to the *FMCSRs* from which entities and individuals can request exemptions for pilot programs pursuant to part 381, subpart D. This change is authorized as stated above in section II.A.

E. Section 382.103 Applicability

In § 382.103(d)(1), FMCSA adds the word “only” after “comply” to clarify that drivers who perform only Federal Transit Administration (FTA)-regulated safety-sensitive functions are exempt from part 382, as are their employers. By contrast, FTA-regulated entities that employ drivers who also perform FMCSA-regulated safety-sensitive functions must comply with the relevant testing requirements of part 382. FMCSA makes this change, which reflects the purpose and intent of § 382.103(d)(1), as stated above, to improve clarity.

F. Section 382.121 Employee Admission of Alcohol and Controlled Substances Use

FMCSA inserts “non-DOT” before “return to duty” in paragraphs (b)(4)(i) and (ii) of § 382.121. Paragraph (a) provides that employees who self-admit alcohol misuse or controlled substances use to their employers are not subject to obtaining referral, evaluation, and treatment under parts 382 and 40. The changes in paragraph (b)(4) clarify that the “return to duty” (RTD) testing referenced is not the DOT testing required under parts 382 and 40. This clarification is intended to remind employers that, consistent with the purpose of this section, results of non-DOT RTD tests conducted in accordance with paragraph (b)(4) should not be reported to the Commercial Driver’s License Drug and Alcohol Clearinghouse (Clearinghouse), an electronic database that contains driver-specific drug and alcohol program

violation information. The changes also provide consistency with the reference in paragraph (b)(5) to “non-DOT follow-up testing.”

G. Section 382.123 Driver identification

In § 382.123(b)(2), FMCSA corrects a reference to the Alcohol Testing Form (ATF) (the subject of paragraph (a)), instead of the Federal Drug Testing Custody and Control Form (CCF) (the subject of paragraph (b)). The heading of § 382.123(b) (“Identification information on the Federal Drug Testing Custody and Control Form (CCF)”) indicates this paragraph relates to the information required to be provided on the CCF.

H. Section 382.701 Drug and Alcohol Clearinghouse

Subpart G of part 382, beginning with § 382.701, provides requirements and procedures for implementation of the Clearinghouse. In § 382.701, FMCSA amends paragraph (d) by adding after the first use of the word “driver” the words “the employer employs or intends to hire or use.” The sentence now reads, in part, “No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result”

The purpose of the amendment is to align § 382.701(d) with 49 U.S.C. 31306a, which prohibits employers from using current and prospective employee-drivers to operate a commercial motor vehicle (CMV) if a query of the Clearinghouse shows the driver has violated the drug and alcohol testing program requirements and has not completed the return-to-duty process. In this regard, section 31306a(m)(5) defines “employer” as “a person or entity employing, or seeking to employ, 1 or more employees (including an individual who is self-employed) to be commercial motor vehicle operators.” As currently drafted, § 382.701(d) may imply that the prohibition against permitting a driver with unresolved drug and alcohol testing program violations to perform safety-sensitive functions applies to current, and not prospective, employee-drivers. This amendment makes clear that, consistent with the statute, the prohibition applies to employers of current and prospective drivers. In addition, the amendment conforms § 382.701(d) to § 382.301(a) (“Pre-employment testing”), which states, in part, “No employer shall allow a driver, who the employer intends to hire or use,

to perform safety-sensitive functions unless the employer has received a controlled substances test result from the [Medical Review Officer (MRO)] or [Consortium/Third party Administrator (C/TPA)] indicating a verified negative test result for that driver.”

I. Section 382.705 Reporting to the Clearinghouse

FMCSA amends three paragraphs of § 382.705(b). In paragraph (b)(3)(iii), FMCSA replaces the word “designated” with the phrase “authorized to act” for clarity. This clarifying change avoids potential confusion caused by use of the word “designate” elsewhere in the section. In paragraph (b)(6) of that same section, “designate” pertains to the designation of a C/TPA for Clearinghouse reporting purposes. By substituting “authorized to act” for “designate” in paragraph (b)(3)(iii), FMCSA makes clear that, as intended, the C/TPA must have been acting with actual authority as a service agent when the refusal occurred; whether the C/TPA is “designated” by the employer, as that term is used in paragraph (b)(6), when the refusal occurs, is not relevant.

In paragraphs (b)(3)(iv) and (b)(5)(vii), FMCSA adds “(if applicable)” to the end of each paragraph. This change clarifies that when reporting a “failure to appear” refusal under paragraph (b)(3) or an “actual knowledge” violation under paragraphs (b)(4) and (5), the requirement that employers submit documentation showing that the driver was provided with all the information reported to the Clearinghouse does not apply if the driver is registered in the Clearinghouse. Drivers who are registered in the Clearinghouse have electronic access to the information and documents referenced in paragraphs (b)(3) and (5), thereby making the employer’s separate delivery of the documentation to the driver unnecessary.

J. Section 382.717 Procedures for Correcting Certain Information in the Database

In the heading of this section, FMCSA adds the word “certain” after the word “correcting” to reflect more accurately the limited scope of this section, which sets forth procedures drivers may use to request correction or removal of certain types of information about them that exists in the Clearinghouse. In the heading of paragraph (a), FMCSA replaces the word “inaccurately” with “incorrectly.” The Agency also makes clarifying changes to § 382.717(a)(1) to ensure that drivers understand the narrow basis for the correction or removal of their Clearinghouse records

permitted under this section. These clarifications are consistent with the limited scope of § 382.717, as discussed in the preamble to the December 2016 final rule establishing the Clearinghouse requirements (81 FR 87686, 87715, Dec. 5, 2016), the Privacy Impact Assessment for the Clearinghouse, and the System of Records Notice for the Clearinghouse (84 FR 56521, 56526, Oct. 22, 2019). As explained collectively therein, the correction processes in § 382.717 apply only to administrative errors or an employer’s failure to comply with documentation requirements for reporting certain test refusal and actual knowledge violations, as set forth in § 382.703, paragraphs (b)(3) and (5); drivers may not contest the accuracy of drug and alcohol program violation information, such as test results or refusals.

K. Section 382.725 Access by State Licensing Authorities

In § 382.725(c), FMCSA inserts the word “commercial” after “chief” in the second sentence for consistency with use of the term “chief commercial driver’s licensing official” in that section. This amendment also helps to avoid confusion concerning the existing language, which may appear to introduce another category of licensing official.

L. Section 383.3 Applicability

In § 383.3(c), FMCSA corrects a typographical error by adding a missing “s” to the word “member,” in the phrase “member of the national guard on active duty,” to improve readability.

M. Section 383.5 Definitions

At the end of paragraph (1) in the definition of *Commerce* in § 383.5, FMCSA changes the conjunctive “and” to “or” to be consistent with the definition of *Commerce* in 49 U.S.C. 31301(2). This action updates language that has been in § 383.5 since FHWA amended the FMCSRs to implement the requirements of the Commercial Motor Vehicle Safety Act of 1986 on June 1, 1987 (52 FR 20574, 20587). Paragraph (2) of 49 U.S.C. 31301 provides that “commerce” means trade, traffic, and transportation in the United States between a place in a State and a place outside that State (including a place outside the United States); “or” in the United States that affects trade, traffic, and transportation between a place in a State and a place outside that State. This definition applies to 49 U.S.C. 31302 (“Commercial driver’s license requirement”), including the definition of *Commerce* in § 383.5 of 49 CFR part 383 (“Commercial driver’s license

standards; requirements and penalties”). To ensure consistency with the applicable statutory authority, the conjunction “and” is replaced with “or” in § 383.5. The Agency changes the punctuation before the conjunction “or” from a comma to a semicolon. FMCSA adds a comma after the word “traffic” in paragraph (1) to have consistent punctuation with paragraph (2).

N. Section 383.51 Disqualification of Drivers

FMCSA adds an additional exclusion to entry (6) in Table 1 to § 383.51 (which is found in paragraph (b) of that section) to make clear there is no enforcement discretion regarding the period of disqualification for human trafficking offenses. FMCSA added the human trafficking disqualification in entry (10) of Table 1 in a final rule published July 23, 2019 (84 FR 35335, 35338). The addition requires the State to disqualify a commercial driver’s license (CDL) holder for life for a human trafficking conviction. Entry (10) reflects the statutory mandate that prohibits an individual from operating a CMV for life if the individual uses a CMV in the commission of a felony involving an act or practice of severe forms of trafficking in persons, as defined and described in 22 U.S.C. 7102(11). As amended, entry (6) excludes both a felony described in paragraph (b)(9) of Table 1 (entry (9)) and a felony described in paragraph (b)(10) of Table 1 (entry (10)).

O. Section 383.9 Commercial Motor Vehicle Groups

FMCSA updates the title of Figure 1 to § 383.91 from “VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)” to simply “VEHICLE GROUPS (SECTION 383.91).” This amendment eliminates the obsolete reference to FHWA, FMCSA’s predecessor agency.

P. Section 384.401 Withholding of Funds Based on Noncompliance

In § 384.401, FMCSA revises the cross-references to 23 U.S.C. 104(b) to reflect changes to 49 U.S.C. 31314(c), the statutory provision that provides the cross-references in § 384.401. Section 1404(j) of MAP–21 (Pub. L. 112–141, 126 Stat. 405, 559, July 6, 2012) revised 49 U.S.C. 31314(c), effective October 1, 2011. Section 384.401 is no longer consistent with the underlying statutory authority in 49 U.S.C. 31314(c). To conform § 384.401 to 49 U.S.C. 31314(c), FMCSA changes the cross-references in paragraphs (a) and (b) of § 384.401 from “each of sections 104(b)(1), (b)(3), and (b)(4) of title 23 U.S.C.” to “23 U.S.C. 104(b)(1) and (2).”

Q. Section 385.3 Definitions and Acronyms

FMCSA removes the word “on-site” from the definition of *Compliance review* in paragraph (1) of the definition of *Reviews* in § 385.3. This amendment recognizes the technological advances that allow FMCSA to perform the compliance review remotely in some cases. This amendment does not alter the Safety Fitness Rating Methodology (SFRM) in part 385, appendix B, nor does it eliminate the ability for FMCSA to conduct onsite examinations. From the point of view of the regulated entity, the same safety performance metrics are being evaluated, so there is no change. This amendment, however, clarifies that a safety investigator may, in some cases, perform all the investigative functions of the compliance review remotely when the motor carrier uploads its business records for review to FMCSA’s online system and the investigator conducts subsequent discussions with motor carrier officials and employees remotely.

Further, FMCSA notes that this amendment also does not alter in any way the requirements of section 350 of the 2002 DOT Appropriations Act (Pub. L. 107–87, 115 Stat. 833, 864, Dec. 18, 2001 (49 U.S.C. 13902 note)), with which FMCSA will continue to comply, that certain compliance reviews under 49 CFR part 385, subpart B, as to Mexico-domiciled carriers, be conducted onsite.

FHWA first published the definition of *Compliance review* in 1988 (53 FR 50961, 50968, Dec. 19, 1988). The compliance review process at that time did not use a published methodology. In 1997, FHWA published the SFRM (62 FR 60035, Nov. 6, 1997) to codify a more objective safety rating process for the compliance review (62 FR 60037). Under the SFRM, safety investigators sample a carrier’s records and document violations of acute regulations and patterns of violations of critical regulations to complete the compliance review (§ 385.9; appendix B to part 385). Section I (“Source of Data for Rating Methodology”) of appendix B to part 385 states that the sources of data for the compliance review’s “in-depth examination of a motor carrier’s operations” are “[d]ocuments such as those contained in driver qualification files, records of duty status, vehicle maintenance records, and other records.” The definition of *Compliance review* lists these records, along with other objective safety and transportation records, as examples of what a safety investigator would be reviewing during a compliance review. Until relatively

recently, safety investigators had to visit the motor carrier’s principal place of business to review these records. FMCSA is now able to ask carriers to upload their records to FMCSA’s online system, making an “on-site” visit unnecessary in certain compliance reviews.

FMCSA also removes the word “on-site” from the definition of *Roadability review* in paragraph (4) of the definition of *Reviews* in § 385.3. FMCSA makes this amendment to provide consistency between the definitions of *Compliance review* and *Roadability review*. The roadability review program was modeled after FMCSA’s compliance review program (71 FR 76796, 76798, Dec. 21, 2006). This amendment recognizes that the same technological advances that allow FMCSA to perform the compliance review remotely in some cases also allow FMCSA to perform the roadability review remotely in some cases.

In addition to the above amendments, FMCSA adds a missing apostrophe to the phrase “commercial driver’s license” in the definition of *Compliance review*.

R. Section 385.21 Separation of Functions

In new § 385.21, FMCSA adds a separation of functions provision that applies to the various administrative review proceedings under part 385. This amendment clarifies that FMCSA applies a separation of functions between Agency employees engaged in the performance of investigative or prosecutorial functions and those who participate or advise in the decision in administrative review proceedings under part 385. This new section merely codifies the separation of functions that has, in fact, been maintained in FMCSA since the Agency was created in 2000. FMCSA adopts language for this section that is consistent with DOT policy and the requirements for adjudications in 5 U.S.C. 554. It also is similar to the language in § 386.3, which is the separation of functions provision applicable to administrative reviews of proposed civil penalties.

S. Appendix B to Part 385—Explanation of Safety Rating Process

FMCSA amends appendix B to part 385 to conform to a 2013 revision of the standard in § 383.37 from “knowingly” to “knows or should reasonably know” (78 FR 60226, 60227, 60231, Oct. 1, 2013). Specifically, FMCSA amends the entries for § 383.37(a) through (c) on the “List of Acute and Critical Regulations” found in Section VII of appendix B to part 385. In each of those entries,

FMCSA deletes the word “knowingly” at the beginning of the sentence and makes minor modifications to the sentence to ensure that the appendix entries more closely follow the language of the regulatory text to which they refer (e.g., by using the term “driver” instead of “employee” in all three entries and adding the term “CLP” and the acronym “CDL” in the entries for paragraphs (b) and (c)) and to better accommodate the phrase “knows or reasonably should have known” into the entries.

T. Sections 390.5 (Suspended) and 390.5T Definitions

In §§ 390.5 (suspended) and 390.5T, FMCSA clarifies the meaning of *Covered farm vehicle* (CFV) to include combination vehicles, which are eligible for the CFV exemption, but not explicitly identified in the statutory definition in section 32934 of MAP-21 (Pub. L. 112-141, 126 Stat. 405, 830-31, July 6, 2012 (49 U.S.C. 31136 note)). The statutory definition does, however, explicitly include “articulated” vehicles. Combination vehicles are considered “articulated” because they combine a tractor with one or more trailers at one or more points of articulation (e.g., for a single trailer, the point of articulation is the trailer kingpin that fits into the fifth wheel mounted on the chassis of the tractor behind the cab (or sleeper berth, if so equipped)). Because the terms “gross vehicle weight rating” and “gross vehicle weight” are universally applied to single-unit (i.e., non-combination) vehicles, paragraphs (2)(i) and (ii) appear to conflict with the provision in section 32934(c)(1) explicitly allowing the CFV exemption for articulated (including combination) vehicles. Therefore, in paragraphs (2)(i) and (ii) of the definition, FMCSA adds the parallel phrases applicable to combination vehicles (“gross combination weight rating” and “gross combination weight”) to effectuate the intent of Congress expressed in section 32934(c)(1) to give operators of combination (i.e., articulated) vehicles the benefit of the CFV exemption.

On January 17, 2017, FMCSA suspended certain regulations relating to the electronic Unified Registration System and delayed their effective date indefinitely (82 FR 5292). The suspended regulations were replaced by temporary provisions that contain the requirements in place on January 13, 2017. Section 390.5 was one of the sections suspended and § 390.5T, which is currently in effect, was added (82 FR 5311).

U. Section 391.41(b) Physical Qualifications for Drivers

In § 391.41(b), FMCSA corrects the punctuation by changing the ending punctuation in paragraphs (b)(2)(ii) and (b)(4) and (b)(11) from periods to semicolons. In paragraph (b)(12)(i), the Agency changes the ending punctuation from a period to a semicolon and inserts the conjunction “or.” In paragraph (b)(12)(ii), the Agency changes the ending punctuation from a period to a semicolon and inserts the conjunction “and.” These changes make the punctuation in the section consistent and grammatically correct.

V. Section 391.43 Medical Examination; Certificate of Physical Examination

FMCSA amends three paragraphs of § 391.43. In paragraph (e), FMCSA removes the word “endocrinologist” from the first sentence because it is no longer relevant to the requirements of § 391.64, referenced in this paragraph. On September 19, 2018, FMCSA amended its physical qualification standards to allow individuals with stable insulin regimens and properly controlled insulin-treated diabetes mellitus to drive CMVs in interstate commerce if certain requirements are met (83 FR 47486). The rule also eliminated the diabetes grandfather provision under § 391.64(a) 1 year after the effective date of the rule on November 19, 2019 (83 FR 47521). Section 391.64(a) required an annual examination by an endocrinologist. Because § 391.64(a) was eliminated on November 19, 2019, the reference to the findings of the annual examination by an endocrinologist is obsolete.

In paragraph (f), FMCSA changes the Medical Examination Report Form, MCSA-5875, by removing the request for gender information on page 1 in Section 1, pertaining to the personal information provided by the driver, and removing “gender” on page 6 of the instructions to Section 1. FMCSA makes these changes because it is unnecessary to collect gender information on the form. In the medical examiner’s attestation for both the Federal and State Medical Examiner Determination sections (pages 4 and 5 respectively), FMCSA adds a missing comma after “that” to correct punctuation. On page 6 in the instructions for Section 1 regarding the driver’s personal information, FMCSA removes “Question:” prior to the question asking if a medical certificate has ever been denied or issued for less than two years because it is unnecessary. In the

instructions for both the Federal and State Medical Examiner Determination sections (pages 8 and 9, respectively), FMCSA makes changes to the second sentence in the “Meets standards, but periodic monitoring is required” paragraph to correct grammar. FMCSA adds “for,” deletes the comma after “other,” and puts “other” in quotation marks. The sentences read, “Select the corresponding time frame that the driver is qualified for, and if selecting ‘other’ specify the time frame.” FMCSA also makes minor formatting changes to correct errors and promote consistency in the style of bullet points and quotation and apostrophe marks, use of bolding and italics, and use of a forward slash instead of a comma. Use of the revised form will become effective 60 days after this rule is published to provide sufficient time for the public to make any necessary information technology changes.

In paragraph (g)(4), FMCSA makes minor edits for clarity concerning the reasons that a medical examiner may find that a determination should be delayed. Rather than a medical examiner finding that a determination should be delayed “pending the receipt of additional information,” the text makes clear that the delay may be in order “to receive additional information.” Similarly, rather than finding that a determination should be delayed “pending . . . the conduct of further examination,” the text makes clear that the delay may be in order “to conduct further examination.”

W. Section 391.64 Grandfathering for Certain Drivers Who Participated in a Vision Waiver Study Program

In § 391.64, FMCSA revises the section heading to remove references to a diabetes waiver study program. On September 19, 2018, FMCSA amended its physical qualification standards to allow individuals with stable insulin regimens and properly controlled insulin-treated diabetes mellitus to drive CMVs in interstate commerce if certain requirements are met (83 FR 47486). The rule also eliminated the diabetes grandfather provision under § 391.64(a) 1 year after the effective date of the rule on November 19, 2019 (83 FR 47521). Because § 391.64(a) was eliminated on November 19, 2019, the reference to the diabetes waiver study program in the section title is obsolete.

III. Regulatory Analyses

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

This final rule is not a significant regulatory action under section 3(f) of E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and this final rule does not require an assessment of potential costs and benefits under section 6(a)(3) of E.O. 12866. Accordingly, the Office of Management and Budget has not reviewed it under that Order. In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. Two changes relate to minor amendments to FMCSA's rules of practice or procedure. None of the changes in this final rule imposes material new requirements or increases compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

B. Congressional Review Act

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

C. Regulatory Flexibility Act (Small Entities)

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

D. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, Mar. 29, 1996), FMCSA wants to assist small

entities in understanding this final rule so they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the final rule will affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the person listed under the **FOR FURTHER INFORMATION CONTACT** section of this final rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy regarding the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

E. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or Tribal government, in the aggregate, or by the private sector of \$165 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2018 levels) or more in any 1 year. This final rule will not result in such an expenditure.

F. Paperwork Reduction Act (Collection of Information)

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

G. E.O. 13132 (Federalism)

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

regulation. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Impact Statement.

H. Privacy

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

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

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

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

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

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680, Mar. 1, 2004), Appendix 2, paragraphs 6.b and c. These Categorical Exclusions address minor corrections and regulations concerning internal agency functions, organization, or personnel administration such as those found in this rulemaking. Therefore, preparation

of an environmental assessment or environmental impact statement is not necessary.

List of Subjects

49 CFR Part 381

Motor carriers.

49 CFR Part 382

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

49 CFR Part 383

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

49 CFR Part 384

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

49 CFR Part 385

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

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.

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

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

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

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

■ 2. Amend § 381.110 by revising the definition of *FMCSRs* to read as follows:

§ 381.110 What definitions are applicable to this part?

* * * * *

FMCSRs means Federal Motor Carrier Safety Regulations (49 CFR parts 380, 382, 383, and 384; 49 CFR 390.19 and 390.21; and 49 CFR parts 391 through 393, 395, 396, and 399).

* * * * *

■ 3. Amend § 381.200 by:

■ a. Redesignating paragraphs (d)(3) through (10) as paragraphs (d)(5) through (12);

■ b. Redesignating paragraphs (d)(1) and (2) as paragraphs (d)(2) and (3); and

■ c. Adding new paragraphs (d)(1) and (4).

The additions read as follows:

§ 381.200 What is a waiver?

* * * * *

(d) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

■ 4. Amend § 381.300 by:

■ a. Redesignating paragraphs (c)(3) through (8) as paragraphs (c)(5) through (10);

■ b. Redesignating paragraphs (c)(1) and (2) as paragraphs (c)(2) and (3); and

■ c. Adding new paragraphs (c)(1) and (4).

The additions read as follows:

§ 381.300 What is an exemption?

* * * * *

(c) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

■ 5. Amend § 381.400 by:

■ a. Redesignating paragraphs (f)(3) through (8) as paragraphs (f)(5) through (10);

■ b. Redesignating paragraphs (f)(1) and (2) as paragraphs (f)(2) and (3); and

■ c. Adding new paragraphs (f)(1) and (4).

The additions read as follows:

§ 381.400 What is a pilot program?

* * * * *

(f) * * *

(1) Part 380—Special Training Requirements;

* * * * *

(4) Part 384—State Compliance with Commercial Driver's License Program;

* * * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

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

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

§ 382.103 [Amended]

■ 7. In § 382.103, add the word “only” after the word “comply” in paragraph (d)(1).

■ 8. Amend § 382.121 by revising paragraphs (b)(4)(i) and (ii) to read as follows:

§ 382.121 Employee admission of alcohol and controlled substances use.

* * * * *

(b) * * *

(4) * * *

(i) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty test with a result indicating an alcohol concentration of less than 0.02; and/or

(ii) Prior to the employee participating in a safety sensitive function, the employee shall undergo a non-DOT return to duty controlled substance test with a verified negative test result for controlled substances use; and

* * * * *

■ 9. Amend § 382.123 by revising paragraph (b)(2) to read as follows:

§ 382.123 Driver identification.

* * * * *

(b) * * *

(2) The employer's name and other identifying information required in Step 1, section A of the CCF.

■ 10. Amend § 382.701 by revising paragraph (d) introductory text to read as follows:

§ 382.701 Drug and Alcohol Clearinghouse.

* * * * *

(d) *Prohibition.* No employer may allow a driver the employer employs or intends to hire or use to perform any safety-sensitive function if the results of a Clearinghouse query demonstrate that the driver has a verified positive, adulterated, or substituted controlled substances test result; has an alcohol confirmation test with a concentration of 0.04 or higher; has refused to submit to a test in violation of § 382.211; or that an employer has reported actual knowledge, as defined at § 382.107, that the driver used alcohol on duty in violation of § 382.205, used alcohol before duty in violation of § 382.207, used alcohol following an accident in violation of § 382.209, or used a controlled substance in violation of § 382.213, except where a query of the Clearinghouse demonstrates:

* * * * *

■ 11. Amend § 382.705 by revising paragraphs (b)(3)(iii) and (iv) and (b)(5)(vii) to read as follows:

§ 382.705 Reporting to the Clearinghouse.

(b) * * *
(3) * * *
(iii) Documentation, including, but not limited to, electronic mail or other correspondence, or an affidavit, showing that the C/TPA reporting the violation was authorized to act as a service agent for an employer who employs himself/herself as a driver pursuant to paragraph (b)(6) of this section when the reported refusal occurred (if applicable); and
(iv) Documentation, including a certificate of service or other evidence, showing that the employer provided the employee with all documentation reported under paragraph (b)(3) of this section (if applicable).
(5) * * *
(vii) A certificate of service or other evidence showing that the employer provided the employee with all information reported under paragraph (b)(4) of this section (if applicable).

■ 12. Amend § 382.717 by revising the section and paragraph (a) headings and paragraph (a)(1) to read as follows:

§ 382.717 Procedures for correcting certain information in the database.

(a) Petitions limited to incorrectly reported information. (1) Under this section, petitioners may request only that administrative errors be corrected (e.g., errors in data entry or a duplicate report of a positive test result); petitioners may not contest the accuracy of test results, test refusals, or other

violation information, under this section.

■ 13. Amend § 382.725 by revising paragraph (c) to read as follows:

§ 382.725 Access by State licensing authorities.

(c) The chief commercial driver's licensing official's use of information received from the Clearinghouse is limited to determining an individual's qualifications to operate a commercial motor vehicle. No chief commercial driver's licensing official may divulge or permit any other person or entity to divulge any information from the Clearinghouse to any person or entity not directly involved in determining an individual's qualifications to operate a commercial motor vehicle.

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

■ 14. The authority citation for part 383 is revised to read as follows:

Authority: 49 U.S.C. 521, 31136, 31301 et seq., 31502; secs. 214 and 215, Pub. L. 106-159, 113 Stat. 1748, 1766, 1767; sec. 1012(b), Pub. L. 107-56, 115 Stat. 272, 397 (49 U.S.C. 31305(a)(5)); sec. 4140, Pub. L. 109-59, 119 Stat. 1144, 1746; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5401 and 7208, Pub. L. 114-94, 129 Stat. 1312, 1546, 1593 (49 U.S.C. 31305(d)); and 49 CFR 1.87.

■ 15. Amend § 383.3 by revising paragraph (c) to read as follows:

§ 383.3 Applicability.

(c) Exception for certain military drivers. Each State must exempt from the requirements of this part individuals who operate CMVs for military purposes. This exception is applicable to active duty military personnel; members of the military reserves; members of the national guard on active duty, including personnel on full-time national guard duty, personnel on part-time national guard training, and national guard military technicians (civilians who are required to wear military uniforms); and active duty U.S. Coast Guard personnel. This exception is not applicable to U.S. Reserve technicians.

■ 16. Amend § 383.5 by revising the introductory text and paragraph (1) of the definition of Commerce to read as follows:

§ 383.5 Definitions.

Commerce means:
(1) Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a State and a place outside of such State, including a place outside of the United States; or

■ 17. In § 383.51, amend table 1 to § 383.51 in paragraph (b) by revising entry (6) to read as follows:

§ 383.51 Disqualification of drivers.

(b) * * *

TABLE 1 TO § 383.51

Table with 7 columns: Description of offense, Disqualification period (1st conviction), Disqualification period (2nd conviction), Disqualification period (3rd conviction), Disqualification period (4th conviction), Disqualification period (5th conviction), Disqualification period (6th conviction). Row (6) Using the vehicle to commit a felony, other than a felony described in paragraph (b)(9) or (10) of this table.

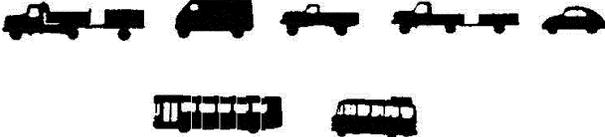
■ 18. Amend § 383.91 by revising figure 1 after paragraph (d) to read as follows:

§ 383.91 Commercial motor vehicle groups.

(d) * * *
BILLING CODE 4910-EX-P

Figure 1
VEHICLE GROUPS (SECTION 383.91)

[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

| Group: | *Description: |
|--------|---|
| A | <p>Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.)</p> <p>Examples Include but are not limited to:</p>   |
| B | <p>Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.)</p> <p>Examples include but are not limited to:</p>   |
| C | <p>Any single vehicle, or combination of vehicles, that does not meet the definition of Group A or Group B as contained herein, but that either is designed to transport 16 or more passengers including the driver, or is placarded for hazardous materials.</p> <p>Examples include but are not limited to:</p>  |

* The representative vehicle for the skills test must meet the written description for that group. The silhouettes typify, but do not fully cover, the types of vehicles falling within each group.

BILLING CODE 4910-EX-C

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

■ 19. The authority citation for part 384 is revised to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, 31502; secs. 103 and 215, Pub. L. 106-159, 113 Stat. 1753, 1767; sec. 32934, Pub. L. 112-141, 126 Stat. 405, 830; secs. 5401 and 7208, Pub. L. 114-94, 129 Stat. 1312, 1546, 1593 (49 U.S.C. 31305(a)); and 49 CFR 1.87.

■ 20. Revise § 384.401 to read as follows:

§ 384.401 Withholding of funds based on noncompliance.

(a) *Following the first year of noncompliance.* An amount up to 4 percent of the Federal-aid highway funds required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2) shall be withheld from a State on the first day of the fiscal year following such State's first year of noncompliance under this part.

(b) *Following second and subsequent year(s) of noncompliance.* An amount up to 8 percent of the Federal-aid highway funds required to be apportioned to any State under 23 U.S.C. 104(b)(1) and (2) shall be withheld from a State on the first day of the fiscal year following such State's second or subsequent year(s) of noncompliance under this part.

PART 385—SAFETY FITNESS PROCEDURES

■ 21. 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, and 31502; Sec. 113(a), Pub. L. 103-311; Sec. 408, Pub. L. 104-88, 109 Stat. 803, 958; Sec. 350 of Pub. L. 107-87, 115 Stat. 833, 864; and 49 CFR 1.87.

■ 22. In § 385.3, amend the definition of *Reviews* by revising the first sentence of paragraph (1) and paragraph (4) to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

Reviews. * * *

(1) *Compliance review* means an examination of motor carrier operations, such as drivers' hours of service, maintenance and inspection, driver qualification, commercial driver's license requirements, financial responsibility, accidents, hazardous materials, and other safety and transportation records to determine

whether a motor carrier meets the safety fitness standard in this part. * * *

* * * * *

(4) *Roadability review* means an examination of the intermodal equipment provider's compliance with the applicable FMCSRs.

* * * * *

■ 23. Add § 385.21 to read as follows:

§ 385.21 Separation of functions.

(a) An Agency employee engaged in the performance of investigative, advocacy, or prosecutorial functions in a proceeding under § 385.15, § 385.113, § 385.327, § 385.423, § 385.711, § 385.911(e), § 385.913(e), § 385.1009(d), or § 385.1011(d) may not, in that case or a factually-related case, discuss or communicate the facts or issues involved with, or otherwise advise or assist, the Agency decisionmaker or personnel advising the Agency decisionmaker, except as counsel or a witness in a public proceeding, or if the same facts and information are provided to all the parties involved in the matter. The prohibition in this paragraph (a) also includes the staff of those covered by this section.

(b) As used in this section, *decisionmaker* means the FMCSA official authorized to issue a final decision in the applicable proceeding listed in paragraph (a) of this section.

(c) Nothing in this part shall preclude Agency decisionmakers or anyone advising an Agency decision-maker from taking part in a determination to launch an investigation or issue a complaint, or similar preliminary decision.

■ 24. Amend appendix B to part 385 in section VII by revising the entries § 383.37(a), § 383.37(b), and § 383.37(c) to read as follows:

Appendix B to Part 385—Explanation of Safety Rating Process

* * * * *

VII. List of Acute and Critical Regulations

* * * * *

§ 383.37(a) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known does not have a current CLP or CDL, does not have a CLP or CDL with the proper class or endorsements, or operates a CMV in violation of any restriction on the CLP or CDL (acute).

§ 383.37(b) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has a CLP or CDL disqualified by a State, has

lost the right to operate a CMV in a State, or has been disqualified (acute).

§ 383.37(c) Allowing, requiring, permitting, or authorizing a driver to operate a CMV who the employer knew or should reasonably have known has more than one CLP or CDL (acute).

* * * * *

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

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

Authority: 49 U.S.C. 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; 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.

■ 26. Amend § 390.5 as follows:

- a. Lift the suspension of the section;
 - b. Revise paragraphs (2)(i) and (ii) of the definition of *Covered farm vehicle*; and
 - c. Suspend § 390.5 indefinitely.
- The revision reads as follows:

§ 390.5 Definitions.

* * * * *

Covered farm vehicle * * *

(2) * * *

(i) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

* * * * *

■ 27. Amend § 390.5T by revising paragraphs (2)(i) and (ii) of the definition of *Covered farm vehicle* to read as follows:

§ 390.5T Definitions.

* * * * *

Covered farm vehicle * * *

(2) * * *

(i) With a gross vehicle weight rating or gross combination weight rating, or

gross vehicle weight or gross combination weight, whichever is greater, of 26,001 pounds or less may utilize the exemptions in § 390.39 anywhere in the United States; or

(ii) With a gross vehicle weight rating or gross combination weight rating, or gross vehicle weight or gross combination weight, whichever is greater, of more than 26,001 pounds may utilize the exemptions in § 390.39 anywhere in the State of registration or across State lines within 150 air miles of the farm or ranch with respect to which the vehicle is being operated.

* * * * *

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

■ 28. 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.

■ 29. Amend § 391.41 by revising paragraphs (b)(2)(ii) and (b)(4), (11), and (12) to read as follows:

§ 391.41 Physical qualifications for drivers.

* * * * *

(b) * * *
(2) * * *

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a commercial motor vehicle; or any other significant limb defect or limitation which interferes with the

ability to perform normal tasks associated with operating a commercial motor vehicle; or has been granted a skill performance evaluation certificate pursuant to § 391.49;

* * * * *

(4) Has no current clinical diagnosis of myocardial infarction, angina pectoris, coronary insufficiency, thrombosis, or any other cardiovascular disease of a variety known to be accompanied by syncope, dyspnea, collapse, or congestive cardiac failure;

* * * * *

(11) First perceives a forced whispered voice in the better ear at not less than 5 feet with or without the use of a hearing aid or, if tested by use of an audiometric device, does not have an average hearing loss in the better ear greater than 40 decibels at 500 Hz, 1,000 Hz, and 2,000 Hz with or without a hearing aid when the audiometric device is calibrated to American National Standard (formerly ASA Standard) Z24.5—1951;

(12)(i) Does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; or

(ii) Does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107 of this chapter, who is familiar with the driver’s medical history and has advised the driver that the substance will not adversely affect the driver’s ability to safely operate a commercial motor vehicle; and

* * * * *

■ 30. Amend § 391.43 by revising paragraphs (e) and (g)(4) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(e) Any driver operating under a limited exemption authorized by § 391.64 shall furnish the medical examiner with a copy of the annual medical findings of the ophthalmologist or optometrist, as required under § 391.64. If the medical examiner finds the driver qualified under the limited exemption in § 391.64, such fact shall be noted on the Medical Examiner’s Certificate.

* * * * *

(g) * * *

(4) Beginning December 22, 2015, if the medical examiner finds that the determination of whether the person examined is physically qualified to operate a commercial motor vehicle in accordance with § 391.41(b) should be delayed to receive additional information or to conduct further examination in order for the medical examiner to make such determination, he or she must inform the person examined that the additional information must be provided or the further examination completed within 45 days, and that the pending status of the examination will be reported to FMCSA.

* * * * *

■ 31. Effective September 7, 2021, further amend § 391.43 by revising paragraph (f) to read as follows:

§ 391.43 Medical examination; certificate of physical examination.

* * * * *

(f) The medical examination shall be performed, and its results shall be recorded on the Medical Examination Report Form, MCSA–5875, set out in this paragraph (f):

BILLING CODE 4910-EX-P

Form MCSA-5875

OMB No.: 2126-0006

Public Burden Statement

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U.S. Department of Transportation
Federal Motor Carrier
Safety Administration

Medical Examination Report Form
(for Commercial Driver Medical Certification)

MEDICAL RECORD #

(or sticker)

SECTION 1. Driver Information (to be filled out by the driver)

PERSONAL INFORMATION

Last Name: _____ First Name: _____ Middle Initial: _____ Date of Birth: _____ Age: _____

Street Address: _____ City: _____ State/Province: _____ Zip Code: _____

Driver's License Number: _____ Issuing State/Province: _____ Phone: _____

E-Mail (optional): _____ CLP/CDL Applicant/Holder*: Yes No

Driver ID Verified By**: _____

Has your USDOT/FMCSA medical certificate ever been denied or issued for less than 2 years? Yes No Not Sure

*CLP/CDL Applicant/Holder: See instructions for definitions.

**Driver ID Verified By: Record what type of photo ID was used to verify the identity of the driver, e.g., CDL, driver's license, passport

DRIVER HEALTH HISTORY

Have you ever had surgery? If "yes," please list and explain below. Yes No Not Sure

Empty box for listing surgery details.

Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements)? If "yes," please describe below. Yes No Not Sure

Empty box for listing medication details.

(Attach additional sheets if necessary)

This document contains sensitive information and is for official use only. Improper handling of this information could negatively affect individuals. Handle and secure this information appropriately to prevent inadvertent disclosure by keeping the documents under the control of authorized persons. Properly dispose of this document when no longer required to be maintained by regulatory requirements.

Form MCSA-5875

OMB No.: 2126-0006

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

DRIVER HEALTH HISTORY *(continued)*

| Do you have or have you ever had: | Not | | | | Not | | |
|--|-----------------------|-----------------------|-----------------------|---|-----------------------|-----------------------|-----------------------|
| | Yes | No | Sure | | Yes | No | Sure |
| 1. Head/brain injuries or illnesses (e.g., concussion) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 16. Dizziness, headaches, numbness, tingling, or memory loss | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 2. Seizures/epilepsy | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 17. Unexplained weight loss | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 3. Eye problems (except glasses or contacts) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 18. Stroke, mini-stroke (TIA), paralysis, or weakness | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 4. Ear and/or hearing problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 19. Missing or limited use of arm, hand, finger, leg, foot, toe | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 5. Heart disease, heart attack, bypass, or other heart problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 20. Neck or back problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 6. Pacemaker, stents, implantable devices, or other heart procedures | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 21. Bone, muscle, joint, or nerve problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 7. High blood pressure | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 22. Blood clots or bleeding problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 8. High cholesterol | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 23. Cancer | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 9. Chronic (long-term) cough, shortness of breath, or other breathing problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 24. Chronic (long-term) infection or other chronic diseases | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 10. Lung disease (e.g., asthma) | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 25. Sleep disorders, pauses in breathing while asleep, daytime sleepiness, loud snoring | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 11. Kidney problems, kidney stones, or pain/problems with urination | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 26. Have you ever had a sleep test (e.g., sleep apnea)? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 12. Stomach, liver, or digestive problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 27. Have you ever spent a night in the hospital? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 13. Diabetes or blood sugar problems Insulin used | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 28. Have you ever had a broken bone? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 14. Anxiety, depression, nervousness, other mental health problems | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 29. Have you ever used or do you now use tobacco? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| 15. Fainting or passing out | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> | 30. Do you currently drink alcohol? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | 31. Have you used an illegal substance within the past two years? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |
| | | | | 32. Have you ever failed a drug test or been dependent on an illegal substance? | <input type="radio"/> | <input type="radio"/> | <input type="radio"/> |

Other health condition(s) not described above: Yes No Not Sure

Did you answer "yes" to any of questions 1-32? If so, please comment further on those health conditions below: Yes No Not Sure

(Attach additional sheets if necessary)

CMV DRIVER'S SIGNATURE

I certify that the above information is accurate and complete. I understand that inaccurate, false or missing information may invalidate the examination and my Medical Examiner's Certificate, that submission of fraudulent or intentionally false information is a violation of 49 CFR 390.35, and that submission of fraudulent or intentionally false information may subject me to civil or criminal penalties under 49 CFR 390.37 and 49 CFR 386 Appendices A and B.

Driver's Signature: _____ Date: _____

SECTION 2. Examination Report *(to be filled out by the medical examiner)*

DRIVER HEALTH HISTORY REVIEW

Review and discuss pertinent driver answers and any available medical records. Comment on the driver's responses to the "health history" questions that may affect the driver's safe operation of a commercial motor vehicle (CMV).

(Attach additional sheets if necessary)

Form MCSA-5875

OMB No.: 2126-0006

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

Please complete only one of the following (Federal or State) Medical Examiner Determination sections:

MEDICAL EXAMINER DETERMINATION (Federal)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49):

- Does not meet standards (specify reason): _____
- Meets standards in 49 CFR 391.41; qualifies for 2-year certificate
- Meets standards, but periodic monitoring required (specify reason): _____
 Driver qualified for: 3 months 6 months 1 year other (specify): _____
 Wearing corrective lenses Wearing hearing aid Accompanied by a waiver/exemption (specify type): _____
 Accompanied by a Skill Performance Evaluation (SPE) Certificate Qualified by operation of 49 CFR 391.64 (Federal)
 Driving within an exempt intracity zone (see 49 CFR 391.62) (Federal)
- Determination pending (specify reason): _____
 Return to medical exam office for follow-up on (must be 45 days or less): _____
 Medical Examination Report amended (specify reason): _____
 (if amended) Medical Examiner's Signature: _____ Date: _____
- Incomplete examination (specify reason): _____

If the driver meets the standards outlined in 49 CFR 391.41, then complete a Medical Examiner's Certificate as stated in 49 CFR 391.43(h), as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that, to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: _____
 Medical Examiner's Name (please print or type): _____
 Medical Examiner's Address: _____ City: _____ State: _____ Zip Code: _____
 Medical Examiner's Telephone Number: _____ Date Certificate Signed: _____
 Medical Examiner's State License, Certificate, or Registration Number: _____ Issuing State: _____
 MD DO Physician Assistant Chiropractor Advanced Practice Nurse
 Other Practitioner (specify): _____
 National Registry Number: _____ Medical Examiner's Certificate Expiration Date: _____

Form MCSA-5875

OMB No.: 2126-0006

Last Name: _____ First Name: _____ DOB: _____ Exam Date: _____

MEDICAL EXAMINER DETERMINATION (State)

Use this section for examinations performed in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) with any applicable State variances (which will only be valid for intrastate operations):

- Does not meet standards in 49 CFR 391.41 with any applicable State variances (specify reason): _____
- Meets standards in 49 CFR 391.41 with any applicable State variances
- Meets standards, but periodic monitoring required (specify reason): _____
 Driver qualified for: 3 months 6 months 1 year other (specify): _____
- Wearing corrective lenses Wearing hearing aid Accompanied by a waiver/exemption (specify type): _____
- Accompanied by a Skill Performance Evaluation (SPE) Certificate Grandfathered from State requirements (State)

If the driver meets the standards outlined in 49 CFR 391.41, with applicable State variances, then complete a Medical Examiner's Certificate, as appropriate.

I have performed this evaluation for certification. I have personally reviewed all available records and recorded information pertaining to this evaluation, and attest that, to the best of my knowledge, I believe it to be true and correct.

Medical Examiner's Signature: _____

Medical Examiner's Name (please print or type): _____

Medical Examiner's Address: _____ City: _____ State: _____ Zip Code: _____

Medical Examiner's Telephone Number: _____ Date Certificate Signed: _____

Medical Examiner's State License, Certificate, or Registration Number: _____ Issuing State: _____

MD DO Physician Assistant Chiropractor Advanced Practice Nurse

Other Practitioner (specify): _____

National Registry Number: _____

Medical Examiner's Certificate Expiration Date:

Instructions MCSA-5875

Instructions for Completing the Medical Examination Report Form (MCSA-5875)**I. Step-By-Step Instructions****Driver:****Section 1: Driver Information**

- **Personal Information:** Please complete this section using your name as written on your driver's license, your current address and phone number, your date of birth, age, driver's license number and issuing state.
 - **CLP/CDL Applicant/Holder:** Check "yes" if you are a commercial learner's permit (**CLP**) or commercial driver's license (**CDL**) holder, or are applying for a CLP or CDL. CDL means a license issued by a State or the District of Columbia which authorizes the individual to operate a class of a commercial motor vehicle (**CMV**). A CMV that requires a CDL is one that: (1) has a gross combination weight rating or gross combination weight of 26,001 pounds or more inclusive of a towed unit with a gross vehicle weight rating (**GVWR**) or gross vehicle weight (**GVW**) of more than 10,000 pounds; or (2) has a GVWR or GVW of 26,001 pounds or more; or (3) is designed to transport 16 or more passengers, including the driver; or (4) is used to transport either hazardous materials requiring hazardous materials placards on the vehicle or any quantity of a select agent or toxin.
 - **Driver ID Verified By:** The Medical Examiner/staff completes this item and notes the type of photo ID used to verify the driver's identity such as, commercial driver's license, driver's license, or passport, etc.
 - **Has your USDOT/FMCSA medical certificate ever been denied or issued for less than two years?** Please check the correct box "yes" or "no" and if you aren't sure check the "not sure" box.
- **Driver Health History:**
 - **Have you ever had surgery:** Please check "yes" if you have ever had surgery and provide a written explanation of the details (type of surgery, date of surgery, etc.)
 - **Are you currently taking medications (prescription, over-the-counter, herbal remedies, diet supplements):** Please check "yes" if you are taking any diet supplements, herbal remedies, or prescription or over the counter medications. In the box below the question, indicate the name of the medication and the dosage.
 - **#1-32:** Please complete this section by checking the "yes" box to indicate that you have, or have ever had, the health condition listed or the "No" box if you have not. Check the "not sure" box if you are unsure.
 - **Other Health Conditions not described above:** If you have, or have had, any other health conditions not listed in the section above, check "Yes" and in the box provided and list those condition(s).
 - **Any yes answers to questions #1-32 above:** If you have answered "yes" to any of the questions in the Driver Health History section above, please explain your answers further in the box below the question. For example, if you answered "yes" to question #5 regarding heart disease, heart attack, bypass, or other heart problem, indicate which type of heart condition. If you checked "yes" to question #23 regarding cancer, indicate the type of cancer. Please add any information that will be helpful to the Medical Examiner.
- **CMV Driver Signature and Date:** Please read the certification statement, sign and date it, indicating that the information you provided in Section 1 is accurate and complete.

Instructions MCSA-5875

Medical Examiner:**Section 2: Examination Report**

- **Driver Health History Review:** Review answers provided by the driver in the driver health history section and discuss any “yes” and “not sure” responses. In addition, be sure to compare the medication list to the health history responses ensuring that the medication list matches the medical conditions noted. Explore with the driver any answers that seem unclear. Record any information that the driver omitted. As the Medical Examiner conducting the driver’s physical examination you are required to complete the entire medical examination even if you detect a medical condition that you consider disqualifying, such as deafness. Medical Examiners are expected to determine the driver’s physical qualification for operating a commercial vehicle safely. Thus, if you find a disqualifying condition for which a driver may receive a Federal Motor Carrier Safety Administration medical exemption, please record that on the driver’s Medical Examiner’s Certificate, Form MCSA-5876, as well as on the Medical Examination Report Form, MCSA-5875.
- **Testing:**
 - **Pulse rate and rhythm, height, and weight:** record these as indicated on the form.
 - **Blood Pressure:** record the blood pressure (systolic and diastolic) of the driver being examined. A second reading is optional and should be recorded if found to be necessary.
 - **Urinalysis:** record the numerical readings for the specific gravity, protein, blood and sugar.
 - **Vision:** The current vision standard is provided on the form. When other than the Snellen chart is used, give test results in Snellen-comparable values. When recording distance vision, use 20 feet as normal. Record the vision acuity results and indicate if the driver can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors; has monocular vision; has been referred to an ophthalmologist or optometrist; and if documentation has been received from an ophthalmologist or optometrist.
 - **Hearing:** The current hearing standard is provided on the form. Hearing can be tested using either a whisper test or audiometric test. Record the test results in the corresponding section for the test used.
- **Physical Examination:** Check the body systems for abnormalities and indicate normal or abnormal for each body system listed. Discuss any abnormal answers in detail in the space provided and indicate whether it would affect the driver’s ability to safely operate a commercial motor vehicle.

In this next section, you will be completing either the Federal or State determination, not both.

- **Medical Examiner Determination (Federal):** Use this section for examinations performed in accordance with the FMCSRs ([49 CFR 391.41-391.49](#)). Complete the medical examiner determination section completely. When determining a driver’s physical qualification, please note that English language proficiency ([49 CFR part 391.11](#): General qualifications of drivers) is not factored into that determination.
 - **Does not meet standards:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in [49 CFR 391.41](#).
 - **Meets standards in [49 CFR 391.41](#); qualifies for 2-year certification:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner’s Certificate.

Instructions MCSA-5875

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified for, and if selecting "other" specify the time frame.
 - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, driving within an exempt intracity zone, etc.).
- **Determination pending:** Select this option when more information is needed to make a qualification decision and specify a date, on or before the 45 day expiration date, for the driver to return to the medical exam office for follow-up. This will allow for a delay of the qualification decision for as many as 45 days. If the disposition of the pending examination is not updated via the National Registry on or before the 45 day expiration date, FMCSA will notify the examining medical examiner and the driver in writing that the examination is no longer valid and that the driver is required to be re-examined.
 - **MER amended:** A Medical Examination Report Form (MER), MCSA-5875, may only be amended while in determination pending status for situations where new information (e.g., test results, etc.) has been received or there has been a change in the driver's medical status since the initial examination, but prior to a final qualification determination. Select this option when a Medical Examination Report Form, MCSA-5875, is being amended; provide the reason for the amendment, sign and date. In addition, initial and date any changes made on the Medical Examination Report Form, MCSA-5875. A Medical Examination Report Form, MCSA-5875, cannot be amended after an examination has been in determination pending status for more than 45 days or after a final qualification determination has been made. The driver is required to obtain a new physical examination and a new Medical Examination Report Form, MCSA-5875, should be completed.
- **Incomplete examination:** Select this when the physical examination is not completed for any reason (e.g., driver decides they do not want to continue with the examination and leaves) other than situations outlined under determination pending.
- **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
- **Medical Examiner's Certificate Expiration Date:** Enter the date the **driver's** Medical Examiner's Certificate (MEC) expires.
- **Medical Examiner Determination (State):** Use this section for examinations performed in accordance with the FMCSRs ([49 CFR 391.41-391.49](#)) with any applicable State variances (which will only be valid for intrastate operations). Complete the medical examiner determination section completely.
 - **Does not meet standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be not qualified and provide an explanation of why the driver does not meet the standards in [49 CFR 391.41](#) with any applicable State variances.
 - **Meets standards in 49 CFR 391.41 with any applicable State variances:** Select this option when a driver is determined to be qualified and will be issued a 2-year Medical Examiner's Certificate.

Instructions MCSA-5875

- **Meets standards, but periodic monitoring is required:** Select this option when a driver is determined to be qualified but needs periodic monitoring and provide an explanation of why periodic monitoring is required. Select the corresponding time frame that the driver is qualified for, and if selecting "other" specify the time frame.
 - **Determination that driver meets standards:** Select all categories that apply to the driver's certification (e.g., wearing corrective lenses, accompanied by a waiver/exemption, etc.).
 - **Medical Examiner information, signature and date:** Provide your name, address, phone number, occupation, license, certificate, or registration number and issuing state, national registry number, signature and date.
 - **Medical Examiner's Certificate Expiration Date:** Enter the date the **driver's** Medical Examiner's Certificate (MEC) expires.
- II. If updating an existing exam, you must resubmit the new exam results, via the Medical Examination Results Form, MCSA-5850, to the National Registry, and the most recent dated exam will take precedence.**
- III. To obtain additional information regarding this form go to the Medical Program's page on the Federal Motor Carrier Safety Administration's website at <http://www.fmcsa.dot.gov/regulations/medical>.**

* * * * *

■ 32. Amend § 391.64 by revising the section heading to read as follows:

§ 391.64 Grandfathering for certain drivers who participated in a vision waiver study program.

* * * * *

Issued under authority delegated in 49 CFR 1.87.

Meera Joshi,

Deputy Administrator.

[FR Doc. 2021–13888 Filed 7–6–21; 8:45 am]

BILLING CODE 4910–EX–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 210629–0138]

RIN 0648–BG66

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Requirements To Safeguard Fishery Observers

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: Under authority of the Western and Central Pacific Fisheries Convention Implementation Act (WCPFC Implementation Act), NMFS issues this final rule establishing requirements to safeguard fishery observers and establishing pre-trip notification procedures for observer placement. This action is necessary to satisfy the obligations of the United States under the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention), to which it is a Contracting Party.

DATES: This rule is effective on August 6, 2021.

ADDRESSES: Copies of supporting documents prepared for this final rule, including the regulatory impact review (RIR), as well as the proposed rule (85 FR 66513; October 20, 2020), are available via the Federal e-rulemaking Portal, at www.regulations.gov (search for Docket ID NOAA–NMFS–2020–0125). Those documents are also available from NMFS at the following address: Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp

Blvd., Building 176, Honolulu, HI 96818.

A final regulatory flexibility analysis (FRFA) prepared under authority of the Regulatory Flexibility Act is included in the Classification section of the **SUPPLEMENTARY INFORMATION** section of this document.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this rule may be submitted to PIRO at the address listed above, by email to OIRA_Submission@omb.eop.gov, or by fax to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Valerie Post, NMFS PIRO, 808–725–5034.

SUPPLEMENTARY INFORMATION:

Background

On October 20, 2020, NMFS published a proposed rule in the **Federal Register** (85 FR 66513) proposing to establish requirements to safeguard fishery observers and to establish pre-trip notification procedures for observer placement. The 30-day public comment period for the proposed rule closed on November 19, 2020.

The final rule is issued under the authority of the WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), which authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission). The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on

the WCPFC website at: www.wcpfc.int/doc/convention-area-map.

This final rule implements specific provisions of Conservation and Management Measure (CMM) 2017–03, “Conservation and Management Measure for WCPFC Regional Programme Observers,” as well as establishes pre-trip notification procedures for observer placement. The preamble to the proposed rule provides background information, including information on the Convention and the Commission, the provisions that are being implemented in this rule, and the basis for the regulations, which is not repeated here.

The Action

The specific elements of the final rule are detailed below.

1. Observer Safety Requirements

This final rule implements specific requirements for vessel owners and operators to help ensure the safety of WCPFC observers.¹ CMM 2017–03 describes requirements for vessel owners and operators specifically related to vessel operations, notification, search and rescue procedures, and investigations in the event of death, injury, serious illness, missing overboard, or harassment of a WCPFC observer.

NMFS is not promulgating additional regulations in the event of death, loss or serious injury as they would be duplicative of U.S. Coast Guard regulations on marine casualties and investigations at 46 CFR part 4.

Under the final rule, vessel owners and operators are required to notify the designated authorities as specified by the Regional Administrator at <https://www.fisheries.noaa.gov/pacific-islands/commercial-fishing/western-and-central-pacific-longline-and-purse-seine-vessels> in the event of serious illness, assault, intimidation, threats, interference, or harassment of a WCPFC observer. NMFS has created a website that provides specific contact information of the designated authorities, including emails and phone numbers. At this time, NMFS has identified the observer provider and NOAA Office of Law Enforcement Pacific Islands Division Duty Officer as contacts in the event of serious assault,

¹ A WCPFC observer is a person authorized by the Commission in accordance with any procedures established by the Commission to undertake vessel observer duties as part of the Commission’s Regional Observer Programme (ROP), including an observer deployed as part of a NMFS-administered observer program or as part of another national or sub-regional observer program, provided that such program is authorized by the Commission to be part of the Commission’s ROP (see 50 CFR 300.211).