

**DEPARTMENT OF TRANSPORTATION****Federal Motor Carrier Safety Administration****49 CFR Parts 380, 383, and 384**

[FMCSA–2007–27748]

RIN 2126–AB66

**Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators****AGENCY:** Federal Motor Carrier Safety Administration (FMCSA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM), request for public comments.

**SUMMARY:** FMCSA proposes new training standards for certain individuals applying for their initial commercial driver's license (CDL); an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials, passenger, or school bus endorsement for their license; and a "refresher" training curriculum. These individuals would be subject to the proposed entry-level driver training requirements and must complete a course of instruction provided by an entity that: Meets the minimum qualifications for training providers; covers the curriculum; is listed on FMCSA's proposed Training Provider Registry; and submits electronically to FMCSA the training certificate for each individual who completes the training.

This NPRM responds to a Congressional mandate imposed under the Moving Ahead for Progress in the 21st Century Act. The proposed rule is based on consensus recommendations from the Agency's Entry-Level Driver Training Advisory Committee (ELDTAC), a negotiated rulemaking committee which held a series of meetings between February and May 2015. The compliance date of this proposed rule would be three years after the effective date of the final rule.

**DATES:** You must submit comments on or before April 6, 2016.

**ADDRESSES:** You may submit comments identified by docket number FMCSA–2007–27748 using any one of the following methods:

- *Federal eRulemaking Portal:* [www.regulations.gov](http://www.regulations.gov).
- *Fax:* 202–493–2251.
- *Mail:* Docket Services (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.
- *Hand delivery:* Same as mail address above, between 9 a.m. and 5

p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the "Public Participation and Request for Comments" heading under the **SUPPLEMENTARY INFORMATION** section below for instructions regarding submitting comments. Comments received after the comment closing date will be included in the docket, and we will consider late comments to the extent practicable. FMCSA may, however, issue a final rule at any time after the close of the comment period.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this proposed rule, contact Mr. Richard Clemente, Driver and Carrier Operations (MC–PSD) Division, FMCSA, 1200 New Jersey Ave. SE., Washington, DC 20590–0001, by telephone at 202–366–4325, or by email at [MCPSD@dot.gov](mailto:MCPSD@dot.gov). If you have questions about viewing or submitting material to the docket, contact Docket Services, telephone 202–366–9826.

**SUPPLEMENTARY INFORMATION:** This notice of proposed rulemaking (NPRM) is organized as follows:

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  - M. E.O. 13211 (Energy Supply, Distribution, or Use)
  - N. National Technology Transfer and Advancement Act (Technical Standards)
  - O. Environment (NEPA, CAA, E.O. 12898 Environmental Justice)

**I. Public Participation and Request for Comments**

FMCSA encourages you to participate in this rulemaking by submitting comments and related materials.

**A. Submitting Comments**

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2007–27748), indicate the heading of the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online, by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so the Agency can contact you if it has questions regarding your submission. However, see the *Privacy Act* section below.

To submit your comment online, go to [www.regulations.gov](http://www.regulations.gov), type the docket number, "FMCSA–2007–27748" in the "Keyword" box, and click "Search." When the new screen appears, click the "Comment Now!" button and type your comment into the text box in the following screen. Choose whether you are submitting your comment as an individual or on behalf of a third party, and click "Submit." If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

**Confidential Business Information**

Confidential Business Information (CBI) is commercial or financial information that is customarily not made available to the general public by the submitter. Under the Freedom of Information Act, CBI is eligible for protection from public disclosure. If you have CBI that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Accordingly, please mark each page of your submission as "confidential" or "CBI." Submissions designated as CBI and meeting the definition noted above will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Brian Dahlin, Chief, Regulatory Analysis Division, 1200 New Jersey Avenue SE., Washington, DC 20590. Any commentary that FMCSA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

### B. Viewing Comments and Documents

To view comments and any document mentioned in this preamble, go to [www.regulations.gov](http://www.regulations.gov), insert the docket number, “FMCSA–2007–27748” in the “Keyword” box, and click “Search.” Next, click the “Open Docket Folder” button and choose the document listed to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Services in Room W12–140 on the ground floor of the DOT West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

### C. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to [www.regulations.gov](http://www.regulations.gov), as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at [www.dot.gov/privacy](http://www.dot.gov/privacy).

## II. Executive Summary

### Purpose and Summary of Major Provisions

#### A. Purpose of the Entry-Level Driver Training Proposed Rule

The Agency believes this rulemaking would enhance the safety of commercial motor vehicle (CMV) operations on our Nation’s highways by establishing a more extensive entry-level driver training (ELDT) protocol and by increasing the number of drivers who receive ELDT. It would revise the standards for mandatory training requirements for entry-level operators of CMVs in interstate and intrastate operations who are required to possess a commercial driver’s license (CDL). FMCSA proposes new training standards for certain individuals applying for an initial CDL, an upgrade of their CDL<sup>1</sup> (e.g., a Class B CDL holder seeking a Class A CDL), or a hazardous materials, passenger, or school bus endorsement for their license. Specifically, these individuals would be subject to the proposed ELDT requirements and must complete a course of instruction provided by an entity that (1) meets the minimum qualifications for training providers, (2) covers the curriculum, (3) is listed on FMCSA’s proposed Training Provider

Registry (TPR), and (4) submits electronically to FMCSA the training certificate for each individual who completes the training.

FMCSA’s legal authority to propose this rulemaking is derived from the Motor Carrier Act of 1935, the Motor Carrier Safety Act of 1984, the Commercial Motor Vehicle Safety Act of 1986, and the Moving Ahead for Progress in the 21st Century Act.

### B. Summary of Major Provisions

The proposed rule would primarily revise 49 CFR part 380, Special Training Requirements. It would require an individual who must complete the CDL skills test requirements, defined as an “Entry-Level Driver”, to receive mandatory training. The proposed rule applies to persons who drive, or intend to drive, CMVs in either interstate or intrastate commerce. Military drivers, farmers, and firefighters are generally excepted from the CDL requirements in part 383, and they are excepted from this proposed rule.

The NPRM proposes a Class A and Class B CDL core curriculum; training curricula related to hazardous materials (H); passenger (P); and school bus (S) endorsements; and a “refresher” training curriculum. The core, endorsement, and refresher curricula generally are subdivided into theory and behind-the-wheel (BTW) (range and public road) segments. There is no proposed minimum number of hours that driver-trainees must spend on the theory portions of any of the individual curricula. The NPRM proposes that Class A CDL driver-trainees must receive a minimum of 30 hours of BTW training, with a minimum of 10 hours on a driving range. Driving on a public road would also be required, and Class A CDL driver-trainees may fulfill this requirement by either (1) driving 10 hours on a public road, or (2) 10 public road trips (each no less than 50 minutes in duration). Class B CDL driver-trainees must receive a minimum of 15 hours of BTW training, with a minimum of 7 hours of public road driving. And irrespective of the number of hours of BTW training, the training provider must not issue the training certificate unless the student demonstrates proficiency in operating the CMV. The NPRM also proposes that a CDL holder who has been disqualified from operating a CMV must successfully complete refresher training. Training providers must provide instruction on

all elements of the applicable curriculum.

The NPRM would apply to entities that train, or expect to train, entry-level drivers, also referred to as herein as driver-trainees. Training providers, must, at a minimum, offer and teach a training curriculum that meets all FMCSA standards for entry-level drivers and must also meet requirements related to: Course administration, qualifications for instructional personnel, assessments, issuance of training certificates, and training vehicles (*i.e.*, equipment). Training providers that meet these requirements would be eligible for listing on FMCSA’s TPR and must continue to meet the eligibility requirements in order to stay listed on the TPR. Training providers must also attest that they meet the specified requirements, and in the event of an FMCSA audit or investigation of the provider, must supply documentary evidence to verify their compliance. The NPRM also proposes conforming changes to parts 383 and 384.

The proposed compliance date for this rule is 3 years after the effective date of the final rule, which would provide the States with sufficient time to pass necessary implementing legislation, to modify their information systems to begin recording the training provider’s certificate information on the Commercial Driver’s License Information System (CDLIS) driver record, and to begin making that information available from the CDLIS driver record. This proposed phase-in period would also allow time for the driver training industry to develop and begin offering training programs that meet the eligibility requirements for listing on the TPR.

### Benefits and Costs

Entry-level drivers, motor carriers, training providers, State driver licensing agencies (SDLAs), and the Federal Government would incur costs for compliance and implementation. The costs of the proposed rule include tuition expenses, the opportunity cost of time while in training, compliance audit costs, and costs associated with the implementation of the TPR. As shown in table 1, FMCSA estimates that the 10-year cost of the proposed rule would total \$5.55 billion on an undiscounted basis, \$4.86 billion discounted at 3%, and \$4.15 billion discounted at 7% (all in 2014 dollars). Values in table 1 are rounded to the nearest million.

<sup>1</sup> Class A covers all large, articulated vehicles, usually tractor/trailers Class B vehicles include both large straight trucks and buses.

TABLE 1—TOTAL COST OF THE PROPOSED RULE  
[In millions of 2014\$]

| Year       | Undiscounted        |                |                    |       |                    |       | Discounted       |                  |
|------------|---------------------|----------------|--------------------|-------|--------------------|-------|------------------|------------------|
|            | Entry-level drivers | Motor carriers | Training providers | SDLAs | Federal Government | Total | Discounted at 3% | Discounted at 7% |
| 2020       | \$490               | \$27           | \$10               | \$26  | \$6                | \$559 | \$559            | \$559            |
| 2021       | 495                 | 27             | 7                  | 0     | 1                  | 530   | 515              | 495              |
| 2022       | 501                 | 28             | 8                  | 0     | 1                  | 538   | 507              | 470              |
| 2023       | 506                 | 28             | 7                  | 0     | 1                  | 542   | 496              | 442              |
| 2024       | 511                 | 28             | 8                  | 0     | 1                  | 548   | 487              | 418              |
| 2025       | 517                 | 29             | 7                  | 0     | 1                  | 554   | 478              | 395              |
| 2026       | 522                 | 29             | 8                  | 0     | 1                  | 560   | 469              | 373              |
| 2027       | 538                 | 29             | 7                  | 0     | 1                  | 565   | 459              | 352              |
| 2028       | 533                 | 30             | 8                  | 0     | 1                  | 572   | 452              | 333              |
| 2029       | 539                 | 30             | 7                  | 0     | 1                  | 577   | 442              | 314              |
| Total      | 5,142               | 285            | 77                 | 26    | 15                 | 5,545 | 4,864            | 4,151            |
| Annualized |                     |                |                    |       |                    | 555   | 554              | 552              |

The costs presented in table 1 include the costs associated with the S endorsement training requirement of the proposed rule, however the costs of the proposed rule specifically attributable to the proposed S endorsement training requirement were also evaluated separately. Details are presented in the Regulatory Impact Analysis (RIA), which is available in the docket. This separate analysis of the costs of the proposed rule specifically attributable to the proposed S endorsement training requirement was done because Section 32304 of MAP-21 statutorily mandates training for new entry-level drivers who wish to obtain a CDL, or a P endorsement, or an H endorsement, but

is silent with respect to the S endorsement. The analysis shows that inclusion of the proposed S endorsement training requirement increases the total cost of the rule by only approximately 0.36%. On an annualized basis at a 7% discount rate, this equates to an increase in the total cost of the rule from \$550 million to the \$552 million that is shown in Table 1.

This proposed rule would result in benefits to CMV operators, the trucking industry, the traveling public, and to the environment. FMCSA estimated benefits in two broad categories: Non-safety benefits and safety benefits. Training would lead to more efficient driving techniques, resulting in a reduction in

fuel consumption and consequently lowering environmental impacts associated with carbon dioxide emissions. Training that promotes safer, more efficient driving has been shown to reduce maintenance and repair costs. Training related to the performance of complex tasks may improve performance; in the context of the training required by this proposed rule, improvement in task performance may reduce the frequency and severity of crashes thereby resulting in safer roadways for all. Table 2 presents the directly quantifiable benefits that FMCSA projects would result from the proposed rule (all in 2014 dollars, values rounded to the nearest million).

TABLE 2—TOTAL QUANTIFIABLE BENEFITS OF THE PROPOSED RULE  
[In millions of 2014\$]

| Year       | Undiscounted          |   |                                     |                    | Discounted       |                  |
|------------|-----------------------|---|-------------------------------------|--------------------|------------------|------------------|
|            | Value of fuel savings | Value of CO <sub>2</sub> reduction <sup>a</sup> | Maintenance and repair cost savings | Total <sup>b</sup> | Discounted at 3% | Discounted at 7% |
| 2020       | \$75                  | \$13  | \$44                                | \$132              | \$132            | \$132            |
| 2021       | 127                   | 22  | 75                                  | 223                | 217              | 209              |
| 2022       | 157                   | 26  | 91                                  | 274                | 258              | 241              |
| 2023       | 160                   | 27  | 92                                  | 279                | 256              | 231              |
| 2024       | 163                   | 27  | 94                                  | 284                | 253              | 220              |
| 2025       | 166                   | 28  | 95                                  | 289                | 249              | 210              |
| 2026       | 170                   | 28  | 96                                  | 294                | 246              | 201              |
| 2027       | 172                   | 29  | 97                                  | 298                | 242              | 191              |
| 2028       | 175                   | 29  | 98                                  | 302                | 238              | 182              |
| 2029       | 178                   | 29  | 99                                  | 305                | 234              | 173              |
| Total      | 1,543                 | 258   | 880                                 | 2,680              | 2,325            | 1,989            |
| Annualized |                       |   |                                     | 268                | 265              | 265              |

**Notes:**

<sup>a</sup> The monetized benefits associated with reduced CO<sub>2</sub> emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO<sub>2</sub> reductions, and is consistent with past USDOT and EPA practices. Further details on the monetization of CO<sub>2</sub> reductions are presented in Section 4.1.2 of the RIA.

<sup>b</sup> Total benefit values may not equal the sum of the components due to rounding (the totals shown in this column are the rounded sum of unrounded components).

The directly quantifiable benefits of the proposed rule that are presented in Table 2 assume a future baseline in which a joint FMCSA/NHTSA Heavy Vehicle Speed Limiters rule would be in effect. This approach was intended to be a conservative assumption, in that it reduces the potential amount of baseline industry fuel consumption from which the possible benefits of reductions in fuel consumption and CO<sub>2</sub> emissions from the proposed ELDT rule may be realized. Because of the uncertainty of when the FMCSA/NHTSA Heavy Vehicle Speed Limiters proposed rule will be published for public comment or how those comments may influence a final rule, an alternative baseline for the proposed ELDT rule in which there would be no Speed Limiters rule, and thus no effect from speed limiters upon baseline industry fuel consumption, was

also analyzed. The details regarding this approach and the estimated reductions in fuel consumption and CO<sub>2</sub> emissions of the proposed ELDT rule are presented in the RIA which is available in the docket. This alternative baseline results in slightly higher total quantifiable benefits for the proposed ELDT rule, because any assumed reduction in baseline industry fuel consumption resulting from a Speed Limiters rule would not be present. Table 3 presents a comparison of the total estimated quantifiable benefits of the proposed ELDT rule both with and without a Speed Limiters rule in the baseline. Under such an alternative baseline reflecting no impact from a potential Speed Limiters rule, the total quantifiable benefits from the proposed ELDT rule, on an annualized basis at a 7% discount rate, would increase by \$9

million to \$274 million from the \$265 million that would be realized under a baseline scenario that does incorporate the effects of a Speed Limiters rule. This represents an increase of 3.4% in total quantifiable benefits. Because this 3.4% increase in the total quantifiable benefits is relatively modest, and because the baseline scenario that does incorporate the effects of a Speed Limiters rule is the more conservative assumption as it results in somewhat lower benefits and somewhat higher net costs of the proposed ELDT rule, the quantifiable benefits, net costs, and threshold analysis of the proposed ELDT rule that are presented here represent those that incorporate the effects of a Speed Limiters rule in the baseline.

TABLE 3—COMPARISON OF TOTAL QUANTIFIABLE BENEFITS WITH AND WITHOUT BASELINE ADJUSTMENT FOR SPEED LIMITERS RULE

[In millions of 2014\$]

| Year             | With speed limiters adjustment |                  | Without speed limiters adjustment |                  |
|------------------|--------------------------------|------------------|-----------------------------------|------------------|
|                  | 3% Discount rate               | 7% Discount rate | 3% Discount rate                  | 7% Discount rate |
| 2020 .....       | \$132                          | \$132            | \$137                             | \$137            |
| 2021 .....       | 217                            | 209              | 224                               | 217              |
| 2022 .....       | 258                            | 241              | 267                               | 249              |
| 2023 .....       | 256                            | 231              | 265                               | 239              |
| 2024 .....       | 253                            | 220              | 262                               | 228              |
| 2025 .....       | 249                            | 210              | 258                               | 218              |
| 2026 .....       | 246                            | 201              | 255                               | 208              |
| 2027 .....       | 242                            | 191              | 251                               | 198              |
| 2028 .....       | 238                            | 182              | 247                               | 189              |
| 2029 .....       | 234                            | 173              | 243                               | 179              |
| Total .....      | 2,325                          | 1,989            | 2,409                             | 2,062            |
| Annualized ..... | 265                            | 265              | 274                               | 274              |

While FMCSA believes that the proposed rule would at minimum achieve cost-neutrality, the net of quantified costs and benefits (presented

in table 4 below) results in an annualized net cost of \$287 million at a 7% discount rate. This estimate is based only on *quantifiable* costs and

benefits attributable to this proposed rule; it makes no claims regarding safety benefits which are discussed below.

TABLE 4—NET COST OF THE PROPOSED RULE, ABSENT QUANTIFIABLE SAFETY BENEFITS

[In millions of 2014\$]

| Year       | 3% Discount rate | 7% Discount rate |
|------------|------------------|------------------|
| 2020 ..... | \$427            | \$427            |
| 2021 ..... | 298              | 286              |
| 2022 ..... | 249              | 229              |
| 2023 ..... | 240              | 211              |
| 2024 ..... | 234              | 198              |
| 2025 ..... | 229              | 185              |
| 2026 ..... | 223              | 172              |
| 2027 ..... | 217              | 161              |
| 2028 ..... | 214              | 151              |
| 2029 ..... | 208              | 141              |

TABLE 4—NET COST OF THE PROPOSED RULE, ABSENT QUANTIFIABLE SAFETY BENEFITS—Continued  
[In millions of 2014\$]

| Year             | 3% Discount rate | 7% Discount rate |
|------------------|------------------|------------------|
| Total .....      | 2,539            | 2,161            |
| Annualized ..... | 289              | 287              |

The lack of data directly linking training to improvements in safety outcomes, such as reduced crash frequency or severity, posed a challenge to the Agency throughout the development of the RIA. Discussion regarding the efforts undertaken by FMCSA and its partners in the negotiated rulemaking process to establish such a quantitative link is presented in the RIA. Although no empirical evidence linking safety to training was identified in this process, there remains a strongly held belief among stakeholders—including all who participated in the negotiated rulemaking—and the Agency that safety-oriented training *does* improve

safety outcomes. The long-standing industry practice of providing such training to drivers—often at carriers’ expense—supports the notion that such training is not without merit. In the absence of a clear empirical link between training and safety, FMCSA followed the guidance of the Office of Management and Budget (OMB) in its Circular A–4 to perform a threshold analysis to determine the degree of safety benefits that would need to occur as a consequence of this proposed rule in order for the rule to achieve cost-neutrality.<sup>2</sup> As documented in detail in the RIA, an 8.15% improvement in safety performance (that is, an 8.15% reduction in the frequency of crashes

involving those new entry-level drivers who would receive additional pre-CDL training as a result of this proposed rule during the period for which the benefit of training remains intact) is necessary to offset the \$287 million (annualized at 7%) net cost of the rule.

Table 5 below presents the projected number of crash reductions involving new entry-level drivers that must occur in each of the 10 years and in aggregate, in order to offset the net cost (\$287 million annualized at 7%). To be clear, it is the sum of the monetized value of *all columns* of table 5—not the sum of the monetized value of any individual column—that results in cost-neutrality.

TABLE 5—CRASH REDUCTIONS INVOLVING NEW ENTRY-LEVEL DRIVERS, BY TYPE, NECESSARY TO ACHIEVE COST-NEUTRALITY

| Year  | Number of fatal crashes | Number of injury crashes | Number of property damage only (PDO) crashes |
|---|-------------------------|--------------------------|--|
| 2020 .....                                      | 6                       | 127                      | 421  |
| 2021 .....                                      | 10                      | 211                      | 702  |
| 2022 .....                                      | 12                      | 253                      | 842  |
| 2023 .....                                      | 12                      | 253                      | 842  |
| 2024 .....                                      | 12                      | 253                      | 842  |
| 2025 .....                                      | 12                      | 253                      | 842  |
| 2026 .....                                      | 12                      | 253                      | 842  |
| 2027 .....                                      | 12                      | 253                      | 842  |
| 2028 .....                                      | 12                      | 253                      | 842  |
| 2029 .....                                      | 12                      | 253                      | 842  |
| Average (rounded to nearest whole number) ..... | 11                      | 236                      | 786  |
| Total .....                                     | 115                     | 2,364                    | 7,857  |

III. Abbreviations and Acronyms

| Full name  | Abbreviation or acronym |
|--|-------------------------|
| American Association of Motor Vehicle Administrators .....               | AAMVA.                  |
| Americans with Disabilities Act .....                                    | ADA.                    |
| Anti-lock Braking Systems .....  | ABS.                    |
| Assessing the Adequacy of Commercial Motor Vehicle Driver Training ..... | Adequacy Report.        |
| Advocates for Highway and Auto Safety .....                              | Advocates.              |
| Advance Notice of Proposed Rulemaking .....                              | ANPRM.                  |
| American Trucking Associations .....                                     | ATA.                    |
| American Transportation Research Institute .....                         | ATRI.                   |
| Behind the wheel .....   | BTW.                    |
| Clean Air Act .....  | CAA.                    |

<sup>2</sup> Office of Management and Budget, Circular A–4, *Regulatory Analysis*, September 17, 2003.

Available at: [https://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](https://www.whitehouse.gov/omb/circulars_a004_a-4/) (accessed July 23, 2015).

| Full name   | Abbreviation or acronym |
|---|-------------------------|
| Categorical Exclusion   | CE.                     |
| Commercial Driver's License                                       | CDL.                    |
| Commercial Driver's License Information System                    | CDLIS.                  |
| Code of Federal Regulations                                       | CFR.                    |
| Commercial Learner's Permit                                       | CLP.                    |
| Commercial Motor Vehicle  | CMV.                    |
| Commercial Motor Vehicle Safety Act of 1986                       | CMVSA.                  |
| Compliance, Safety and Accountability                             | CSA.                    |
| Commercial Vehicle Safety Alliance                                | CVSA.                   |
| Commercial Vehicle Training Association                           | CVTA.                   |
| U.S. Court of Appeals for the District of Columbia Circuit        | DC Circuit.             |
| Director, Office of Carrier, Driver, and Vehicle Safety Standards | Director.               |
| U.S. Department of Transportation                                 | DOT.                    |
| U.S. Department of Education                                      | ED.                     |
| Entry-Level Driver Training                                       | ELDT.                   |
| Entry-Level Driver Training Advisory Committee                    | ELDTAC.                 |
| Executive Order   | EO.                     |
| Federal Highway Administration                                    | FHWA.                   |
| Federal Motor Carrier Safety Administration                       | FMCSA.                  |
| Federal Motor Carrier Safety Regulations                          | FMCSRs.                 |
| Gross Vehicle Weight Rating                                       | GVWR.                   |
| Hazardous Materials Endorsement                                   | H.                      |
| Hazardous Materials   | HM.                     |
| Hazardous Materials Safety Permit                                 | HMSP.                   |
| Hours of Service  | HOS.                    |
| Longer Combination Vehicle  | LCV.                    |
| Moving Ahead for Progress in the 21st Century Act                 | MAP-21.                 |
| Motor Carrier Safety Act of 1984                                  | MCSA.                   |
| Motor Carrier Safety Advisory Committee                           | MCSAC.                  |
| North American Fatigue Management Program                         | NAFMP.                  |
| National Association of Publicly Funded Truck Driving Schools     | NAPFTDS.                |
| National Association of Small Trucking Companies                  | NASTC.                  |
| National Environmental Policy Act                                 | NEPA.                   |
| National Governors' Association                                   | NGA.                    |
| National Highway Traffic Safety Administration                    | NHTSA.                  |
| Notice of Proposed Rulemaking                                     | NPRM.                   |
| National Transportation Safety Board                              | NTSB.                   |
| Owner-Operator Independent Drivers Association, Inc.              | OOIDA.                  |
| Office of Management and Budget                                   | OMB.                    |
| Out-of-service  | OOS.                    |
| Pipeline and Hazardous Materials Safety Administration            | PHMSA.                  |
| Privacy Impact Assessment   | PIA.                    |
| Paperwork Reduction Act   | PRA.                    |
| Professional Truck Driver Institute                               | PTDI.                   |
| State Driver Licensing Agency                                     | SDLA.                   |
| Truckload Carriers Association                                    | TCA.                    |
| Training Provider Registry  | TPR.                    |
| Transportation Research Board                                     | TRB.                    |
| United States Code  | U.S.C.                  |

**IV. Legal Basis for the Rulemaking**

This NPRM is based on the authority of the Motor Carrier Act of 1935, the Motor Carrier Safety Act of 1984, and the Commercial Motor Vehicle Safety Act of 1986 (CMVSA), as described below. It also implements section 32304 of the Moving Ahead for Progress in the 21st Century Act (MAP-21) requiring the establishment of minimum driver training standards for certain individuals required to hold a CDL. In addition, the proposed rule responds to the March 10, 2015, order of the U.S. Court of Appeals for the District of Columbia Circuit (DC Circuit), referenced further below. This NPRM reflects the recommendations of

FMCSA's Entry Level Driver Training Advisory Committee (ELDTAC), comprised of 25 industry stakeholders and FMCSA, convened earlier this year through a negotiated rulemaking, as discussed below.

The Motor Carrier Act of 1935, codified at 49 U.S.C. 31052 (b), provides that "The Secretary of Transportation may prescribe requirements for—(1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation." This NPRM would improve the "safety of

operation" of entry-level "employees" who operate CMVs, as defined in 49 CFR 383.5, by enhancing the training they receive before obtaining or upgrading a CDL.

The Motor Carrier Safety Act of 1984 (MCSA), codified at 49 U.S.C. 31136(a), provides concurrent authority to regulate drivers, motor carriers, and vehicle equipment. It requires the Secretary of Transportation to prescribe regulations for CMV safety to ensure that (1) CMVs are maintained, equipped, loaded, and operated safely; (2) responsibilities imposed on CMV drivers do not impair their ability to operate the vehicles safely; (3) drivers' physical condition is adequate to operate the vehicles safe; (4) the

operation of CMVs does not have a deleterious effect on the drivers' physical condition; and (5) CMV drivers are not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a CMV in violation of regulations promulgated under this section, or chapter 51 or chapter 313 of this title (49 U.S.C. 31136(a)).

This NPRM is based specifically on 49 U.S.C. 31136(a)(1), requiring regulations to ensure that CMVs are "operated safely," and secondarily on section 31136(a)(2), requiring that regulations ensure that "the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicles safely." The proposed rule enhances the training of entry-level drivers to further ensure that they operate CMVs safely and meet the operational responsibilities imposed on them.

This rulemaking does not directly address medical standards for drivers (section 31136(a)(3)) or possible physical effects caused by driving CMVs (section 31136(a)(4)). However, to the extent that the various curricula proposed today address health and wellness issues that facilitate the safe operation of CMVs (section 31136(a)(3)), has been considered and addressed. Also, to the extent that curriculum addresses idling and related health effects (section 31136(a)(4)), has been considered and addressed. FMCSA does not anticipate that drivers will be coerced (section 31136(a)(5)) as a result of this rulemaking. However, we note that the training curricula proposed for Class A and B CDLs and for refresher training includes a unit addressing the right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisal simply for stating a safety concern. Driver-trainees will also be instructed in procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

CMVSA provides, among other things, that the Secretary of Transportation shall prescribe regulations on minimum standards for testing and ensuring the fitness of an individual operating a commercial motor vehicle (49 U.S.C. 31305(a)). The requirement of today's proposed rule that States test only those entry-level CDL applicants who have completed the training proposed by this NPRM falls within the "minimum standards for testing" authorized by the CMVSA. The training requirement itself, as described below, was created by section 32304 of MAP-21.

MAP-21 requires DOT to regulate ELDT. Public Law 112-141, section 32304, 126 Stat. 405, 791 (July 6, 2012). MAP-21 modified 49 U.S.C. 31305 by adding paragraph (c), which requires FMCSA to issue ELDT regulations. The regulations must address the knowledge and skills necessary for safe operation of a CMV that must be acquired before obtaining an initial CDL or upgrading from one class of CDL to another. MAP-21 also requires that training apply to CMV operators seeking passenger or hazardous materials endorsements (49 U.S.C. 31305(c)(1) and (2)). Although the statute specifically requires that the regulations include both classroom and behind-the-wheel instruction, MAP-21 otherwise allows FMCSA broad discretion to define the training methodology, standards, and curriculum necessary to satisfy the ELDT mandate.

MAP-21 clearly establishes the scope of operations to be covered by this rulemaking by requiring that ELDT regulations apply to prospective CDL holders operating in both interstate and intrastate commerce. The ELDT requirements are codified in section 31305, and the definition of a CMV in section 31301(4) therefore applies to ELDT. The definition of "commerce" in section 31301(2) covers both interstate commerce (paragraph A) and intrastate commerce (paragraph B). ELDT, as a CDL-related mandate, therefore applies to interstate and intrastate commerce.

The ELDTAC recommended the inclusion of a school bus (S) endorsement in the NPRM, although MAP-21 did not specifically mandate training for this endorsement. The current FMCSRs require that, in order for a driver to obtain the S endorsement, he or she must first obtain either a Class A or Class B CDL, as well as pass the knowledge and skills test for a passenger vehicle (P) endorsement (49 CFR 383.123). FMCSA believes that, since Congress recognized the importance of entry-level training in the operation of passenger vehicles by including the P endorsement within the scope of the MAP-21 mandate in section 31305(c), the inclusion of the S endorsement training curriculum in the NPRM is entirely consistent with that mandate.

While 49 U.S.C. 31305(c) clearly applies to entry-level CMV drivers—understood as new drivers—FMCSA believes that refresher training is necessary for essentially the same reason. CDL holders who have been disqualified from operating a CMV, have either never learned the necessary skills for safe operation of a CMV or have allowed those skills to deteriorate to the

point where they have no greater mastery of operational safety than individuals who have not previously driven a CMV. The Agency believes that requiring refresher training for those drivers is well within the purpose and intent of the training mandate required in 49 U.S.C. 31305(c).

Before prescribing any regulations, FMCSA must consider their "costs and benefits" (49 U.S.C. 31136(c)(2)(A) and 31502(d)). Those factors are discussed in the RIA associated with this rulemaking.

## V. Regulatory and Legal History

### *Initial Efforts To Address ELDT*

In the early 1980s, the Federal Highway Administration's (FHWA) Office of Motor Carriers, the predecessor to FMCSA, determined that there was a need for technical guidance in the area of truck driver training. This need was based on a Government Accountability Office report stating that a large percentage of truck crashes are due to driver error.<sup>3</sup> Research further showed that few driver training institutions then offered a structured curriculum or a standardized training program, and also showed that, for motorcoaches and school buses, nearly the entire capacity for entry-level training was provided by the fleet operators, and not by training schools.

FHWA published a "Model Curriculum for Training Tractor-Trailer Drivers" (Model Curriculum) in 1985. The Model Curriculum provided suggestions and recommendations for training providers covering curriculum, facilities, vehicles, instructor qualifications and hiring practices, graduation requirements, and student placement. Curriculum content addressed basic operation, safe operating practices, advanced operating procedures, vehicle maintenance, and non-vehicle activities (e.g., handling and documenting cargo). The Model Curriculum reflected a consensus among experts at the time of its publication.

The 1985 Model Curriculum recommended the equivalent of a total of 148 hours<sup>4</sup> of training, including driving-range time and on-road BTW training. In 1986, the motor carrier, truck driver training school, and insurance industries created the Professional Truck Driver Institute

<sup>3</sup> GAO/RCED-89-163, Truck Safety: Information on Driver Training, August 1989.

<sup>4</sup> The original Model Curriculum referred to a total of 320 hours. However, these hours of training include periods when the student is not receiving individual instruction, such as while waiting his or her turn to use an available truck to practice driving skills.

(PTDI) to certify high-quality training programs offered by training institutions. The Model Curriculum, as updated over time, remains as the centerpiece of many training programs currently offered. It provided the starting point for the ELDT curricula requirements proposed in this NPRM.

CMVSA, which created the CDL program, defined a CMV, in part, as a vehicle operating in “commerce,” a term separately defined to cover both interstate commerce and operations that “affect” intrastate commerce (49 U.S.C. 31301(2) and (4)). CMVSA directed the Agency to establish minimum Federal standards that States must meet when testing and licensing CMV drivers. The goal was to ensure that drivers of large trucks and buses possess the knowledge and skills necessary to operate safely on public highways. Until 2012, however, as discussed further below in this section, Congress did not specify whether an ELDT rulemaking should be limited to CMV drivers in interstate commerce, or whether it should also encompass CMV drivers operating in intrastate commerce.

In accordance with part 383, all drivers of CMVs must possess a valid CDL. In addition to passing the CDL knowledge and skills tests required for the basic vehicle group, all persons who operate or anticipate operating double/triple trailers, passenger vehicles, tank vehicles, vehicles transporting hazardous materials, or school buses must obtain vehicle-specific endorsements under § 383.93(3)(b). The driver is required to pass a knowledge test for each endorsement, plus a skills test to obtain a passenger endorsement or a school bus endorsement.

By 1991, Congress became concerned about the quality and inconsistency of CDL-related training individuals were receiving prior to obtaining a CDL. As a result, section 4007(a)(1) of the Intermodal Surface Transportation Efficiency Act (ISTEA) required FHWA to: (1) Study the effectiveness of private sector training efforts and to report its results to Congress; and (2) to commence a rulemaking on the need to require training of all entry-level drivers of CMVs (Pub. L. 102–240, 105 Stat. 1914, 2151, Dec. 19, 1991).

In 1992, the FHWA began to examine the effectiveness of private sector training. A 1995 report titled, “Assessing the Adequacy of Commercial Motor Vehicle Driver Training” (the Adequacy Report) concluded, among other things, that effective ELDT needs to include BTW instruction. While the Adequacy Report recognized that ELDT seemed intuitively beneficial, it also acknowledged the lack of quantitative

data linking driver training with positive safety outcomes. The Adequacy Report did not reach a conclusion as to whether “testing-based,” “training-based,” or “performance-based” approaches to ELDT would be more effective. The Secretary of Transportation submitted this report to Congress in 1996. A copy of the Adequacy Report is included in the docket for this rulemaking.

In 1993, pursuant to section 4007(a)(2) of ISTEA, FHWA began a rulemaking to address the need to require training of all entry-level CMV drivers. On June 21, 1993, FHWA published an ANPRM titled “Commercial Motor Vehicles: Training for All Entry Level Drivers” (58 FR 33874). The NPRM asked 13 questions pertaining to the adequacy of training standards, curriculum requirements, the requirements for obtaining a CDL, the definition of “entry-level driver” training, training pass rates, and costs.

#### 2003 NPRM/2004 Final Rule

In November 2002, several organizations filed a petition for a writ of mandamus in the DC Circuit seeking an order directing the DOT to promulgate various regulations, including one establishing ELDT (petition for a writ of mandamus and for *Relief from Unlawfully Withheld Agency Action, In re Citizens for Reliable and Safe Highways*, No. 02–1363 (D.C. Cir.)). As part of a settlement agreement reached in February 2003, DOT agreed to issue a final rule on minimum training standards for entry-level CMV drivers by May 31, 2004 (*Settlement Agreement, In re Citizens for Reliable and Safe Highways*, No. 02–1363 (D.C. Cir.)). Both of these documents are available in the docket for this rulemaking.

The FMCSA published an NPRM on Friday, August 15, 2003, which proposed training for entry-level drivers based on three main principles (68 FR 48863). First, the NPRM focused on the types of drivers addressed in the Adequacy Report; *i.e.*, only drivers in the heavy truck, motorcoach, and school bus industries. Second, the NPRM focused on drivers who operate in interstate commerce and therefore are subject to MCSA. Third, the Agency limited the NPRM to the following areas: (1) Driver medical qualifications and Federal drug and alcohol testing requirements, (2) driver hours of service limits, (3) driver wellness, and (4) whistleblower protections. The Agency believed that training focusing on these four areas would establish an adequate baseline for training entry-level CMV drivers at a reasonable cost. The NPRM

did not specify a required number of hours for the training or propose requirements pertaining to the type of training. The Agency published a final rule on May 21, 2004, that included the four elements proposed in the NPRM (69 FR 29384).

In 2005, three parties petitioned the D.C. Circuit for review of the 2004 rule. The Court held that the 2004 final rule was arbitrary and capricious because FMCSA ignored the finding of the Adequacy Report that BTW training was necessary and remanded the rule to the Agency for further consideration (*Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration*, 429 F.3d 1136 (D.C. Cir. 2005) (*Advocates I*)). The Court did not vacate the 2004 final rule.

#### 2007 NPRM

In response to the Court’s decision in *Advocates I*, FMCSA published an NPRM on December 26, 2007, that proposed requiring both classroom and BTW training from an accredited institution or program (72 FR 73226). The NPRM generated more than 700 public comments, which varied widely regarding the necessity and efficacy of the proposed ELDT program elements. While most commenters expressed support for the ELDT concept, they had divergent views on several of the proposed rule’s key provisions: (1) Hours-based versus “performance-based” driver training, (2) accreditation, (3) passenger driver training, and (4) post-CDL training.

#### *Hours-Based vs. “Performance-Based” Driver Training*

Several industry organizations expressed opposition to the proposed requirements of a specific minimum number of training hours. Instead, these commenters generally supported a performance-based approach to training that would allow an individual to move through the training program at his or her own pace. Essentially, a driver who demonstrated mastery of one skill would be able to move to the next skill. The driver would not have to repeat continually or practice a skill for a prescribed amount of time—2 hours, for example—if the driver could master the skill in 20 minutes. However, among the various comments expressing support for a “performance-based” approach, there was no consistent interpretation of the term.

Other commenters, however, supported a minimum hours-based approach to training. They stated that FMCSA must specify the minimum number of instructional hours in order to be consistent with the original Model



Curriculum. Additionally, some supporters of an hours-based approach believed that the Agency's proposal did not include sufficient hours (particularly BTW hours) to train a driver adequately. Finally, other commenters suggested a hybrid of the hours-based and "performance-based" approaches.

#### *Third-Party Accreditation*

The 2007 NPRM proposed that all commercial driver-training schools be accredited by an agency recognized by either the U.S. Department of Education (ED) or the Council on Higher Education Accreditation. Most commenters opposed the accreditation proposal because they claimed it is long and costly and would not necessarily result in better training of the students because the accreditation is not "program specific." In other words, the training institution may obtain accreditation, but the accreditation would not be specific to the driver training program's course content. They argued that accreditation might restrict the number of schools where drivers could receive training.

Alternatives suggested included allowing training institutions to self-certify, subject to Federal or other oversight, or permitting training institutions to voluntarily obtain third-party certification or accreditation. However, other commenters believed that even stricter control of training schools should be exercised by the Federal and/or State governments.

#### *Passenger Driver Training*

Commenters from the motorcoach industry stated that they were an "afterthought" in the NPRM. Specifically, they stated that there was no mention of the Model Motorcoach Driver Training Curriculum in the proposed rule. One motorcoach company asserted that its in-house training program was much more rigorous than the Agency proposal and that it continually tested and re-trained its drivers. Others believed that the proposed training program would have particularly adverse consequences for the motorcoach industry as few institutions offered training specific to that segment of the industry.

#### *Post-CDL Training*

Some commenters suggested that the Agency consider regulatory actions beyond what was proposed in the 2007 NPRM. For example, several individuals and organizations believed FMCSA should assess the merits of implementing a graduated CDL system approach. This concept would involve placing limits on the operations of new

CDL holders for certain periods of time until the drivers obtain enough experience to operate without restrictions or limitation. Specifically, such a concept would require that the new CDL holder work under the supervision of an experienced driver or mentor as part of a team operation before being allowed to drive alone. Other commenters stressed that their companies are doing continuous training/testing and that re-training of individuals should be required. As proposed, the 2007 NPRM would have required training before an individual obtained a CDL; the "finishing training" advocated by some commenters was not discussed in the NPRM.

The Agency ultimately withdrew the 2007 NPRM for a number of reasons including: Sharply divided public comments; feedback from participants in the Agency's two public ELDT listening sessions held in 2013; recommendations by the Motor Carrier Safety Advisory Committee (MCSAC), noted below;<sup>5</sup> and the new requirements imposed by MAP-21, discussed below (78 FR 57585, September 19, 2013).

#### *MAP-21 Requirements*

Section 32304 specifically mandates that DOT issue training regulations that (1) address the knowledge and skills needed for safe operation of a CMV, (2) address the specific training needs of those seeking hazardous materials and passenger endorsements, (3) create a means of certifying that an applicant for a CDL meets Federal ELDT requirements, and (4) require training providers to demonstrate that their training meets uniform Federal standards.

After Congress enacted MAP-21, FMCSA requested that MCSAC consider the history of the ELDT issue, including legislative, regulatory and research background, and identify ideas and concepts the Agency should consider in moving forward with a rulemaking to implement the MAP-21 requirements. MCSAC issued its letter report in June 2013.

#### *ELDT Negotiated Rulemaking/ Advocates II*

On August 19, 2014, FMCSA formally announced that it was considering addressing the rulemaking mandated by MAP-21 through a negotiated rulemaking (79 FR 49044). Negotiated rulemaking is a process which brings together representatives of various

interest groups and a federal agency to negotiate the text of a proposed rule. The goal of a negotiated rulemaking proceeding is for the Committee to reach consensus on the text of a proposed rule. The Agency retained a neutral convener, as authorized by the Negotiated Rulemaking Act (5 U.S.C. 563(b)) to impartially assist the Agency in determining whether establishment of a negotiated rulemaking would be feasible and appropriate. To that end, the convener interviewed a broad range of stakeholders concerning ELDT.

On September 18, 2014, FMCSA and DOT were sued in a mandamus action requesting that the D.C. Circuit order the Agency to publish a proposed rule on ELDT in 60 days and a final rule within 120 days of the Court's order (*In Re Advocates for Highway and Auto Safety, the International Brotherhood Teamsters; and Citizens for Reliable and Safe Highways v. Anthony Foxx, Secretary of the United States Department of Transportation, et al.* (No. 14-1183, D.C. Circuit (2014)) (*Advocates II*). This document is available in the docket for this rulemaking.

On November 26, 2014, the convener submitted his report to the Agency concluding that a negotiated rulemaking was feasible and appropriate. The convening report is available in the docket for this rulemaking. In December 2014, FMCSA announced its intention to establish a negotiated rulemaking committee to negotiate and develop proposed regulations to implement the MAP-21 requirements concerning ELDT for drivers operating CMVs in interstate or intrastate commerce. At that time, FMCSA also stated its intention to finish the negotiated rulemaking process in the first half of 2015, followed by publication of an NPRM the same year and a final ELDT rule in 2016 (79 FR 73274, December 10, 2014). The Agency also described the issues to be addressed by the ELDTAC, interests likely to be significantly affected by the rule, proposed various organizations for membership, and explained how a person may apply or nominate another person for membership on the committee, as required by the Negotiated Rulemaking Act. The FMCSA solicited public comment on the proposal to establish the committee and the proposed membership of the negotiated rulemaking committee. The FMCSA considered the comments and applications submitted, and determined that a negotiated rulemaking committee could adequately represent the interests that would be significantly affected by a proposed rule, and that it was feasible and appropriate to establish the

<sup>5</sup> Both available in the docket for this rulemaking, FMCSA-2007-27748. The listening session took place in January and March of 2013.

ELDTAC. Next, FMCSA established a charter under the Federal Advisory Committee Act, 5 U.S.C. App. 2, under which it subsequently convened the ELDTAC (79 FR 73273, 73275).

On February 12, 2015, the Agency published a **Federal Register** notice listing the ELDTAC member organizations<sup>6</sup> as required by the Negotiated Rulemaking Act (80 FR 7814). The ELDTAC, composed of FMCSA and a cross-section of 25 representatives from motor carrier transportation, highway safety, and driver training organizations, met for six two-day negotiating sessions starting in February until reaching consensus in May 2015. The ELDTAC meeting minutes and other documentation are available at [www.eldtac.fmcsa.dot.gov](http://www.eldtac.fmcsa.dot.gov) and in the docket for this rulemaking.

On March 10, 2015, the court in *Advocates II* ordered that the petition for writ of mandamus be held in abeyance pending further order of the court to permit the DOT to issue, by September 30, 2016, final regulations pursuant to MAP-21. Petitioners to the lawsuit agreed to participate in the negotiated rulemaking process to collaborate on the drafting of an NPRM.

A consensus agreement of the ELDTAC,<sup>7</sup> including FMCSA as a party, was reached on May 29, 2015. In this NPRM, FMCSA has followed the consensus agreement “to the maximum extent possible consistent with its legal obligations” (5 U.S.C 563 (a)(7)).

<sup>6</sup> The ELDTAC members are: FMCSA, Advocates for Highway and Auto Safety, American Association of Motor Vehicle Administrators, American Bus Association, Paraprofessional and School-Related Personnel, American Federation of Teachers (AFL-CIO), Amalgamated Transit Union (AFL-CIO), American Trucking Associations, Citizens for Reliable and Safe Highways, Commercial Vehicle Safety Alliance, Commercial Vehicle Training Association, Great West Casualty Company, Greyhound Lines, Inc., International Brotherhood of Teamsters, Massachusetts Registry of Motor Vehicle Division, Massachusetts Department of Transportation, National Association of Publicly Funded Truck Driving Schools, National Association of Small Trucking Companies, National Association of State Directors of Pupil Transportation Services, National School Transportation Association, Owner-Operator Independent Drivers Association, Professional Truck Drivers Institute, Stevens Transport, Spoon Trucking, Truckload Carriers Association, Truck Safety Coalition, United Motorcoach Association, and Women in Trucking.

<sup>7</sup> <http://www.fmcsa.dot.gov/eldtac> (providing comprehensive documentation regarding all negotiated rulemaking meetings leading to the consensus agreement, including committee ground rules, ELDTAC members, agendas, meeting minutes and working documents).

ELDTAC Consensus Agreement (Consensus Agreement)<sup>8</sup>

At the ELDTAC’s final session in May 2015, the Committee unanimously approved a final package of recommendations, as set forth in the Consensus Agreement, on which this NPRM is based. The key terms/concepts of the Consensus Agreement are:

- Beginning on the compliance date of the rule, no “Entry-Level Driver” may take a CDL skills test to receive a Class A CDL, Class B CDL, Passenger Bus endorsement, School Bus endorsement, or Hazardous materials endorsement unless he/she has successfully completed a training program that (1) is provided by a Training Provider who appears on FMCSA’s TPR, and (2) is appropriate to the license/endorsement for which that person is applying.

- The ELDTAC approved proposed curricula for Class A CDL, Class B CDL, Passenger Bus endorsement, School Bus endorsement, Hazardous materials endorsement, and Refresher training.

- The ELDTAC approved proposed curricula for Class A and Class B training programs generally sub-divided into theory and BTW segments, with BTW driving occurring both on a “range” (any protected area not involving a public road) or a public road.

- Theory may be taught either online or in a classroom. The ELDTAC agreed not to propose prescribing the length of time to be spent on theory/knowledge instruction. The training provider would administer a written knowledge assessment, which would provide a satisfactory test of competence in the area of instruction.

- BTW instruction (range and road):

- Class A CDL trainees would be required to receive a minimum of 30 hours of BTW with a minimum of 10 hours spent on a “range” (which may be any suitable area not on public roads), and 10 hours driving on a public road or 10 public road trips (no less than 50 minutes each). A 50-minute training session (“academic hour”) would count as one hour for purposes of this requirement. The training provider will determine how the remaining 10 hours of BTW training will be spent (*i.e.*, whether on a range or public road, or some combination of the two).

- Class B CDL trainees would be required to receive a minimum of 15 hours of BTW (range and public road)

<sup>8</sup> Written Statement of the Entry-Level Driver Training Advisory Committee, Consensus Recommendation on Rule for Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators, Richard W. Parker, Facilitator, June 15, 2015.

driving, with a minimum of 7 hours of road driving. Again, a 50-minute training session (“academic hour”) would count as one hour under this requirement. Training providers may determine how the remaining 8 hours of BTW training are spent, as long as the range curriculum, as set forth below, is covered.

- These proposed requirements would apply to individuals who obtain the CLP on or after the compliance date. However, the new requirements would not apply to individuals—such as military drivers—for whom 49 CFR part 383 gives States the discretion to waive the CDL skills test. Any individual who fails to obtain the CDL within 360 days after obtaining a CLP would be required to complete a full ELDT course again following application for a new CLP.

- An individual holding a CDL that has been canceled or revoked by the State of issuance—and would thus be required to re-take a State-administered CDL exam—would not be required to re-take a full ELDT course as a condition of taking such exam. However, any individual whose CDL has been canceled or revoked for a highway-safety related reason would be required to complete refresher training from a provider listed on the TPR prior to re-taking the State CDL exam to re-instate his or her CDL Class A or Class B license.

- Once such refresher training is completed, the training certificate would be transmitted from the training provider to FMCSA, and the Agency would electronically transmit the certificate to the SDLA via the Commercial Driver’s License Information System (CDLIS). The rule would include an explicit requirement for SDLAs to administer a CDL skills test to these individuals, but only if there is an electronic training certificate on file with the SDLA.

- To become an FMCSA-registered training provider, a person or institution would have to meet the applicable FMCSA’s Eligibility Requirements for Training Providers, and complete and submit (online) a Training Provider Identification Report affirming under penalties of perjury that such provider will teach the FMCSA-prescribed curriculum that is appropriate for that license or endorsement and that such provider meets the eligibility requirements. Training providers that meet these requirements would be placed on FMCSA’s TPR.

- The ELDTAC approved two sets of Eligibility Requirements that training providers would meet in order to appear on the TPR. One set of proposed requirements would apply to in-house

or school training providers that train, or expect to train, more than three drivers per year, while the other would pertain to small business or for-hire training providers that train, or expect to train, three or fewer drivers per year. All training providers would complete the Training Provider Identification Report as part of their application for registration.

- The ELDTAC agreed that theory and BTW training may be delivered by separate providers.

- The ELDTAC approved FMCSA's draft regulatory text setting forth the general requirements for training providers listed on FMCSA's TPR.

- The compliance date of the rule would be three years from the effective date of the final rule.

Although the ELDTAC approved the consensus agreement unanimously, two parties formally dissented (as permitted by the ground rules for the negotiated rulemaking) on a single issue, requiring a minimum number of hours for BTW (range and road) for Class A training. A more detailed discussion of the ELDTAC's deliberations regarding the hours-based approach for BTW, including the dissenting comments, is provided below in the "General Discussion of the Proposal" section.

#### Issues Left to the Agency's Discretion by ELDTAC

Several items were discussed by the Committee, but left to the Agency's discretion. These include:

- The impact of serious traffic violations on an individual's eligibility to be a BTW training instructor.
- Required record retention period for training providers listed on the TPR.
- Finalizing the Training Provider Identification Report requirements.

The Committee agreed that a BTW training instructor's driving record is relevant to his or her overall qualification, but left to FMCSA the decision on how long he or she must have a "clean" driving record. Accordingly, BTW training instructors, during the two years prior to engaging in BTW instruction, must not have had any CMV-related convictions for the offenses identified in § 383.51(b) through (e). FMCSA invites comment on this proposed driver training qualification.

ELDTAC briefly discussed how long training providers would be required to retain training records, but ultimately left the decision to the Agency. FMCSA proposes that the records be kept for three years after the date they are created, consistent with the retention requirements in § 391.51(d), General

#### Requirements for Driver Qualification Files.

ELDTAC reviewed and commented on a draft version of the Training Provider Identification Report [to be attached as an Appendix] to be used by training providers seeking to be listed on the TPR. The Agency made minor changes to the design and content of the form to reflect the comments received during the ELDTAC's deliberations.

#### Necessary Conforming Changes Made by the Agency

After the Agency began using the consensus of the Committee to form the basis of the proposed rule, the Agency found that there was a need for certain conforming changes. These include:

- State reinstatement of a CDL for the BTW portion of refresher training.
- A disqualification for refresher training.
- Use of a written assessment by training providers that provide theory training to three or fewer driver-trainees annually.
- Changes made to hazardous materials endorsement curriculum to be consistent with existing regulations.
- Other non-substantive or editorial changes.

The Agency proposes a conforming change related to the refresher training curriculum, which includes a BTW component. The completion of the BTW portion of the refresher training implicitly requires that driver-trainees be licensed to drive a CMV on a range or public road. Accordingly, we propose that if a CDL holder has been disqualified from operating a CMV under § 383.51(b) through (e), the State would reinstate the driver-trainee's CDL solely for the limited purpose of completing the BTW portion of the refresher training curriculum in § 380.625. The State may not restore full CMV driving privileges until the disqualification period is completed and the State receives notification, through the process described below, that the driver successfully completed refresher training. FMCSA specifically invites comment on the practical implications of implementing this proposed requirement.

The Agency modified the ELDTAC language concerning when a CDL holder would be required to take refresher training. In lieu of the revocation or cancellation of a CDL for highway safety related reasons by the State of issuance as a trigger for refresher training, the Agency proposes a disqualification under § 383.51(b) through (e) as the sole standard for requiring refresher training. This change would ensure consistency among the States in determining when

refresher training is required. FMCSA is using this criteria for both when a CDL holder is required to take refresher training and for determining the qualification of a BTW instructor. The Agency requests comments on these changes. Additionally, FMCSA invites comment on whether a driver disqualified under § 383.52 should also be required to complete refresher training before his or her CDL is reinstated.

In reviewing the supporting documentation for the consensus agreement, FMCSA noted that training providers that provide theory training to three or fewer driver-trainees annually are not explicitly required to assess the driver-trainee's knowledge proficiency by using a written or electronic format (see annex 8, page 53 of the Consensus Agreement). The Agency believes, however, that a written or electronic assessment of a driver-trainee's proficiency by all training providers is necessary in order to create a record verifying that the training provider followed the applicable theory curriculum requirements; therefore, it includes this requirement in the NPRM. The Agency requests comment on this proposed clarification.

FMCSA also revised the description of training providers who train or expect to train three or fewer driver-trainees per year by deleting "small business or for-hire" but maintained the general concept as developed by the ELDTAC. We concluded that the deleted language detracted from the clear "dividing-line" between training entities established by the ELDTAC: Those entities that train three or fewer driver-trainees or those that train more than three.

Additionally, FMCSA made editorial changes to certain units in the H endorsement curriculum. The Agency changed the name of the "Cargo Tank" unit to "Bulk Packages"; and edited the "Loading and Unloading HM" unit to more accurately reflect the range of transportation containers addressed in current regulations (49 CFR part 177).

The six driver training curricula proposed in this NPRM were drafted by the ELDTAC. The Agency made non-substantive conforming editorial changes to certain portions of the curricula solely for purposes of clarity and consistency or to eliminate duplication. For example, the "accident procedures" unit of the Class A and B curricula has been removed because all of the requirements are set forth in the "post-crash procedures" units of those same curricula.

## VI. General Discussion of the Proposal

MAP-21 mandated that the FMCSA issue regulations to establish minimum entry-level training requirements for *all* initial interstate and intrastate CDL applicants, CDL holders seeking license upgrades, and those seeking passenger (P) or hazardous materials (H) endorsements. These proposed regulations would address the knowledge and/or skills training required for these CMV drivers. Additionally, this rulemaking would propose new Federal standards that training providers would meet in order to be eligible to deliver ELDT. Finally, while not specifically required by MAP-21, the NPRM reflects the ELDTAC's consensus that both refresher training and school bus (S) endorsement training should be required when appropriate.

In this NPRM, FMCSA proposes a definition of an "Entry-Level Driver," a person who must complete the CDL skills test requirements, and focuses on drivers who intend to drive CMVs in interstate and/or intrastate commerce. Generally, military drivers are excepted, and farmers and firefighters are eligible to be excepted from current CDL requirements under § 383.3(c) and (d), respectively. These drivers would continue to be excepted under this proposed rule.

The proposed rule also applies to entities that train CDL applicants. Such providers would, at a minimum, offer and teach a driver training curriculum that meets all FMCSA standards as set forth in the NPRM. Furthermore, entities would meet and attest to their compliance with the eligibility requirements set forth in subpart G of part 380. These proposed requirements address the following areas: Course administration; instructional personnel qualifications; training vehicles; training facilities (e.g., classroom and range); and curricula and proficiency assessment. Training providers meeting these requirements would be eligible for listing on FMCSA's TPR. These providers would continue to meet the required criteria in order to remain listed on the TPR. In addition, training providers would, at FMCSA's request, be required to supply documentary evidence to verify their compliance with the eligibility requirements. The NPRM also proposes an administrative process for providers removed from or reinstated to the TPR.

The NPRM proposes a Class A CDL core curriculum; a Class B CDL core curriculum; three specific endorsement training curricula: Hazardous materials (H), passenger bus (P), and school bus (S); and a "refresher" training

curriculum. The core curricula for Class A and Class B CDL training programs subdivide into theory and BTW (range and public road). For those individuals seeking H, P, or S endorsements on their CDL, the appropriate training curriculum would be required. The proposed P and S training curricula are also divided into theory and BTW (range and public road) training. The H endorsement training curriculum is proposed as theory-only training because there is no CDL skills test currently required for those seeking an H endorsement. The NPRM does not propose that any minimum number of hours be spent by driver-trainees in completing the theory portion of any of the individual curricula, nor does it propose that any minimum number of hours be spent completing the non-BTW portion (e.g., pre-trip inspection) of the range training. However, training providers would provide instruction on all elements of the applicable curriculum. The driver-trainee's successful completion of the appropriate curricula would be required, which includes achieving an overall score of at least 80% on the assessment administered by the training provider.

As proposed, a CDL holder who has been disqualified from operating a CMV would need to successfully complete refresher training requirements before applying for reinstatement of their CDL. Similar to the other curricula, the refresher curriculum is broken down into the categories of theory and BTW (range and public road) training; however, the NPRM does not propose that a minimum number of hours be required to complete any portion of the refresher curriculum. As noted above, the Agency proposes that SDLAs issue limited CDL privileges for persons seeking to become reinstated, solely for the purpose of allowing the driver to complete the BTW portion of the refresher curriculum.

The NPRM describes factors that would justify FMCSA's removal of a training entity from the TPR. The proposal sets forth procedures the Agency would follow before an entity can be removed from the TPR, as well as procedures that the training entities would follow in order to challenge a proposed removal.

This NPRM also proposes that training providers would electronically notify the TPR that driver-trainees have completed training by the close of the next business day. There would be no limit on the number of training certifications a provider may submit to the TPR at one time, so long as each individual driver-trainee's successful

completion of his or her training is certified separately. The submission of documentation would ensure that each individual received the required training from a provider listed on the TPR prior to applying for the CDL and/or an applicable endorsement.

The proposed compliance date for this rule is three years after the effective date of the final rule. The Agency believes the three-year phase-in period would give the States enough time to (1) pass implementing legislation and/or regulations as necessary; (2) modify their information systems to begin recording the training provider's certification information into CDLIS and onto the driver's CDL record; and (3) begin making that information available to other States through CDLIS. The three-year phase-in period would also allow ample time for the CMV driver training industry to develop and begin offering training programs that meet the requirements for listing on the TPR.

### *Dissenting Views From ELDTAC Members*

While two ELDTAC members, the American Trucking Associations (ATA) and the National Association of Small Trucking Companies (NASTC), voted in favor of the unanimously approved consensus agreement as a whole, they disagreed with the other members of the ELDTAC that a minimum number of hours of BTW training should be prescribed for the Class A CDL. The statute, as noted previously, mandates some amount of BTW training, but it does not prescribe how much, nor does it state whether the minimum amount of BTW training be expressed in hours.

ATA cited two reasons for its disagreement with the consensus approach on minimum hours of BTW training. First, ATA argued that the hours-based proposal lacks a scientific basis. ATA cited a 2008 report from the American Transportation Research Institute (ATRI) that concluded that "no relationship is evident between total training program contact hours and driver safety events when other factors such as age and length of employment are held constant." ATA claimed, therefore, that a proposal prescribing a minimum number of BTW training hours was "arbitrary."<sup>9</sup> NASTC agreed with this conclusion in its dissent.<sup>10</sup> FMCSA notes that the ATRI study did not rely on a representative sample of either motor carriers or new entrant drivers. The Agency therefore does not

<sup>9</sup> ATA Letter to Richard Parker, ELDTAC Facilitator, June 15, 2015.

<sup>10</sup> NASTC Statement for the Record of the ELDTAC, Rationale for Vote on Hours Requirement for Behind-the-Wheel Training June 15, 2015.

view the ATRI report's conclusion regarding the BTW training requirement as definitive for purposes of this NPRM. However, FMCSA does not have scientific evidence that would suggest that an hours-based requirement improves safety.

Throughout the ELDTAC's deliberations, the need for correlative data pertaining to the effectiveness of any form of ELDT (either the hours-based or the purely "performance-based" approach favored by ATA and NASTC) was repeatedly acknowledged. But while some participants offered data in response to the request of the ELDTAC's Data Needs/Cost Benefit Analysis Work Group, none of those submissions included safety benefit data that could be utilized in support of this proposal. However, as discussed in the RIA, there was significant information about existing driver training programs carried out by motor carriers and others that include substantial BTW training. The use of these programs to train a substantial number of CDL holders strongly supports the need for and desirability of establishing minimum BTW hours requirements in the proposed rule.

ATA's second argument was that using an hours-based approach is contrary to the "performance-based" approaches favored in Executive Orders 12866 and 13563, as well as the Office of Management and Budget's guidance (OMB Circular A-4, September 17, 2003). FMCSA does not believe that the consensus proposal contravenes Executive Order 12866, Section 1 (b)(8), directive that "[e]ach agency shall identify and assess alternative forms of regulation and shall, *to the extent feasible*, specify performance objective, rather than specifying the behavior or manner of compliance that regulated entities must adopt" (emphasis added). As the discussion in the "alternatives considered" section makes clear, the ELDTAC identified and assessed different approaches to driver training for Class A CDLs. As discussed below, ultimately the ELDTAC adopted a hybrid approach that combines a required minimum number of BTW hours (range and public road) for Class A and Class B CDLs only, with a prescribed theory curriculum for which no minimum number of hours is required, while also incorporating "performance-based" elements, such as reliance on demonstrated outcomes. The approach presented in this NPRM, therefore reflects the consensus of ELDTAC representatives that performance objectives be specified "to the extent feasible".

Although there are a required minimum number of BTW hours prescribed in this NPRM, FMCSA believes that many of the other provisions included are consistent with Executive Order 12866's emphasis on performance objectives, as illustrated by the level of discretion that instructors have when assessing the performance of individual driver-trainees. The NPRM proposes that instructors maintain significant flexibility, within the total number of hours required for BTW training in the Class A and B CDL curricula, to allot more or less time to specific elements of the training according to the instructor's evaluation of the trainee's demonstrated performance of required skills. For example, the NPRM permits instructors in the Class A curriculum complete discretion to determine how 10 hours (of the total required 30 hours) will be allocated, including whether those hours should be spent on the driving range or on a public road (or some combination of the two), as well as which specific driving maneuvers require further training. This level of instructional discretion, based entirely on the trainee's demonstrated skill proficiency, permits BTW training to be tailored to the needs of the individual. This hybrid approach thus emphasizes the achievement of performance objectives, while also assuring that a reasonable amount of time will be spent on BTW training.

As further discussed below, the ELDTAC consensus process vetted all available evidence and alternatives. We further note that FMCSA's reliance on the consensus agreement "as the basis" for this proposal is required by the Negotiated Rulemaking Act (5 U.S.C. 563(a)(7)) and the ELDTAC Ground Rules (Section (3)(a)).

#### *Alternatives Considered*

As noted above, the Agency is bound to propose in this NPRM the ELDTAC's consensus package for notice and comment to the maximum extent possible consistent with its legal obligations. The preferred alternatives agreed upon as a package are outlined in the Written Statement from ELDTAC facilitator (docketed at FMCSA-2007-27748). But as discussed in the analysis of alternatives below, several other options were considered for some of the regulatory provisions being proposed. Due to our legal obligation to propose the consensus package, we provide relatively more analysis of the provisions adopted in the consensus package compared to the alternatives that were considered, but ultimately rejected, by the ELDTAC. As further

discussed in the RIA, FMCSA provides some analytical assumptions about these alternatives, as compared to the alternatives ultimately proposed, as a basis for comparison. For example, some of the provisions rejected by the ELDTAC were opposed by industry based on cost considerations. We seek comment on the economic and analytical assumptions utilized to compare the alternatives considered to the approaches proposed in this NPRM.

#### *"Performance-Based" Versus Hours-Based Approach to ELDT*

As previously noted, the issue of a "performance-based" approach to BTW training versus an approach requiring that a minimum number of hours be spent in BTW training was the most thoroughly debated issue within the ELDTAC.<sup>11</sup> The ELDTAC facilitator framed the discussion as the "major challenge" confronting the Committee. The Agency has considered this issue for many years, both in studies, such as the Adequacy Report, and in connection with prior rulemakings, such as the 2007 NPRM (72 FR 73226, 73229).

One of the difficulties surrounding the resolution of this question is that the term "performance-based" is subject to multiple interpretations. In response to the 2007 NPRM, which proposed a minimum number of hours for BTW training, FMCSA received numerous comments addressing the pros and cons of "performance-based" training. These comments made clear that various parties interpreted the term "performance-based" differently. For some commenters, it was a measure of the achievement of specific learning objectives with instructor flexibility, while other commenters thought the term simply meant that students could learn at their own pace. At least one commenter believed that the term indicated that no detailed curricula would be followed. Many commenters understood that a performance-based training system would allow proficient students to "test out" of an otherwise required curriculum. The ELDTAC's discussions also revealed a lack of common understanding of the term, although Committee members generally agreed that it did *not* include a minimum-hours requirement.

Given the lack of industry consensus on the precise meaning of the term "performance-based," the Agency hopes to avoid further confusion by not using it in this NPRM. However, by requiring that driver-trainees achieve specific performance objectives in both the

<sup>11</sup> ELDTAC Meeting Minutes: March 19-20; April 9-10; May 14-15; May 28-29, 2015.

theory and BTW portions of the training, this proposal does incorporate key elements of a “performance-based” approach by relying on demonstrated outcomes.

The proposed curricula in the NPRM sets forth prescriptive elements of each individual curriculum (including BTW vehicle maneuvers on both range and public road), all of which must be taught and assessed. Other than BTW (range and public road) training for the Class A and B CDL, discussed below, there are no required minimum hours that driver-trainees must spend to complete the applicable curricula. The NPRM reflects the Committee’s consensus that detailed curriculum requirements, combined with a prescribed means of performance assessment in the theory and BTW portions of the curricula, are necessary to ensure both adequacy and uniformity of the minimum ELDT training mandated by MAP–21.

This approach prevents individual driver-trainees from “testing out” of any applicable training curriculums. The NPRM requires that, for the theory portion of the training, all elements of each curriculum be taught and a representative portion of each learning unit be assessed by written or electronic means. Driver-trainees must achieve a proficiency rate of at least 80 percent. In the case of BTW training, the ELDTAC first developed a detailed curriculum for Class A and B CDLs. The committee subsequently determined the minimum number of hours necessary to complete the prescribed curricula. A driver-trainee’s competence will be evaluated by the training instructor who is observing the driver-trainees while they are in direct control of the CMV when performing the required elements of the BTW curriculum (noted below) for both range and public road driving. All required driving maneuvers must be performed to the satisfaction of the instructor and the required minimum number of hours for Class A and Class B CDLs must be logged. However, as noted above, the instructor has considerable discretion in determining how the required training time will be spent by each driver-trainee.

FMCSA believes that BTW training for entry-level drivers is uniquely suited to an hours-based approach because it ensures that driver-trainees will obtain the basic safe driving skills necessary to obtain a Class A or Class B CDL and to operate their vehicles safely—skills that can only be obtained after spending a reasonable amount of time *actually driving* a CMV. All but two members of the ELDT supported this approach; safety experts on the committee

considered it a requisite element of any meaningful effort to establish an ELDT protocol at the federal level. Notably, Committee members representing the professional training industry stated repeatedly that, when it comes to the proficient operation of a CMV, there is simply no substitute for experience. The proposed BTW hours requirement is intended to ensure that driver-trainees receive a minimum level of that experience.

Further, FMCSA notes that this relatively modest hours-based approach proposed for BTW range training is coupled with required driving exercises that would provide driver-trainees with the opportunity to master basic maneuvers identified in the American Association of Motor Vehicle Administrators (AAMVA)<sup>12</sup> Commercial Driver License Manual as well as 49 CFR 383.111 and 383.113. These BTW range maneuvers include: Straight line backing, alley dock-backing, off-set backing, parallel parking (blind side), and parallel parking (sight side). The public road portion of BTW training for the Class A and Class B CDL is also coupled with specified driving competencies that the driver-trainees would be required to master, such as vehicle controls (left and right turns, lane changes, curves at highway speeds), shifting/transmission, communication/signaling, visual search, speed and space management, and other safe driving behaviors.

The ELDTAC gave extensive consideration to each driver-trainee correctly performing these key driving skills 5 times for Class A drivers (fewer times in the case of Class B), and having the training provider maintain written documentation of such performance in a “Master Trip Sheet” or some comparable document. Ultimately, the ELDTAC decided not to adopt this option—either in addition to, or in lieu of, a minimum number of hours of BTW training requirement. Instead, the ELDTAC recommended that FMCSA provide post-rule guidance on the use of a “trip sheet” as an illustrative method by which BTW training may be documented.

In the Agency’s judgment, a hybrid approach combining minimum BTW hours requirement with detailed curriculum requirements is the best way to ensure that drivers will be adequately trained in the safe operation of Class A and Class B CMVs. This approach is also consistent with the recommendation included in the June

17, 2013, MCSAC Task 13–01 Report, “Recommendations on Minimum Training Requirements for Entry-Level Commercial Motor Vehicle (CMV) Operators”, which stated that “the majority of the group. . . believes that FMCSA should mandate both some minimum behind-the-wheel training hours, along with performance-based requirements that achieve competency.”

While two ELDTAC members opposed any minimum hours requirement for BTW training, several members thought that the Consensus Agreement, as reflected in this NPRM, should have required a *higher* number of BTW training hours for Class A and B CDLs. Several ELDTAC members, including the Commercial Vehicle Training Association (CVTA), noted that ELDT programs currently offered in a variety of settings (*e.g.*, community colleges, institutional training providers, motor carriers, etc.) generally require more than the 30 BTW training hours proposed. According to CVTA, “since quality trainers were and are already training in excess of this [proposed] amount of BTW time, incorporating this BTW component imposes little or no burden on any individual trainer or training program that is teaching the curriculum with the *diligence needed to produce safe drivers.*”<sup>13</sup> (emphasis added). For a more expansive review of existing ELDT program requirements, see the RIA.

Accordingly, we solicit comment on whether any minimum number of BTW hours should be required. If there is a required minimum number of hours for BTW training, we seek comment on whether the number of BTW training hours proposed in this NPRM should be retained, lowered, or increased. Further, because minimum hours are not proposed for BTW training for the S and P endorsements or for the refresher training, we also solicit comment on whether, and to what extent, a minimum hours requirement should be added to the BTW portions of those curricula.

As previously noted, according to some ELDTAC members and the Agency’s own research, the minimum hours requirement for BTW proposed in this NPRM falls below the requirements currently imposed by many driver training programs. Some Committee members expressed concern that this proposal would cause existing training providers to reduce their level of training to reflect the proposed Federal minimum standard. FMCSA does not believe that will necessarily occur. In

<sup>12</sup> The ELDTAC committee endorsed this manual as the basis for the range and road training. FMCSA has docketed this material.

<sup>13</sup> CVTA letter to ELDTAC facilitator Richard Parker, June 9, 2015.

today's training environment, in which most States do not impose requirements pertaining to ELDT training, one might expect drivers to take only the bare minimum necessary to pass the CDL skills test. Yet that is not the case. As discussed in the RIA, a substantial share of driver trainees currently obtain training, often paid for by the motor carriers themselves, that exceeds the requirements proposed by the NPRM. The reason is that carriers and their insurers have a vested interest in putting drivers on the road that can operate their CMVs safely and efficiently and that the costs of such programs are fully justified in light of the benefits to the motor carriers and the drivers themselves. In light of this market-driven imperative, we do not think it is reasonable to assume that training providers would diminish the scope or length of their training in response to this NPRM.

#### *Third-Party Accreditation Versus Self-Certification*

The ELDTAC considered whether to propose that ELDT programs subject to this rule be accredited by third parties recognized by, for example, ED or the Council for Higher Education Accreditation. Citing the cost and potential administrative difficulties of implementing a third-party accreditation requirement, the Committee rejected this approach in favor of a self-certification process whereby training providers would attest that they meet specified eligibility requirements for listing on the TPR. The Committee approved the use of a detailed application, the Training Provider Identification Report (described below in the Paperwork Reduction Act section), designed to capture that information.<sup>14</sup> Training providers listed on the TPR would be subject to audit or investigation by FMCSA and must, on request, produce documentation establishing their compliance with the eligibility requirements. FMCSA intends to provide post-rule guidance regarding both suggested and required documentation, including the forms of documentation identified in Annexes 7 and 8 of the ELDTAC Consensus Agreement.

This approach is consistent with the MCSAC's recommendation that, in lieu of third-party accreditation, ELDT programs rely on an approved curriculum, quality assurance requirements for training providers, and a self-certification process to ensure a

minimum level of program quality.<sup>15</sup> Some ELDTAC members asserted that the level of specificity of the new proposed reporting requirements alone could discourage unscrupulous training providers from entering the training field or from staying in the driver training business. In addition, such requirements would provide FMCSA with information that might be used to detect fraudulent training providers who may subsequently be removed from the TPR in accordance with the procedures set forth in the NPRM, and subject to other penalties.

#### *ELDT Curricula*

The Committee thoroughly considered the skills components and theory elements included in the six curricula proposed in the NPRM. At the outset, the ELDTAC agreed that the FHWA Model Curriculum would form the basis for initial discussions. The entire ELDTAC made all final decisions regarding curriculum content, based on detailed proposals by curriculum-specific Work Groups, which were revised and refined throughout the Committee's deliberations. FMCSA intends to provide additional post-rule guidance concerning available resources which may be used to supplement the required curricula, including those resources specifically identified by the ELDTAC: Pipeline and Hazardous Materials Safety Administration (PHMSA) basic HM awareness;<sup>16</sup> training for commercial drivers of cargo tank motor vehicles transporting HM created jointly by the FMCSA, PHMSA, and industry partners;<sup>17</sup> and the North American Fatigue Management Program (NAFMP).<sup>18</sup>

Activities on the range training consist of driving exercises that provide practice for the development of basic control skills and mastery of basic maneuvers as set forth in the American Association of Motor Vehicle Administrators (AAMVA) manual on how to operate a CMV safely. The experience on the range provides the groundwork for how to drive on the road in real world situations. The practicing of skills on the driving range will ultimately make a trainee a better driver. One example of a skill taught on the range is shifting. This is a skill that a trainee must master not only for acquiring their CDL, but also when the individual is operating on a public road or highway. These maneuvers/training

topics are included in the road test that a trainee will need to know and master in order to pass this test and acquire their CDL. To maintain maximum flexibility, FMCSA did not propose that a certain portion of the range training needed to precede road training, but expects that trainers will require the completion of basic maneuvers in a controlled environment before allowing a student to operate on a public road.

FMCSA notes that ELDTAC did not propose a curriculum for Class C CDL training because a Class C vehicle, must, by definition, be designed to transport 16 or more passengers (including the driver) or any hazardous materials as defined in 49 CFR 383.5. As such, the Class C driver needs either a P or an H endorsement, and this NPRM proposes training curricula for both of those endorsements. Class C training is therefore effectively covered by the proposed endorsement training.

FMCSA seeks comment on the scope and content of the proposed curricula. For example, FMCSA is aware that some carriers and owner-operators utilize CMVs equipped only with an automatic transmission. In the proposed curricula for Classes A and B, shifting/transmission is a required element of both theory and BTW components of the training. We invite comment on whether there should be an option to forego this element of the training for driver-trainees who intend to operate CMVs equipped only with automatic transmissions. Currently, for drivers who take their CDL skills tests in a CMV equipped with an automatic transmission, the State must indicate on the CDL that the person is restricted from operating a CMV with a manual transmission (49 CFR 383.95(c)(1)).

FMCSA seeks comment on whether the hazardous material regulations (HMR) training in 49 CFR 172.704 could be used or modified to satisfy the H endorsement training in this proposed rule.

#### *Data*

One of the most significant challenges faced by both FMCSA and ELDTAC is the limited quantitative or qualitative data correlating the provision of *any type* of ELDT with positive safety outcomes, such as crash reduction. During the ELDTAC deliberations, a Data Needs/Cost Benefit Analysis Work Group was formed in order to focus specifically on identifying and gathering relevant data. Although some members of the Work Group submitted information in response to the data needs outlined by FMCSA's economists at the outset of the ELDTAC's deliberations and in subsequent

<sup>15</sup> MCSAC Task 13-01 Report, pp. 4-5.

<sup>16</sup> <http://www.phmsa.dot.gov/hazmat/outreach-training>.

<sup>17</sup> <http://www.fmcsa.dot.gov/rolloverprevention>.

<sup>18</sup> <http://www.nafmp.org/en/>.

<sup>14</sup> ELDTAC Meeting Minutes, April 9-10, 2015; May 14-15, 2015.

requests, none of the data provided was statistically adequate for use in this rulemaking analysis. The Agency seeks comment, for example, on whether the insurance industry provides discounted premiums to carriers who train entry-level drivers, or who employ entry-level drivers who have received training elsewhere (e.g., from a community college or independent training school). The specific data needs related to this proposal, as well as the efforts FMCSA made to obtain data throughout the ELDTAC deliberations, are discussed in the RIA.

#### Impact of the NPRM on Small Training Provider Entities

During its deliberations, ELDTAC worked to ensure that the proposed rule would not be unduly burdensome to small entities that provide ELDT. The small business representatives on the ELDTAC provided valuable contributions in this regard. Based on their input, there are several regulatory elements in today's proposal tailored specifically to meet the needs of small training provider entities.

First, the Committee decided not to propose that any training entity maintain its own designated driving range. Instead, the NPRM sets forth the proposed elements that any area would meet in order to be suitable for range training. This approach provides the flexibility for small training entities to use publicly available areas, such as office building or mall parking lots during "off" hours for range training, so long as the basic definitional requirements (e.g., range area must be free of obstructions and permit adequate sight lines) are met. The Agency requests comments on the practicability of this proposed approach. FMCSA notes that if training is done in a publicly accessible area such as a mall parking lot, all CLP requirements apply.

Second, the Committee considered proposing requirements pertaining to classroom facilities used for teaching the theory portion of the curricula, such as adequate ventilation, adequate space per driver-trainees, etc. However, in deference to the concerns of small training providers, the Committee ultimately chose not to propose any standards in this NPRM regarding the physical learning environment for theory training. We note, however, that it is outside the scope of this proposal, as well as FMCSA's authority and the ELDTAC's jurisdiction, to propose any changes in classroom facility requirements currently imposed at the local, State, or Federal levels.

Third, this proposal reflects the ELDTAC's intent to impose fewer

eligibility requirements regarding the instructional personnel of training providers who train, or expect to train, three or fewer entry-level drivers per year. For example, while instructors affiliated with these providers must have a valid CDL of the appropriate or higher class and endorsements required to operate the CMVs for which training is provided, plus at least one year of driving experience in those vehicles, they would not be required to have completed training in the on-road portion of the curriculum in which they are instructing (a requirement that is imposed on instructors affiliated with providers training more than three drivers per year).

Finally, ELDTAC decided not to propose that these small training entities provide written training materials addressing the various curricula elements proposed in this NPRM, in an effort to lessen the administrative burden on such entities.

Based on the Agency's review of supporting documents to the consensus agreement, we infer that the Committee also intended to exempt instructors affiliated with providers training three or fewer drivers per year from State requirements currently applicable to CMV instructors. We note, however that the Agency has no legal authority to do so.

Further, the Agency notes the relative ease with which all training providers, regardless of size, would be able to apply for and obtain listing on the TPR. The process would be entirely electronic, eliminating any need for paperwork. Listing on the TPR would be accomplished solely by the training providers' completion of the FMCSA Entry-Level Driver Training Provider Identification Report; there is no separate requirement that the training provider be accredited by a third-party. In declining to impose such a requirement, the Committee specifically cited the costs associated with third-party accreditation and the disproportionate impact of such a requirement on small training providers. In addition, the certification that a driver has completed training would also be accomplished electronically.

The Agency seeks comment from small business entities regarding any specific changes to the NPRM that would further lessen the regulatory burden imposed by these training requirements.

#### Major Issues on Which the Agency Seeks Comment

FMCSA has requested comment on several issues throughout this section.

The Agency specifically seeks comments on the following topics.

1. Is there any additional data on the safety benefits of requiring ELDT training that you can provide (e.g. demonstrated crash reduction as a result of training)?

2. As proposed, would the training be effective in improving safety? If so, what aspects of the proposal would be effective in improving safety? If not, how could the training be delivered more effectively than proposed?

3. Is there any duplication in the commercial learner's permit exam and ELDT theory training? If yes, should it be eliminated or minimized?

4. FMCSA proposed a specific number of required hours for the BTW training for Class A and B. First, should there be a required number of BTW hours for these two programs? If so, is FMCSA's proposal for 30 hours (Class A) and 15 hours (Class B) appropriate?

5. If there is not a required number of behind the wheel hours, what alternative would be appropriate to ensure adequate BTW training for Class A and B? Would a requirement that is expressed in terms of outcomes rather than specifying the means to those ends be more appropriate?

6. FMCSA allowed training providers flexibility by using either clock-hours or academic hours depending on the type of entity that offers the training (e.g. community college vice carrier provided trainer). FMCSA requests comment on whether training providers should be allowed to use academic hours versus clock-hours. Furthermore, FMCSA asks for input regarding whether there is a discernable difference between the two concepts.

7. MAP-21 did not mandate that FMCSA include the "S" endorsement as part of the required training. Given the devastating consequences of unsafe school bus operation, should the "S" endorsement training be retained in the final rule?

8. The Agency did not propose that the theory, BTW range, and BTW public road training occur in a specific sequence in order to allow training providers the flexibility to determine how they would structure their programs. FMCSA requests comment on whether there should be a particular order associated with the theory, BTW range, and BTW public road curricula.

#### Section-by-Section Explanation of the Proposed Changes

##### Subpart E of Part 380

Subpart E would be retitled as "Subpart E—Entry-Level Driver Training Requirements Before [DATE 3



YEARS AFTER THE EFFECTIVE DATE OF THE FINAL RULE].” On the compliance date of the final rule, this subpart would be removed and reserved and replaced by new subparts F and G.

#### *New Subpart F of Part 380*

The proposed entry-level driver training requirements that would replace those in current subpart E would be titled “Subpart F—Entry-Level Driver Training Requirements On and After [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].”

#### *§ 380.600 Compliance Date for Training Requirements for Entry-Level Drivers*

This section states that the compliance date would be three years after the effective date of the final rule.

#### *§ 380.601 Purpose and Scope*

This proposed section specifies that Subpart F establishes requirements for entry-level drivers, minimum curriculum content, and standards for training providers. Proposed § 380.601 further specifies that the term “ELDT” applies only to individuals initially applying for a CDL or for a CDL upgrade and does not otherwise amend substantive CDL requirements in parts 383 and 384 beyond the changes authorized by MAP–21.

#### *§ 380.603 Applicability*

This proposed section explains that ELDT applies to all entry-level drivers, defined in this subpart, who intend to drive CMVs, as defined in § 383.5, in interstate and/or intrastate commerce. This section specifically excludes from its scope drivers excepted under § 383.3(c), (d), and (h), and those drivers applying for a restricted CDL under § 383.3(e) through (g). These exceptions cover many groups of drivers, including military drivers, farmers, and firefighters; veterans with military CMV experience who meet all the requirements and conditions of § 383.77; or applicants seeking restricted CDLs from Alaska, farm-related service industries, and the pyrotechnics industry. This proposal applies only to those individuals who, upon the compliance date, would need to obtain a CDL (or a CDL upgrade or endorsement) and does not otherwise amend substantive CDL requirements in parts 383 and 384.

Veterans with military CMV experience who meet all the requirements and conditions of § 383.77 would be excepted if the State waives the skills test, though they would still need to take the State’s written test.

These requirements apply to individuals who obtain the CLP on or after the compliance date. Any individual who fails to obtain the CDL within 360 days after obtaining a CLP would be required to complete a full ELDT course following application for a new CLP.

Once an entry-level driver receives training certification qualifying him or her to take the CDL skills test and/or the applicable endorsement skills test for the first time, the person is not required to obtain such certification again. However, if a CDL holder is disqualified from operating a CMV, a driver must take refresher training, as set forth in § 380.625, before reapplying for a CDL or endorsement.

#### *§ 380.605 Definitions*

FMCSA created a new definition for this subpart for behind-the-wheel (BTW) instructor, behind-the-wheel (BTW) range training, behind-the-wheel (BTW) public road training, entry-level driver, entry-level driver training, experienced driver, range, refresher training, theory instruction,<sup>19</sup> theory instructor, and training provider.

In the definition of “BTW instructor” the Committee agreed to the requirement of 1 year of CMV experience driving or 1 year or experience as a BTW instructor. The Consensus Agreement included a statement that 2 or more years of such experience “is preferable.”<sup>20</sup> The Committee agreed that FMCSA should solicit comment on whether the two-year requirement would affect the applicability of State laws relating to instructors or training providers.

#### *§ 380.609 Entry-Level Driver Training Requirements*

This proposed section explains in detail that an applicant for a CDL must complete training that meets the applicable requirements for the CDL class and endorsements (*i.e.*, Class A, Class B, passenger, school bus, or hazardous materials) from a provider listed on FMCSA’s TPR. Paragraph (c) provides that CDL holders who are disqualified from operating a CMV, must complete refresher training from a training provider listed on the TPR.

<sup>19</sup> The Agency anticipates that online theory training providers will enter the training market after publication of a final rule (the NPRM permits theory and BTW training to be provided by separate entities). We expect that online training will represent a lower cost and less time-consuming option than the traditional classroom setting, lessening the burden on driver-trainees.

<sup>20</sup> Consensus Agreement, pg. 46, footnote 3.

#### *§ 380.611 Entry-Level Driver Training Provider Requirements*

This proposed section states that training providers must, at a minimum, meet the requirements of part 380 subpart G, and these training providers must attest that they meet those requirements. Upon request, training providers must supply documentary evidence to verify that they meet the requirements in subpart G.

As proposed, training in the theory and BTW portions of the curricula may be offered by the same or different training providers as long as the provider is listed on the TPR. The NPRM does not propose that the theory and BTW portions of the curricula be instructed in any particular order, although ELDTAC members suggested that the industry norm is that theory training precedes BTW (range and public road) training. If theory and BTW training is received from separate providers, FMCSA would not transmit training certification to the SDLA until it receives notice of successful completion of both theory and BTW (range and public road) training, when applicable. The Agency requests comment on whether the rule should require that theory and BTW training be taken sequentially and specifically whether theory training should be required before taking the State-administered written test to obtain a CLP.

#### *§ 380.613 Class A—CDL Training Curriculum*

This proposed section would require drivers seeking a Class A CDL to successfully complete the Class A curriculum outlined in this section. There is no minimum number of instruction hours proposed for the theory training, but the training provider would cover all of the topics set forth in the curriculum. The driver-trainees would also complete a minimum of 30 hours of BTW training with a minimum of 10 hours spent driving on a range. Driving on a public road would also be required, and Class A CDL driver-trainees may fulfill this requirement by either (1) driving 10 hours on a public road, or (2) 10 public road trips (each no less than 50 minutes in duration). The training provider will determine how the remaining 10 hours of BTW training will be spent (*i.e.*, whether on a range or public road, or some combination of the two). The mandatory minimum number of hours of BTW training would be conducted in a CMV for which a Class A CDL would be required.

*§ 380.615 Class B—CDL Training Curriculum*

This proposed section would require drivers seeking a Class B CDL to complete the Class B curriculum outlined in this section. No minimum number of instruction hours for theory training is proposed, but the training provider would cover all of the topics set forth in the curriculum. The driver-trainees would also complete a minimum of 15 hours of BTW driving training, with a minimum of 7 hours of public road driving. Training providers may determine how the remaining 8 hours of BTW training are spent, as long as the range curriculum, as set forth below, is covered. The mandatory minimum number of hours of BTW driving training would be conducted in a CMV for which a Class B CDL would be required.

*§ 380.619 Passenger Endorsement Training Curriculum*

This proposed section sets forth the proposed training requirements and curriculum for CMV drivers seeking a passenger (P) endorsement. As proposed, there is no minimum number of instruction hours for the theory and BTW (range and public road) portions of the P endorsement training, but the training provider would cover all of the topics set forth in the curriculum. The training would be conducted in a representative vehicle for the P endorsement.

*§ 380.621 School Bus Endorsement Training Curriculum*

FMCSA proposes a curriculum to address the specific training needs of a CMV driver seeking an S endorsement on a CDL. As proposed, there is no minimum number of hours for the theory and BTW (range and public road) portions of the S endorsement training, but the training provider would cover all of the topics set forth in the curriculum. The training would be conducted in a representative vehicle for the S endorsement.

*§ 380.623 Hazardous materials training curriculum*

This proposed section sets forth the training requirements and curriculum for a CMV driver seeking a hazardous materials (H) endorsement. As proposed, there is no minimum number of instruction hours for this training. This proposed training would be theory-only because the current CDL requirement to obtain an H endorsement does not include a skills test.

*§ 380.625 Refresher Training Curriculum*

This proposed section specifies the refresher training for CDL holders who are disqualified from operating a CMV (49 CFR 383.51(b) through (e)). These individuals would be required to complete refresher training from a provider listed on the TPR. As proposed, there is no minimum number of instruction hours for the theory and BTW (range and public road) portions of the refresher training, but the training provider would cover all of the topics set forth in the curriculum.

**49 CFR Part 380, Subpart G Registry of Entry-Level Driver Training Providers**

*§ 380.700 Scope*

This proposed section establishes the minimum qualifications for an entity to be eligible for listing on the FMCSA Training Provider Registry (TPR). The TPR would be an online portal administered by FMCSA allowing training providers to register. The TPR allows drivers seeking training to find an eligible provider who meets their needs.

*§ 380.703 Requirements for Training Provider Registry*

This proposed section outlines the requirements that a training provider would meet in order to be eligible for listing on the TPR. Training providers would agree to follow the applicable curriculum for the CDL class and/or endorsement for which they provide training. Additionally, the training provider would utilize instructors, facilities, and equipment that meet the proposed requirements. Third, the training provider would allow FMCSA or its designated representative to conduct audits or investigations to ensure that the provider meets the eligibility criteria for listing on the TPR. Finally, the training provider would complete the FMCSA Entry-Level Driver Training Provider Identification Report [See appendix for part 380], which provides basic business information to FMCSA and also includes an attestation, under penalties of perjury, that the provider meets all of the requirements for listing on the TPR. This section also provides that once a training provider meets the requirements of §§ 380.703 and 380.707, the training provider would receive a unique TPR number from FMCSA for each separate training location to be listed on the TPR.

*§ 380.707 Entry-Level Training Provider*

This proposed section would require that the training provider ensure that

public road driver-trainees meet certain Federal, State, and local rules and regulations related to their ability to obtain a CDL. This section reiterates that training providers would follow the applicable curriculum for the CDL class or endorsement for which they provide training. In addition, the training provider would offer reasonable assurance that driver-trainees can demonstrate proficiency in the theory and/or BTW (range and public road) portions of the curriculum.

*§ 380.709 Facilities*

This proposed section includes a requirement that the classroom facilities meet all currently applicable Federal, State, and local laws and regulations. For reasons noted previously, FMCSA is not imposing any requirements related to classroom facilities.

The driving range, as defined in § 380.605, must be free of obstructions, enable the driver to maneuver safely and be free from interference from other vehicles and hazards, and have adequate sight lines. A training provider that teaches the range portion of the curriculum would have an instructor onsite who can demonstrate appropriate skills and correct deficiencies of individual driver-trainees.

*§ 380.711 Equipment*

This section proposes that training providers use training vehicles that are in safe mechanical condition. Vehicles used for BTW training would comply with applicable Federal and State safety requirements. Driver-trainees would be instructed in the same class (*i.e.*, Class A or Class B) and type of vehicle (cargo, passenger or school bus) that they will be operating for their CDL skills test.

*§ 380.713 Driver-Instructor Qualifications/Requirements*

This section proposes that theory training providers utilize instructors who are either an experienced driver or a theory instructor as defined in § 380.605. BTW training providers would be required to utilize experienced drivers as defined in § 380.605. In addition, BTW training instructors, during the two years prior to engaging in BTW instruction, must not have had a disqualification, as defined by § 383.5, under § 383.51(b) through (e). Training providers would also be required to utilize only BTW instructors on public roads whose driving record meets applicable Federal and State requirements.

*§ 380.715 Assessments*

This section proposes that training providers assess (in written or electronic

format) the driver-trainee's mastery of the knowledge objectives covered in the applicable theory portion of the training. In order to pass, a driver-trainee must receive an overall score of 80% or higher on the assessment. A driver-trainee's BTW proficiency on the range would be assessed by the instructor's evaluation of his or her performance of the fundamental vehicle control skills and routine driving procedures, as set forth in the applicable curricula requirements. Likewise, BTW proficiency on a public road would be assessed by observing the driver-trainee's performance of the driving maneuvers specified in the curriculum. As noted above, theory and BTW training could be delivered by separate providers.

#### *§ 380.717 Training Certification*

This section proposes that all training providers be required to upload training certificates to the TPR by close of the next business day after the driver-trainee successfully completes the training. The Agency would transmit the certification to the SDLA via CDLIS. This certificate would include:

- (a) Driver name, CDL/CLP number, and State of licensure;
- (b) Vehicle class and/or endorsement training the individual received;
- (c) Name and TPR identification number of the training provider; and
- (d) Date of successful completion of the training.

#### *§ 380.719 Requirements for Continued Listing on the Training Provider Registry*

The Agency proposes that, in order to remain on the TPR, a training provider would continue to ensure that its program meets the requirements defined in § 380.703 as well as all applicable State training licensure, registration, certification, or accreditation requirements. The goal is not to attempt to enforce State requirements, but to ensure that a training provider that fails to satisfy applicable State requirements should not remain on the TPR. In addition, a training provider would update its FMCSA Entry-Level Driver Training Provider Identification Report biennially and report changes in key information to FMCSA within 30 days of the change. Key information changes would include a change in the status of a training provider based on the number of driver-trainees actually trained in a twelve-month period. For example, if, when submitting the report form, a training provider anticipated training three or fewer driver-trainees annually, but in fact trained more than three, that provider would no longer be eligible for treatment as a small training provider.

The provider's change in status would be updated on the report form and the provider would thereafter be subject to all requirements of § 380.707 (a) through (d). We invite comment regarding this proposed requirement. The training provider would also maintain required documentation as set forth in § 380.725 and ensure such documentation is available upon request to FMCSA or its authorized representative. Finally, in order to be eligible for continued listing on the TPR, training providers would allow FMCSA or its authorized representative to conduct an audit or investigation of the provider's operations.

#### *§ 380.721 Removal From the Training Providers Registry: Factors Considered*

This section proposes that FMCSA may rely on a variety of factors to determine whether to remove a training provider from the TPR, including, but not limited to:

- The provider's failure to comply with the requirements for continued listing on the TPR, as described in § 380.719.
- The provider's failure to permit FMCSA or its authorized representative the opportunity to conduct an audit or investigation of its operations.
- The audit conducted by FMCSA or its authorized representative identifies material deficiencies in the training provider's compliance with the eligibility requirements for listing on the TPR.
- The training provider falsely claims to be authorized to provide training in accordance with the applicable laws and regulations in any State in which the provider conducts training.
- The SDLA CDL exam passage rate of those individuals who successfully complete the provider's training is abnormally low. FMCSA is not establishing a minimum required CDL passage rate, but would use this information in the context of State norms.
- There is evidence of fraud or other criminal behavior by the training provider.

#### *§ 380.723 Removal From the Training Provider Registry: Procedure*

FMCSA would establish procedures for removing training providers from the TPR based on the failure of the training provider to meet the applicable requirements under 49 CFR part 380. This section proposes that the Agency provide the training provider with a notice stating the reason for the proposed removal and any corrective actions the training provider must take in order to remain listed on the TPR.

The training provider must notify current driver-trainees, as well as those persons scheduled for future training, that it has received a notice of proposed removal. Training conducted after the issuance of a notice of proposed removal would not be compliant and, therefore, not valid for issuance of a CDL, until FMCSA withdraws the notice.

A training provider that wishes to remain listed on the TPR would have to provide a written response to the Director, Office of Carrier, Driver, and Vehicle Safety Standards (Director), within 30 days of the proposed removal, explaining why it believes that decision is not proper or setting forth the corrective actions that the training provider will take, or has taken. Within 60 days, the Director would notify the training provider of the Director's decision. Within 30 days of its removal from the TPR, a training provider may submit a written request for review of the Director's decision to the FMCSA Associate Administrator of Policy.

The ELDTAC discussed the effect of a training provider's involuntary removal from the TPR on those driver-trainees enrolled in that provider's program at the time of the removal, but who have not yet completed their course of training. The Committee ultimately decided that this is an issue appropriately left to negotiations between driver-trainees and the training provider.

In extreme circumstances, the Director may immediately remove a training provider from the TPR. An extreme circumstance may include, for example, issuance of a training certificate without a training provider actually providing any training. Alternatively, training providers may voluntarily remove themselves from the TPR by submitting a written request to the Director.

These proposed removal procedures are based on the process currently used in § 390.115, Procedure for removal from the National Registry of Certified Medical Examiners. The Agency seeks comment on whether there are preferable alternative approaches to the removal of training providers from the TPR.

#### *§ 380.725 Documentation and Record Retention*

This section proposes the documents that training providers must maintain and for how long. All training providers would maintain these records for 3 years from the date they were created, consistent with § 391.51, General requirements for driver qualification files.

## 49 CFR Part 383, Commercial Driver's License Standards; Requirements and Penalties

### § 383.51 Disqualification of Drivers

A new paragraph (a)(8) proposes that CDL holder may not be fully reinstated after a disqualification from operating a CMV under § 383.51 (b) through (e) until the individual successfully completes the refresher training curriculum in § 380.625.

### § 383.71 Driver Application Procedures

New paragraphs (a)(3), (b)(11), and (e)(3) through (5) propose the successful completion of the training prescribed in part 380, subpart F, before an initial Class A or B CDL, or a CDL with a hazardous materials, passenger, or school bus endorsement, or an upgrade to the CDL is issued. In addition, paragraph (a)(4) would require driver-trainees who have successfully completed the theory portion of the training to complete the skills portion within 360 days, except for driver-trainees seeking the H endorsement (for which the skills test is not required).

### § 383.73 State Procedures

New paragraphs (b)(10) and (c)(8), and a revised paragraph (b)(3)(ii) propose to prohibit a State from issuing an initial Class A or B CDL, or a CDL with a hazardous materials, passenger, or school bus endorsement, or an upgrade to a CDL unless the SDLA has received electronic certification indicating completion of the ELDT requirements in part 380.

### § 383.95 Restrictions

New paragraph (h) proposes to allow limited commercial driving privileges after a CDL holder has been disqualified from operating a CMV under § 383.51(b) through (e). The State would reinstate the CDL solely for the limited purpose of the driver's completion of the BTW portion of the refresher training curriculum in § 380.625. The State may not restore full CMV driving privileges until the State receives notification that the driver successfully completed the refresher training curriculum.

### § 383.153 Information on the CLP and CDL Documents and Applications

New paragraph (a)(10)(ix) would designate "R" as the code for the refresher training restriction on a CDL.

## 49 CFR Part 384—State Compliance With Commercial Driver's License Program

### § 384.230 Entry-Level Driver Certification

On or after the compliance date of the final rule, a State may not issue an initial Class A or B CDL; an initial CDL with a hazardous materials, passenger, or school bus endorsement; or a CDL upgraded from one class to another; or may not upgrade a CDL with a hazardous materials, passenger, or school bus endorsement, unless it follows the procedures prescribed in § 383.73 of this subchapter for verifying that a person received training from a provider listed on the TPR. A State may issue a CDL to an individual who obtained a CLP before the compliance date when such an individual has not complied with § 380.603(c)(1), as long as the individual obtains a CDL within 360 days after obtaining a CLP. A State may not issue a CDL to an individual who obtains a CLP *on or after* the compliance date of the final rule unless they comply with § 380.603.

### § 384.301 Substantial Compliance—General Requirements

States would be required to comply with the new ELDT requirements within three years of the effective date of the final rule.

## VIII. Regulatory Analyses

### A. Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this rulemaking is an economically significant regulatory action under Executive Order (E.O.) 12866, Regulatory Planning and Review, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011). It also is significant under Department of Transportation regulatory policies and procedures because the economic costs and benefits of the rule exceed the \$100 million annual threshold and because of the substantial congressional and public interest concerning the lack of Federal entry-level driver training requirements. A draft regulatory impact analysis is available in the docket as indicated under the "Public Participation and Request for Comments" section of this preamble.

### Summary of Estimated Costs

Entry-level drivers, motor carriers, training providers, SDLAs, and the Federal Government would incur costs for compliance and implementation. The costs of the rule include tuition

expenses, the opportunity cost of time while in training, compliance audit costs, and costs associated with the implementation of the TPR. As shown in Table 1 above, FMCSA estimates that the 10-year cost of the proposed rule would total \$5.55 billion on an undiscounted basis, \$4.86 billion discounted at 3%, and \$4.15 billion discounted at 7% (all in 2014 dollars).

### Summary of Estimated Benefits

This proposed rule would result in benefits to CMV operators, the trucking industry, the traveling public, and to the environment. FMCSA estimated benefits in two broad categories: Non-safety benefits and safety benefits. Training would lead to more efficient driving techniques, resulting in a reduction in fuel consumption and consequently lowering environmental impacts associated with carbon dioxide emissions. Training that promotes safer, more efficient driving has been shown to reduce maintenance and repair costs. Training related to the performance of complex tasks may improve performance; in the context of the training required by this proposed rule, improvement in task performance may reduce the frequency and severity of crashes thereby resulting in safer roadways for all. As stated in the stand-alone regulatory impact analysis, however, lack of data directly linking training to improvements in safety outcomes (such as reduced crash frequency or severity) necessitated that the Agency perform a threshold analysis, consistent with OMB Circular A-4 guidance, to determine the degree of safety benefits that would need to occur as a consequence of this proposed rule in order for the rule to achieve cost-neutrality.<sup>21</sup>

Absent any quantified safety benefits, as shown in table 2 of section B. Summary of Major Provisions, the directly quantifiable benefits over the 10-year period of 2020 to 2029 attributable to the proposed rule total \$2.68 billion on an undiscounted basis, \$2.33 billion discounted at 3 percent, and \$1.99 billion discounted at 7 percent (all in 2014 dollars).

The net cost of this proposed rule (net of costs and quantifiable benefits) over the 10-year period of 2020 to 2029, for which the threshold analysis estimated the degree of safety benefits necessary to offset, total \$2.54 billion discounted at 3 percent, and \$2.16 billion discounted at 7 percent. On an annualized basis,

<sup>21</sup> Office of Management and Budget. Circular A-4. *Regulatory Analysis*. September 17, 2003. Available at: [https://www.whitehouse.gov/omb/circulars\\_a004\\_a-4/](https://www.whitehouse.gov/omb/circulars_a004_a-4/) (accessed July 23, 2015).

these net costs equate to \$289 million amortized at 3 percent and \$287 million amortized at 7 percent.

As documented in detail in the RIA, an 8.15% improvement in safety performance (that is, an 8.15% reduction in the frequency of crashes involving those new entry-level drivers who would receive additional pre-CDL training as a result of this proposed rule during the period for which the benefit of training remains intact) is necessary to offset the net cost of the rule. The RIA is available in the docket.

### B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, Public Law 96–354, 94 Stat. 1164 (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 857, March 29, 1996) and the Small Business Jobs Act of 2010 (Pub. L. 111–240, 124 Stat. 2504 September 27, 2010), requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term “small entities” comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities, and mandates that agencies strive to lessen any adverse effects on these businesses. FMCSA has not determined whether this proposed rule would have a significant economic impact on a substantial number of small entities. Therefore, FMCSA is publishing this initial regulatory flexibility analysis (IRFA) to aid the public in commenting on the potential small business impacts of the proposals in this NPRM. We invite all interested parties to submit data and information regarding the potential economic impact that would result from adoption of the proposals in this NPRM. We will consider all comments received in the public comment process when making a determination in the Final Regulatory Flexibility Assessment.

An IRFA, which must accompany this NPRM, must include six components. See 5 U.S.C. 603(b) and (c). The Agency has listed these components and addresses each section with regard to this NPRM.

- A description of the reasons why the action by the agency is being considered;

- A succinct statement of the objective of, and legal basis for, the proposed rule;

- A description of and, where feasible, an estimate of the number of small entities to which the proposed rule will apply;

- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record;

- An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and

- A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.

### Why the Action by the Agency Is Being Considered

Section 4007(a) of Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, December 18, 1991, 105 Stat. 1914, 2151) directed the Secretary of Transportation to undertake a rulemaking on the need to require training of all entry-level drivers of “CMVs.” The Agency has since published multiple rulemakings that would require training of entry-level drivers of CMVs, but has not published a final rule that was upheld in the courts. The proposed rule also responds to the March 10, 2015, order of the U.S. Court of Appeals for the District of Columbia Circuit.

In August 2014, FMCSA formally announced that it was considering whether to address this rulemaking through a negotiated rulemaking. Based on the Negotiated Rulemaking Act (5 U.S.C. 561–570), the Agency retained a neutral convener, as authorized under 5 U.S.C. 563(b), to interview interested parties and examine the potential for a balanced representation of these interests on an advisory committee (79 FR 49044–45). This proposal is based on the conclusions and recommendations of the advisory committee.

The Agency is proposing this rule to mandate training for entry-level drivers that are required to obtain a CDL or endorsement.

### The Objectives of and Legal Basis for the Proposed Rule

The NPRM is based on the authority of the Motor Carrier Act of 1935 and the Motor Carrier Safety Act of 1984, the Commercial Vehicle Safety Act of 1986,

and Section 32304 of the Moving Ahead for Progress in the 21st Century Act (MAP–21).

FMCSA proposes to mandate standards for minimum training requirements for entry-level drivers of CMVs operating in interstate and intrastate commerce that are applying for a CDL or certain endorsements. The main objective of this proposal is to improve highway safety by ensuring that entry-level CMV drivers receive appropriate training that takes into consideration the type of activities they perform.

### A Description of and Where Feasible an Estimate of the Number of Small Entities To Which the Proposed Rule Will Apply

“Small entity” is defined in 5 U.S.C. 601. Section 601(3) defines a “small entity” as having the same meaning as “small business concern” under section 3 of the Small Business Act. This includes any small business concern that is independently owned and operated, and is not dominant in its field of operation. Section 601(4), likewise includes within the definition of “small entities” not-for-profit enterprises that are independently owned and operated, and are not dominant in their fields of operation. Additionally, section 601(5) defines “small entities” as governments of cities, counties, towns, townships, villages, school districts, or special districts with populations less than 50,000.

This proposed rule would affect entry-level drivers, motor carriers, and training providers. This proposed rule would directly apply to entry-level drivers seeking to obtain a CDL or a hazardous materials (H), passenger (P), or school bus (S) endorsement. Entry-level drivers are not small entities as defined by the U.S. Small Business Administration (SBA), and are therefore not included in this IRFA.

This proposed rule does not directly regulate motor carriers, but it could indirectly affect either their motor carrier operations or their in-house training operations. A potential concern is that this proposed rule could constrain their ability to hire entry-level drivers by either constricting the pool of available entry-level drivers or increasing the market wage for entry-level drivers. However, as discussed in the RIA, most of the industry is already completing training at least equal to the requirements of this proposed rule and FMCSA does not think that the minimal requirements of this proposed rule would lead to a driver shortage, or increased wages. Furthermore, small- to

medium-sized motor carriers tend to hire drivers with at least two years' experience driving a CMV due to insurance requirements inhibiting their ability to hire entry-level drivers. Additionally, owner-operators have generally driven a CMV with a motor carrier employer for a number of years before deciding to run their own business. FMCSA does not believe that this proposed rule would affect the transportation operations of motor carriers. Some motor carriers offer in-house training to entry-level drivers and would choose to become training providers under this NPRM; these motor carriers tend to be larger in size, operating more than 100 power units. As shown in Table IFRA 1, the SBA size standard for truck transportation is currently \$27.5 million in revenue per

year, and the size standard for transit and passenger ground transportation is \$15 million in revenue per year.

Components of this proposed rule would apply to training providers that choose to become registered with FMCSA through inclusion on the TPR. These training providers could be training schools, educational institutions, motor carriers offering in-house training to their employees or prospective employees, local governments or school districts providing training to transit agency or school bus driver employees.

These training providers operate under many different North American Industry Classification System<sup>22</sup> (NAICS) codes with differing size standards. As shown in table IFRA 1 below, the SBA size standard for

educational services ranges from \$7.5 million in revenue per year for apprenticeship training, to \$27.5 million in revenue per year for colleges. Motor carriers operating in-house training programs or contractors providing transportation services for transit agencies and school districts would be classified under truck transportation or transit and passenger ground transportation, with size standards of \$27.5 million and \$15 million, respectively. School districts and transit agencies with modes requiring the vehicle operator to obtain a CDL train their own employees or prospective employees and would become certified training providers. The size standard for small governments is those with populations less than 50,000.

TABLE IFRA 1—SBA SIZE STANDARDS FOR SELECTED INDUSTRIES  
[In millions of 2014\$]

| NAICS code   | NAICS industry description  | SBA size standard |
|--|---|-------------------|
| <b>Subsector 484—Truck Transportation</b>                        |   |                   |
| 484110 .....   | General Freight Trucking, Local .....                                 | \$27.5            |
| 484121 .....   | General Freight Trucking, Long-Distance, Truckload .....              | 27.5              |
| 484122 .....   | General Freight Trucking, Long-Distance, Less Than Truckload .....    | 27.5              |
| 484210 .....   | Used Household and Office Goods Moving .....                          | 27.5              |
| 484220 .....   | Specialized Freight (except Used Goods) Trucking, Local .....         | 27.5              |
| 484230 .....   | Specialized Freight (except Used Goods) Trucking, Long-Distance ..... | 27.5              |
| <b>Subsector 485—Transit and Ground Passenger Transportation</b> |   |                   |
| 485113 .....   | Bus and Other Motor Vehicle Transit Systems .....                     | 15.0              |
| 485210 .....   | Interurban and Rural Bus Transportation .....                         | 15.0              |
| 485410 .....   | School and Employee Bus Transportation .....                          | 15.0              |
| 485510 .....   | Charter Bus Industry .....  | 15.0              |
| <b>Subsector 611—Educational Services</b>                        |   |                   |
| 611210 .....   | Junior Colleges .....   | 20.5              |
| 611310 .....   | Colleges, Universities and Professional Schools .....                 | 27.5              |
| 611513 .....   | Apprenticeship Training .....   | 7.5               |
| 611519 .....   | Other Technical and Trade School .....                                | 15.0              |
| 6115193 .....  | Truck Driving Schools .....   | 15.0              |
| <b>Sector 92—Public Administration</b>                           |   |                   |

Small business size standards are not established for this Sector. Establishments in the Public Administration Sector are Federal, State, and local government agencies which administer and oversee government programs and activities that are not performed by private establishments.

FMCSA examined data from the 2007 Economic Census, the most recent Census for which data were available, to determine the percentage of firms that have revenue at or below SBA's thresholds.<sup>23</sup> Although boundaries for the revenue categories used in the Economic Census do not exactly coincide with the SBA thresholds,

FMCSA was able to make reasonable estimates using these data.

Motor carrier operations in the Truck Transportation industry and in the Transit and Ground Passenger industry primarily earn their revenue via the movement of people and goods. Very few of these firms would choose to become training providers, and FMCSA

estimates that those firms that do train their own employees or prospective employees are generally larger in size. FMCSA does not know how many motor carriers provide in-house training, but is confident that the number of small entities in these industries who would chose to become certified training providers is a small

<sup>22</sup> More information about NAICS is available at: <http://www.census.gov/eos/www/naics/> (accessed July 21, 2015).

<sup>23</sup> U. S. Census Bureau. 2007 Economic Census. Available at: <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml> (accessed August 7, 2015).

subset of those small entities listed below. According to the Economic Census, about 99% of trucking firms had annual revenue less than \$25 million; the Agency concluded that the percentage would be approximately the same using the SBA threshold of \$27.5 million as the boundary. For passenger carriers, the \$15 million SBA threshold falls between two Economic Census revenue categories, \$10 million and \$25 million. The percentages of passenger carriers with revenue less than these amounts were 97.8% and 99.3%. Because the SBA threshold is closer to the lower of these two boundaries, FMCSA has assumed that the percent of passenger carriers that are small will be closer to 97.8%, and is using a figure of 98%.

The Transit and Ground Passenger Transportation subsector that focuses on School and Employee Bus Transportation (485410) is more likely to contain a high percentage of training providers than the rest of NAICS Sector 485. These entities often perform contract bus services for school districts, and some are responsible for training their employee to the standards of the State or county. The SBA size standard for this subsector is \$15 million, and

FMCSA estimates that about 99% of the school and employee bus transportation firms are considered small based on the SBA size standard.

Entities that identify with four of the 6-digit NAICS code in the educational services sector could register with the TPR to become training providers. The Census Bureau does not publish size by revenue data for entities in the Junior Colleges sector or the Colleges, Universities, and professional schools sector. FMCSA conservatively estimated that all of the firms in these two sectors would be small. The Census Bureau does publish size by revenue data for the apprenticeship training and other technical and trade school industries. Approximately 98% and 99%, respectively, of the firms in these industries are small. The other technical and trade school industry contains those firms that identify as truck driving schools (6115193). About 99% of truck driving schools are considered small based on the SBA size standard.

FMCSA examined data from the Federal Transit Administration (FTA) National Transit Database (NTD) to determine the number of transit agencies that serve a population of less than 50,000, and would therefore be

considered small.<sup>24</sup> The transit agencies report many different data elements including information pertaining to the type of services they offer, the population that they serve, the urbanized area they identify with, and the number of vehicles operated. Of the 857 agencies in the database, 801 provide service with vehicles that would require a CDL to operate (e.g., transit bus, commuter bus, trolley bus, bus rapid transit, etc.), and 125 of the 801 serve a population of less than 50,000. As discussed in the RIA, all agencies with CDL drivers provide entry-level driver training to their prospective employees and employees.

The 2012 Census of Governments, a survey coordinated by the Census Bureau, provides information on the school districts throughout the country.<sup>25</sup> FMCSA combined this data with county level 2014 population estimates from the Census Bureau to estimate that there are 6,325 school districts in counties with less than 50,000 people.<sup>26</sup>

Table IFRA 2 below shows the complete estimates of the number of small entities that might choose to become certified training providers.

TABLE IFRA 2—ESTIMATES OF NUMBERS OF SMALL ENTITIES

| NAICS code | Description                                      | Total number of firms | Number of small entities | % of all firms |
|------------|--|-----------------------|--------------------------|----------------|
| 484        | Truck Transportation                             | 83,056                | 82,182                   | 99             |
| 485        | Transit and Ground Passenger Transportation      | 12,723                | 12,438                   | 98             |
| 485410     | School and Employee Bus Transportation           | 2,574                 | 2,486                    | 97             |
| 611210     | Junior colleges                                  | 434                   | 434                      | 100            |
| 611310     | Colleges, universities, and professional schools | 2,419                 | 2,419                    | 100            |
| 611513     | Apprenticeship training                          | 1,094                 | 1,075                    | 98             |
| 611519     | Other technical and trade schools                | 2,672                 | 2,640                    | 99             |
| 92         | Transit Agencies                                 | 801                   | 125                      | 16             |
| 92         | School Districts                                 | 14,482                | 6,325                    | 44             |

*A description of the proposed reporting, recordkeeping and other compliance requirements of the proposed rule, including an estimate of the classes of small entities which will be subject to the requirement and the type of professional skills necessary for preparation of the report or record.*

This proposed rule would include recordkeeping requirements that would pertain to small training providers. In order to be included on the TPR, each training provider would be required to submit a training provider identification

report biennially at a minimum or when the information for the training provider changes and needs to be updated, the training provider goes out of business, or the training provider is re-applying to be re-listed on the TPR after previous removal. Each training provider would be required to upload training completion certification into the TPR for each entry-level driver by the next business day following completion of the training. Each training provider would be required to make themselves and their records available for

inspection upon request by FMCSA or its enforcement partners. FMCSA believes that a professional or administrative employee would be capable of creating and uploading these records and requests comment on whether skills beyond those typical of a professional or administrative employee would be necessary for the above recordkeeping requirements.

*An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the proposed rule.*

<sup>24</sup> USDOT Federal Transit Administration. RY 2013 National Transit Database. Agency Information and Agency Mode Service. Available at: [http://www.ntdprogram.gov/ntdprogram/database/2013\\_database/NTDdatabase.htm](http://www.ntdprogram.gov/ntdprogram/database/2013_database/NTDdatabase.htm) (accessed August 7, 2015).

<sup>25</sup> U.S. Census Bureau. 2012 Census of Governments. Available at: <http://www.census.gov/govs/cog/> (accessed August 7, 2015).

<sup>26</sup> U.S. Census Bureau. Vintage 2014 National Population Datasets. Population, population

change, and estimated components of population change: April 1, 2010 to July 1, 2014 (NST-EST2014—alldata). Available at: <https://www.census.gov/popest/data/datasets.html> (accessed August 7, 2015).

FMCSA is not aware of any relevant Federal rules that may duplicate, overlap, or conflict with the proposed rule. The current entry-level driver training requirements in 49 CFR part 380, subpart E, which are quite minimal compared to those being proposed by the NPRM, would be replaced by those in the NPRM.

*A description of any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant economic impact of the proposed rule on small entities.*

FMCSA attempted to draft a proposed rule that would minimize any significant economic impact on small entities. The negotiated rulemaking process by which this proposed rule was developed provided outreach to small motor carriers and training provider representatives through the Entry-Level Driver Training Advisory Committee (ELDTAC). The ELDTAC often discussed issues specific to small motor carriers and those training fewer than three entry-level drivers per year. The discussions yielded many insights, and the proposed rule takes into account the concerns expressed by small motor carrier representatives during the committee meetings. For example, training entities are not required to have a designated range, nor is FMCSA proposing training facility requirements. FMCSA is not aware of any significant alternatives that would meet the intent of our statutory requirements, but requests comment on any alternatives that would meet the intent of the statutes and prove cost beneficial for small entities.

#### Description of Steps Taken by a Covered Agency To Minimize Costs of Credit for Small Entities

FMCSA is not a covered agency as defined in section 609(d)(2) of the Regulatory Flexibility Act, and has taken no steps to minimize the additional cost of credit for small entities.

#### Requests for Comment To Assist Regulatory Flexibility Analysis

FMCSA requests comments on all aspects of this initial regulatory flexibility analysis.

#### C. Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on themselves and participate in the rulemaking initiative. If the proposed

rule would affect your small business, organization or governmental jurisdiction and you have questions concerning its provisions or options for compliance; please consult the FMCSA point of contact, Rich Clemente, listed in the **FOR FURTHER INFORMATION CONTACT** section of this proposed rule.

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

#### D. 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, taken together, or by the private sector of \$155 million (which is the value of \$100 million in 1995 after adjusting for inflation to present-day dollars) or more in any 1 year. This rulemaking would result in private sector expenditures in excess of the \$155 million threshold. Gross costs, however, are expected to be offset by fuel, carbon dioxide, and maintenance and repair savings, making this NPRM cost-neutral based on reduced instances of crashes, as further discussed in the threshold-based analysis described in the RIA.

A written statement under the Unfunded Mandates Reform Act is not required for regulations that incorporate requirements specifically set forth in law. 2 U.S.C. 1531. MAP-21 mandated that FMCSA issue regulations to establish minimum entry-level training requirements for all initial CLP/CDL applicants and CDL holders seeking license upgrades. Because this proposed rule implements the direction of Congress in mandating ELDT, a written statement under the Unfunded Mandates Reform Act is not required.

#### E. Paperwork Reduction Act

The proposed regulations require training providers to obtain, collect,

maintain, and in some cases transmit information about their facilities, curricula and graduates. The Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501-3520) prohibits Agencies from conducting information-collection (IC) activities until they analyze the need for the collection of information and how the collected data will be managed. Agencies must also analyze whether technology could be used to reduce the burden imposed on those providing the data. The Agency must estimate the time burden required to respond to the IC requirements, such as the time a training provider will expend transmitting certification data to FMCSA. The Agency submits its IC analysis and burden estimate to OMB as a formal information collection request (ICR); the Agency cannot conduct the information collection until OMB approves the ICR.

FMCSA proposes that the compliance date for the amended training rules be three years following publication of the final rule in order to provide interested parties sufficient time to adjust to the new requirements. Thus, the compliance date will be no earlier than the year 2019. Until that time, the current regulations pertaining to the training of entry-level drivers (49 CFR Subpart E) will remain in place. OMB approves information-collection activities for no more than 3 years. Consequently, at this time, the Agency does not amend its current OMB-approved estimate of the information-collection burden of subpart E: 66,250 hours.

Today, FMCSA asks for comment on the IC requirements of this proposed rule. The Agency's analysis of these comments will be used in devising the Agency's estimate of the IC burden of the final rule. Comments can be submitted to the docket as outlined under **ADDRESSES** at the beginning of this notice. Specifically, the Agency asks for comment on (1) how useful the information is and whether it can help FMCSA perform its functions better, (2) how the Agency can improve the quality of the information being collected, (3) the accuracy of FMCSA's estimate of the burden of this IC, and (4) how the Agency can minimize the burden of collection.

*Title:* Entry-Level Driver Training.

*OMB Control Number:* 2126-0028.

*Summary of the Collection of Information:* Under the proposal, training providers would apply online to FMCSA and provide information about their training operations. Periodically, they would upload information about those who



successfully complete entry-level driver training.

*Need for Information:* The Agency must be able to assess the qualifications of training providers in order to approve their participation as certified providers of the entry-level training. The identity of successful driver graduates is needed so the Agency can inform State CDL licensing agencies of those who have successfully completed the requisite training and are certified for CDL licensure.

*Proposed Use of Information:* The Agency will monitor training providers to ensure that they conduct training in accordance with these rules. Monitoring will include on-site safety audits of the operations of training providers. Further, the Agency will be assessing the safety performance of drivers who receive entry-level training in order to assess the efficacy of the Agency's standards of learning and their delivery by training providers.

*Description of the Respondents:* Training providers.

*Number of Respondents:* 20,800.

*Frequency of Response:* Training providers will register with the Agency once and thereafter update their registration at least every two years. On an irregular basis, training providers will upload to FMCSA electronically the names of the individuals who successfully complete their entry-level driver-training courses.

*Burden of Response:* The Agency estimates that the average training provider will require 2 hours to register and provide updates to that registration annually, or a total of 41,600 hours (20,800 training providers × 2 hours each). The Agency estimates that 449,000 entry-level drivers will graduate annually and that the average training provider will require 5 minutes to upload this information to FMCSA, or a total of 37,417 hours.

*Estimate of Total Annual Burden:* 79,017 hours (41,600 hours + 37,417 hours).

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

A rule has implications for Federalism under § 1(a) of Executive Order 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 proposal would have substantial direct costs on or for States or would limit the policymaking discretion of States.

FMCSA recognizes that, as a practical matter, this proposed rule may have some impact on the States. Accordingly,

the Agency sought advice from the National Governors Association (NGA), National Conference of State Legislatures (NCSL), the American Association of Motor Vehicle Administrators (AAMVA), and National Association of Publicly Funded Truck Driving Schools (NAPFTDS) on the topic of entry-level driver training, by letters to each organization, dated July 6, 2015. (Copies of these letters are available in the docket for this rulemaking.) FMCSA offered NGA, NCSL, AAMVA, and NAPFTDS officials the opportunity to meet and discuss issues of concern to the States. It should also be noted that AAMVA was a member of the ELDTAC, whose consensus recommendations form the basis of this NPRM. State and local governments will also be able to raise Federalism issues during the comment period for this NPRM.

#### *G. E.O. 12988 (Civil Justice Reform)*

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminates ambiguity, and reduce burden.

#### *H. E.O. 13045 (Protection of Children)*

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing "economically significant" rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is economically significant. In any event, the Agency does not anticipate that this regulatory action could in any way create an environmental or safety risk that could disproportionately affect children.

#### *I. E.O. 12630 (Taking of Private Property)*

FMCSA reviewed this proposed rule in accordance with E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

#### *J. Privacy*

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108-447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment (PIA) of a regulation that will affect the

privacy of individuals. In accordance with this Act, a privacy impact analysis is warranted to address the collection of personally identifiable information contemplated in the proposed Entry-Level Driver Training rulemaking.

The DOT Chief Privacy Officer has determined that this rulemaking results in a low to moderate level of privacy risk for driver-trainees seeking certification through approved training providers. The NPRM requires these individuals to provide approved training providers certain personally identifiable information including, Name, CDL/CLP number, and State of licensure for the purposes of identity verification at the time of training. This information in conjunction with the individuals training record is maintained by the training provider in the individual's training record and is transmitted to the multi-state Commercial Driver's License Information System (CDLIS). State driver licensing agencies (SDLAs) may then access the individual's training record in accordance with CLDIS protocol. Individuals seeking information on the data privacy practices of training providers should consult with the specific provider.

To limit the burden on the public, the Department will provide a single technical interface in order to promote the efficient transmission of trainee data from approved training providers to CDLIS. The Department will establish technical, administrative, and physical security requirements, as appropriate to ensure the secure data transfer. An approved training provider would upload its training certificates to the Training Provider Registry which would instantaneously transmit the information electronically to CDLIS for entry into the appropriate CDL driver record. The driver-trainee would be able to apply for a CDL when the SDLA pulled the CDL driver record from CDLIS and verified that he/she had successfully completed the appropriate training. The Department will not retain a copy of the trainee certificate in its systems.

This PIA will be reviewed and revised as appropriate to reflect the Final Rule and will be published not later than the date on which the Department initiates any of the activities contemplated in the Final Rule that have an impact on individuals' privacy.

#### *K. E.O. 12372 (Intergovernmental Review)*

The regulations implementing E.O. 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

*L. E.O. 13211 (Energy Supply, Distribution, or Use)*

FMCSA has analyzed this proposed rule under E.O. 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The Agency has determined that it is not a “significant energy action” under that order because it is not a “significant regulatory action” likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, it does not require a Statement of Energy Effects under E.O. 13211.

*M. 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.

*N. National Technology Transfer and Advancement Act (Technical Standards)*

The National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note) directs agencies to use voluntary consensus standards in their regulatory activities unless the agency provides Congress, through OMB, with an explanation of why using these standards would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards (*e.g.*, specifications of materials, performance, design, or operation; test methods; sampling procedures; and related management systems practices) are standards that are developed or adopted by voluntary consensus standards bodies. This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

*O. Environment (NEPA, CAA, Environmental Justice)*

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) requires Federal agencies to integrate environmental values into their decision-making processes by requiring Federal agencies to consider the potential environmental impacts of their proposed actions. In accordance with NEPA, FMCSA’s NEPA Order 5610.1 (NEPA Implementing Procedures and Policy for Considering Environmental Impacts), and other applicable requirements, FMCSA is

preparing an Environmental Assessment (EA) to review the potential impacts of the proposed rule. Because the implementation of this action would only alter new training standards for certain individuals applying for their initial CDL, an upgrade of their CDL, or hazardous materials, passenger, or school bus endorsement for their license, FMCSA has tentatively found that noise, endangered species, cultural resources protected under the National Historic Preservation Act, wetlands, and resources protected under Section 4(f) of the Department of Transportation Act of 1966 49 U.S.C. 303, as amended by Public Law 109–59, would not be impacted. The impact areas that may be affected and will be evaluated in this EA include air quality, hazardous materials transportation, solid waste, and public safety. But the impact area of focus for the EA will be air quality. Specifically, as outlined in the RIA for this rulemaking, FMCSA anticipates that an increase in driver training to result in improved fuel economy based on changes to driver behavior, such as smoother acceleration and braking practices. Such improved fuel economy is anticipated to result in lower air emissions and improved air quality for gases including carbon dioxide. FMCSA expects that all negative impacts, if any, will be negligible. However, we expect the overall environmental impacts of this action to be beneficial. The EA will be available for inspection or copying in the Regulations.gov Web site listed under **ADDRESSES**.

FMCSA also analyzed this NPRM under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and regulations promulgated by the Environmental Protection Agency (40 CFR part 93, subpart B). Under the General Conformity Rule, a conformity determination is required where a Federal action would result in total direct and indirect emissions of a criteria pollutant or precursor originating in nonattainment or maintenance areas equaling or exceeding the rates specified in 40 CFR 93.153(b)(1) and (2). As noted in the NEPA discussion above, however, FMCSA expects a net decrease in air emissions as a result of this NPRM. Consequently, approval of this action is exempt from the CAA’s General Conformity Requirement since it does not affect direct or indirect emissions of criteria pollutants.

Under E.O. 12898, each Federal agency must identify and address, as appropriate, “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority

populations and low-income populations” in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the Executive order, and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

**List of Subjects**

*49 CFR Part 380*

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

*49 CFR Part 383*

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

*49 CFR Part 384*

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

For the reasons set forth in the preamble, FMCSA proposes to amend 49 CFR parts 380, 383, and 384 as follows:

**PART 380—SPECIAL TRAINING REQUIREMENTS**

- 1. The authority citation for part 380 is revised to read as follows:

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

**Subpart E—Entry-Level Driver Training Requirements Before [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].**

- 2. Revise the heading for subpart E to read as set out above.
- 3. Add subpart F to read as follows:

**Subpart F—Entry-Level Driver Training Requirements On and After [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].**

Sec.

- 380.600 Compliance date for training requirements for entry-level drivers.
- 380.601 Purpose and scope.
- 380.603 Applicability.
- 380.605 Definitions.
- 380.609 General entry-level driver training requirements.
- 380.611 Driver training provider requirements.
- 380.613 Class A—CDL training curriculum.
- 380.615 Class B—CDL training curriculum.
- 380.619 Passenger endorsement training curriculum.
- 380.621 School bus endorsement training curriculum.

- 380.623 Hazardous materials endorsement training curriculum.  
 380.625 Refresher training curriculum.

**Subpart F—Entry-Level Driver Training Requirements On and After [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE]**

**§ 380.600 Compliance date for training requirements for entry-level drivers.**

Compliance with the provisions of this subpart is required on or after [DATE THREE YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].

**§ 380.601 Purpose and scope.**

This subpart establishes training requirements for entry-level drivers, minimum content for training curricula, and standards for training providers. Entry-level driver training, as defined in this subpart, applies only to those individuals who need to obtain a commercial driver's license (or a commercial driver's license upgrade or endorsement) and does not otherwise amend substantive commercial driver's license requirements in part 383 of this chapter.

**§ 380.603 Applicability.**

(a) The rules in this subpart apply to all entry-level drivers, as defined in this subpart, who intend to drive CMVs as defined in § 383.5 of this chapter in interstate and/or intrastate commerce, except:

- (1) Drivers excepted from the CDL requirements under § 383.3 (c), (d), and (h) of this chapter;
- (2) Drivers applying for a restricted CDL under § 383.3(e) through (g) of this chapter; and
- (3) Veterans with military CMV experience who meet all the requirements and conditions of § 383.77 of this chapter.

(b) Drivers who hold a valid CDL issued before [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] are not required to comply with this subpart except as otherwise specifically provided.

(c) (1) Individuals who obtain a CLP before [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] are not required to comply with this subpart if they obtain a CDL within 360 days after obtaining a CLP.

(2) Individuals who obtain a CLP on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] will be required to comply with this subpart.

(d) Except as provided under paragraph (e) of this section, a person who has received training qualifying him or her to take the skills test for a

CDL and/or endorsement is not required to obtain such training again before reapplying for a CDL or endorsement.

(e) A CDL holder who has been disqualified from operating a CMV under § 383.51(b) through (e) of this chapter, must complete the refresher training requirements of § 380.625.

**§ 380.605 Definitions.**

(a) The definitions in parts 383 and 384 of this subchapter apply to this subpart, except where otherwise stated.

(b) As used in this subpart:  
*Behind-the-wheel (BTW) instructor* means an experienced driver as defined in this section and who provides BTW training involving the actual operation of a CMV by entry-level driver on a range or a public road. These instructors must have completed training in the public road portion of the curriculum in which they are instructing, except that instructors utilized by training providers that train, or expect to train, three or fewer drivers annually do not need to meet this additional requirement.

*Behind-the-wheel (BTW) range training* means training provided by a qualified driver-instructor when driver-trainees have actual control of the power unit during a driving lesson conducted on a range. BTW range training does not include time driver-trainees spend observing the operation of a CMV when he/she is not in control of the vehicle.

*Behind-the-wheel (BTW) public road training* means training provided by a qualified driver-instructor when driver-trainee has actual control of the power unit during a driving lesson conducted on a public road. BTW public road training does not include the time that driver-trainees spend observing the operation of a CMV when he/she is not in control of the vehicle.

*Entry-level driver* means a person who must complete the CDL skills test requirements under 49 CFR 383.71 prior to receiving the initial CDL or having a CDL reinstated, upgrading to a Class A or Class B CDL, or obtaining a hazardous materials, passenger, or school bus endorsement. This definition does not include individuals for whom States waive the CDL skills test under 49 CFR 383.77.

*Entry-level driver training* means training an entry-level driver receives from an entity listed on FMCSA's Training Provider Registry prior to:

- (1) Taking the CDL skills test required to receive the initial Class A or Class B CDL;
- (2) Taking the CDL skills test required to upgrade to a Class A or Class B CDL; or

(3) Taking the CDL knowledge and skills test required to obtain a passenger or school bus endorsement, or the CDL knowledge test required to obtain a hazardous materials endorsement.

*Experienced driver* means a driver who holds a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided and who:

- (1) Has at least 1 year of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement; or
- (2) Has at least 1 year of experience as a BTW CMV instructor; and
- (3) Meets all applicable State training requirements for CMV instructors.

*Range* means an area that must be free of obstructions, enables the driver to maneuver safely and free from interference from other vehicles and hazards, and has adequate sight lines.

*Refresher training* means training a CDL holder who has been disqualified from operating a CMV must take.

*Theory instruction* means knowledge instruction on the operation of a CMV and related matters provided by a theory instructor through lectures, demonstrations, audio-visual presentations, computer-based instruction, driving simulation devices, online training, or similar means.

*Theory instructor* means instructors who provide knowledge instruction on the operation of a CMV and are either an experienced driver as defined in this section or have previously audited or instructed that portion of the theory training course that they intend to instruct.

*Training provider* means an entity that is listed on the FMCSA Training Provider Registry, as required by subpart G of this part.

**§ 380.609 General entry-level driver training requirements.**

(a) A person who wishes to obtain a CDL that would allow him/her to operate a Class A or B CMV in interstate or intrastate commerce must successfully complete driver training from a provider listed on the Training Provider Registry (TPR). A person who intends to operate a CMV for which a Class A CDL is required must complete the curriculum outlined in § 380.613 and a person who intends to operate a CMV for which a Class B CDL is required must complete the curriculum outlined in § 380.615.

(b) A person who wishes to obtain a passenger (P), school bus (S), or hazardous materials (H) endorsement on his or her CDL must successfully complete the appropriate training from a training provider listed on the TPR. A

person who intends to operate a CMV for which a passenger endorsement is required must successfully complete the curriculum outlined in § 380.619. A person who intends to operate a CMV for which a school bus endorsement is required must successfully complete the curriculum outlined in § 380.621. A person who intends to operate a CMV for which an H endorsement is required must successfully complete the curriculum outlined in § 380.623.

(c) A CDL holder who is disqualified from operating a CMV under § 383.51(b) through (e) of this chapter, must successfully complete refresher training from a training provider listed on the TPR. Refresher training must meet the curriculum outlined in § 380.625.

**§ 380.611 Driver training provider requirements.**

(a) Entities seeking to be listed on the Training Provider Registry must, at a minimum, meet the requirements of subpart G of this part.

(b) Entities must attest that they meet the requirements of this part.

(c) Entities must, upon request, supply documentary evidence to FMCSA or its authorized representatives so the Agency can verify compliance with these requirements.

**§ 380.613 Class A—CDL training curriculum.**

(a) Class A CDL applicants must successfully complete the Class A CDL curriculum outlined in paragraph (b) of this section. There is no required minimum number of instruction hours for theory training, but the training provider must cover all the topics set forth in the curriculum in paragraph (b) of this section. Applicants must complete a minimum of 30 hours of training in BTW driving with a minimum of 10 hours spent driving on a range and either 10 hours driving on a public road; or 10 public road trips (each no less than 50 minutes in duration). The training provider will determine how the remaining 10 hours of BTW training will be spent (*i.e.*, whether on a range or public road, or some combination of the two). The mandatory minimum hours of BTW training must be conducted in a CMV for which a Class A CDL is required.

(b) *Class A CDL curriculum.* The Class A curriculum must, at a minimum, include the following:

(1) *Theory—(i) Basic operation.* This component must cover the interaction between driver-trainees and the CMV. Driver-trainees will receive instruction in the Federal Motor Carrier Safety Regulations (FMCSRs) and will be introduced to the basic CMV

instruments and controls. Driver trainees must familiarize themselves with the basic operating characteristics of a CMV. This section must also teach driver-trainees how to properly perform vehicle inspections, control the motion of CMVs under various road and traffic conditions, employ shifting and backing techniques, and properly couple and uncouple combination vehicles. Driver-trainees must first familiarize themselves with the basic operating characteristics of a CMV. Then, driver-trainees must be able to perform the skills in each unit to a level of competency required to permit safe transition to public road driving.

(A) *Orientation.* This unit must introduce driver-trainees to the combination vehicle driver training curriculum and the components of a combination vehicle. Driver-trainees will learn the safety fundamentals, essential regulatory requirements (*i.e.*, overview of FMCSRs/hazardous materials (HM) regulations), and driver-trainees' responsibilities not directly related to driving. This unit must also cover the ramifications and driver disqualification provisions and fines for non-compliance with parts 380, 382, 383, 387, and 390 through 399 of this chapter. This unit must also include an overview of the applicability of State and local laws relating to the safe operation of the CMV, stopping at weigh stations/scales, hazard awareness of vehicle size and weight limitations, low clearance areas (*e.g.*, CMV height restrictions), and bridge formulas.

(B) *Control systems/dashboard.* This unit must introduce driver-trainees to vehicle instruments, controls, and safety components. The driver-trainees will learn to read gauges and instruments correctly and learn proper use of vehicle safety components, including safety belts and mirrors. Driver-trainees will also learn to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking, and parking.

(C) *Pre- and post-trip inspections.* This unit must stress to driver-trainees the importance of vehicle inspections and help them develop the skills necessary for conducting pre-trip, enroute, and post-trip inspections. This unit must include instruction in a driver-trainee's personal awareness of his or her surroundings, including at truck stops and/or rest areas, and at shipper/receiver locations.

(D) *Basic control.* This unit must introduce basic vehicular control and handling as it applies to combination vehicles. This must include instruction

addressing basic combination vehicle controls in areas such as executing sharp left and right turns, centering the vehicle, and maneuvering in restricted areas.

(E) *Shifting/operating transmissions.* This unit must introduce shifting patterns and procedures to driver-trainees to prepare them to safely and competently perform basic shifting maneuvers. This must include training driver-trainees to execute up and down shifting techniques on multi-speed dual range transmissions, if appropriate. The importance of increased fuel economy achieved by utilizing proper shifting techniques should also be covered.

(F) *Backing and docking.* This unit must prepare driver-trainees to back and dock the combination vehicle safely. This unit must cover "Get Out and Look" (GOAL), evaluation of backing/loading facilities, knowledge of backing set ups, as well as instruction in how to back with use of spotters.

(G) *Coupling and uncoupling.* This unit must provide instruction for driver-trainees to develop the skills necessary to conduct the procedures for safe coupling and uncoupling of combination vehicle units.

(ii) *Safe operating procedures.* This component must teach the practices required for safe operation of the combination vehicle on the highway under various road, weather, and traffic conditions. Driver-trainees must be instructed in the Federal rules (§ 392.16 of this chapter) governing the proper use of safety restraint systems (*i.e.*, seat belts).

(A) *Visual search.* This unit must enable driver-trainees to visually search the road for potential hazards and critical objects, including instruction on recognizing distracted pedestrians or distracted drivers. This unit must include instruction in how to ensure a driver-trainee's personal security/general awareness in common surroundings such as truck stops and/or rest areas, and at shipper/receiver locations.

(B) *Vehicle communications.* This unit must enable driver-trainees to communicate their intentions to other road users. Driver-trainees must learn techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. Instruction in proper utilization of eye contact techniques with other drivers and pedestrians will be covered in this unit.

(C) *Speed management.* This unit must enable driver-trainees to manage speed effectively in response to various road, weather, and traffic conditions.

Driver-trainees must understand that driving competency cannot compensate for excessive speed. Instruction must include methods for calibrating safe following distances under an array of conditions including traffic, weather, and CMV weight and length.

(D) *Space management.* This unit must teach driver-trainees about the importance of managing the space surrounding the vehicle. Emphasis must be placed upon maintaining appropriate space surrounding the vehicle for safe operation under various traffic and road conditions.

(E) *Night operation.* Driver-trainees will learn the factors affecting the safe operation of CMVs at night and in darkness, including the specific factors that require special attention on the part of the driver. Driver-trainees must be instructed in vehicle safety inspection, vision, communications, speed, and space management and proper use of lights, as needed, to deal with the special problems night driving presents.

(F) *Extreme driving conditions.* This unit addresses the driving of CMVs under extreme conditions. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Driver-trainees will learn the changes in basic driving habits needed to deal with the specific problems presented by extreme driving conditions. Driver-trainees will also learn proper tire chaining procedures in this unit.

(iii) *Advanced operating practices.* This component must introduce higher-level skills that can be acquired only after the more fundamental skills and knowledge taught in the prior two components have been mastered. Driver-trainees must learn about the advanced perceptual skills necessary to recognize potential hazards and must demonstrate the procedures needed to handle a CMV when faced with a hazard.

(A) *Hazard perception.* The unit must provide instruction in recognizing potential hazards in the driving environment in time to reduce the severity of the hazard and neutralize possible emergency situations. Driver-trainees must identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments. Emphasis must be placed upon hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. Driver-trainees will also learn to recognize potential dangers and the safety

procedures that must be utilized while driving in construction/work zones.

(B) *Distracted driving.* Driver-trainees must be instructed in the "key" driver distraction issues, including improper cell phone use, texting, and use of in-cab technology. This includes training in the following aspects: Visual attention (keeping eyes on the road); manual control (keeping hands on the wheel); and cognitive awareness (keeping mind on the task and safe operation of the CMV).

(C) *Emergency maneuvers/skid avoidance.* This unit must enable driver-trainees to carry out appropriate responses when faced with CMV emergencies. These must include evasive steering, emergency braking, and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and rollovers. The discussion must include a review of unsafe acts and the role they play in producing or worsening hazardous situations.

(D) *Skid control and recovery.* This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. Driver-trainees must understand the importance of maintaining directional control and bringing the CMV to a stop in the shortest possible distance while operating over a slippery surface.

(E) *Railroad-highway grade crossings.* Driver-trainees will learn to recognize potential dangers and appropriate safety procedures to utilize at railroad (RR)-highway grade crossings. This instruction must include an overview of various State RR grade crossing regulations, RR grade crossing environments, obstructed view conditions, clearance around the tracks, and rail signs and signals.

(F) *Vehicle systems and reporting malfunctions.* This section must provide entry-level driver-trainees with sufficient knowledge of the combination vehicle and its systems and subsystems to ensure that they understand and respect their role in vehicle inspection, operation, and maintenance and the impact of those factors upon highway safety and operational efficiency.

(G) *Identification and diagnosis of malfunctions, including out-of-service violations.* This unit must teach driver-trainees to identify major combination vehicle systems. The goal is to explain their function and how to check all key vehicle systems, (e.g., engine, engine exhaust auxiliary systems, brakes, drive train, coupling systems, and suspension) to ensure their safe operation. Driver-trainees must be provided with a detailed description of

each system, its importance to safe and efficient operation, and what is needed to keep the system in good operating condition. Driver-trainees must further learn what vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating when subject to an OOS order as defined in § 390.5 of this chapter.

(H) *Maintenance.* This unit must introduce driver-trainees to the basic servicing and checking procedures for various engine and vehicle components and to help develop their ability to perform preventive maintenance and simple emergency repairs.

(iv) *Non-vehicle activities.* This component must prepare driver-trainees to handle the responsibilities of a combination vehicle driver that do not involve actually operating the CMV.

(A) *Handling and documenting cargo.* This unit must enable driver-trainees to understand the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and techniques for safe and efficient loading/unloading. Driver-trainees will learn basic cargo security/cargo theft prevention procedures in this unit. Basic information regarding the proper handling and documentation of HM cargo will also be covered in this unit.

(B) *Environmental compliance issues.* Driver-trainees will learn to recognize environmental hazards and issues related to the CMV and load, and made aware that city, county, State, and Federal requirements may apply to such circumstances.

(C) *Hours of service requirements.* The purpose of this unit is to enable driver-trainees to understand that there are different hours-of-service (HOS) requirements applicable to different industries. Driver-trainees must learn all applicable HOS regulatory requirements. Driver-trainees will develop the ability to complete a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. Driver-trainees will learn the consequences (safety, legal, and personal) of violating the HOS regulations, including the fines and penalties imposed for these types of violations.

(D) *Fatigue and wellness awareness.* The issues and consequences of chronic and acute driver fatigue and the importance of staying alert will be covered in this unit. Driver-trainees must learn regulatory requirements regarding driver wellness and basic health maintenance that affect a driver's ability to safely operate a CMV. This unit also must address issues such as

diet, exercise, personal hygiene, stress, and lifestyle changes.

(E) *Post-crash procedures.* Driver-trainees must learn appropriate post-crash procedures, including the requirement that the driver, if possible, assess his or her physical condition immediately after the crash and notify authorities, or assign the task to other individuals at the crash scene. Driver-trainees must also learn how to protect the area; obtain emergency medical assistance; move on-road vehicles off the road in minor crashes so as to avoid subsequent crashes or injuries; engage flashers, placing triangles, and properly use a fire extinguisher, if necessary. The following topics must also be covered: Responsibilities for assisting injured parties; Good Samaritan Laws; driver legal obligations and rights, including rights and responsibilities for engaging with law enforcement personnel; and the importance of learning company policy on post-crash procedures. Driver-trainees must receive instruction in post-crash testing requirements related to controlled substances and alcohol. Driver-trainees must learn the techniques of photographing the scene; obtaining witness information; assessing skid measurements; and assessing signage, road, and weather conditions.

(F) *External communications.* Driver-trainees must be instructed in the value of effective interpersonal communication techniques/skills to interact with enforcement officials. Driver-trainees must be taught the specifics of the roadside vehicle inspection process, and what to expect during this activity. Driver-trainees who are not native English speakers must be instructed in FMCSA English language proficiency requirements and the consequences for violations. Driver-trainees also must learn the implications of violating Federal and state regulations on their driving records and their employing motor carrier's records.

(G) *Whistleblower/coercion.* This unit will advise the driver-trainees about the right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisals simply for stating a safety concern. Driver-trainees must be instructed in the whistleblower protection regulations in 29 CFR part 1978. They must also learn the procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

(H) *Trip planning.* This unit must address the importance of and requirements for planning routes and trips. This instruction must address planning the safest route, planning for

rest stops, heavy traffic areas, railroad-highway grade crossing safe clearance and ground clearance (*i.e.*, "high center"), the importance of Federal and State requirements on the need for permits, and vehicle size and weight limitations. Driver-trainees must be instructed in the correct identification of restricted routes, the pros and cons of Global Positioning System (GPS)/trip routing software, and the importance of selecting fuel-efficient routes.

(I) *Drugs/alcohol.* In this unit, driver-trainees must learn that there are a variety of rules applicable to drug and alcohol use and must receive the training required by the applicable drug and alcohol regulations, including consequences for engaging in controlled substance (including prescription drugs) and alcohol use-related conduct. The importance of avoiding use of drugs/alcohol in violation of applicable regulations must be covered in this unit.

(J) *Medical requirements.* In this unit, driver-trainees will learn the Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (49 CFR part 391, subparts B and E).

(2) *Range.* This unit must consist of driving exercises related to basic vehicle control skills and mastery of basic maneuvers, as covered in §§ 383.111 and 383.113 of this chapter, necessary to operate the vehicle safely. Activities in this unit will take place on a driving range as defined in § 380.605.

(i) *Vehicle inspection pre-trip/enroute/post-trip.* Driver-trainees must demonstrate proficiency in proper techniques for performing pre-trip, enroute, and post-trip inspections and making accurate notes of actual and suspected component abnormalities or malfunctions using a Driver Vehicle Inspection Report in accordance with the FMCSRs.

(ii) *Straight line backing.* Driver-trainees must demonstrate proficiency in proper techniques for performing various straight line backing maneuvers to appropriate criteria/acceptable tolerances.

(iii) *Alley dock backing (45/90 degree).* Driver-trainees must demonstrate proficiency in proper techniques for performing 45/90 degree alley dock maneuvers, to appropriate criteria/acceptable tolerances.

(iv) *Off-set backing.* Driver-trainees must demonstrate proficiency in proper techniques for performing off-set backing maneuvers to appropriate criteria/acceptable tolerances.

(v) *Parallel parking blind side.* Driver-trainees must demonstrate proficiency in proper techniques for performing parallel parking blind side positions/maneuvers to appropriate criteria/acceptable tolerances.

(vi) *Parallel parking sight side.* Driver-trainees must demonstrate proficiency in proper techniques for performing sight side parallel parking maneuvers to appropriate criteria/acceptable tolerances.

(vii) *Coupling and uncoupling.* Driver-trainees must demonstrate proficiency in proper techniques for coupling, inspecting and uncoupling combination vehicle units, in accordance with safety requirements and approved practices.

(3) *Public road.* The instructor must engage in active two-way communication with the driver-trainees during all active training sessions and evaluate the driving competence of the driver-trainees during all public road training. Concepts described in paragraphs (b)(3)(viii) through (xiii) of this section are discussed during public road training or simulated, but not necessarily performed.

(i) *Vehicle controls including: Left turn, right turns, lane changes, curves at highway speeds.* Driver-trainees must demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, and stopping the vehicle in a controlled manner.

(ii) *Shifting/transmission.* Driver-trainees must demonstrate proficiency in proper techniques for performing safe and fuel-efficient shifting and making any necessary adjustments in the process.

(iii) *Communications/signaling.* Driver-trainees must demonstrate proficiency in proper techniques for signaling intentions and effectively communicating with other drivers.

(iv) *Visual search.* Driver-trainees must demonstrate proficiency in proper techniques for visually searching the road for potential hazards and critical objects.

(v) *Speed and space management.* Driver-trainees must demonstrate proficiency in proper habits and techniques for adjusting and maintaining vehicle speed, taking into consideration various factors such as traffic and road conditions. Driver trainees practice maintaining proper speed to keep appropriate spacing between the driver-trainee's CMV and other vehicles. Instruction must include methods for calibrating safe following distances under an array of conditions

including traffic, weather, and CMV weight and length.

(vi) *Safe driver behavior.* Driver-trainees must learn and demonstrate proficiency in safe driver behavior during their operation of the CMV.

(vii) *Hours of service (HOS) requirements.* Driver-trainees must demonstrate proficiency in the basic activities required by the HOS regulations, such as completing a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate.

(viii) *Hazard perception (partial demonstration).* Driver-trainees must demonstrate their ability to recognize potential hazards in the driving environment in time to reduce the severity of the hazard and neutralize possible emergency situations. Driver-trainees must demonstrate the ability to identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments.

(ix) *Railroad (RR)-highway grade crossing.* (demonstration where railroad grade crossing is available, simulated otherwise). Driver-trainees must demonstrate the ability to recognize potential dangers and to implement appropriate safety procedures when RR-highway grade crossings are reasonably available.

(x) *Night operation.* Driver-trainees must learn how to operate a CMV safely at night. Heightened emphasis must be placed upon the factors affecting the operation of CMVs at night. Driver-trainees must learn that night driving presents specific circumstances that require heightened attention on the part of the driver. Driver-trainees must be taught special requirements for in-vehicle safety inspection, night vision, communications, speed, and space management, and proper use of lights as needed to prepare driver-trainees to deal with the special problems night driving presents. Though not required to do so, training providers are strongly encouraged to offer driver-trainees night-driving experience where feasible.

(xi) *Extreme driving conditions.* Driver-trainees must be familiar with the special risks created by, and the heightened precautions required by, driving CMVs under extreme driving conditions, such as heavy rain, high wind, high heat, high grades, fog, snow, and ice. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Driver-trainees must learn and demonstrate proficiency in changes in basic driving habits needed to deal with

the specific challenges presented by these extreme driving conditions.

(xii) *Emergency maneuvers/skid avoidance.* Driver-trainees must be familiar with proper techniques for responding to CMV emergencies, such as evasive steering, emergency braking and off-road recovery. They must also know how to prevent or respond to brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and rollovers.

(xiii) *Skid control and recovery.* Driver-trainees must know the causes of skidding and jackknifing and techniques for avoiding and recovering from them. Driver-trainees must know how to maintain directional control and bring the CMV to a stop in the shortest possible distance while operating over a slippery surface.

#### **§ 380.615 Class B—CDL training curriculum.**

(a) Class B CDL applicants must successfully complete the Class B CDL curriculum outlined in paragraph (b) of this section. There is no required minimum number of instruction hours for theory training, but the training provider must cover all the topics in the curriculum set forth in paragraph (b) of this section. Applicants must successfully complete a minimum of 15 hours of BTW training with a minimum of 7 hours of public road driving. Training providers may determine how the remaining 8 hours of BTW training are spent, as long as the range curriculum, as set forth below, is covered. The mandatory minimum hours of BTW training must be conducted in a CMV for which a Class B CDL would be required.

(b) *Class B CDL core curriculum.* The Class B curriculum must, at a minimum, include the following:

(1) *Theory—(i) Basic operation.* This component must cover the interaction between driver-trainees and the CMV. Driver-trainees will receive instruction in the Federal Motor Carrier Safety Regulations (FMCSRs) and will be introduced to the basic CMV instruments and controls. Driver trainees must familiarize themselves with the basic operating characteristics of a CMV. This section must also teach driver-trainees how to properly perform vehicle inspections, control the motion of CMVs under various road and traffic conditions, employ shifting and backing techniques, and properly couple and uncouple combination vehicles. Driver-trainees must first familiarize themselves with the basic operating characteristics of a CMV. Then, driver-trainees must be able to perform the skills in each unit to a level of

competency required to permit safe transition to public road driving.

(A) *Orientation.* This unit must introduce driver-trainees to the combination vehicle driver training curriculum and the components of a combination vehicle. Driver-trainees will learn the safety fundamentals, essential regulatory requirements (*i.e.*, overview of FMCSRs/hazardous materials (HM) regulations), and driver-trainees' responsibilities not directly related to driving. This unit must also cover the ramifications and driver disqualification provisions and fines for non-compliance with parts 380, 382, 383, 387, and 390 through 399 of this chapter. This unit must also include an overview of the applicability of State and local laws relating to the safe operation of the CMV, stopping at weigh stations/scales, hazard awareness of vehicle size and weight limitations, low clearance areas (*e.g.*, CMV height restrictions), and bridge formulas.

(B) *Control systems/dashboard.* This unit must introduce driver-trainees to vehicle instruments, controls, and safety components. The driver-trainees will learn to read gauges and instruments correctly and learn proper use of vehicle safety components, including safety belts and mirrors. Driver-trainees will also learn to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking, and parking.

(C) *Pre- and post-trip inspections.* This unit must stress to driver-trainees the importance of vehicle inspections and help them develop the skills necessary for conducting pre-trip, enroute, and post-trip inspections. This unit must include instruction in a driver-trainee's personal awareness of his or her surroundings, including at truck stops and/or rest areas, and at shipper/receiver locations.

(D) *Basic control.* This unit must introduce basic vehicular control and handling as it applies to combination vehicles. This must include instruction addressing basic combination vehicle controls in areas such as executing sharp left and right turns, centering the vehicle, and maneuvering in restricted areas.

(E) *Shifting/operating transmissions.* This unit must introduce shifting patterns and procedures to driver-trainees to prepare them to safely and competently perform basic shifting maneuvers. This must include training driver-trainees to execute up and down shifting techniques on multi-speed dual range transmissions, if appropriate. The importance of increased fuel economy

achieved by utilizing proper shifting techniques should also be covered.

(F) *Backing and docking.* This unit must prepare driver-trainees to back and dock the combination vehicle safely. This unit must cover “Get Out and Look” (GOAL), evaluation of backing/loading facilities, knowledge of backing set ups, as well as instruction in how to back with use of spotters.

(ii) *Safe operating procedures.* This component must teach the practices required for safe operation of the combination vehicle on the highway under various road, weather, and traffic conditions. Driver-trainees must be instructed in the Federal rules (§ 392.16 of this chapter) governing the proper use of safety restraint systems (*i.e.*, safety belts).

(A) *Visual search.* This unit must enable driver-trainees to visually search the road for potential hazards and critical objects, including instruction on recognizing distracted pedestrians or distracted drivers. This unit must include instruction in how to ensure a driver-trainee’s personal security/general awareness in common surroundings such as truck stops and/or rest areas, and at shipper/receiver locations.

(B) *Vehicle communications.* This unit must enable driver-trainees to communicate their intentions to other road users. Driver-trainees must learn techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. Instruction in proper utilization of eye contact techniques with other drivers and pedestrians will be covered in this unit.

(C) *Speed management.* This unit must enable driver-trainees to manage speed effectively in response to various road, weather, and traffic conditions. Driver-trainees must understand that driving competency cannot compensate for excessive speed. Instruction must include methods for calibrating safe following distances under an array of conditions including traffic, weather and CMV weight and length.

(D) *Space management.* This unit must teach driver-trainees about the importance of managing the space surrounding the vehicle. Emphasis must be placed upon maintaining appropriate space surrounding the vehicle for safe operation under various traffic and road conditions.

(E) *Night operation.* Driver-trainees will learn the factors affecting the safe operation of CMVs at night and in darkness, including the specific factors that require special attention on the part of the driver. Driver-trainees must be

instructed in vehicle safety inspection, vision, communications, speed, and space management and proper use of lights, as needed, to deal with the special problems night driving presents.

(F) *Extreme driving conditions.* This unit addresses the driving of CMVs under extreme conditions. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Driver-trainees will learn the changes in basic driving habits needed to deal with the specific problems presented by extreme driving conditions. Driver-trainees will also learn proper tire chaining procedures in this unit.

(iii) *Advanced operating practices.* This component must introduce higher-level skills that can be acquired only after the more fundamental skills and knowledge taught in the prior two sections have been mastered. Driver-trainees must learn about the advanced perceptual skills necessary to recognize potential hazards and must demonstrate the procedures needed to handle a CMV when faced with a hazard.

(A) *Hazard perception.* The unit must provide instruction in recognizing potential hazards in the driving environment in time to reduce the severity of the hazard and neutralize possible emergency situations. Driver-trainees must identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments. Emphasis must be placed upon hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. Driver-trainees will also learn to recognize potential dangers and the safety procedures that must be utilized while driving in construction/work zones.

(B) *Distracted driving.* Driver-trainees must be instructed in the “key” driver distraction issues, including improper cell phone use, texting, and use of in-cab technology. This includes training in the following aspects: Visual attention (keeping eyes on the road); manual control (keeping hands on the wheel); and cognitive awareness (keeping mind on the task and safe operation of the CMV).

(C) *Emergency maneuvers/skid avoidance.* This unit must enable driver-trainees to carry out appropriate responses when faced with CMV emergencies. These must include evasive steering, emergency braking, and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, skidding,

jackknifing, and rollovers. The discussion must include a review of unsafe acts and the role they play in producing or worsening hazardous situations.

(D) *Skid control and recovery.* This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. Driver-trainees must understand the importance of maintaining directional control and bringing the CMV to a stop in the shortest possible distance while operating over a slippery surface.

(E) *Railroad-highway grade crossings.* Driver-trainees will learn to recognize potential dangers and appropriate safety procedures to utilize at railroad (RR)-highway grade crossings. This instruction must include an overview of various State RR grade crossing regulations, RR grade crossing environments, obstructed view conditions, clearance around the tracks, and rail signs and signals.

(F) *Vehicle systems and reporting malfunctions.* This unit must provide entry-level driver-trainees with sufficient knowledge of the combination vehicle and its systems and subsystems to ensure that they understand and respect their role in vehicle inspection, operation, and maintenance and the impact of those factors upon highway safety and operational efficiency.

(G) *Identification and diagnosis of malfunctions, including out-of-service violations.* This unit must teach driver-trainees to identify major combination vehicle systems. The goal is to explain their function and how to check all key vehicle systems, (*e.g.*, engine, engine exhaust auxiliary systems, brakes, drive train, coupling systems, and suspension) to ensure their safe operation. Driver-trainees must be provided with a detailed description of each system, its importance to safe and efficient operation, and what is needed to keep the system in good operating condition. Driver-trainees must further learn what vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating when subject to an OOS order as defined in § 390.5 of this chapter.

(H) *Maintenance.* This unit must introduce driver-trainees to the basic servicing and checking procedures for various engine and vehicle components and to help develop their ability to perform preventive maintenance and simple emergency repairs.

(iv) *Non-vehicle activities.* This component must prepare driver-trainees to handle the responsibilities of a driver that do not involve actually operating the CMV.



(A) *Handling and documenting cargo.* This unit must enable driver-trainees to understand the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and techniques for safe and efficient loading/unloading. Driver-trainees will learn basic cargo security/cargo theft prevention procedures in this unit. Basic information regarding the proper handling and documentation of HM cargo will also be covered in this unit.

(B) *Environmental compliance issues.* Driver-trainees will learn to recognize environmental hazards and issues related to the CMV and load, and made aware that city, county, State, and Federal requirements may apply to such circumstances.

(C) *Hours of service requirements.* The purpose of this unit is to enable driver-trainees to understand that there are different hours-of-service (HOS) requirements applicable to different industries. Driver-trainees must learn all applicable HOS regulatory requirements. Driver-trainees will develop the ability to complete a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. Driver-trainees will learn the consequences (safety, legal, and personal) of violating the HOS regulations, including the fines and penalties imposed for these types of violations.

(D) *Fatigue and wellness awareness.* The issues and consequences of chronic and acute driver fatigue and the importance of staying alert will be covered in this unit. Driver-trainees must learn regulatory requirements regarding driver wellness and basic health maintenance that affect a driver's ability to safely operate a CMV. This unit also must address issues such as diet, exercise, personal hygiene, stress, and lifestyle changes.

(E) *Post-crash procedures.* Driver-trainees must learn appropriate post-crash procedures, including the requirement that the driver, if possible, assess his/her physical condition immediately after the crash and notify authorities, or assign the task to other individuals at the crash scene. Driver-trainees must also learn how to protect the area; obtain emergency medical assistance; move on-road vehicles off the road in minor crashes so as to avoid subsequent crashes or injuries; engage flashers, placing triangles, and properly use a fire extinguisher, if necessary. The following topics must also be covered: Responsibilities for assisting injured parties; Good Samaritan Laws; driver legal obligations and rights, including rights and responsibilities for engaging with law enforcement personnel; and

the importance of learning company policy on post-crash procedures. Driver-trainees must receive instruction in post-crash testing requirements related to controlled substances and alcohol. Driver-trainees must learn the techniques of photographing the scene; obtaining witness information; assessing skid measurements; and assessing signage, road, and weather conditions.

(F) *External communications.* Driver-trainees must be instructed in the value of effective interpersonal communication techniques/skills to interact with enforcement officials. Driver-trainees must be taught the specifics of the roadside vehicle inspection process, and what to expect during this activity. Driver-trainees who are not native English speakers must be instructed in FMCSA English language proficiency requirements and the consequences for violations. Driver-trainees also must learn the implications of violating Federal and state regulations on their driving records and their employing motor carrier's records.

(G) *Whistleblower/coercion.* This unit will advise the driver-trainees about the right of an employee to question the safety practices of an employer without incurring the risk of losing a job or being subject to reprisals simply for stating a safety concern. Driver-trainees must be instructed in the whistleblower protection regulations in 29 CFR part 1978. They must also learn the procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

(H) *Trip planning.* This unit must address the importance of and requirements for planning routes and trips. This instruction must address planning the safest route, planning for rest stops, heavy traffic areas, railroad-highway grade crossing safe clearance and ground clearance (*i.e.*, "high center"), the importance of Federal and State requirements on the need for permits, and vehicle size and weight limitations. Driver-trainees must be instructed in the correct identification of restricted routes, the pros and cons of Global Positioning System (GPS)/trip routing software, and the importance of selecting fuel-efficient routes.

(I) *Drugs/alcohol.* In this unit, driver-trainees must learn that there are a variety of rules applicable to drug and alcohol use and must receive the training required by the applicable drug and alcohol regulations, including consequences for engaging in controlled substance (including prescription drugs) and alcohol use-related conduct. The importance of avoiding use of drugs/

alcohol in violation of applicable regulations must be covered in this unit.

(J) *Medical requirements.* In this unit, driver-trainees will learn the Federal rules on medical certification, medical examination procedures, general qualifications, responsibilities, and disqualifications based on various offenses, orders, and loss of driving privileges (49 CFR part 391, subparts B and E).

(2) *Range.* This unit must consist of driving exercises related to basic vehicle control skills and mastery of basic maneuvers, as covered in §§ 383.111 and 383.113 of this chapter, necessary to operate the vehicle safely. Activities in this unit will take place on a driving range as defined in § 380.605.

(i) *Vehicle inspection pre-trip/enroute/post-trip.* Driver-trainees must demonstrate proficiency in proper techniques for performing pre-trip, enroute, and post-trip inspections and making accurate notes of actual and suspected component abnormalities or malfunctions using a Driver Vehicle Inspection Report in accordance with the FMCSRs.

(ii) *Straight line backing.* Driver-trainees must demonstrate proficiency in proper techniques for performing various straight line backing maneuvers to appropriate criteria/acceptable tolerances.

(iii) *Alley dock backing (45/90 degree).* Driver-trainees must demonstrate proficiency in proper techniques for performing 45/90 degree alley dock maneuvers, to appropriate criteria/acceptable tolerances.

(iv) *Off-set backing.* Driver-trainees must demonstrate proficiency in proper techniques for performing off-set backing maneuvers to appropriate criteria/acceptable tolerances.

(v) *Parallel parking blind side.* Driver-trainees must demonstrate proficiency in proper techniques for performing parallel parking blind side positions/maneuvers to appropriate criteria/acceptable tolerances.

(vi) *Parallel parking sight side.* Driver-trainees must demonstrate proficiency in proper techniques for performing sight side parallel parking maneuvers to appropriate criteria/acceptable tolerances.

(3) *Public road.* The instructor must engage in active two-way communication with the driver-trainees during all active training sessions and evaluate the driving competence of the driver-trainees during all public road training. Concepts described in paragraphs (b)(3)(viii) through (xiii) of this section are discussed during public road training or simulated, but not necessarily performed.

(i) *Vehicle controls including: left turn, right turns, lane changes, curves at highway speeds.* Driver-trainees must demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, and stopping the vehicle in a controlled manner.

(ii) *Shifting/transmission.* Driver-trainees must demonstrate proficiency in proper techniques for performing safe and fuel-efficient shifting and making any necessary adjustments in the process.

(iii) *Communications/signaling.* Driver-trainees must demonstrate proficiency in proper techniques for signaling intentions and effectively communicating with other drivers.

(iv) *Visual search.* Driver-trainees must demonstrate proficiency in proper techniques for visually searching the road for potential hazards and critical objects.

(v) *Speed and space management.* Driver-trainees must demonstrate proficiency in proper habits and techniques for adjusting and maintaining vehicle speed, taking into consideration various factors such as traffic and road conditions. Driver trainees practice maintaining proper speed to keep appropriate spacing between the driver-trainee's CMV and other vehicles. Instruction must include methods for calibrating safe following distances under an array of conditions including traffic, weather, and CMV weight and length.

(vi) *Safe driver behavior.* Driver-trainees must learn and demonstrate proficiency in safe driver behavior during their operation of the CMV.

(vii) *Hours of service (HOS) requirements.* Driver-trainees must demonstrate proficiency in the basic activities required by the HOS regulations, such as completing a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate.

(viii) *Hazard perception (partial demonstration).* Driver-trainees must demonstrate their ability to recognize potential hazards in the driving environment in time to reduce the severity of the hazard and neutralize possible emergency situations. Driver-trainees must demonstrate the ability to identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments.

(ix) *Railroad (RR)-highway grade crossing (demonstration where railroad grade crossing is available, simulated otherwise).* Driver-trainees must demonstrate the ability to recognize

potential dangers and to implement appropriate safety procedures when RR-highway grade crossings are reasonably available.

(x) *Night operation.* Driver-trainees must learn how to operate a CMV safely at night. Heightened emphasis must be placed upon the factors affecting the operation of CMVs at night. Driver-trainees must learn that night driving presents specific circumstances that require heightened attention on the part of the driver. Driver-trainees must be taught special requirements for in-vehicle safety inspection, night vision, communications, speed, and space management, and proper use of lights as needed to prepare driver-trainees to deal with the special problems night driving presents. Though not required to do so, training providers are strongly encouraged to offer driver-trainees night-driving experience where feasible.

(xi) *Extreme driving conditions.* Driver-trainees must be familiar with the special risks created by, and the heightened precautions required by, driving CMVs under extreme driving conditions, such as heavy rain, high wind, high heat, high grades, fog, snow, and ice. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Driver-trainees must learn and demonstrate proficiency in changes in basic driving habits needed to deal with the specific challenges presented by these extreme driving conditions. Driver-trainees will also learn proper tire chaining procedures in this unit.

(xii) *Emergency maneuvers/skid avoidance.* Driver-trainees must be familiar with proper techniques for responding to CMV emergencies, such as evasive steering, emergency braking and off-road recovery. They must also know how to prevent or respond to brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and rollovers.

(xiii) *Skid control and recovery.* Driver-trainees must know the causes of skidding and jackknifing and techniques for avoiding and recovering from them. Driver-trainees must know how to maintain directional control and bring the CMV to a stop in the shortest possible distance while operating over a slippery surface.

#### **§ 380.619 Passenger endorsement training curriculum.**

(a) This section describes the training requirements and curriculum that a CMV driver seeking a passenger (P) endorsement on his or her CDL must successfully complete in order to receive the P endorsement.

(b) There is no required minimum number of instruction hours for any portion of this training, but the training provider must cover all the topics identified in paragraph (d).

(c) The training must be conducted in a representative vehicle for the P endorsement.

(d) *Passenger bus "P" entry-level driver training (ELDT) curriculum.* The passenger endorsement training must, at a minimum, contain the following:

(1) *Theory*—(i) *Post-crash procedures.* Evidence suggests that including "Post-Crash Procedure" training early in the driver-training curriculum may enhance the impact of subsequent training and have a positive influence in reducing crashes involving new drivers.

Accordingly, driver-trainees must learn appropriate post-crash procedures, including the requirement that the driver, if possible, assess his or her physical condition immediately after the crash and notify authorities, or assign the task to a passenger or other individuals at the crash scene. Also, driver-trainees must learn how to obtain emergency medical assistance; move on-road vehicles off the road in minor crashes so as to avoid subsequent crashes or injuries; engage flashers, placing triangles, and properly use a fire extinguisher if necessary. The following topics must also be covered: responsibilities for assisting injured parties and Good Samaritan Laws; driver legal obligations and rights, including rights and responsibilities for engaging with law enforcement personnel; and the importance of learning company policy on post-crash procedures. Driver-trainees must also learn the techniques of photographing the scene; obtaining witness information, skid measurements; and assessing signage, road, and weather conditions.

(ii) *Other emergency procedures.* Driver-trainees must receive instruction in managing security breaches, on-board fires, medical emergencies, and emergency stopping procedures including the deployment of various emergency hazard signals (49 CFR 392.22). Instruction must also include procedures for dealing with mechanical breakdowns and vehicle defects while enroute.

(iii) *Vehicle orientation.* Driver-trainees must become familiar with basic physical and operational characteristics of a bus, including overall height, length, width, ground clearances, rear overhang, Gross Vehicle Weight and Gross Vehicle Weight Rating, axle weights, tire ratings, mirrors, steer wheels, lighting, windshield, windshield wipers, engine

compartments, basic electrical system, and spare tire storage. Additionally, driver-trainees must receive instruction in techniques for proper seat and mirror adjustments.

(iv) *Pre-trip, enroute, and post-trip inspection.* (A) This unit must underscore the importance of pre-trip, enroute, and post-trip inspections; and provide instruction in techniques for conducting such inspections of buses and key components, including, but not limited to:

- (1) Bus mechanical condition;
- (2) Brakes;
- (3) Tires (including tire pressure);
- (4) Emergency exits;
- (5) Emergency equipment;
- (6) Bus interiors (including passenger seats as applicable);
- (7) Restrooms and associated environmental requirements;
- (8) Temperature controls (for maintaining passenger comfort);
- (9) Driver and passenger seat belts; and
- (10) Mirrors.

(B) Additionally, driver-trainees must receive instruction in procedures, as applicable, in security-related inspections, including inspections for unusual wires or other abnormal visible materials, interior and exterior luggage compartments, packages or luggage left behind, and signs of cargo or vehicle tampering.

(C) Driver-trainees must receive instruction in cycling-accessible lifts and procedures for inspecting them for functionality and defects.

(v) *Fueling.* Driver-trainees must receive instruction emphasizing the significance of avoiding refueling a bus while passengers are onboard, and the imperative of avoiding refueling in an enclosed space.

(vi) *Idling.* Most States and local jurisdictions impose commercial motor vehicle idling limits, generally to reduce emissions. Idling limits can vary significantly for passenger carriers, with considerations for ambient temperature, safety of passengers, traffic conditions, etc. Driver-trainees must receive instruction regarding the importance of compliance with State and local laws and regulations, including for example, fuel savings; and the consequences of non-compliance, including adverse health effects and penalties.

(vii) *Baggage and/or cargo management.* In this unit, driver-trainees must receive training on:

(A) Proper methods for handling passenger baggage and containers to avoid worker, passenger, and non-passenger (e.g., bystander) related injuries and property damage.

(B) Procedures for visually inspecting baggage and containers for prohibited items such as hazardous materials.

(C) Proper methods for handling and securing passenger baggage and containers, as applicable.

(D) Proper handling and securement of devices associated with the Americans with Disabilities Act (ADA) compliance, including oxygen, wheeled mobility devices, and other associated apparatuses.

(E) Identifying prohibited and acceptable materials such as Class 1 (explosives), Hazardous Materials, articles other than Class 1 (explosive) materials, Division 6.1 (poisonous) or Division 2.3 (poisonous gas), Class 7 (radioactive) materials as specified in 49 CFR part 177 subpart E and removing prohibited materials as appropriate.

(viii) *Passenger safety awareness briefing.* Driver-trainees must receive instruction on briefing passengers on safety topics including fastening seat belts, emergency exits, emergency phone contact information, fire extinguisher location, safely walking in the aisle when the bus is moving, and restroom emergency push button or switch.

(ix) *Passenger management.* In this unit, driver-trainees must receive instruction concerning:

(A) Proper procedures for safe loading and unloading of passengers prior to departure, including rules concerning standing passengers and the Standee Line (49 CFR 392.62).

(B) Procedures for dealing with disruptive passengers.

(x) *Americans with Disabilities Act (ADA) compliance.* Along with learning the proper operation of accessibility equipment (e.g., lifts), driver-trainees must receive instruction regarding the applicable regulations and proper procedures for engaging persons with disabilities or special needs under the ADA. Training must cover passengers with mobility issues, engaging passengers with sight, hearing or cognitive impairments, and recognizing the permitted use of service animals. Driver-trainees must receive sensitivity training and be familiar with applicable regulations (49 CFR part 37 subpart H).

(xi) *Hours of service (HOS) requirements.* Driver-trainees must receive instruction regarding HOS regulations that apply to drivers for interstate passenger carriers. Driver-trainees must receive instruction in the basic activities required by the HOS regulations, such as completing a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. Driver-trainees must receive basic training in how to

recognize the signs of fatigue, and basic fatigue countermeasures as a means to avoid crashes.

(xii) *Safety belt safety.* Driver-trainees must be instructed in the Federal rules (§ 392.16 of this chapter) governing the proper use of safety restraint systems (i.e., seat belts) by CMV drivers.

(xiii) *Distraction driving.* Driver-trainees must receive instruction regarding FMCSA regulations that prohibit bus drivers from texting or using hand-held mobile phones while operating their vehicles; and must be instructed in the serious consequences of violations, including crashes, heavy fines, impacts on a motor carrier's and/or driver's safety records, and/or driver disqualification.

(xiv) *Railroad (RR)-highway grade crossings.* This unit must instruct driver-trainees in applicable regulations, techniques, and procedures for navigating RR-highway grade crossings appropriate to passenger buses.

(xv) *Weigh station obligations.* Driver-trainees must receive instruction regarding weigh-station regulations that apply to buses and the fines applicable to drivers who unlawfully pass or avoid weigh stations.

(xvi) *Security and crime.* Driver-trainees must receive instruction in basic techniques for recognizing and minimizing risks from criminal activities.

(xvii) *Commercial Vehicle Safety Alliance (CVSA) North American out-of-service criteria.* Driver-trainees must receive instruction in the applicable regulations for conducting CVSA Level I–VII inspections for buses, including the vehicle defects and driver violations that can result in out-of-service (OOS) orders, and consequences for violating OOS orders. Training providers should provide driver-trainees with a CVSA manual.

(xviii) *Penalties and fines.* Driver-trainees must receive instruction concerning the potential consequences of violating driver-related regulations, including impacts on driver and motor carrier safety records, adverse impacts on the driver's Pre-employment Screening Program record; financial penalties for both the driver and carrier; and possible loss of CMV driving privileges.

(2) *Range and public road.* The instructor must engage in active two-way communication with the driver-trainees during all active training sessions and evaluate the driving competence of the driver-trainees during all road training.

(i) *Commercial Vehicle Safety Alliance (CVSA) North American out-of-service criteria.* Driver-trainees must

demonstrate their knowledge of applicable regulations for conducting CVSA Level I–VII inspections for buses, including the vehicle defects and driver violations that can result in out-of-service (OOS) orders, and consequences for violating OOS orders. Training providers should furnish driver-trainees with a CVSA manual.

(ii) *Vehicle orientation.* Training providers must familiarize driver-trainees with basic bus physical and operational characteristics including overall height, length, width, ground clearances, rear overhang, gross vehicle weight and gross vehicle weight rating, axle weights, tire ratings, mirrors, steer wheels, lighting, windshield, windshield wipers, engine compartments, basic electric system, and spare tire storage. Additionally, driver-trainees must receive instruction in techniques for proper seat and mirror adjustments.

(iii) *Pre-trip, enroute, and post-trip inspection.* (A) Driver-trainees must demonstrate their ability to conduct such pre-trip, enroute and post-trip inspections of buses and key components, including, but not limited to:

- (1) Bus mechanical condition;
- (2) Brakes;
- (3) Tires (including tire pressure);
- (4) Emergency exits;
- (5) Emergency Equipment;
- (6) Bus interiors (including passenger seats as applicable);
- (7) Restrooms and associated environmental requirements;
- (8) Temperature controls (for maintaining passenger comfort);
- (9) Driver and passenger seat belts; and
- (10) Mirrors.

(B) Additionally, driver-trainees must demonstrate their knowledge of procedures, as applicable, in security-related inspections, including inspections for unusual wires or other abnormal visible materials, interior and exterior luggage compartments, packages or luggage left behind, and signs of cargo or vehicle tampering.

(C) Driver-trainees must know how to operate cycling-accessible lifts and the procedures for inspecting them for functionality and defects.

(iv) *Baggage and/or cargo management.* In this unit, driver-trainees must demonstrate their ability to:

(A) Properly handle passenger baggage and containers to avoid worker, passenger, and non-passenger related injuries and property damage;

(B) Visually inspect baggage and containers for prohibited items such as hazardous materials;

(C) Properly handle and secure devices associated with ADA compliance including oxygen, wheeled mobility devices, and other associated apparatuses; and

(D) Identify prohibited and acceptable Class 1 (explosives), Hazardous Materials, articles other than Class 1 (explosive) materials, Division 6.1 (poisonous) or Division 2.3 (poisonous gas), Class 7 (radioactive) materials as specified in 49 CFR part 177 subpart E and remove prohibited materials as appropriate.

(iv) *Passenger safety awareness briefing.* Driver-trainees must demonstrate their ability to brief passengers on safety on topics including: fastening seat belts, emergency exits, emergency phone contact information, fire extinguisher location, safely walking in the aisle when the bus is moving, and restroom emergency push button or switch.

(v) *Passenger management.* In this unit, driver-trainees must demonstrate their ability to safely load and unload passengers prior to departure and to deal with disruptive passengers.

(vi) *Railroad-highway grade crossings.* This unit must instruct driver-trainees in applicable regulations, techniques, and procedures for navigating railroad crossings appropriate to passenger buses.

#### **§ 380.621 School bus endorsement training curriculum.**

(a) This section sets forth the training requirements and curriculum that a CMV driver seeking a school bus endorsement (S) on his or her CDL must successfully complete in order to receive the S endorsement.

(b) There is no required minimum number of instruction hours for any portion of this training, but the training provider must cover all the topics identified in paragraph (d).

(c) The training must be conducted in a representative vehicle for the S endorsement involved.

(d) *School bus (S) entry-level driver training curriculum.* The school bus endorsement training must, at a minimum, include the following:

(2) *Theory*—(i) *Danger zones and use of mirrors.* This unit must instruct driver-trainees regarding the danger zones that exist around the school bus and the techniques to ensure the safety of those around the bus. These techniques include correct mirror adjustment and usage. The types of mirrors and their use must be discussed, as well as the requirements found in Federal Motor Vehicle Safety Standard (FMVSS) 111 (49 CFR 571.111). Driver-trainees must be informed of the

dangers of “dart-outs.” Driver-trainees also must be instructed on the importance of training students how to keep out of the danger zone when around school buses and the techniques for doing so.

(ii) *Loading and unloading.* Driver-trainees must be instructed on the State and local laws and procedures for loading and unloading, as well as the required procedures for students waiting at a bus stop and crossing the roadway at a bus stop. Special dangers involved in loading and unloading must be specifically discussed, including procedures to ensure the danger zone is clear and that no student has been caught in the doorway prior to moving the vehicle. Instruction also must be included on the proper use of lights, stop arms, crossing gates, and safe operation of the door during loading and unloading; the risks involved with leaving students unattended on a school bus; and the proper techniques for checking the bus for sleeping children and lost items at the end of each route.

(iii) *Post-crash procedures.* This unit must instruct driver-trainees instruction on the proper procedures following a school bus crash. Training must include instruction on tending to injured passengers, post-crash vehicle securement, notification procedures, deciding whether to evacuate the bus, data gathering, and interaction with law enforcement officials.

(iv) *Emergency exit and evacuation.* Driver-trainees must receive instruction on their role in safely evacuating the bus in an emergency and planning for an emergency in advance. Training must include proper evacuation methods and procedures, such as the safe evacuation of students on field and activity trips who only occasionally ride school buses and thus may not be familiar with the procedures.

(v) *Railroad-highway grade crossings.* Driver-trainees are made aware of the dangers trains present and the importance of the school bus driver and students strictly following railroad crossing procedures. Instruction must be given on the types of crossings, warning signs and devices, and State and local procedures and regulations for school buses when crossing railroad-highway grade crossings.

(vi) *Student management.* Driver-trainees must receive instruction on their responsibility to manage student behavior on the bus to ensure that safety is maintained and the rights of others are respected. Specific student management techniques must be discussed, including warning signs of bullying and the techniques for managing student behavior and

administering discipline. Driver-trainees must learn techniques to avoid becoming distracted by student behavior while driving, especially when crossing railroad tracks and during loading and unloading. Driver-trainees also must learn techniques for handling serious problems arising from student behavior.

(vii) *Antilock-braking systems.* Driver-trainees must be provided an overview of anti-lock braking systems (ABS). Topics discussed must include which vehicles are required to have ABS, how ABS helps the driver, techniques for braking with ABS, procedures to follow if ABS systems malfunction, and general ABS safety reminders.

(viii) *Special safety considerations.* This unit must cover special safety considerations and equipment in school bus operations. Topics discussed must include use of strobe lights, driving in high winds, safe backing techniques, and preventing tail swing crashes.

(ix) *Pre- and post-trip inspections.* Driver-trainees must receive an overview of the pre- and post-trip inspection requirements unique to school bus equipment, such as mirrors, stop arms, crossing arms, emergency exits, fire extinguishers, passenger seats, first aid kits, interior lights, and internal vehicle conditions. Driver-trainees must be instructed in State and local procedures, as applicable, for inspection of school bus equipment.

(x) *School bus security.* This unit must cover the security issues facing school bus drivers. Driver-trainees must be made aware of potential security threats, techniques for preventing and responding to security threats, how to recognize and report suspicious behavior, and what to do in the event of a hijacking or attack on a school bus.

(xi) *Route and stop reviews.* Driver-trainees must be made aware of the importance of planning their routes prior to beginning driving in order to avoid distraction while on the road. They must learn techniques for reviewing routes and stops, as well as State and local procedures for reporting hazards along the route and at bus stops.

(xii) *Night operation.* Driver-trainees must learn about the special challenges presented when operating a school bus at night and the techniques for driving safely at times of darkness, such as during a thunderstorm.

(2) *Range and public road*—(i) *Danger zones and use of mirrors.* Driver-trainees must demonstrate the techniques necessary to ensure the safety of persons in the danger zone around the bus. Driver-trainees must be practice mirror adjustment and usage. The types of mirrors and their use are shown and cones are set up to

demonstrate the requirements of 49 CFR 571.111.

(ii) *Loading and unloading.* Driver-trainees must practice the loading and unloading techniques learned in the theory portion of the training. Driver-trainees must practice checking the vehicle for sleeping children and lost items at the end of the route.

(iii) *Emergency exit and evacuation.* Driver-trainees must practice their role in safely evacuating the bus in an emergency.

(iv) *Special safety considerations.* Driver-trainees must practice safe backing techniques and demonstrate their ability to avoid tail swing crashes by using reference points when making turns.

(v) *Pre- and post-trip inspections.* Driver-trainees must practice pre-and post-trip inspections of school bus-specific equipment, such as mirrors, stop arms, crossing arms, emergency exits, fire extinguishers, passenger seats, first aid kits, interior lights, and internal vehicle conditions.

(vi) *Railroad-highway grade crossings.* Driver-trainees must practice proper procedures for safely crossing railroad-highway grade crossing in a school bus.

#### **§ 380.623 Hazardous materials endorsement training curriculum**

(a) This section sets forth the training requirements and curriculum that a CMV driver seeking a hazardous materials endorsement (H) on his or her CDL must successfully complete in order to receive the H endorsement.

(b) There is no required minimum number of instruction hours for theory training, but the training provider must cover all the topics in the curriculum in paragraph (c) of this section.

(c) *Hazardous materials entry-level driver training curriculum.* The hazardous materials (HM) curriculum must, at a minimum, include the following:

(1) *Theory*—(i) *Basic introductory HM requirements.* Driver-trainees must learn the basic HM competencies, including applicability requirements when HM is being transported. Driver-trainees must also be instructed in the HM communication requirements including: shipping paper requirements; marking; labeling; placarding; emergency response information; and shipper's responsibilities.

(ii) *Operational HM requirements.* Driver-trainees must learn the basic competencies for transportation of HM (i.e., vehicle operation).

(iii) *Reporting HM crashes and releases.* Driver-trainees must learn the proper procedures and contacts for the immediate notification related to certain

HM incidents, including instruction in the proper completion and submission of HM Incident Reports.

(iv) *Tunnels and railroad (RR)-highway grade crossing requirements.* Driver-trainees must learn the proper operation of an HM vehicle at RR-highway grade crossings and in vehicular tunnels.

(v) *Loading and unloading HM.* Driver-trainees must learn the proper loading and unloading procedures for hazardous material cargo. Driver-trainees must also learn the requirements for proper segregation and securement of HM, and the prohibitions on transporting certain solid and liquid poisons with foodstuffs.

(vi) *HM on passenger vehicles.* Driver-trainees must learn the various requirements for vehicles transporting passengers and property, and the types and quantities of HM that can and cannot be transported in these vehicles/situations.

(vii) *Bulk packages.* (A) Driver-trainees must learn the specialized requirements for transportation of cargo in bulk packages, including cargo tanks, intermediate bulk containers, bulk cylinders and portable tanks. The unit must include training in the operation of emergency control features, special vehicle handling characteristics, rollover prevention, and the properties and hazards of the HM transported.

(B) Driver-trainees must learn methods specifically designed to reduce cargo tank rollovers including, but not limited to, vehicle design and performance, load effects, highway factors, and driver factors.

(viii) *Operating emergency equipment.* Driver-trainees must learn the applicable requirements of the FMCSRs and the procedures necessary for the safe operation of the motor vehicle. This includes training in special precautions for fires, loading and unloading, operation of cargo tank motor vehicle equipment, and shut-off/shut-down equipment.

(ix) *Emergency response procedures.* Driver-trainees must learn the proper procedures and best practices for handling an emergency response and post-response operations, including what to do in the event of an unintended release of an HM. All training, preparation, and response efforts must focus on the hazards of the materials that have been released; and the protection of people, property, and the environment.

(x) *Engine (fueling).* Driver-trainees must learn the procedures for fueling a vehicle that contains HM.

(xi) *Tire check.* Driver-trainees must learn the proper procedures for

checking the vehicle tires at the start of a trip and each time the vehicle is parked.

(xii) *Routes and route planning.* Driver-trainees must learn the proper routing procedures that they are required to follow for the transportation of radioactive and non-radioactive HM.

(xiii) *Hazardous materials safety permits (HMSP).* Driver-trainees must be instructed in the proper procedures and operational requirements including communications, constant attendance, and parking that apply to the transportation of an HM for which an HMSP is required.

#### **§ 380.625 Refresher training curriculum.**

(a) This section sets forth the training requirements and curriculum that a CDL holder who is disqualified from operating a CMV, must complete in order to reapply for a CDL.

(b) There is no required minimum number of instruction hours for any portion of the curriculum, but the training provider must cover all the topics in the curriculum in paragraph (d) of this section.

(c) The training must be conducted in a representative vehicle consistent with the driver's CDL Class and/or endorsement for which the driver is reapplying.

(d) *Entry-level driver training refresher curriculum.* The refresher curriculum must, at a minimum, include the following:

(1) *Theory*—(i) *Post-crash procedures.* Including post-crash procedure training early in the curriculum may enhance the impact of subsequent training and have a positive influence in reducing crashes. Accordingly, driver-trainees must learn appropriate post-crash procedures, including the requirement that, if possible, the driver assess his or her physical condition immediately after the crash and notify authorities, or assign the task to other individuals at the crash scene. Also, driver-trainees must learn how to obtain emergency medical assistance; move on-road vehicles off the road in minor crashes so as to avoid subsequent crashes or injuries; engage flashers; and place triangles. The following topics must also be covered: responsibilities for assisting injured parties and Good Samaritan Laws; driver legal obligations and rights, including rights and responsibilities for engaging with law enforcement personnel; and the importance of learning company policy on post-crash procedures. Driver-trainees must also learn the techniques of photographing the scene; obtaining witness information; skid measurements; and

assessing signage, road, and weather conditions.

(ii) *Alcohol and controlled substances.* Driver-trainees must be instructed in the Federal regulations on driving under the influence of alcohol or controlled substances and the potential consequences for violating the regulations. (See part 382 and §§ 392.4 and 392.5 of this chapter)

(iii) *Driver fatigue and wellness.* Driver-trainees must be instructed in the extreme safety risks associated with fatigued driving, and the risks and potential consequences, including legal consequences for the driver, of causing a crash due to fatigued driving.

(iv) *Hours of service (HOS) and records of duty status/logbooks.* Driver-trainees must learn the basic applicable concepts and HOS requirements; and must practice completing a Driver's Daily Log (electronic and paper), timesheet, and logbook recap as appropriate.

(v) *Seat belt safety.* Driver-trainees must be instructed in the Federal rules (§ 392.16 of this chapter) governing the proper use of safety restraint systems (*i.e.*, seat belts) by CMV drivers.

(vi) *Distraction driving.* Driver-trainees must be instructed in the "key" driver distraction issues, including improper cell phone use, texting, and use of in-cab technology. This includes training in the following aspects: visual attention (keeping eyes on the road); manual control (keeping hands on the wheel); and cognitive awareness (keeping mind on the task and safe operation of the CMV).

(vii) *Serious traffic violations while operating a CMV.* Driver-trainees must be instructed in Federal regulations in § 383.51 of this chapter pertaining to the potential disqualification of drivers for violations such as following too closely; improper lane changes; driving 15 mph or more over the speed limit; and reckless driving.

(viii) *CDL holder committing serious traffic violations while operating a non-CMV.* Driver-trainees must be instructed in Federal regulations in § 383.51 of this chapter pertaining to the potential disqualification of drivers—for driving violations off the job, *i.e.*, while not operating a CMV. Driver-trainees must learn that CDL holders are held to a higher standard as the CDL is a professional license.

(ix) *Safe operating procedures.* Driver-trainees must be taught how to apply their basic operating skills in a way that ensures their safety and that of other road users under various road, weather, and traffic conditions as follows.

(x) *Visual search.* Driver-trainees must be taught how to visually search the

road for potential hazards and critical objects, including instruction on recognizing distracted pedestrians and/or distracted drivers. This unit must include instruction in how to ensure a driver-trainee's personal security/general awareness in common surroundings such as truck stops, rest areas, and at shipper/receiver locations.

(xi) *Vehicle communications.* This unit must enable driver-trainees to communicate their intentions to other road users (*e.g.*, proper signaling). Driver-trainees must learn techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. Instruction in proper utilization of eye contact techniques with other drivers and pedestrians must be covered in this unit.

(xii) *Speed management.* This unit must instruct driver-trainees in managing speed effectively in response to various road, weather, and traffic conditions. Driver-trainees must understand that driving competency cannot compensate for excessive speed. Instruction must include methods for calibrating safe following distances under an array of conditions including traffic, weather and CMV weight and length.

(xiii) *Space management.* In this unit driver-trainees will learn how to manage the space around the vehicle for safe operation. Emphasis must be placed upon maintaining appropriate space surrounding the vehicle under various traffic and road conditions.

(xiv) *Night operation.* Driver-trainees must be instructed in how to operate a CMV safely at night. Heightened emphasis must be placed upon the factors affecting the safe operation of CMVs at night and in darkness. Driver-trainees must understand that night driving presents specific factors that require special attention on the part of the driver. Driver-trainees must be instructed in special requirements for vehicle safety inspection, vision, communications, speed, space management and proper use of lights, as needed, to deal with the unique problems night driving presents.

(xv) *Extreme driving conditions.* This unit must provide instruction addressing driving under extreme conditions. Emphasis must be placed upon the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. Driver-trainees must understand the changes in basic driving habits needed to deal with the specific problems presented by these conditions. Driver-trainees also must be instructed

in proper tire chaining procedures in this unit.

(2) *Advanced operating practices.* Driver-trainees must learn the perceptual skills necessary to recognize potential hazards.

(i) *Hazard perception.* The unit must provide instruction in recognizing hazards in time to reduce the severity of the hazard and neutralize possible emergency situations. Driver-trainees must learn to identify road conditions and other road users who are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments, e.g. defensive maneuvers. Emphasis must be placed upon hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers. Driver-trainees also must be instructed to recognize potential dangers and the appropriate safety procedures to utilize while driving in construction/work zones.

(ii) *Emergency maneuvers/skid avoidance.* This unit must prepare driver-trainees to carry out appropriate responses when faced with CMV emergencies, such as evasive steering, emergency braking, and off-road recovery. Driver-trainees must also learn how to respond to brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and rollovers. The discussion must include a review of unsafe acts and the role they play in producing hazardous situations.

(iii) *Skid control and recovery.* This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. Driver-trainees must be able to maintain directional control and bring the CMV to a stop in the shortest possible distance while operating over a slippery surface.

(iv) *Railroad (RR)-highway grade crossings.* Driver-trainees must learn to recognize potential dangers and appropriate safety procedures to utilize at RR-highway grade crossings, including an overview of various State RR-highway grade crossing regulations. Instruction must also include the following topics: RR-highway grade crossing environment, obstructed view, clearance around the tracks, and knowledge of rail signs and signals.

(v) *Roadside inspection/communication with law enforcement.* Driver-trainees must be taught the value of effective interpersonal communications and skills to properly interact with law enforcement officials during the roadside CMV inspection process and what to expect during this activity.

(vi) *Medical certificate/personal health and wellness.* Driver-trainees must learn the Federal regulations in subpart E of part 391 of this chapter on medical certification and medical examination procedures. Driver-trainees must learn about driver wellness, basic health maintenance including diet and exercise, and the importance of avoiding excessive use of alcohol.

(v) *Whistleblower/coercion.* The right of an employee to question the safety practices of an employer without incurring the risk of losing a job, or being subject to reprisals simply for stating a safety concern must be included in this unit. Driver-trainees must become familiar with the whistleblower protection regulations in 29 CFR part 1978. Driver-trainees must learn procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

(vi) *Driver/public safety importance.* Training must emphasize the fact that the CMV driver is the most important component of the motor carrier operation and highway/public safety. Driver-trainees must understand they are responsible for the safety of the operation, the load, and the equipment.

(vii) *Emergency stopping, crashes, incidents.* Driver-trainees must be instructed in carrying out the appropriate responses when faced with CMV emergencies. This instruction must specifically include discussion of evasive steering, emergency braking and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, skidding, jackknifing, and rollovers. This instruction must include a review of unsafe acts and the role they play in producing hazardous situations.

(3) *Range—(i) Pre-trip and post-trip inspections.* Driver-trainees must learn the importance of vehicle inspections and must develop the skills necessary for conducting pre-trip, enroute, and post-trip inspections. Driver-trainees must demonstrate the ability to perform a pre-trip inspection under 49 CFR 396.13 and a post-trip inspection under § 396.11 of this chapter. This unit must include a review of CMV parts and accessories including brakes and components.

(ii) *Load securement.* Driver-trainees must learn the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and demonstrate techniques for safe and efficient loading, and properly securing the cargo under 49 CFR 392.9 and §§ 393.100 through 393.136 of this chapter.

(4) *Public road.* Driver-trainees demonstrate the practices required for safe operation of the CMV on a public road. This unit must include training in basic operation and vehicle maneuvers under § 391.31 (Skills and Knowledge) of this chapter. Driver-trainees must be taught how to apply their basic operating skills in a way that ensures their safety and that of other road users under various road, weather, and traffic conditions.

■ 4. Add subpart G to read as follows:

#### **Subpart G—Registry of Entry-Level Driver Training Providers**

Sec.

|         |   |
|---------|---|
| 380.700 | Scope.  |
| 380.703 | Requirements for the training provider registry.                      |
| 380.707 | Entry-level training provider.  |
| 380.709 | Facilities.   |
| 380.711 | Equipment.  |
| 380.713 | Driver-instructor qualifications/requirements.                        |
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| 380.719 | Requirements for continued listing on the training provider registry. |
| 380.721 | Removal from Training Provider Registry: factors considered.          |
| 380.723 | Removal from Training Provider Registry: procedure.                   |
| 380.725 | Documentation and record retention.                                   |

#### **Subpart G—Registry of Entry-Level Driver Training Providers**

##### **§ 380.700 Scope.**

The rules in this subpart establish the eligibility requirements for listing on FMCSA's Training Provider Registry (TPR). Drivers seeking ELDT may use only providers listed on the TPR to comply with this part.

##### **§ 380.703 Requirements for the training provider registry.**

(a) To be eligible for listing on the TPR, an entity must:

(1) Follow a curriculum that meets the criteria set forth in § 380.613, 380.615, 380.619, 380.621, 380.623, or 380.625, as applicable;

(2) Utilize facilities that meet the criteria set forth in § 380.709;

(3) Utilize vehicles that meet the criteria set forth in § 380.711;

(4) Utilize driver training instructors that meet the criteria set forth in § 380.713;

(5) Allow FMCSA or its authorized representative to audit or investigate the training provider's operations to ensure that the provider meets the criteria set forth in this section.

(6) Submit to FMCSA an Entry-Level Driver Training Provider Identification Report and attest that the training provider meets all the applicable requirements of this section to obtain a

unique TPR number. If a training provider has more than one campus or training location, the training provider must submit an Entry-Level Driver Training Provider Identification Report for each campus or training location in order to obtain a unique TPR number for each location.

(7) Create and maintain driver-trainee records of completion and/or withdrawal in accordance with § 380.725.

(b) When a provider meets the requirements of §§ 380.703 and 380.707, FMCSA will issue the provider a unique TPR number and add the provider's name and contact information to the TPR Web site.

#### **§ 380.707 Entry-level training provider.**

(a) Training providers must require that all accepted applicants for public road training meet minimum U.S. DOT regulations—as well as other Federal, State, and/or local laws—related to drug screening, controlled substances testing, age, medical certification, licensing, and driving record.

(b) Behind-the-wheel (BTW) driving (range and public road), must include the required driving maneuvers in § 380.613, 380.615, 380.619, 380.621, or 380.625, as applicable.

(c) Theory and range instruction must include all elements identified in § 380.613, 380.615, 380.619, 380.621, 380.623, or 380.625, as applicable.

(d) Providers that train more than three driver-trainees annually must provide training materials to each driver-trainee that address the applicable curriculum identified in § 380.613, 380.615, 380.619, 380.621, 380.623, or 380.625. Providers that train three or fewer driver-trainees are not subject to this requirement.

(e) Separate training providers may deliver the theory and BTW portions of the training.

#### **§ 380.709 Facilities.**

(a) The training provider's classroom and range facilities must comply with all applicable Federal, State, and/or local statutes and regulations.

(b) Training providers who teach the range portion of the curriculum must have an instructor present on site to demonstrate applicable skills and correct deficiencies of individual students.

(c) The range must be free of obstructions, enable the driver to maneuver safely and free from interference from other vehicles and hazards, and have adequate sight lines.

#### **§ 380.711 Equipment.**

(a) All vehicles used in the behind-the-wheel (BTW) range training must be in safe mechanical condition.

(b) Vehicles used for BTW road training must comply with applicable Federal and State safety requirements.

(c) Training vehicles must be in the same class (A or B) and type (bus or truck) that driver-trainees intend to operate for their CDL skills test.

#### **§ 380.713 Driver-instructor qualifications/requirements.**

(a) Theory training providers must utilize instructors who are either an experienced driver or a theory instructor as defined in § 380.605.

(b) BTW training providers must utilize experienced drivers as defined in § 380.605. BTW training instructors, during the two years prior to engaging in BTW instruction, must not have had any CMV-related convictions for the offenses identified in § 383.51(b) through (e). Training providers must utilize only public road BTW instructors whose driving record meets applicable Federal and State requirements.

#### **§ 380.715 Assessments.**

Driver-trainees must successfully complete a course of instruction that meets the applicable entry-level driver training curriculum requirements.

(a) Training providers must use assessments (in written or electronic format) to demonstrate driver-trainees' proficiency in the knowledge objectives in the theory portion of each unit of instruction in § 380.613, 380.615, 380.619, 380.621, 380.623, or 380.625. The driver-trainee must receive an overall score of 80% or above on the assessment.

(b) Training instructors must assess driver-trainee proficiency on the range in pre-trip inspections, fundamental vehicle control skills, and routine driving procedures for the appropriate vehicle in accordance with the curricula in § 380.613, 380.615, 380.619, 380.621, or 380.625.

(c) Training instructors must evaluate a driver-trainee's proficiency in BTW driving skills on a public road. The instructor must observe specified driving maneuvers required in § 380.613, 380.615, 380.619, 380.621, or 380.625, as applicable. BTW public road assessments must be administered in a vehicle of the class (A or B) and type (bus or truck) that the driver-trainees will operate for the CDL skills test.

#### **§ 380.717 Training certification.**

After an individual successfully completes training administered by a provider on the TPR, that provider

must, by close of the next business day after the driver-trainee completes the training, upload the training certification including the following:

(a) Driver-trainee name, CDL/CLP number, and State of licensure;

(b) Vehicle class and/or endorsement training the driver-trainee received;

(c) Name of the training provider and its unique TPR identification number; and

(d) Date of successful training completion.

#### **§ 380.719 Requirements for continued listing on the training provider registry.**

(a) To be eligible for continued listing on the TPR, a provider must:

(1) Meet the requirements of this subpart and the applicable requirements of elements of § 380.703 of this chapter.

(2) Biennially provide an updated Entry-Level Driver Training Provider Identification Report to FMCSA.

(3) Report to FMCSA changes to key information, as identified in paragraph (a)(3)(i) of this section, submitted under § 380.703 within 30 days of the change.

(i) Key information is defined as training provider name, address, phone number, type of training offered, training provider status, and any change in State licensure, certification, or accreditation status.

(ii) Changes must be reported by submitting an updated Entry-Level Driver Training Provider Identification Report to FMCSA.

(4) Be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations of each State where training is provided.

(5) Maintain documentation of State licensure, registration, or certification verifying that the provider is authorized to provide training in that State, if applicable.

(6) Allow an audit or investigation of the training provider to be completed by FMCSA or its authorized representative, if requested.

(7) Ensure that all required documentation is available upon request to FMCSA or its authorized representative. The provider must submit this documentation within 48 hours of the request.

#### **§ 380.721 Removal from Training Provider Registry: factors considered.**

FMCSA may remove a provider from the TPR when a provider fails to meet or maintain the qualifications established by this subpart or the requirements of other State and Federal regulations applicable to the provider. If FMCSA removes a provider from the TPR, all training certificates issued after



the removal date will be considered invalid.

(a) The factors FMCSA may consider for removing a provider from the TPR include, but are not limited to, the following:

(1) The provider fails to comply with the requirements for continued listing on the TPR, as described in § 380.719.

(2) The provider denies FMCSA or its authorized representatives the opportunity to conduct an audit or investigation of its training operations.

(3) The audit or investigation conducted by FMCSA or its authorized representatives identifies material deficiencies, pertaining to the training provider's program, operations, or eligibility.

(4) The provider falsely claims to be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations in each State where training is provided.

(5) The SDLA CDL exam passage rate of those individuals who complete the provider's training is abnormally low. FMCSA is not establishing a minimum required passage rate, but will use this information in the context of State norms.

(b) In instances of fraud or other criminal behavior by a training provider in which driver-trainees have knowingly participated, FMCSA reserves the right, on a case-by-case basis, to retroactively deem invalid training certificates that were issued by training providers removed from the TPR.

**§ 380.723 Removal from Training Provider Registry: procedure.**

(a) *Voluntary removal.* To be voluntarily removed from the Training Provider Registry (TPR), a provider must submit written notice to FMCSA's Director, Office of Carrier, Driver, and Vehicle Safety Standards (Director). Upon receiving the written notice, FMCSA will remove the training provider from the TPR. On and after the date of issuance of a notice of proposed removal from the TPR issued in accordance with paragraph (b) of this section, such voluntary removal notice will not be effective.

(b) *Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for removal of a provider from the TPR by issuing a written notice to the provider, stating the reasons for the proposed removal and setting forth any corrective actions necessary for the provider to remain listed on the TPR. If a notice of proposed removal is issued, the provider must notify current driver-

trainees and driver-trainees scheduled for future training of the proposed removal. In addition, no training conducted after issuance of the notice of proposed removal will be considered to comply with this subpart until FMCSA withdraws the notice.

(c) *Response to notice of proposed removal and corrective action.* A training provider that has received a notice of proposed removal and wishes to remain on the TPR must submit a written response to the Director no later than 30 days after the date of issuance of the notice explaining why it believes that decision is not proper, as described in paragraph (c)(1) of this section. Alternatively, the provider will set forth corrective actions taken in response to FMCSA's notice of proposed removal, as described in paragraph (c)(2) of this section.

(1) *Opposing a notice of proposed removal.* If the provider believes FMCSA has relied on erroneous information in proposing removal from the TPR, the provider must explain the basis for that belief and provide supporting documentation. The Director will review the explanation.

(i) If the Director finds that FMCSA has relied on erroneous information to propose removal of a training provider from the TPR, the Director will withdraw the notice of proposed removal and notify the provider of the withdrawal in writing.

(ii) If the Director finds FMCSA has not relied on erroneous information in proposing removal, the Director will affirm the notice of proposed removal and notify the provider in writing of the determination. No later than 60 days after the date the Director affirms the notice of proposed removal, the provider must comply with this subpart and correct the deficiencies identified in the notice of proposed removal as described in paragraph (c)(2) of this section.

(iii) If the provider does not respond in writing within 30 days of the date of issuance of a notice of proposed removal, the removal becomes effective immediately and the provider will be removed from the TPR.

(2) *Compliance and corrective action.*

(i) The provider must comply with this subpart and complete the corrective actions specified in the notice of proposed removal no later than 60 days after either the date of issuance of the notice of proposed removal or the date the Director affirms or modifies the notice of proposed removal, whichever is later. The provider must provide documentation of compliance and completion of the corrective action(s) to the Director. The Director may conduct

an investigation and request any documentation necessary to verify that the provider has complied with this subpart and completed the required corrective action(s). The Director will notify the provider in writing whether it has met the requirements for continued listing on the TPR.

(ii) If the provider fails to complete the proposed corrective action(s) within the 60-day period, the provider will be removed from the TPR. The Director will notify the provider in writing of the removal.

(3) At any time before a notice of proposed removal from the TPR becomes final, the recipient of the notice of proposed removal and the Director may resolve the matter by mutual agreement.

(d) *Request for administrative review.* If a provider has been removed from the TPR under paragraph (c)(1)(iii), (c)(2)(ii), or (e) of this section, the provider may request an administrative review no later than 30 days after the effective date of the removal. The request must be submitted in writing to the FMCSA Associate Administrator for Policy (Associate Administrator). The request must explain the alleged error(s) committed in removing the provider from the TPR, and include all factual, legal, and procedural issues in dispute, as well as any supporting documentation.

(1) *Additional procedures for administrative review.* The Associate Administrator may ask the provider to submit additional information or attend a conference to discuss the removal. If the provider does not provide the information requested, or does not attend the scheduled conference, the Associate Administrator may dismiss the request for administrative review.

(2) *Decision on administrative review.* The Associate Administrator will complete the administrative review and notify the provider in writing of the decision. The decision constitutes final Agency action. If the Associate Administrator deems the removal to be invalid, FMCSA will reinstate the provider's listing on the TPR.

(e) *Emergency removal.* In cases of fraud, criminal behavior, or willful disregard of the regulations in this subpart or in which public health, interest, or safety requires, the provisions of paragraph (b) of this section are not applicable. In these cases, the Director may immediately remove a provider from the TPR. In instances of fraud or other criminal behavior by a training provider in which driver-trainees have knowingly participated, FMCSA reserves the right to retroactively deem invalid training

certificates issued under § 380.717. A provider who has been removed under the provisions of this paragraph may request an administrative review of that decision as described under paragraph (d) of this section.

(f) *Reinstatement to the Training Provider Registry.* (i) Any time after a training provider's voluntary removal from the TPR, the provider may apply to the Director to be reinstated.

(ii) No sooner than 30 days after the date of a provider's involuntary removal from the TPR, the provider may apply to the Director to be reinstated. In the case of an involuntarily removal, the provider must submit documentation showing completion of any corrective action(s) identified in the notice of proposed removal or final notice of removal, as applicable.

#### § 380.725 Documentation and record retention.

(a) *Applicability.* The documentation and retention of records required by this subpart apply to entities that meet the requirements of subpart F of this part and are eligible for listing on the Training Provider Registry (TPR).

(b) All training providers on the TPR must retain the following:

(1) The training provider's policy setting forth eligibility requirements for driver-trainee applicants related to controlled substances testing, medical certification, licensing, and driving records.

(2) Instructor qualification documentation indicating driving and/or training experience, as applicable, for each instructor and copies of commercial driver's licenses and applicable endorsements held by behind-the-wheel (BTW) instructors.

(3) The amount of time generally allocated to theory and BTW (range and public road) training, as applicable.

(4) The instructor-driver-trainee ratio during each portion of the curriculum; the number of vehicles, and a description of range and lesson plans for theory and BTW (range and public road) training, as applicable.

(5) Names of all driver-trainees who completed or withdrew from instruction in the required curriculum and who passed or failed the training provider's assessment of theory and, if applicable, BTW (range and public road) training.

(c) *Retention of records.* Training providers listed on the TPR must retain the records identified in paragraph (b) of this section for a minimum of three years from the date each required record is generated or received, unless a record, such as a CDL, has expired or been canceled, in which case the most recent, valid CDL should be retained. The

provisions of this part do not affect a training provider's obligation to comply with any other local, State, or Federal requirements prescribing longer retention periods for any category of records described herein.

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

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

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

■ 6. Amend § 383.51 by adding paragraph (a)(8) to read as follows:

#### § 383.51 Disqualification of drivers.

(a) \* \* \*

(8) A holder of a CDL who is disqualified as a result of a conviction of offenses under § 383.51(b), (c), (d), or (e) must not be fully reinstated to drive a CMV until he or she has successfully completed the refresher training curriculum in § 380.625 of this chapter. Limited privileges to drive a CMV are to be reinstated solely in order to allow the driver to complete the refresher training curriculum.

\* \* \* \* \*

■ 7. Amend § 383.71 by adding paragraphs (a)(3) and (4) and (b)(11); revising paragraphs (e)(3) and (4); and adding paragraph (e)(5) to read as follows:

#### § 383.71 Driver application procedures

(a) \* \* \*

(3) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], a person must successfully complete the training prescribed in subpart F of part 380 of this chapter before taking the skills test for a Class A or B CDL or a passenger or school bus endorsement or the knowledge test for a hazardous materials endorsement. The training must be administered by a provider listed on the Training Provider Registry.

(4) Except for driver trainees seeking the H endorsement, driver-trainees who have successfully completed the theory portion of the training must complete the skills portion within 360 days.

(b) \* \* \*

(11) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], a person must successfully complete the training prescribed in subpart F of part 380 of this chapter before taking the skills test for an initial Class A or B CDL, a CDL

with a passenger or school bus endorsement, or knowledge test for a hazardous materials endorsement. The training must be administered by a provider listed on the Training Provider Registry.

\* \* \* \* \*

(e) \* \* \*

(3) Comply with the requirements specified in paragraph (b)(8) of this section to obtain a hazardous materials endorsement;

(4) Surrender the previous CDL; and

(5) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], a person must successfully complete the training prescribed in subpart F of part 380 of this chapter before taking the skills test for upgrading a CDL from one class to another; or upgrading a CDL with a passenger or school bus endorsement; or knowledge test for hazardous materials endorsement issued on a CDL. The training must be administered by a provider on the Training Provider Registry.

\* \* \* \* \*

■ 8. Amend § 383.73 by revising paragraph (b)(3) introductory text and paragraph (b)(3)(ii), and by adding paragraphs (b)(10) and (e)(8) to read as follows:

#### § 383.73 State procedures.

\* \* \* \* \*

(b) \* \* \*

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification under § 383.51, or any license disqualification under State law, does not have a driver's license from more than one State or jurisdiction, and has completed the required training prescribed in subpart F of part 380 of this subchapter. The record check must include, but is not limited to, the following:

\* \* \* \* \*

(ii) A check with CDLIS to determine whether the driver applicant has already been issued a CDL, whether the applicant's license has been revoked or canceled, whether the applicant has been disqualified from operating a CMV, and, if the CDL was issued on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], whether an applicant for a Class A and B CDL or a CDL with a hazardous materials, passenger, or school bus endorsement has completed the training required by subpart F of part 380 of this subchapter from a provider listed on the Training Provider Registry;

\* \* \* \* \*

(10) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], the State must not conduct a skills test of an applicant for a Class A or B CDL, or a passenger or school bus endorsement until the State verifies that the applicant successfully completed the training prescribed in subpart F of part 380 of this subchapter from a training provider listed on the Training Provider Registry.

\* \* \* \* \*

(e) \* \* \*

(8) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE], require a person with a CDL upgrading from one class of CDL to another or upgrading a CDL with a hazardous materials, passenger, or school bus endorsement to successfully complete the training required in subpart F of part 380 of this subchapter from a provider listed on the Training Provider Registry.

\* \* \* \* \*

■ 9. Amend § 383.95 by adding paragraph (h) to read as follows:

**§ 383.95 Restrictions.**

\* \* \* \* \*

(h) *Refresher training.* If a CDL holder has been disqualified from operating a CMV under § 383.51(b) through (e), the State would reinstate the CDL solely for the limited purpose of completing the refresher training curriculum in § 380.625 of this chapter. The State may not restore full CMV driving privileges until the State receives notification that the driver successfully completed the refresher training curriculum.

■ 10. Amend § 383.153 by revising paragraph (a)(10) to read as follows:

**§ 383.153 Information on the CLP and CDL documents and applications.**

(a) \* \* \*

(10) The restriction(s) placed on the driver from operating certain equipment or vehicles, if any, indicated as follows:

(i) L for No Air brake equipped CMV;

(ii) Z for No Full air brake equipped CMV;

(iii) E for No Manual transmission equipped CMV;

(iv) O for No Tractor-trailer CMV;

(v) M for No Class A passenger vehicle;

(vi) N for No Class A and B passenger vehicle;

(vii) K for Intrastate only;

(viii) V for Medical variance;

(ix) R for Refresher training only; and

(x) At the discretion of the State, additional codes for additional restrictions, as long as each such restriction code is fully explained on the front or back of the CDL document.

\* \* \* \* \*

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

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

**Authority:** 49 U.S.C. 31136, 31301, *et seq.*, and 31502; secs. 103 and 215 of Pub. L. 106–59, 113 Stat. 1753, 1767; sec. 32934 of Pub. L. 112–141, 126 stat. 405, 830 and 49 CFR 1.87.

■ 12. Add § 384.230 to read as follows:

**§ 384.230 Entry-level driver certification.**

(a) Beginning on [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] a State must follow the procedures prescribed in § 383.73 of this subchapter for verifying that a person

received training from a provider listed on the Training Provider Registry before issuing an initial Class A or B CDL; a CDL with a hazardous materials, passenger, or school bus endorsement; upgrade a CDL from one class to another; or upgrade a CDL with a hazardous materials, passenger, or school bus endorsement.

(b)(1) A State may issue a CDL to individuals who obtain an initial CLP before [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] who have not complied with subpart F of part 380 of this subchapter so long as they obtain a CDL within 360 days after obtaining an initial CLP.

(2) A State may not issue a CDL to individuals who obtain a CLP on or after [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE] unless they comply with subpart F of part 380 of this subchapter.

■ 13. Add § 384.301(j) to read as follows:

**§ 384.301 Substantial compliance—general requirements.**

\* \* \* \* \*

(j) A State must come into substantial compliance with the requirements of subpart B of this part and part 383 of this chapter in effect as of [EFFECTIVE DATE OF THE FINAL RULE], but not later than [DATE 3 YEARS AFTER EFFECTIVE DATE OF THE FINAL RULE].

Issued under the authority of delegation in 49 CFR 1.87.

Dated: February 19, 2016.

**T.F. Scott Darling III,**  
*Acting Administrator.*

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