

■ c. Adding the definition of “Organizational structure” in alphabetical order.

The additions and revision read as follows:

§ 455.101 Definitions.

Additional disclosable party means, with respect to a nursing facility defined in section 1919(a) of the Act, any person or entity who—

(1) Exercises operational, financial, or managerial control over the facility or a part thereof, or provides policies or procedures for any of the operations of the facility, or provides financial or cash management services to the facility;

(2) Leases or subleases real property to the facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or

(3) Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility.

* * * * *

Managing employee means—

(1) A general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of an institution, organization, or agency, either under contract or through some other arrangement, whether or not the individual is a W–2 employee of the institution, organization, or agency; or

(2) With respect to the additional requirements at § 455.104(e) for a nursing facility defined in section 1919(a) of the Act, an individual, including a general manager, business manager, administrator, director, or consultant, who directly or indirectly manages, advises, or supervises any element of the practices, finances, or operations of the facility.

Organizational structure means, with respect to a nursing facility defined in section 1919(a) of the Act, in the case of any of the following:

(1) *A corporation.* The officers, directors, and shareholders of the corporation who have an ownership interest in the corporation which is equal to or exceeds 5 percent.

(2) *A limited liability company.* The members and managers of the limited liability company including, as applicable, what percentage each member and manager has of the ownership interest in the limited liability company.

(3) *A general partnership.* The partners of the general partnership.

(4) *A limited partnership.* The general partners and any limited partners of the limited partnership who have an ownership interest in the limited partnership which is equal to or exceeds 10 percent.

(5) *A trust.* The trustees of the trust.

(6) *An individual.* Contact information for the individual.

* * * * *

■ 6. Section 455.104 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

§ 455.104 Disclosure by Medicaid providers and fiscal agents: Information on ownership and control.

* * * * *

(e) *Nursing facilities.* (1) In addition to all other applicable reporting requirements in this subpart, a nursing facility (as defined in section 1919(a) of the Act) must disclose upon initial enrollment and revalidation the following information:

(i) Each member of the governing body of the facility, including the name, title, and period of service for each such member.

(ii) Each person or entity who is an officer, director, member, partner, trustee, or managing employee (as defined in § 455.101) of the facility, including the name, title, and period of service of each such person or entity.

(iii) Each person or entity who is an additional disclosable party of the facility (as defined in § 455.101).

(iv) The organizational structure (as defined in § 455.101) of each additional disclosable party of the facility and a description of the relationship of each such additional disclosable party to the facility and to one another.

(2) The State need not require the facility to disclose the same information described in this paragraph (e) more than once on the same enrollment application submission.

Xavier Becerra,

Secretary, Department of Health and Human Services.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Chapter III

[Docket No. FMCSA–2023–0174]

RIN 2126–AC60

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 a change to its rules of organization, procedures, and practice.

DATES: This final rule is effective November 17, 2023, except for amendatory instruction 88, which is effective January 16, 2024.

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SUPPLEMENTARY INFORMATION:

I. Legal Basis for the Rulemaking

Congress delegated certain powers to regulate interstate commerce to DOT in numerous pieces of legislation, most notably in section 6 of the Department of Transportation Act (DOT Act) (Pub. L. 89–670, 80 Stat. 931, 937, Oct. 15, 1966). Section 6 of the DOT Act transferred to DOT the authority of the former Interstate Commerce Commission (ICC) to regulate the qualifications and maximum hours of service of employees, the safety of operations, and the equipment, of motor carriers in interstate commerce (80 Stat. 939). This authority, first granted to the ICC in the Motor Carrier Act of 1935 (Pub. L. 74–255, 49 Stat. 543, Aug. 9, 1935), now appears in 49 U.S.C. chapter 315. The regulations issued under this authority, as well as subsequently enacted laws, became known as the FMCSRs, codified at 49 Code of Federal Regulations (CFR) parts 350 through 399. The administrative powers to

enforce chapter 315 (codified in 49 U.S.C. chapter 5) were also transferred from the ICC to DOT in 1966, assigned first to the Federal Highway Administration (FHWA), and then to FMCSA. The FMCSA Administrator, whose powers and duties are set forth in 49 U.S.C. 113, has been delegated authority by the Secretary of Transportation (the Secretary) under 49 CFR 1.81 to prescribe regulations and to exercise authority over and with respect to any personnel within the organization, and under 49 CFR 1.87 to carry out the motor carrier functions vested in the Secretary.

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

The Motor Carrier Safety Improvement Act of 1999 (Pub. L. 106–159, 113 Stat. 1748, Dec. 9, 1999) established FMCSA as a new operating administration within DOT, effective January 1, 2000. Accordingly, since that time the motor carrier safety, and certain commercial, responsibilities previously assigned to both the ICC and FHWA have been the jurisdiction of FMCSA. These responsibilities also include regulations relating to section 18 of the Noise Control Act of 1972, codified at 42 U.S.C. 4917, which were originally assigned to the Secretary of Transportation (Pub. L. 92–574, 86 Stat. 1249, Oct. 27, 1972) and delegated to FHWA (39 FR 7791, Feb. 28, 1974), and are now the jurisdiction of FMCSA, as codified at 49 U.S.C. 113(f)(1).¹

Congress subsequently expanded, modified, and amended FMCSA's authority in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. 107–56, 115 Stat. 272, Oct. 26, 2001); the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, 119 Stat. 1144, Aug. 10, 2005); the SAFETEA–LU Technical Corrections Act of 2008 (Pub. L. 110–244, 122 Stat. 1572, June 6, 2008); the Moving Ahead for Progress in the 21st Century Act (MAP–21) (Pub. L. 112–141, 126 Stat. 405, July 6, 2012); Fixing America's Surface Transportation Act (Pub. L. 114–94, 129 Stat. 1312, Dec. 4, 2015); and the Infrastructure Investment and Jobs Act (Pub. L. 117–58, 135 Stat. 429, Nov. 15, 2021).

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

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

In addition to amendments that fall within the APA good cause exception, this rule also contains amendments that fall within the APA exception for rules of agency organization, procedure, or practice. The Agency amends part 386, titled “Rules of Practice for FMCSA Proceedings,” so that administrative proceedings under that part are brought before the appointed or duly authorized Agency Decisionmaker rather than the Assistant Administrator. These amendments fall within the exception to the APA's notice and comment rulemaking procedures for “rules of agency organization, procedure, or

practice,” (5 U.S.C. 553(b)(A)), and are therefore excepted from the notice and public comment requirements. Further, the APA does not apply to matters “relating to agency management or personnel” (5 U.S.C. 553(a)(2)); therefore, the notice and comment rulemaking procedures do not apply to the Agency Decisionmaker amendments in part 386.

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 84 concerning the revised Medical Examination Report Form, MCSA–5875, in § 391.43(f) and Medical Examiner's Certificate, Form MCSA–5876, in § 391.43(h).

II. Severability

The purpose of this rule is to make technical amendments throughout FMCSA's regulations. These amendments include minor changes to correct inadvertent errors and omissions, remove or update obsolete references, and improve the clarity and consistency of certain regulatory provisions. These technical amendments, which apply to many different parts of FMCSA's regulations, are collected into this single rule for rulemaking efficiency. This rule is bound together by the common character of the changes as technical amendments, rather than a common subject matter. As a result, FMCSA finds that the provisions in this final rule can operate independently and are therefore severable. In the event a court were to invalidate one or more of this rulemaking's unique provisions, the remaining provisions should stand.

III. Section-by-Section Analysis

This section-by-section analysis first describes changes to the regulatory text that affect multiple parts within the FMCSRs, and then the remaining changes to the regulatory text in numerical order.

A. Amendments Affecting Multiple Parts Within Chapter III, Subchapter B

The following amendments affect chapter III, subchapter B, as a whole, or multiple parts within the subchapter.

Redesignation of Appendix B to Subchapter B of Chapter III and Deletion of Reserved Appendices

FMCSA makes several amendments to the appendices of chapter III, subchapter B, to complete a

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

reorganization of that subchapter. The object of the reorganization is to move each appendix at the end of subchapter B to the specific part to which the appendix most directly pertains, for the purpose of making the appendices more helpful and accessible to the reader. All but one of the appendices have already been moved via redesignation, though appendices A and C through E remain reserved at the end of the subchapter to maintain the appendix ordering.² The last non-reserved appendix, appendix B, is now moved and the reserved appendices are deleted.

Subchapter B formerly had an appendix A entitled “Interpretations.” This appendix contained a collection of interpretations of the FMCSRs. FMCSA’s predecessor agency, FHWA, deemed this appendix obsolete, and removed and reserved it (59 FR 60319, 60322, Nov. 23, 1994). With the relocation of appendix B, appendix A no longer needs to be reserved to maintain the appendix ordering, and so FMCSA deletes reserved appendix A to subchapter B.

FMCSA redesignates appendix B to subchapter B, entitled “Special Agents,” as appendix B to part 390. This appendix describes the authority of persons appointed as special agents of FMCSA, and the obligations of motor carriers and other regulated entities to comply with examination and inspection by special agents. Of the parts within the FMCSRs, this appendix most directly pertains to part 390, “Federal Motor Carrier Safety Regulations; General,” therefore FMCSA redesignates the appendix as appendix B to that part. Note that the appendix is cross-referenced in several sections of the FMCSRs, and conforming amendments are made to update these cross-references, as described later in the section-by-section analysis.

Subchapter B formerly had an appendix C entitled “Written Examination for Drivers.” This appendix related to a written examination covering the FMCSRs, then required by part 391. FHWA determined this requirement was unnecessary and removed and reserved the appendix (59 FR 60319, 60320, Nov. 23, 1994). FMCSA now deletes the reserved appendix.

Subchapter B formerly had an appendix D entitled “Table of Disqualifying Drugs and Other Substances, Schedule I,” and an appendix E entitled “Tables of Disqualifying Drugs and Other Substances, Schedules II Through V.” Earlier versions of the FMCSRs cross-referenced these tables in regulations related to controlled substances use and testing. When the controlled substances use and testing regulations were updated, these cross-references to appendices were replaced with cross-references to drug schedules located elsewhere in the CFR (see, e.g., 62 CFR 37150, 37151, July 11, 1997 (amendment to the definition of *controlled substance* in § 383.5)). The change in cross-references made appendices D and E unnecessary, and FHWA removed and reserved them (62 CFR 37150, 37153, July 11, 1997). FMCSA now deletes these reserved appendices.

Replacement of the Term “Web Site”

FMCSA amends the FMCSRs throughout to change the terms “Web site” and “web site” to “website.” This change adds consistency throughout the FMCSRs by adopting the updated form of the term, which is already used in several regulations (see, e.g., 49 CFR 375.213(a)(1)). FMCSA also changes the term “http” to “https” to ensure the website addresses in the CFR are accurate. This amendment affects §§ 365.105, 365.106T, 365.503, 368.3, 368.3–1T, 368.3T, 369.1, 371.107, 371.111, 371.117, 375.103, 375.213, 385.305, 385.305T, 385.603T, 389.5, 390.19, 390.19T, 390.200T, 390.201, 391.43, 395.22, and appendix A to subpart B of part 395.

Addition of a Hyphen to the Adjective “Third-Party”

FMCSA amends the FMCSRs by adding a hyphen to the term “third party” where it is used as an adjective. In these instances, hyphen usage is recommended by the U.S. Government Publishing Office Style Manual. This amendment increases clarity by updating the term to use the correct grammar to avoid confusion. This amendment does not affect instances where “third party” is used as a noun (see, e.g., 49 CFR 350.207(b)). This amendment affects §§ 382.107, 382.401, 382.403, 382.409, 382.711, 383.5, 383.75, 384.228, 384.229, and 390.15.

B. Part 325—Compliance With Interstate Motor Carrier Noise Emission Standards

Section 325.13 Inspection and Examination of Motor Vehicles

FMCSA replaces “appendix B to subchapter B” with “appendix B to part 390” in paragraph (a). This change reflects the redesignation of appendix B to subchapter B of chapter III—Special Agents, as discussed above in section III.A. The redesignation appends the Special Agents material to part 390, the part to which it most directly pertains.

C. Part 375—Transportation of Household Goods in Interstate Commerce; Consumer Protection Regulations

Section 375.103 What are the definitions of terms used in this part?

FMCSA replaces “§ 1312.3(a)” with “§ 1310.3(a)” in the definition of *tariff* to correct a cross-reference. The definition currently references 49 CFR 1312.3(a) when referring to Surface Transportation Board tariff requirements. However, the Surface Transportation Board tariff requirements for shipments of household goods referenced in the definition of *tariff* are found at 49 CFR 1310.3(a). Accordingly, FMCSA is updating the cross-reference to reflect the correct section of the regulations.

Section 375.403 How must I provide a binding estimate?

FMCSA amends § 375.403(a)(6)(ii) to clarify the requirements for binding estimates provided by household goods motor carriers. Section 375.403(a) describes the requirements for a binding estimate, and § 375.403(a)(6) relates to situations where a shipper of household goods tenders additional household goods or requires additional services not identified in the binding estimate. This section was amended last year to incorporate recommendations from the Household Goods Consumer Protection Working Group (the Working Group) (87 FR 24431, Apr. 26, 2022). Prior to this amendment, § 375.403(a)(6)(ii) referred to a revised binding estimate that accurately listed, in detail, additional household goods or services. As amended, § 375.403(a)(6)(ii) refers to a new, rather than a revised, binding estimate and does not expressly refer to a list of additional goods or services.

FMCSA’s purpose in amending this section was merely to change the requirement from a revised binding estimate to a new binding estimate (87

²In 2021, FMCSA redesignated subchapter B, appendix F (entitled “Commercial Zones”), as appendix A to part 372 (86 FR 57060, 57066, Oct. 14, 2021). In the same rule FMCSA redesignated subchapter B, appendix G (entitled “Minimum Periodic Inspection Standards”), as appendix A to part 396 (86 FR 57060, 57066, Oct. 14, 2021). Both of these appendices were removed and were not reserved.

FR 24431, 24435, Apr. 26, 2022).³ The Working Group had found that, in some cases, revised estimates obscured whether the shipper and mover had agreed to the items to be moved, services to be provided, and price to be paid. The lack of clear terms made it difficult for investigators to address shipper complaints, and the Working Group recommended requiring a new estimate, rather than a revised estimate, to close this loophole.

In making the change from “revised binding estimate” to “new binding estimate” in 2022, however, there was no intent to remove the requirement that the estimate contain an accurate and detailed list of the household goods or services to which the estimate applied, and no such change was discussed in the rulemaking. Rather, FMCSA intended that the new estimate would justify the increased costs for additional goods and services by clearly describing all goods and services included in the shipment, as is required for original estimates in § 375.403(a)(5), including any additional goods tendered or services requested. It has come to FMCSA’s attention that deleting this language may have inadvertently caused confusion about what a new binding estimate must contain. The Agency is therefore amending § 375.403(a)(6)(ii) to restore the language indicating that a list of additional household goods and services is required when a new estimate is prepared.

FMCSA also replaces “§ 375.401(a)” with “§ 375.401(b)(1)” in paragraph (b) to correct a cross reference. The requirements for a binding estimate referenced in paragraph (b) are in § 375.401(b)(1), whereas § 375.401(a) discusses physical surveys and does not mention binding estimates. Accordingly, FMCSA is updating the cross-reference to reflect the correct section of the regulations.

Section 375.405 How must I provide a non-binding estimate?

FMCSA amends § 375.405(b)(7)(ii) to make a clarification similar to the above amendment in § 375.403(a)(6)(ii). Section 375.405(b) describes the

requirements for a non-binding estimate, and § 375.403(b)(7) relates to situations where a shipper of household goods tenders additional household goods or requires additional services not identified in the non-binding estimate, similar to the situation described in § 375.403(a)(6) but in the case of a non-binding estimate instead of a binding estimate. FMCSA amended § 375.405(b)(7)(ii) last year to require a new non-binding estimate, rather than a revised non-binding estimate (87 FR 24431, 24435, Apr. 26, 2022). As with the 2022 amendment to § 375.403(a)(6)(ii), FMCSA’s amendment to streamline the regulatory language inadvertently caused confusion for movers when preparing new estimates. FMCSA now amends § 375.405(b)(7)(ii) to restore the original language, clarifying that the non-binding estimate must provide a detailed and accurate list of the additional household goods or services to which the estimate applies.

Section 375.505 Must I write up a bill of lading?

FMCSA amends § 375.505 by replacing the term “order for service” with the term “bill of lading” in paragraph (b)(4). This revision is consistent with the changes made in the 2022 final rule incorporating recommendations from the Working Group (87 FR 24431, Apr. 26, 2022). As noted in the preamble of that rule, in agreement with Recommendation 9 of the Working Group, FMCSA removed the requirements in part 375 for an order for service as duplicative and updated the requirements for a bill of lading to also include information that was previously contained in an order for service (87 FR 2441). While all references to an order for service in part 375 should have been replaced with references to a bill of lading, the final rule inadvertently left the original language in place in § 375.505(b)(4). FMCSA updates the reference to reflect that the bill of lading has replaced the order for service, consistent with the prior revisions.

D. Part 378—Procedures Governing the Processing, Investigation, and Disposition of Overcharge, Duplicate Payment, or Overcollection Claims

Section 378.2 Definitions

FMCSA revises the definition of *overcollection* in § 378.2(d) so that the Surface Transportation Board is no longer described as a component of DOT. The Surface Transportation Board Reauthorization Act made the Surface Transportation Board completely independent from DOT (Pub. L. 114–

110, 129 Stat. 2228, at 2228–29, Dec. 18, 2015). This amendment removes the characterization of the Surface Transportation Board as a DOT component to conform with the board’s current status as an independent agency.

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

Section 381.225 Who should I contact if I have questions about the information I am required to submit to the FMCSA or about the status of my request for a waiver?

FMCSA replaces “Office of Bus and Truck Standards and Operations (MC–PS)” with “Office of Carrier, Driver & Vehicle Safety Standards (MC–PS)” to update the name of the office. The office name has changed to “Office of Carrier, Driver & Vehicle Safety Standards” since this section was last amended. FMCSA removes the word “the” preceding the term “FMCSA” in the section heading as an update to the language for consistency. FMCSA also removes the period after the term “SE” in the address provided in the section.

Section 381.315 What will the FMCSA do after the agency receives my application for an exemption?

FMCSA removes the word “the” where it precedes the term “FMCSA” in the section heading for consistency. FMCSA removes the word “to” preceding the word “either” in paragraph (b) and adds the word “to” before the word “deny” to correct a typographical error. In paragraph (d)(1), FMCSA replaces “the Department of Transportation, Docket Management Facility, 1200 New Jersey Ave. SE, Washington, DC 20590–0001” with “Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001” to update the office name and location. In paragraph (d)(2), FMCSA replaces “the Department of Transportation, Docket Management Facility” with “Dockets Operations, U.S. Department of Transportation” to update the office name.

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

Section 382.213 Controlled Substance Use

FMCSA revises § 382.213(b) to replace “pursuant to the instructions of a licensed medical practitioner” with “prescribed by a licensed medical practitioner.” This amendment conforms to FMCSA’s intent as described in its final rule “Harmonizing

³ This intention is further evidenced by the report on which the 2022 amendment was based, Recommendations to the U.S. Department of Transportation to Improve Household Goods Consumer Education, Simplify and Reduce Paperwork, and Condense FMCSA Publication ESA 03005 (Working Group Recommendations). The report is available online at <https://www.fmcsa.dot.gov/sites/fmcsa.dot.gov/files/docs/fastact/450791/fast-act-hhg-working-group-report-recommendations.pdf> (last accessed July 19, 2023). The report describes situations where rogue operators take advantage of revised estimates and recommends revising § 375.403(a)(6)(ii) to require a new estimate (see pp. 28–30).

Schedule I Drug Requirements,” published at 77 FR 4479 (Jan. 30, 2012). The Agency had proposed to amend § 382.213(b) by replacing “prescribed by” with “pursuant to the instructions of” a licensed medical practitioner but declined to adopt that change. When declining to adopt the language change in the final rule, FMCSA explained that the proposed change was inconsistent with language used elsewhere in the Agency’s regulations and would be confusing to public. The Agency further stated in the final rule that it was removing the language “pursuant to the instructions of” and replacing it with the original language in this section, “prescribed by” (77 FR 4481). However, that change was inadvertently omitted from the 2012 final rule regulatory text. This amendment conforms the language of § 382.213(b) with FMCSA’s expressed intent.

Section 382.213(c) currently states that employers who have actual knowledge of controlled substance use by drivers must not permit the driver to perform, or continue to perform, safety-sensitive functions. The term *controlled substances*, currently defined in § 382.107, refers to those substances tested for in accordance with 49 CFR 40.82. FMCSA amends § 382.213(c) by adding “as defined in § 382.107” after “controlled substances” and by adding “except when the use is prescribed by a *licensed medical practitioner*, as defined in § 382.107, 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.” The Agency makes this change to conform § 382.213(c) with the language of § 382.213(b), as revised.

Section 382.217 Employer Responsibilities

Section 382.217 states that no employer may allow, require, permit, or authorize a driver to operate a commercial motor vehicle (CMV) during any period in which an employer determines that a driver is not in compliance with the return-to-duty requirements in 49 CFR part 40, subpart O, after the occurrence of prohibited drug or alcohol use, as specified in paragraphs (a) through (d) or has actual knowledge that a driver has used alcohol while performing safety sensitive functions, used alcohol within 4 hours of performing safety-sensitive functions, or used a controlled substance, as set forth in paragraphs (e)(1) through (3). The term *controlled substance*, currently defined in § 382.107, refers to those substances

tested for in accordance with 49 CFR 40.82.

FMCSA amends paragraph (e)(3) by adding after “controlled substance” the phrase “except when the use is prescribed by a licensed medical practitioner 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.” Under current regulations, a driver who uses a *controlled substance*, as defined in § 382.107, pursuant to a valid prescription as described above, is not required to comply with return-to-duty requirements. The Agency makes this change to conform with existing practice in FMCSA’s controlled substance use and testing program and to conform paragraph (e)(3) with the language of § 382.213(c), as revised.

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

Section 383.25 Commercial Learner’s Permit (CLP)

FMCSA amends § 383.25(a)(1) by adding the words “and is otherwise authorized to operate the CMV for that trip” following “necessary to operate the CMV” in the first sentence. Section 383.25 permits a CLP holder to operate a CMV on public roads for purposes of behind-the-wheel (BTW) training, as long as several minimum conditions are met. One of these conditions, set forth in § 383.25(a)(1), requires that the CLP holder be accompanied by the holder of a valid commercial driver’s license (CDL) who has the proper CDL group and endorsement(s) necessary to operate the CMV and is physically present in the front seat of the CMV next to the CLP holder, or in the case of a passenger vehicle, directly behind or in the first row behind the driver. The CDL holder must have the CLP holder under observation and direct supervision. The amendment clarifies that the CDL holder must also be legally authorized to operate the CMV for the trip. FMCSA makes this revision in response to a petition for rulemaking submitted in April 2023 by the Commercial Vehicle Safety Alliance asking the Agency to clarify this issue in the interest of promoting safety.

The requirement that the CLP holder be accompanied by the holder of a valid CDL who has the proper CDL group and endorsement(s) serves two purposes: (1) the CDL holder, having passed the CDL skills test(s), is knowledgeable in the operation of the CMV for BTW training purposes; and (2) the CDL holder is ready to assume control of the CMV in

the event the CLP holder is not capable of performing a BTW training maneuver, or becomes otherwise incapacitated. As discussed below, FMCSA is aware, however, that situations may occur when the person accompanying the CLP holder has a valid CDL but is nevertheless not legally authorized to operate the CMV due to other existing regulatory requirements.

For example, someone holding a valid CDL may be prohibited from operating a CMV due to a drug or alcohol use or testing violation, in accordance with § 382.501(a). The Agency notes that even after the CDL downgrade provision set forth in § 383.73(q) takes effect on November 18, 2024, thereby removing the CDL privilege from the holder’s license, the downgrade may not be recorded on the CDL holder’s CDLIS record for up to 60 days. Another example involves a CDL holder who is not qualified to operate a CMV because they do not comply with the physical qualification requirements in 49 CFR part 391, subpart E, as required by § 391.11(a). The holder’s CDL is subject to downgrade in accordance with § 383.73(o)(4), due to not having a current medical certificate or medical variance, but again, the downgrade may not be effective for 60 days. Another scenario would be when a CDL holder has self-certified as “excepted interstate commerce” and is thus exempt from medical requirements, but the CDL holder is accompanying the CLP holder in a non-excepted interstate movement. Under these circumstances, operating without a current medical certificate is prohibited. In each of these examples, the individual continues to hold a CDL that is facially valid while they are otherwise prohibited from operating the CMV due to existing regulatory requirements. FMCSA acknowledges that these examples are not intended to be exclusive and that there may be other instances where an individual holding a valid CDL is not authorized to operate the CMV under the FMCSRs.

Section 383.37 Employer Responsibilities

FMCSA replaces the words “he or she” with the words “the employer” in the introductory text of § 383.37 to clarify that the knowledge requirement referred to in the regulation applies to the employer. In paragraph (d), FMCSA replaces the words “he/she is driving” with “the driver is operating” to update the language.

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

Section 384.208 Notification of Disqualification

Section 383.5 defines *commercial driver's license (CDL)* as a license issued to an individual by a State or other jurisdiction of domicile, in accordance with the standards contained in this part, which authorizes the individual to operate a class of a CMV. In accordance with § 383.23(b)(1), CDLs issued by Canadian Provinces and Territories in conformity with the Canadian National Safety Code and the Licencias Federales de Conductor issued by the United Mexican States are in accordance with the standards of 49 CFR part 383. In § 384.208(a), FMCSA adds the phrase “or other jurisdiction of domicile” after “by another State” and adds the words “or jurisdiction” after “notify the State.” The purpose of these amendments, which reflect current practice, is to conform to the current definition of *CDL* set forth in § 383.5 and to clarify that the commercial licensing entities in Canada and Mexico are included within the scope of this section.

Section 384.209 Notification of Traffic Violations

In paragraphs (a)(1) and (b)(1) of § 384.209, FMCSA adds the phrase “or other jurisdiction of domicile” after “another State” and adds the words “or jurisdiction” between “the licensing entity in the State” and “where the driver is licensed.” The purpose of these amendments, which reflect current practice, is to conform to the current definition of *CDL* set forth in § 383.5 and to clarify that the commercial licensing entities in Canada and Mexico are included within the scope of this section, similar to the amendments to § 384.208 above.

I. Part 386—Rules of Practice for FMCSA Proceedings

Agency Proceedings Before the Agency Decisionmaker

FMCSA amends part 386 by replacing “Assistant Administrator” with “Agency Decisionmaker” throughout the part, excluding §§ 386.1 and 386.2. FMCSA amends §§ 386.1 and 386.2 to make similar, section-specific replacements. These amendments specify that administrative proceedings under applicable provisions of the Federal Motor Carrier Safety Regulations (49 CFR parts 350 through 399), including the commercial regulations (49 CFR parts 360 through 379), and the Hazardous Materials Regulations (49 CFR parts 171 through

180) are not necessarily brought before the Assistant Administrator. The statute requiring FMCSA to have an Assistant Administrator, 49 U.S.C. 113(e), does not require that this person act as the Agency Decisionmaker. Replacing the current language is consistent with the Agency's ability to allow another properly appointed official to assume the duties of Agency Decisionmaker when the Assistant Administrator position is vacant or when the Agency determines that this function is better served by a different official. Consequently, this part will be updated to state that such proceedings are before the Agency Decisionmaker, rather than before the Assistant Administrator. FMCSA also amends part 386 to conform the capitalization of the term “Agency Decisionmaker” throughout the part.

Final Order

FMCSA amends part 386 to correct certain instances where the term “Final Agency Order” is used instead of the term “Final Order.” These terms, while similar, are distinguishable in that a Final Order may be reviewed by the Agency Decisionmaker, while a Final Agency Order is typically issued by the Agency Decisionmaker and constitutes FMCSA's final action in a proceeding. The amendment applies to sections where the regulations are intended to refer to an administratively reviewable Final Order rather than a Final Agency Order as defined in § 386.2. The affected sections are §§ 386.14, 386.16, 386.31, 386.36, 386.61, and 386.64. Taking § 386.14 as an example, the document currently described as a “Notice of Default and Final Agency Order” in § 386.14(c)(1) is appealable to the Agency Decisionmaker for review and is therefore not a Final Agency Order when initially issued, thus the terminology must be corrected to read, “Notice of Default and Final Order.” In addition to replacing the term “Final Agency Order” with “Final Order” where necessary to correct this oversight, the Agency also makes minor conforming amendments to §§ 386.14(c)(3) and 386.16(a)(5). The term “Final Agency Order” is retained in sections describing orders that are Final Agency Orders as defined in § 386.2 (see, e.g., § 386.18).

Section 386.1 Scope of the Rules in This Part

FMCSA amends § 386.1(a) and (b) to replace “Assistant Administrator” with “Agency Decisionmaker,” consistent with the replacement amendment applied throughout part 386, described above. The amendment to § 386.1

includes the removal of the description of the Assistant Administrator as FMCSA's Chief Safety Officer, appearing in § 386.1(a), because the section will no longer refer to the Assistant Administrator.

Section 386.2 Definitions

FMCSA amends the definition of “Agency Decisionmaker” in § 386.2. Currently, the Agency Decisionmaker is the Assistant Administrator or any person to whom this decisionmaking authority has been delegated. The amended definition will make clear that other Agency officials may serve as the Agency Decisionmaker, provided they are appointed by the President or otherwise duly authorized. As discussed above, the Assistant Administrator is not statutorily required to serve in this role and FMCSA has the discretion to delegate these functions to another authorized official.

FMCSA deletes the definition of “Assistant Administrator,” as this term will no longer be used interchangeably with the term “Agency Decisionmaker.”

FMCSA amends the definition of “Final Agency Order” to reflect that such orders are issued by the Agency Decisionmaker or another authorized official, in conformance with the amendments discussed above.

Section 386.3 Separation of Functions

FMCSA amends § 386.3 to conform the capitalization of the terms “Agency Decisionmaker” and “Agency Decisionmakers” with the capitalization used throughout the rest of part 386.

Section 386.12 Complaints

FMCSA amends § 386.12 by correcting the telephone number provided for information on filing a written complaint, in each place that the number appears. The telephone number included in this section was inaccurately published as beginning with “1-800,” but in fact begins with “1-888.” The remainder of the telephone number is unchanged.

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

Section 387.9 Financial Responsibility, Minimum Levels

FMCSA amends § 387.9 by adding the words “in bulk” to one of the commodities listed in table 1, to conform the description of that commodity to other commodity descriptions on the list. Section 387.9 specifies minimum levels of financial responsibility that motor carriers must maintain to comply with other sections within part 387 (see 49 CFR 387.7). The

level of financial responsibility required depends on the type of carriage and the commodity transported, as shown in table 1 of § 387.9. The second row of the table specifies a combination of carriage type and commodity subject to a \$5,000,000 level of financial responsibility.

FMCSA, and FHWA before it, have amended table 1 several times to clarify that the list generally refers to commodities carried in bulk (see 59 FR 63921, 63924 (Dec. 12, 1994), 73 FR 76496 (Dec. 16, 2008), and 86 FR 57060, 57064 (Oct. 14, 2021)). The table previously used various terms to describe the quantities of these commodities and stated that the \$5,000,000 level of financial responsibility applied to, among other commodities, in bulk Division 1.1, 1.2, 1.3 materials, Division 2.3, Hazard Zone A, or Division 6.1, Packing Group I, Hazard Zone A material. As part of a later amendment, this list of commodities was broken into multiple clauses and the word “or” omitted. The term “in bulk” was also inadvertently omitted from the new clause containing Division 2.3, Hazard Zone A materials. This commodity should be described as in bulk, the same as the preceding and succeeding items on this list. FMCSA corrects this oversight by prepending the words “in bulk” to Division 2.3, Hazard Zone A material.

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

Section 389.3 Definitions

FMCSA revises the definition of *act* in § 389.3 by adding “or commercial activity” to the end of the definition. This revision clarifies that the rulemaking procedures in part 389 apply to the issuance, amendment, and revocation of rules under FMCSA’s statutory authority for both motor carrier safety and commercial activities.⁴ The definition of *act* currently references statutes only covering motor carrier safety. FMCSA’s intent and practice, however, is and has been that part 389 applies to rulemaking procedures in all areas of FMCSA’s authority, including the Agency’s commercial authorities. The lack of reference to commercial authorities is an oversight in § 389.3 that has carried

⁴ FMCSA’s commercial household goods regulations in part 375 cite part 389 when referring to procedures required to update regulatory requirements relating to appendix A of part 375 through notice and comment rulemaking (49 CFR 375.213(c)(1)).

over from predecessor agency regulations.

When responsibility for administering these commercial authorities was transferred from the ICC to FHWA,⁵ the definition of *act* should have been updated to include the new authorities under which FHWA was promulgating regulations. However, the new commercial authorities were not formally updated into the definition of *act*, although nothing in the regulatory history of this section suggests this omission was intended. When the FHWA regulations were transferred to FMCSA, it was an inadvertent oversight for the Agency to not update the definition to include the commercial statutes. In practice, the Agency has treated these regulatory actions the same. Thus, the Agency remedies this ongoing oversight by revising the definition of *act* to include a reference to FMCSA’s commercial statutory authorities to clarify that the provisions in part 389 apply to the issuance, amendment, and revocation of rules under both safety and commercial authorities.

Section 389.31 Petitions for Rulemaking

FMCSA amends § 389.31 by correcting a typographical error in the Agency’s website address. The published address, “www.FMCSA.gov,” is incorrect and FMCSA replaces it with the correct address, which is “www.FMCSA.dot.gov.”

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

Sections 390.5 (Suspended) and 390.5T Definitions⁶

FMCSA revises the definition of *employer* in §§ 390.5 (suspended) and 390.5T by replacing the word “terms” with “term” to correct a typographical error. The word “term” is meant to refer to the term “employer” in the singular.

FMCSA revises the definition of *medical variance* in §§ 390.5 (suspended) and 390.5T by removing the words “or § 391.64 of this chapter” in paragraph (1) of the definition. Section 391.64 provided a basis for an

⁵ See the Legal Basis section above for an overview of the relevant statutes that transferred authority for certain provisions from the ICC to FHWA, and subsequently to FMCSA.

⁶ 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 one of the replacement sections added (82 FR 5299).

exemption from the Agency’s vision standard for certain drivers who participated in FMCSA’s Vision Waiver Study Program conducted in the 1990s. On January 21, 2022, FMCSA published a final rule adopting an alternative vision standard for individuals to be medically certified to operate CMVs in interstate commerce (87 FR 3390). The rule also eliminated physical qualification under § 391.64 as of March 22, 2023 (87 FR 7756, Feb. 10, 2022). Because this date has passed, FMCSA removes the obsolete reference to medical certification under § 391.64 from the definition. In addition, FMCSA adds the word “or” to the end of paragraph (1) of the definition to make the list grammatically correct and reflect that either of the documents listed is included in the definition, as indicated in the introductory paragraph of the term.

FMCSA revises the definition of *special agent* in §§ 390.5 (suspended) and 390.5T by replacing “appendix B to subchapter B—Special agents” and “appendix B to this subchapter—Special agents,” respectively, with “appendix B to this part.” This change reflects the redesignation of appendix B to subchapter B of chapter III discussed above in section III.A. The redesignation appends the Special Agents material to part 390, the part to which it most directly pertains.

Section 390.25 Extension of Relief From Regulations—Emergencies

FMCSA revises § 390.25 by replacing the words “he or she” with the word “it” in the last sentence of the section. This amendment also corrects an error from a previous technical amendment. In FMCSA’s technical amendments rule published October 14, 2021, the Agency replaced the term “the FMCSA Field Administrator” with the term “FMCSA,” and a corresponding edit should have been made to replace “he or she” with “it” in the same sentence (see 86 FR 57060, 57064–65, Oct. 14, 2021). This amendment corrects that oversight.

Section 390.27 Locations of Motor Carrier Safety Service Centers

FMCSA revises § 390.27 to change the address of the Southern Service Center from 1800 Century Boulevard, Suite 1700, Atlanta, Georgia 30345–3220, to 61 Forsyth Street SW, Suite 3M40, Atlanta, GA 30303. The Southern Service Center moved in May 2021, requiring this update to remove the obsolete address.

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

Section 391.23 Investigation and Inquiries

FMCSA revises § 391.23 to clarify that the initial motor vehicle record (MVR) required by § 391.23(a) is to cover the prior 3 years. This revision addresses an inadvertent error in a previous rulemaking titled, “Medical Certification Requirements as Part of the CDL,” published at 73 FR 73095 (Dec. 1, 2008). FMCSA’s intention in that rulemaking was to revise paragraph (a)(1) to use the terms “State driver license agency” and “motor vehicle record” (73 FR 73113). Prior to the rule, paragraph (a)(1) read, “An inquiry into the driver’s driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator’s license or permit during those 3 years; and.” The rule revised the paragraph to read “An inquiry to each State where the driver held or holds a motor vehicle operator’s license or permit during the preceding 3 years to obtain that driver’s motor vehicle record.” The rulemaking provided no mention of, nor rationale for, the removal of the language requiring the initial MVR to cover the prior 3 years.

FMCSA now fixes this unintentional deletion by adding “covering that driver’s prior 3-year driving history” to the end of paragraph (a)(1). The accidental removal of the language in the 2008 rule has not changed how the 3-year requirement has been applied since 2008, but FMCSA believes adding that language back to paragraph (a)(1) increases clarity for regulated entities.

Section 391.43 Medical Examination; Certificate of Physical Examination

FMCSA amends three paragraphs in § 391.43 to remove obsolete references to medical certification under § 391.64. As noted above, § 391.64 provided a basis for an exemption from the Agency’s vision standard for certain drivers who participated in FMCSA’s Vision Waiver Study Program conducted in the 1990s. On January 21, 2022, FMCSA published a final rule adopting an alternative vision standard for individuals to be medically certified to operate CMVs in interstate commerce (87 FR 3390). The rule also eliminated physical qualification under § 391.64 as of March 22, 2023 (87 FR 7756, Feb. 10, 2022).

FMCSA revises § 391.43 by removing and reserving paragraph (e). Paragraph (e) relates only to drivers medically certified under § 391.64.

In paragraph (f), FMCSA changes the Medical Examination Report Form, MCSA–5875, by removing the option for medical certification under § 391.64 in the “Medical Examiner Determination (Federal)” section. 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 (h), FMCSA changes the Medical Examiner’s Certificate, Form MCSA–5876, by removing the option for medical certification under § 391.64 in the first section on the form. 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.

Section 391.45 Persons Who Must Be Medically Examined and Certified

FMCSA revises § 391.45 by removing and reserving paragraph (d). Paragraph (d) relates only to drivers medically certified under § 391.64. As previously noted, § 391.64 provided a basis for an exemption from the Agency’s vision standard for certain drivers who participated in FMCSA’s Vision Waiver Study Program conducted in the 1990s. On January 21, 2022, FMCSA published a final rule adopting an alternative vision standard for individuals to be medically certified to operate CMVs in interstate commerce (87 FR 3390). The rule also eliminated physical qualification under § 391.64 as of March 22, 2023 (87 FR 7756, Feb. 10, 2022). Because this date has passed, FMCSA removes the obsolete reference to medical certification under § 391.64.

Section 391.47 Resolution of Conflicts of Medical Evaluation

FMCSA amends § 391.47 to reflect current Agency terminology and eligibility to conduct a driver physical qualification examination. Section 391.47 provides a process to resolve conflicting medical certification determinations between the medical examiner for the driver and the medical examiner for the motor carrier. When § 391.47 was adopted in 1970, the term “medical examiner” was used in § 391.47 to describe the individuals who conducted the physical qualification examination (35 FR 6458, Apr. 22, 1970). At that time, § 391.43(a) provided that only a physician, *i.e.*, a licensed doctor of medicine or osteopathy, was allowed to conduct such examinations. In 1977, § 391.47 was completely rewritten and an opinion by an impartial medical specialist in the field in which the medical conflict arose was

added to the process (42 FR 18076, Apr. 5, 1977). The term “physician” was used throughout the revised section to replace medical examiner and to include the impartial medical specialist. The intent was to ensure that the medical specialist was well qualified. The relevant provisions of § 391.47 have not been revised since 1977.

Over time, the categories of medical professionals eligible to conduct physical qualification examinations have expanded and the term used to describe them has changed. In 1992, a new definition of *health care professional* was added to § 390.5 (57 FR 33276, July 28, 1992). The term was defined as a person who is licensed, certified, and/or registered, in accordance with applicable State laws and regulations, to perform physical examinations. It included, but was not limited to, doctors of medicine, doctors of osteopathy, physician assistants, advanced practice nurses, and doctors of chiropractic. Section 391.43(a)(1) was amended to provide that the physical qualification examination must be performed by a licensed *health care professional* as defined in § 390.5.

In 1993, §§ 390.5 and 391.43 were amended with a technical amendment that changed the term “health care professional” wherever it appeared back to the previous usage of “medical examiner” without a change to the definition (58 FR 59194, Nov. 8, 1993). In 2012, the definition of *medical examiner* in § 390.5 was amended with respect to physical qualification examinations conducted on and after May 21, 2014, to mean an individual certified by FMCSA and listed on the National Registry of Certified Medical Examiners in accordance with 49 CFR part 390 (77 FR 24104, Apr. 20, 2012). New § 390.103(a)(1) provides the professional licensure requirements for medical examiner eligibility, which are essentially the same as those in the prior definition of *medical examiner*.

Section 391.47 was inadvertently overlooked when these changes occurred; therefore, FMCSA amends § 391.47 to conform to current Agency terminology and medical examiner eligibility. In paragraphs (b)(1) and (7), FMCSA changes “physicians” to “medical examiners and medical specialists.” In paragraph (b)(2), FMCSA changes “physician” to “medical examiner” each place that it appears.

In addition, FMCSA revises § 391.47 by removing the mail stop “MC–PS” in each place that it appears. This amendment corrects an inadvertent error from a previous technical amendment. In FMCSA’s technical amendments rule published October 14,

2021, the Agency simplified many sections across various parts of the CFR to remove or otherwise update references to specific titles or offices to provide greater flexibility in delegations (86 FR 57060). The Agency replaced references to the Office of Carrier, Driver and Vehicle Safety Standards and its Director with the term “FMCSA,” but failed to remove the corresponding mail stop (86 FR 57074). This amendment corrects that oversight in § 391.47(c), (d)(1) and (2), and (f) by removing the reference to “MC–PS.”

N. Part 395—Hours of Service of Drivers

Section 395.2 Definitions

FMCSA amends the definition of *utility service vehicle* provided in § 395.2 by adding broadband-internet and cellular telephone operations as examples of public utilities in paragraph (1) of the definition. The definition of *utility service vehicle* in § 395.2 is used in part 391 as part of the hours of service regulations. The definition provides a non-exhaustive list of public utilities in paragraph (1) as an illustration of which CMVs should be considered utility service vehicles. Broadband-internet and cellular telephone operations are public utilities, as evidenced by the Federal Communication Commission’s classification of these services as public utilities. Many CMVs are used to repair, maintain, and operate facilities necessary for the delivery of broadband-internet and cellular telephone operations. Given the prevalence of these operations and associated vehicles, FMCSA amends the list of public utilities in § 395.2 by adding broadband-internet and cellular telephone operations.

Section 395.13 Drivers Ordered Out of Service

FMCSA replaces “appendix B to this subchapter” with “appendix B to part 390” in paragraph (a). This change reflects the redesignation of appendix B to subchapter B of chapter III discussed above in section III.A. The redesignation appends the Special Agents material to part 390, the part to which it most directly pertains.

O. Part 396—Inspection, Repair, and Maintenance

Section 396.9 Inspection of Motor Vehicles and Intermodal Equipment in Operation

FMCSA replaces “appendix B to this subchapter” with “appendix B to part 390” in paragraph (a). This change reflects the redesignation of appendix B to subchapter B of chapter III discussed

above in section III.A. The redesignation appends the Special Agents material to part 390, the part to which it most directly pertains.

P. Part 398—Transportation of Migrant Workers

Section 398.8 Administration Inspection of Motor Vehicles in Operation

FMCSA replaces “Appendix B of chapter III of this title” with “appendix B to part 390” in paragraph (a). This paragraph references the Special Agents appendix, although it incorrectly describes the appendix as appended to chapter III rather than subchapter B. FMCSA amends this section to reflect the redesignation of appendix B to subchapter B of chapter III discussed above in section III.A. The redesignation appends the Special Agents material to part 390, the part to which it most directly pertains.

IV. Regulatory Analyses

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

FMCSA has considered the impact of this final rule under E.O. 12866 (58 FR 51735, Oct. 4, 1993), Regulatory Planning and Review, E.O. 13563 (76 FR 3821, Jan. 21, 2011), Improving Regulation and Regulatory Review, and by E.O. 14094 (88 FR 21879, Apr. 11, 2023), Modernizing Regulatory Review. The Office of Information and Regulatory Affairs (OIRA) within the Office of Management and Budget (OMB) determined that this final rule is not a significant regulatory action under section 3(f) of E.O. 12866, as supplemented by E.O. 13563 and E.O. 14094, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. Accordingly, OMB has not reviewed it under that E.O. In addition, this rule is not significant within the meaning of DOT regulations (49 CFR 5.13(a)). The amendments made in this final rule primarily correct inadvertent errors and omissions, remove or update obsolete references, and make minor language changes to improve clarity and consistency. Some changes are statutorily mandated or relate to previous changes that were statutorily mandated. In accommodating those changes, the Agency is performing nondiscretionary, ministerial acts. Other changes merely align regulatory requirements with the underlying statutory authority. None of the changes

in this final rule impose new material requirements or increase compliance obligations; therefore, this final rule imposes no new costs and a full regulatory evaluation is unnecessary.

B. Congressional Review Act

This rule is not a *major rule* as defined under the Congressional Review Act (5 U.S.C. 801–808).⁷

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

⁷ A *major rule* means any rule that the Office of Management and Budget finds has resulted in or is likely to result in (a) an annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, geographic regions, Federal, State, or local government agencies; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets (5 U.S.C. 802(4)).

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 \$192 million (which is the value equivalent of \$100 million in 1995, adjusted for inflation to 2022 levels) or more in any 1 year. This final rule will not result in such an expenditure.

F. Paperwork Reduction Act

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

G. E.O. 13132 (Federalism)

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

H. Privacy

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

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

The E-Government Act of 2002 (Pub. L. 107–347, sec. 208, 116 Stat. 2899, 2921, Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects,

maintains, or disseminates information in an identifiable form. No new or substantially changed technology will collect, maintain, or disseminate information as a result of this rule. Accordingly, FMCSA has not conducted a privacy impact assessment.

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

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

J. National Environmental Policy Act of 1969

FMCSA analyzed this rule pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and determined this action is categorically excluded from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1 (69 FR 9680 (Mar. 1, 2004)), Appendix 2, paragraph 6.b and c. These Categorical Exclusions address technical amendments and other minor amendments such as those found in this rulemaking, as well as regulations concerning internal agency functions, organization or personnel administration. Therefore, preparation of an environmental assessment or environmental impact statement is not necessary.

List of Subjects

49 CFR Part 325

Motor carriers, Noise control.

49 CFR Part 365

Administrative practice and procedure, Brokers, Buses, Freight forwarders, Maritime carriers, Mexico, Motor carriers, Moving of household goods.

49 CFR Part 368

Administrative practice and procedure, Mexico, Motor carriers.

49 CFR Part 369

Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 371

Brokers, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 375

Advertising, Consumer protection, Freight, Highways and roads, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

49 CFR Part 378

Freight forwarders, Investigations, Motor carriers, Moving of household goods.

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

49 CFR Part 386

Administrative practice and procedure, Brokers, Freight forwarders, Hazardous materials transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety, Penalties.

49 CFR Part 387

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

49 CFR Part 389

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

49 CFR Part 390

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

49 CFR Part 391

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

49 CFR Part 395

Highway safety, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 396

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

49 CFR Part 398

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

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

PART 325—COMPLIANCE WITH INTERSTATE MOTOR CARRIER NOISE EMISSION STANDARDS

■ 1. The authority citation for part 325 continues to read as follows:

Authority: 42 U.S.C. 4917; 49 U.S.C. 301; and 49 CFR 1.87.

■ 2. Amend § 325.13 by, in paragraph (a):

- a. Adding a heading; and
- b. Removing the words “appendix B to subchapter B” and adding in their place “appendix B to part 390 of this chapter”.

§ 325.13 Inspection and examination of motor vehicles.

(a) *Authority.* * * *

* * * * *

Appendix A to Subchapter B of Chapter III [Removed]

■ 3. Under the authority of 44 U.S.C. 1505 and 1510, remove reserved appendix A to subchapter B of chapter III.

Appendix B to Subchapter B of Chapter III [Redesignated as Appendix B to Part 390]

■ 4. Under the authority of 49 U.S.C. 113, redesignate appendix B to subchapter B of chapter III as appendix B to part 390.

Appendices C Through E to Subchapter B of Chapter III [Removed]

■ 5. Under the authority of 44 U.S.C. 1505 and 1510, remove reserved appendices C through E to subchapter B of chapter III.

PART 365—RULES GOVERNING APPLICATIONS FOR OPERATING AUTHORITY

■ 6. The authority citation for part 365 continues to read as follows:

Authority: 5 U.S.C. 553 and 559; 49 U.S.C. 13101, 13301, 13901–13906, 13908, 14708, 31133, 31138, and 31144; 49 CFR 1.87.

§ 365.105 [Amended]

■ 7. Amend § 365.105 by:

- a. Lifting the suspension of the section;
- b. In paragraph (c), removing “Web site” and “http” and in their places adding “website” and “https”, respectively; and
- c. Suspending the section indefinitely.

§ 365.106T [Amended]

■ 8. Amend § 365.106T by, in paragraph (c), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

Subpart D [Suspension Lifted]

■ 9. Lift the suspension of subpart D, consisting of §§ 365.401 through 365.405.

§§ 365.401, 365.403, and 365.405 [Suspended]

■ 10. Suspend §§ 365.401, 365.403, and 365.405 indefinitely.

§ 365.503 [Amended]

■ 11. Amend § 365.503 by, in paragraph (d), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

PART 368—APPLICATION FOR A CERTIFICATE OF REGISTRATION TO OPERATE IN MUNICIPALITIES IN THE UNITED STATES ON THE UNITED STATES–MEXICO INTERNATIONAL BORDER OR WITHIN THE COMMERCIAL ZONES OF SUCH MUNICIPALITIES

■ 12. The authority citation for part 368 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 13908; Pub. L. 106–159, 113 Stat. 1748; and 49 CFR 1.87.

§ 368.3 [Amended]

■ 13. Amend § 368.3 by:

- a. Lifting the suspension of the section;
- b. In paragraph (f), removing “Web site” and “http” and in their places adding “website” and “https”, respectively; and
- c. Suspending the section indefinitely.

§ 368.3–1T [Amended]

■ 14. Amend § 368.3–1T by, in paragraph (c), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

§ 368.3T [Amended]

■ 15. Amend § 368.3T by, in paragraph (f), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

PART 369—REPORTS OF MOTOR CARRIERS

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

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

§ 369.1 [Amended]

■ 17. Amend § 369.1 by, in paragraph (b), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

PART 371—BROKERS OF PROPERTY

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

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

§ 371.107 [Amended]

■ 19. Amend § 371.107 by:

- a. Removing the words “Web site(s)” wherever they appear and in their place adding the word “website(s)”; and
- b. In paragraph (e), removing “of this part”.

§ 371.111 [Amended]

■ 20. Amend § 371.111 by, in paragraph (a)(1), removing the words “Web site” and in their place adding the word “website”.

§ 371.117 [Amended]

■ 21. Amend § 371.117 by, in paragraph (a), removing the words “Web site” and in their place adding the word “website”.

PART 375—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE COMMERCE; CONSUMER PROTECTION REGULATIONS

■ 22. The authority citation for part 375 continues to read as follows:

Authority: 49 U.S.C. 13102, 13301, 13501, 13704, 13707, 13902, 14104, 14706, 14708; subtitle B, title IV of Pub. L. 109–59; and 49 CFR 1.87.

§ 375.103 [Amended]

■ 23. Amend § 375.103 by:

- a. In the definition of “Advertisement”, removing the words

“Web site” and in their place adding the word “website”; and

■ b. In the definition of “Tariff”, removing “§ 1312.3(a)” and adding in its place “§ 1310.3(a)”.

§ 375.213 [Amended]

■ 24. Amend § 375.213 by, in paragraph (d), removing the words “Web site” and in their place adding the word “website”.

■ 25. Amend § 375.403 by revising paragraph (a)(6)(ii) and the first sentence of paragraph (b) to read as follows:

§ 375.403 How must I provide a binding estimate?

- (a) * * *
(6) * * *

(ii) Prepare a new binding estimate prior to loading. The new estimate must accurately list, in detail, the additional household goods or services included in the shipment. The new estimate must be signed by the individual shipper. You should maintain a record of the date, time, and manner that the new estimate was prepared.

(b) In accordance with § 375.401(b)(1), you may impose a charge for providing a written binding estimate. * * *

■ 26. Amend § 375.405 by revising paragraph (b)(7)(ii) to read as follows:

§ 375.405 How must I provide a non-binding estimate?

- (b) * * *
(7) * * *

(ii) Prepare a new non-binding estimate which must be signed by the individual shipper. The new estimate must accurately list, in detail, the additional household goods or services included in the shipment. You should maintain a record of the date, time, and manner that the new estimate was prepared.

§ 375.505 [Amended]

■ 27. Amend § 375.505 by, in paragraph (b)(4), removing the words “order for service” and in their place adding the words “bill of lading”.

PART 378—PROCEDURES GOVERNING THE PROCESSING, INVESTIGATION, AND DISPOSITION OF OVERCHARGE, DUPLICATE PAYMENT, OR OVERCOLLECTION CLAIMS

■ 28. The authority citation for part 378 continues to read as follows:

Authority: 49 U.S.C. 13321, 14101, 14704 and 14705; and 49 CFR 1.87.

§ 378.2 [Amended]

■ 29. Amend § 378.2 by, in paragraph (d), removing the words “United States Department of Transportation’s”.

PART 381—WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS

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

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

■ 31. Revise § 381.225 to read as follows:

§ 381.225 Who should I contact if I have questions about the information I am required to submit to FMCSA or about the status of my request for a waiver?

You should contact the Federal Motor Carrier Safety Administration, Office of Carrier, Driver & Vehicle Safety (MC-PS), 1200 New Jersey Ave. SE, Washington, DC 20590-0001.

■ 32. Amend § 381.315 by revising the section heading, paragraph (b), and the first sentences of paragraphs (d)(1) and (2) to read as follows:

§ 381.315 What will FMCSA do after the agency receives my application for an exemption?

(b) After a review of the comments received in response to the Federal Register notice described in paragraph (a) of this section, the Federal Motor Carrier Safety Administration will make a recommendation(s) to the Administrator either to grant or to deny the exemption. Notice of the Administrator’s decision will be published in the Federal Register.

(d) * * *
(1) Interested parties may view the information contained in the docket by visiting Dockets Operations, U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590-0001. * * *

(2) Internet users can access all information received by Dockets Operations, U.S. Department of Transportation by using the Federal Docket Management System using the uniform resources locator (URL): https://www.regulations.gov. * * *

PART 382—CONTROLLED SUBSTANCES AND ALCOHOL USE AND TESTING

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

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

■ 34. Amend § 382.107 by removing the definition of “Consortium/Third party administrator” and adding in its place the definition of “Consortium/Third-party administrator” to read as follows:

§ 382.107 Definitions.

Consortium/Third-party administrator (C/TPA) means a service agent that provides or coordinates one or more drug and/or alcohol testing services to DOT-regulated employers. C/TPAs typically provide or coordinate the provision of a number of such services and perform administrative tasks concerning the operation of the employers’ drug and alcohol testing programs. This term includes, but is not limited to, groups of employers who join together to administer, as a single entity, the DOT drug and alcohol testing programs of its members (e.g., having a combined random testing pool). C/TPAs are not “employers” for purposes of this part, except as provided in § 382.705(c).

§ 382.213 [Amended]

■ 35. Amend § 382.213 by:
■ a. In paragraph (b), removing the words “pursuant to the instructions of a licensed medical practitioner” and in their place adding the words “prescribed by a licensed medical practitioner”; and
■ b. In paragraph (c):
■ i. Adding the words “, as defined in § 382.107,” after the words “controlled substance”; and
■ ii. Adding the words “, except when the use is prescribed by a licensed medical practitioner, as defined in § 382.107, 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” to the end of the paragraph.

§ 382.217 [Amended]

■ 36. Amend § 382.217 by, in paragraph (e)(3), adding the words “, except when the use is prescribed by a licensed medical practitioner 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” after the words “controlled substance”.

§ 382.401 [Amended]

■ 37. Amend § 382.401 by, in paragraph (c)(6)(i), removing the words “third

party” and in their place adding the word “third-party”.

§ 382.403 [Amended]

■ 38. Amend § 382.403 by, in paragraph (e), removing the words “Consortium/Third party administrator” and in their place adding the words “Consortium/Third-party administrator”.

§ 382.409 [Amended]

■ 39. Amend § 382.409 by:
 ■ a. Removing the words “consortium/third party administrator” in each place they appear and in their place adding the words “consortium/third-party administrator”; and
 ■ b. Removing the words “third party administrator” in each place they appear and in their place adding the words “third-party administrator”.

§ 382.711 [Amended]

■ 40. Amend § 382.711 by, in paragraph (d) introductory text, removing the words “consortium/third party administrator” and in their place adding the words “consortium/third-party administrator”.

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

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

Authority: 49 U.S.C. 521, 31136, 31301 *et seq.*, and 31502; secs. 214 and 215 of Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 1012(b) of Pub. L. 107–56, 115 Stat. 272, 297, sec. 4140 of Pub. L. 109–59, 119 Stat. 1144, 1746; sec. 32934 of Pub. L. 112–141, 126 Stat. 405, 830; sec. 23019 of Pub. L. 117–58, 135 Stat. 429, 777; and 49 CFR 1.87.

§ 383.5 [Amended]

■ 42. Amend § 383.5 by removing the words “Third party” and “third party” in each place they appear and in their places adding the words “Third-party” and “third-party”, respectively.

§ 383.25 [Amended]

■ 43. Amend § 383.25 by, in paragraph (a)(1), adding the words “and is otherwise authorized to operate the CMV for that trip” after the words “necessary to operate the CMV”.

§ 383.37 [Amended]

■ 44. Amend § 383.37 by:
 ■ a. In the introductory text, removing the words “he or she” and in their place adding the words “the employer”; and
 ■ b. In paragraph (d), removing the words “he/she is driving” and in their place adding the words “the driver is operating”.
 ■ 45. Amend § 383.75 by revising the section heading and paragraphs (a)

introductory text, (a)(2) through (4), (a)(5) introductory text, (a)(5)(ii), (a)(6), (a)(8)(ii), (a)(8)(iii)(B), (a)(8)(iv) through (viii), (a)(8)(ix) introductory text, (a)(8)(ix)(A) through (C), (E), and (F), (b), and (c) to read as follows:

§ 383.75 Third-party testing.

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

* * * * *

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

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

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

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

* * * * *

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

* * * * *

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

* * * * *

(8) * * *

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

(iii) * * *

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

* * * * *

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

(v) Require the third-party tester to initiate and maintain a bond in an amount determined by the State to be sufficient to pay for re-testing drivers in the event that the third party or one or

more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third-party tester that is a government entity is not required to maintain a bond;

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

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

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

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

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

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

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

* * * * *

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

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

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

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

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

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

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

■ 47. Amend § 384.208 by revising paragraph (a) to read as follows:

§ 384.208 Notification of disqualification.

(a) No later than 10 days after disqualifying a CLP or CDL holder licensed by another State or other jurisdiction of domicile, or disqualifying an out-of-State CLP or CDL holder's privilege to operate a commercial motor vehicle for at least 60 days, the State must notify the State or jurisdiction that issued the license of the disqualification via CDLIS.

* * * * *

■ 48. Amend § 384.209 by revising paragraphs (a)(1) and (b)(2) to read as follows:

§ 384.209 Notification of traffic violations.

(a) * * *

(1) Whenever a person who holds a CLP or CDL from another State or other jurisdiction of domicile is convicted of a violation of any State or local law relating to motor vehicle traffic control (other than parking, vehicle weight or vehicle defect violations), in any type of vehicle, the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State or jurisdiction where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

* * * * *

(b) * * *

(1) Whenever a person who does not hold a CDL, but who is licensed to drive by another State or other jurisdiction of domicile, is convicted of a violation in a CMV of any State or local law relating to motor vehicle traffic control (other than a parking violation), the licensing entity of the State in which the conviction occurs must notify the licensing entity in the State or jurisdiction where the driver is licensed of this conviction within the time period established in paragraph (c) of this section.

* * * * *

§ 384.228 [Amended]

■ 49. Amend § 384.228 by removing the words "third party" in each place they appear and in their place adding the words "third-party".

§ 384.229 [Amended]

■ 50. Amend § 384.229 by removing the words "third party" in each place they

appear and in their place adding the words "third-party".

PART 385—SAFETY FITNESS PROCEDURES

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

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

§ 385.305 [Amended]

■ 52. Amend § 385.305 by:

- a. Lifting the suspension of the section;
■ b. In paragraph (a), removing "Web site" and "http" and in their places adding "website" and "https", respectively; and
■ c. Suspending the section indefinitely.

§ 385.305T [Amended]

■ 53. Amend § 385.305T by, in paragraph (a), removing the words "Web site" and in their place adding the word "website".

§ 385.603T [Amended]

■ 54. Amend § 385.603T by, in paragraph (d), removing "Web site" and "http" and in their places adding "website" and "https", respectively.

PART 386—RULES OF PRACTICE FOR FMCSA PROCEEDINGS

■ 55. The authority citation for part 386 continues to read as follows:

Authority: 28 U.S.C. 2461 note; 49 U.S.C. 113, 1301 note, 31306a; 49 U.S.C. chapters 5, 51, 131-141, 145-149, 311, 313, and 315; and 49 CFR 1.81, 1.87.

■ 56. Amend part 386 by:

- a. In each section of the part, except §§ 386.1 and 386.2, removing the text "Assistant Administrator" wherever it appears and adding in its place the text "Agency Decisionmaker";
■ b. In each section of the part, removing the text "Agency decisionmaker" wherever it appears and adding in its place the text "Agency Decisionmaker"; and
■ c. In each section of the part, removing the text "agency decisionmaker" wherever it appears and adding in its place the text "Agency Decisionmaker".

§ 386.1 [Amended]

■ 57. Amend § 386.1 by removing the words "Assistant Administrator, who also acts as the Chief Safety Officer of

the Federal Motor Carrier Safety Administration," and adding in their place the words "Agency Decisionmaker".

■ 58. Amend § 386.2 by:

- a. Revising the definition of "Agency Decisionmaker";
■ b. Removing the definition of "Assistant Administrator"; and
■ c. In the definition of "Final Agency Order", removing "appropriate Field Administrator (for default judgments under § 386.14) or the Assistant Administrator," "386.22", and "386.61" and in their places adding "Agency Decisionmaker", "§ 386.22", and "§ 386.61", respectively.

The revision reads as follows:

§ 386.2 Definitions.

* * * * *

Agency Decisionmaker means the FMCSA official authorized to issue a final decision and order of the Agency in an administrative proceeding under this part. The Agency Decisionmaker is an FMCSA official appointed by the President or otherwise duly authorized.

* * * * *

§ 386.3 [Amended]

■ 59. Amend § 386.3 by, in paragraph (e), removing the words "agency decisionmakers" and in their place adding the words "Agency Decisionmakers".

§ 386.12 [Amended]

■ 60. Amend § 386.12 by removing "1-800-DOT-SAFT (1-800-368-7238)" in each place that it appears and in its place adding "1-888-DOT-SAFT (1-888-368-7238)".

§ 386.14 [Amended]

- 61. Amend § 386.14 by:
■ a. In paragraph (c)(1):
■ i. Removing "paragraph (a)" and in its place adding "paragraph (a) of this section"; and
■ ii. Removing the words "Final Agency Order" in each place that they appear and in their place adding the words "Final Order";
■ b. In paragraph (c)(2), removing the words "Final Agency Order" and in their place adding the words "Final Order"; and
■ c. In paragraph (c)(3):
■ i. Adding the words "Final Order that has become a" before the words "Final Agency Order"; and
■ ii. Removing "Subpart" and adding in its place "subpart".

§ 386.16 [Amended]

■ 62. Amend § 386.16 by:
■ a. Removing the words "Final Agency Order" in each place that they appear

and in their place adding the words “Final Order”; and

- b. In paragraph (a)(5), removing the words “and order”.

§ 386.31 [Amended]

- 63. Amend § 386.31 by:
 - a. Removing the words “Final Agency Order” and in their place adding the words “Final Order”; and
 - b. Removing “of this part”.

§ 386.36 [Amended]

- 64. Amend § 386.36 by removing the words “final agency order” and “Final Agency Order” and in their places adding the words “Final Order”.

§ 386.61 [Amended]

- 65. Amend § 386.61 by, in paragraph (b), removing the words “Final Agency Order” and in their place adding the words “Final Order”.

§ 386.64 [Amended]

- 66. Amend § 386.64 by:
 - a. In paragraph (a), removing the words “Final Agency Order” and in their place adding the words “Final Order”; and
 - b. In paragraph (b), removing the words “Final Agency Order” in each place that they appear and in their place adding the words “Final Order”.

PART 387—MINIMUM LEVELS OF FINANCIAL RESPONSIBILITY FOR MOTOR CARRIERS

- 67. The authority citation for part 387 continues to read as follows:

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

- 68. In § 387.9, amend table 1 by revising entry (2) to read as follows:

§ 387.9 Financial responsibility, minimum levels.

* * * * *

TABLE 1 TO § 387.9—SCHEDULE OF LIMITS—PUBLIC LIABILITY

Type of carriage	Commodity transported	January 1, 1985
* * * * *	* * * * *	*
(2) For-hire and Private (In interstate, foreign, or intrastate commerce, with a gross vehicle weight rating of 10,001 or more pounds).	Hazardous substances, as defined in 49 CFR 171.8, transported in bulk in cargo tanks, portable tanks, or hopper-type vehicles with capacities in bulk; in bulk Division 1.1, 1.2 or 1.3 materials; in bulk Division 2.3, Hazard Zone A material; in bulk Division 6.1, Packing Group I, Hazard Zone A material; in bulk Division 2.1 or 2.2 material; or highway route controlled quantities of a Class 7 material, as defined in 49 CFR 173.403.	5,000,000
* * * * *	* * * * *	*

PART 389—RULEMAKING PROCEDURES—FEDERAL MOTOR CARRIER SAFETY REGULATIONS

- 69. The authority citation for part 389 continues to read as follows:

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

§ 389.3 [Amended]

- 70. Amend § 389.3 by, in the definition of “Act”, adding the words “or commercial activity” after the words “motor carrier safety”.

§ 389.5 [Amended]

- 71. Amend § 389.5 by, in paragraph (b)(2), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

§ 389.31 [Amended]

- 72. Amend § 389.31 by, in paragraph (b)(1), removing the address “www.FMCSA.gov” and in its place adding the address “www.FMCSA.dot.gov”.

PART 390—FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL

- 73. The authority citation for part 390 continues to read as follows:

Authority: 49 U.S.C. 113, 504, 508, 31132, 31133, 31134, 31136, 31137, 31144, 31149, 31151, 31502; sec. 114, Pub. L. 103–311, 108 Stat. 1673, 1677; secs. 212 and 217, Pub. L. 106–159, 113 Stat. 1748, 1766, 1767; sec. 229, Pub. L. 106–159 (as added and transferred by sec. 4115 and amended by secs. 4130–4132, Pub. L. 109–59, 119 Stat. 1144, 1726, 1743, 1744), 113 Stat. 1748, 1773; sec. 4136, Pub. L. 109–59, 119 Stat. 1144, 1745; secs. 32101(d) and 32934, Pub. L. 112–141, 126 Stat. 405, 778, 830; sec. 2, Pub. L. 113–125, 128 Stat. 1388; secs. 5403, 5518, and 5524, Pub. L. 114–94, 129 Stat. 1312, 1548, 1558, 1560; sec. 2, Pub. L. 115–105, 131 Stat. 2263; and 49 CFR 1.81, 1.81a, 1.87.

- 74. Amend § 390.5 by:

- a. Lifting the suspension of the section;
 - b. Revising the definitions for “Employer”, “Medical variance”, and “Special agent”; and
 - c. Suspending the section indefinitely.
- The revisions read as follows:

§ 390.5 Definitions.

* * * * *

Employer means any person engaged in a business affecting interstate commerce who owns or leases a

commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

* * * * *

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

(1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter; or

(2) A skill performance evaluation certificate permitting operation of a commercial motor vehicle pursuant to § 391.49 of this chapter.

* * * * *

Special agent. See appendix B to this part.

* * * * *

- 75. Amend § 390.5T by revising the definitions for “Employer”, “Medical variance”, and “Special agent” to read as follows:

390.5T Definitions.

* * * * *

Employer means any person engaged in a business affecting interstate

commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any State, any political subdivision of a State, or an agency established under a compact between States approved by the Congress of the United States.

* * * * *

Medical variance means a driver has received one of the following from FMCSA that allows the driver to be issued a medical certificate:

- (1) An exemption letter permitting operation of a commercial motor vehicle pursuant to part 381, subpart C, of this chapter; or
- (2) A skill performance evaluation certificate permitting operation of a

commercial motor vehicle pursuant to § 391.49 of this chapter.

* * * * *

Special agent. See appendix B to this part.

* * * * *

§ 390.15 [Amended]

■ 76. Amend § 390.15 by, in paragraph (a)(1), removing the words “third party” and in their place adding the words “third-party”.

§ 390.19 [Amended]

- 77. Amend § 390.19 by:
 - a. Lifting the suspension of the section;
 - b. In paragraphs (c) and (d), removing the words “Web site” and in their place adding the word “website”;
 - c. In paragraph (c), removing “http” and in its place adding “https”; and

■ d. Suspending the section indefinitely.

§ 390.19T [Amended]

- 78. Amend § 390.19T by:
 - a. In paragraphs (c) and (d), removing the words “Web site” and in their place adding the word “website”; and
 - b. In paragraph (c), removing “http” and in its place adding “https”.

§ 390.25 [Amended]

- 79. Amend § 390.25 by, in the last sentence, removing the words “he or she” and adding the word “it” in their place.
- 80. Amend § 390.27 by, in the table, revising the entry for “Southern” to read as follows:

§ 390.27 Locations of motor carrier safety service centers.

Service center	Territory included	Location of office
* * * * *	* * * * *	* * * * *
Southern	Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee.	61 Forsyth Street SW, Suite 3M40, Atlanta, GA 30303.
* * * * *	* * * * *	* * * * *

* * * * *

Subpart E [Suspension Lifted]

■ 81. Lift the suspension of subpart E, consisting of §§ 390.201 through 390.209.

§ 390.200T [Amended]

■ 82. Amend § 390.200T by, in paragraph (b), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

§ 390.201 [Amended]

■ 83. Amend § 390.201 by, in paragraphs (e) and (f), removing “Web site” and “http” and in their places adding “website” and “https”, respectively.

§§ 390.201 through 390.209 [Suspended]

■ 84. Suspend §§ 390.201 through 390.209 indefinitely.

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

■ 85. 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.

■ 86. Amend § 391.23 by revising paragraph (a)(1) to read as follows:

§ 391.23 Investigation and inquiries.

(a) * * *

(1) An inquiry, within 30 days of the date the driver’s employment begins, to each State where the driver held or holds a motor vehicle operator’s license or permit during the preceding 3 years, to obtain that driver’s motor vehicle

record covering that driver’s prior 3-year driving history.

* * * * *

§ 391.43 [Amended]

- 87. Amend § 391.43 by:
 - a. Removing and reserving paragraph (e);
 - b. In paragraphs (g)(5)(i)(B) and (g)(5)(ii), removing the words “Web site” and in their place adding the word “website”; and
 - c. In paragraph (g)(5)(i)(B), removing “this subpart E” and in its place adding “this subpart”.
- 88. Effective January 16, 2024, further amend § 391.43 by revising paragraph (f) and (h) 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

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to average approximately 25 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRR, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.



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

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

(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: _____

TESTING

Pulse Rate: _____ Pulse rhythm regular: Yes No Height: ___ feet ___ inches Weight: ___ pounds

Blood Pressure	Systolic	Diastolic	Urinalysis	Sp. Gr.	Protein	Blood	Sugar
Sitting			Urinalysis is required. Numerical readings must be recorded.				
Second reading (optional)							

Other testing if indicated

Protein, blood, or sugar in the urine may be an indication for further testing to rule out any underlying medical problem.

Vision
Standard is at least 20/40 acuity (Snellen) in each eye with or without correction. At least 70° field of vision in horizontal meridian measured in each eye. The use of corrective lenses should be noted on the Medical Examiner's Certificate.

Acuity	Uncorrected	Corrected	Horizontal Field of Vision	Check if hearing aid used for test: <input type="checkbox"/> Right Ear <input type="checkbox"/> Left Ear <input type="checkbox"/> Neither
Right Eye:	20/ _____	20/ _____	Right Eye: _____ degrees	Whisper Test Results Record distance (in feet) from driver at which a forced whispered voice can first be heard _____
Left Eye:	20/ _____	20/ _____	Left Eye: _____ degrees	
Both Eyes:	20/ _____	20/ _____		OR
Applicant can recognize and distinguish among traffic control signals and devices showing red, green, and amber colors			Yes <input type="radio"/> No <input type="radio"/>	Audiometric Test Results
Monocular vision			<input type="radio"/> <input type="radio"/>	Right Ear: _____ Left Ear: _____
Referred to ophthalmologist or optometrist?			<input type="radio"/> <input type="radio"/>	500 Hz 1000 Hz 2000 Hz 500 Hz 1000 Hz 2000 Hz
Received documentation from ophthalmologist or optometrist?			<input type="radio"/> <input type="radio"/>	Average (right): _____ Average (left): _____

PHYSICAL EXAMINATION

The presence of a certain condition may not necessarily disqualify a driver, particularly if the condition is controlled adequately, is not likely to worsen, or is readily amenable to treatment. Even if a condition does not disqualify a driver, the Medical Examiner may consider deferring the driver temporarily. Also, the driver should be advised to take the necessary steps to correct the condition as soon as possible, particularly if neglecting the condition could result in a more serious illness that might affect driving.

Check the body systems for abnormalities.

Body System	Normal	Abnormal	Body System	Normal	Abnormal
1. General	<input type="radio"/>	<input type="radio"/>	8. Abdomen	<input type="radio"/>	<input type="radio"/>
2. Skin	<input type="radio"/>	<input type="radio"/>	9. Genito-urinary system including hernias	<input type="radio"/>	<input type="radio"/>
3. Eyes	<input type="radio"/>	<input type="radio"/>	10. Back/spine	<input type="radio"/>	<input type="radio"/>
4. Ears	<input type="radio"/>	<input type="radio"/>	11. Extremities/joints	<input type="radio"/>	<input type="radio"/>
5. Mouth/throat	<input type="radio"/>	<input type="radio"/>	12. Neurological system including reflexes	<input type="radio"/>	<input type="radio"/>
6. Cardiovascular	<input type="radio"/>	<input type="radio"/>	13. Gait	<input type="radio"/>	<input type="radio"/>
7. Lungs/chest	<input type="radio"/>	<input type="radio"/>	14. Vascular system	<input type="radio"/>	<input type="radio"/>

Discuss any abnormal answers in detail in the space below and indicate whether it would affect the driver's ability to operate a CMV. Enter applicable item number before each comment.

(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
 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.

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>.

* * * * *
 (h) The medical examiner's certificate shall be completed in accordance with

the following Form MCSA-5876, Medical Examiner's Certificate:

Form MCSA-5876 OMB No: 2126-0006

Public Burden Statement
 A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0006. Public reporting for this collection of information is estimated to average approximately one minute per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Office, Federal Motor Carrier Safety Administration, MC-899, 1200 New Jersey Avenue, SE, Washington, D.C. 20590.

Medical Examiner's Certificate
 (for Commercial Driver Medical Certification)

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

I certify that I have examined **Last Name:** _____ **First Name:** _____ in accordance with (please check only one):

the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply) **OR**

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), and, with knowledge of the driving duties, I find this person is qualified, and, if applicable, only when (check all that apply):

Wearing corrective lenses Accompanied by a _____ waiver/exemption Driving within an exempt intracity zone (49 CFR 391.62) (Federal)

Wearing hearing aid Accompanied by a Skill Performance Evaluation (SPE) Certificate Grandfathered from State requirements (State)

The information I have provided regarding this physical examination is true and complete. A complete Medical Examination Report Form, MCSA-5875, with any attachments, embodies my findings completely and correctly, and is on file in my office.

Medical Examiner's Certificate Expiration Date

Medical Examiner's Signature	Medical Examiner's Telephone Number	Date Certificate Signed
_____	_____	_____
Medical Examiner's Name (please print or type)	<input type="radio"/> MD <input type="radio"/> Physician Assistant <input type="radio"/> Advanced Practice Nurse	
_____	<input type="radio"/> DO <input type="radio"/> Chiropractor <input type="radio"/> Other Practitioner (specify) _____	
Medical Examiner's State License, Certificate, or Registration Number	Issuing State	National Registry Number
_____	_____	_____

Driver's Signature	Driver's License Number	Issuing State/Province
_____	_____	_____
Driver's Address		CLP/CDL Applicant/Holder
Street Address: _____	City: _____	State/Province: _____
		Zip Code: _____
		<input type="radio"/> Yes <input type="radio"/> No

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.

BILLING CODE 4910-EX-C

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§ 391.45 [Amended]

- 89. Amend § 391.45 by removing and reserving paragraph (d).
- 90. Amend § 391.47 by:
 - a. Revising paragraphs (b)(1), (2), and (7); and
 - b. In paragraphs (c), (d), and (f), removing the text "(MC-PS)".
 The revisions read as follows.

§ 391.47 Resolution of conflicts of medical evaluation.

* * * * *

(b) * * *

- (1) The application must contain the name and address of the driver, motor carrier, and all medical examiners and medical specialists involved in the proceeding.
- (2) The applicant must submit proof that there is a disagreement between the medical examiner for the driver and the medical examiner for the motor carrier concerning the driver's qualifications.
- (7) The applicant must submit all medical records and statements of the medical examiners and medical

specialists who have given opinions on the driver's qualifications.

* * * * *

PART 395—HOURS OF SERVICE OF DRIVERS

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

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

■ 92. Amend § 395.2 by revising paragraph (1) of the definition for "Utility service vehicle" to read as follows:

§ 395.2 Definitions.

* * * * *

Utility service vehicle * * * * *
 (1) Used in the furtherance of repairing, maintaining, or operating any structures or any other physical facilities necessary for the delivery of

public utility services, including the furnishing of electric, gas, water, sanitary sewer, telephone, television cable or community antenna service, and broadband-internet and cellular telephone operations;

* * * * *

§ 395.13 [Amended]

■ 93. Amend § 395.13 by, in paragraph (a), removing the words "appendix B to this subchapter" and adding in their place the words "appendix B to part 390 of this chapter".

§ 395.22 [Amended]

■ 94. Amend § 395.22 by, in paragraph (a), removing the words "Web site" and in their place adding the word "website".

Appendix A to Subpart B of Part 395 [Amended]

■ 95. Amend appendix A to subpart B of part 395 by removing the words "Web site" in each place that they appear and in their place adding the word "website".

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

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

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

§ 396.9 [Amended]

■ 97. Amend § 396.9 by, in paragraph (a), removing the words “appendix B to this subchapter” and adding in their place “appendix B to part 390 of this chapter”.

PART 398—TRANSPORTATION OF MIGRANT WORKERS

■ 98. The authority citation for part 398 continues to read as follows:

Authority: 49 U.S.C. 13301, 13902, 31132, 31133, 31136, 31502, 31504; sec. 204, Pub. L. 104–88, 109 Stat. 803, 941; sec. 212, Pub. L. 106–159, 113 Stat. 1748, 1766; and 49 CFR 1.87.

§ 398.8 [Amended]

■ 99. Amend § 398.8 by, in paragraph (a), removing the words “Appendix B of chapter III of this title” and adding in their place “appendix B to part 390 of this chapter”.

Issued under authority delegated in 49 CFR 1.87.

Robin Hutcheson,
Administrator.

[FR Doc. 2023–24160 Filed 11–16–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration****50 CFR Part 216**

[Docket No. 231109–0265]

RIN 0648–BK06

Modification of Deadlines Under the Fish and Fish Product Import Provisions of the Marine Mammal Protection Act

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to revise the regulations implementing the import provisions of the Marine Mammal Protection Act (MMPA). This final rule extends, by two years, the exemption period to end December 31, 2025.

DATES: This final rule is effective November 17, 2023.

FOR FURTHER INFORMATION CONTACT: Kellie Foster-Taylor, Office of International Affairs and Commerce, NMFS by email *mmpa.loff@noaa.gov* or by phone at 301–427–7721.

SUPPLEMENTARY INFORMATION:**Background***The 2016 Final Rule*

On August 15, 2016, NMFS published a final rule (81 FR 54390) implementing the MMPA Import Provisions (Section 101(a)(2)). Section 101(a)(2) of the MMPA prohibits “the importation of commercial fish or products from fish which have been caught with commercial fishing technology which results in the incidental kill or incidental serious injury of ocean mammals in excess of United States standards.” 16 U.S.C. 1371(a)(2). In the 2016 final rule, NMFS explained that “a fish or fish product caught with commercial fishing technology which results in the incidental mortality or incidental serious injury of marine mammals in excess of U.S. standards is any fish or fish product harvested in an exempt or export fishery for which a valid comparability finding is not in effect.” 50 CFR 216.24(h)(1)(i). A “comparability finding” is “a finding by the Assistant Administrator [for Fisheries] that the harvesting nation for an export or exempt fishery has met the applicable conditions specified in [50 CFR 216.24(h)(6)(ii)] subject to the additional considerations for comparability determinations set out in [50 CFR 216.24(h)(7)].” *Id.* § 216.3. The 2016 final rule set forth those conditions in detail, which measure the effectiveness of the harvesting nation’s regulatory program as compared to the U.S. regulatory program, as well as the procedure for issuing a comparability finding. The rule established that fish and fish products from fisheries identified in the List of Foreign Fisheries (LOFF) can be imported into the United States only if the harvesting nation has applied for and received such a comparability finding from NMFS.

The 2016 final rule provided, however, that this import prohibition “shall not apply during the exemption period” (50 CFR 216.24(h)(2)(ii)), which the rule initially defined as a five-year period. NMFS explained that this exemption period was necessary to provide harvesting nations with adequate time to assess marine mammal stocks, estimate bycatch, and develop regulatory programs that mitigate that bycatch. The 2016 final rule stated that

NMFS “shall determine whether to issue” comparability findings “[n]o later than November 30th of the year when the exemption period . . . is to expire.” *Id.* § 216.24(h)(6)(ii); *see also* 50 CFR 216.24(h)(8)(i) (“No later than November 30th of the year when the exemption period . . . is to expire, the Assistant Administrator shall publish in the **Federal Register**, by harvesting nation, a notice of the harvesting nations and fisheries for which it has issued or denied a comparability finding and the specific fish and fish products that as a result are subject to import prohibitions under paragraphs (h)(1) and (9) of this section.”).

Subsequent Extensions of the Exemption Period

On November 3, 2020, NMFS issued an interim final rule (IFR) (85 FR 69515), which extended the exemption period for one year and requested public comment. The 2020 interim final rule sought to provide additional time for harvesting nations to apply for comparability findings and to comply with the requirements for such findings set forth in the 2016 final rule in light of the disruptions caused by the coronavirus pandemic. On October 21, 2022, NMFS issued a final rule (87 FR 63955), which responded to the comments received in response to the 2020 IFR and revised that rule to extend the exemption period by an additional year, until December 31, 2023, to give NMFS additional time to complete its assessment of the applications for comparability findings.

Under the current exemption period, therefore, NMFS must “determine whether to issue” comparability findings by “[n]o later than November 30th of” 2023 (50 CFR 216.24(h)(6)(ii)).

Current Rule: Further Extension of the Exemption Period

NMFS received 134 applications for comparability findings from nations involving almost 2,500 foreign fisheries. Nations apply for comparability findings for each of their fisheries on the LOFF; however, comparability determinations are made on a fishery-by-fishery basis, not by country. Thus, individual determinations need to be made for each fishery. To review applications for comparability findings, NMFS evaluates each nation’s regulatory programs to address incidental and intentional mortality and serious injury of marine mammals in each fishery that exports fish and fish products to the United States. The evaluation includes assessing information provided in the applicants’ submissions and readily available