

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: Final rule.

SUMMARY: FMCSA establishes new minimum training standards for certain individuals applying for their commercial driver’s license (CDL) for the first time; an upgrade of their CDL (e.g., a Class B CDL holder seeking a Class A CDL); or a hazardous materials (H), passenger (P), or school bus (S) endorsement for the first time. These individuals are subject to the entry-level driver training (ELDT) requirements and must complete a prescribed program of instruction provided by an entity that is listed on FMCSA’s Training Provider Registry (TPR). FMCSA will submit training certification information to State driver licensing agencies (SDLAs), who may only administer CDL skills tests to applicants for the Class A and B CDL, and/or the P or S endorsements, or knowledge test for the H endorsement, after verifying the certification information is present in the driver’s record.

DATES: This final rule is effective February 6, 2017. The compliance date for this rule is February 7, 2020. Comments sent to the Office of Management and Budget (OMB) on the collection of information must be received by OMB on or before January 9, 2017.

Petitions for Reconsideration of this final rule must be submitted to the FMCSA Administrator no later than January 9, 2017.

FOR FURTHER INFORMATION 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. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

For comments on the Privacy Analysis in this Rulemaking, contact FMCSA’s Privacy Officer: Shannon DiMartino, Federal Motor Carrier Safety Administration, 1200 New Jersey

Avenue SE., Washington, DC 20590–0001 or by telephone at 202–366–1577.

SUPPLEMENTARY INFORMATION: This final rule responds to a Congressional mandate imposed under the Moving Ahead for Progress in the 21st Century Act (MAP–21). The rule is based in part on consensus recommendations from the Agency’s Entry-Level Driver Training Advisory Committee (ELDTAC), a negotiated rulemaking committee that held a series of meetings between February and May 2015.

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 - J. Privacy
 - K. E.O. 12372 (Intergovernmental Review)
 - L. E.O. 13211 (Energy Supply, Distribution, or Use)
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 - N. National Technology Transfer and Advancement Act (Technical Standards)
 - O. Environment (NEPA, CAA, E.O.12898 Environmental Justice)

I. Rulemaking Documents

A. Availability of Rulemaking Documents

For access to docket FMCSA–2007–27748 to read background documents and comments received, go to <http://www.regulations.gov> at any time, or to Docket Services at U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

B. Privacy Act

In accordance with 5 U.S.C. 553(c), DOT solicits comments on the Privacy Impact Assessment (PIA) 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, as described in the system of records notice (DOT/ALL-14 FDMS), which can be reviewed at www.dot.gov/privacy.

II. Executive Summary

A. Purpose and Summary of the Entry-Level Driver Training Rule

FMCSA believes this final rule enhances the safety of commercial motor vehicle (CMV) operations on our Nation’s highways by establishing a minimum standard for ELDT and increasing the number of drivers who receive ELDT. It replaces existing mandatory training requirements for entry-level operators of CMVs in interstate and intrastate operations required to possess a CDL. The minimum training standards established in today’s rule are for certain individuals applying for a CDL for the first time, an upgrade of their CDL¹ (e.g., a Class B CDL holder seeking a Class A CDL), or a hazardous materials, passenger, or school bus endorsement for the first time. These individuals are subject to the ELDT requirements and must complete a prescribed program of instruction provided by an entity listed on FMCSA’s Training Provider Registry (TPR).

FMCSA’s legal authority for 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 (CMVSA), and MAP-21.

B. Summary of Major Provisions

The rule primarily revises 49 CFR part 380, Special Training Requirements. It

requires an individual who must complete certain CDL skills test requirements, defined as an “Entry-Level Driver,” to receive mandatory training. The rule applies to persons who drive, or intend to drive, CMVs in either interstate or intrastate commerce. Military drivers, farmers, and firefighters who are generally exempted from the CDL requirements in part 383 are also exempted from this rule.

The rule establishes Class A and Class B CDL core curricula and training curricula including passenger (P); school bus (S); and hazardous materials (H) endorsements. The core and endorsement curricula generally are subdivided into theory (knowledge) and behind-the-wheel (BTW) (range and public road) segments. There is no minimum number of hours that driver-trainees must spend on the theory portions of any of the individual curricula. However, training providers must provide instruction in all elements of the applicable theory curriculum and driver-trainees must receive an overall score of at least 80 percent on the theory assessment.

The BTW curricula for the Class A and Class B CDL, comprised of range and public road segments, include discrete maneuvers which each driver-trainee must proficiently demonstrate to the satisfaction of the training instructor. There is no minimum number of hours that driver-trainees must spend on the BTW elements of the core or endorsement curricula. The training provider must not issue the training certificate unless the driver-trainee demonstrates proficiency in performing all required BTW skills. Providers must submit electronic notification to FMCSA that an individual completed the required training; the Agency will provide that information to the SDLAs through the Commercial Driver’s License Information System (CDLIS).

This rule applies to entities that train entry-level drivers, also referred to herein as driver-trainees. Training providers must, at a minimum, provide instruction in a training curriculum that meets all the standards established in today’s rule and must also meet other eligibility requirements in order to be listed on FMCSA’s 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 documentation to verify their compliance. The final rule also makes conforming changes to parts 383 and 384 of the FMCSRs.

The compliance date for this rule is three years after the effective date of the final rule. This three-year period provides the States with sufficient time to pass necessary implementing legislation and to modify their information systems to begin recording the CDL applicant’s compliance with ELDT requirements. This phase-in period also allows time for CMV driver training entities to develop and begin offering training programs that meet the eligibility requirements for listing on the TPR.

C. Benefits and Costs

Entry-level drivers, motor carriers, training providers, SDLAs, and the Federal Government will incur costs for compliance and implementation. The costs of the final rule include tuition expenses, the opportunity cost of time while in training, compliance audit costs, and costs associated with the implementation and monitoring of the TPR. As shown in Table 1, FMCSA estimates that the 10-year cost of the final rule will total \$3.66 billion on an undiscounted basis, \$3.23 billion discounted at 3 percent, and \$2.76 billion discounted at 7 percent (all in 2014 dollars). Values in Table 1 are rounded to the nearest million.

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

Year	Undiscounted						Discounted	
	Entry-level drivers	Motor carriers	Training providers	SDLAs	Federal government	Total (a)	Discounted at 3%	Discounted at 7%
2020	\$324	\$20	\$9	\$56	\$6	\$415	\$415	\$415
2021	326	20	6	0	1	353	343	330
2022	328	20	7	0	1	356	336	311
2023	330	20	6	0	1	357	327	291
2024	331	20	7	0	1	359	319	274
2025	333	20	6	0	1	360	311	257
2026	335	20	7	0	1	363	304	242

¹ Group A vehicles include all large, combination vehicles, usually tractor/trailers. Group B vehicles include both large straight trucks and buses.

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

Year	Undiscounted						Discounted	
	Entry-level drivers	Motor carriers	Training providers	SDLAs	Federal government	Total (a)	Discounted at 3%	Discounted at 7%
2027	337	20	6	0	1	364	296	227
2028	339	21	7	0	1	368	291	214
2029	341	21	6	0	1	369	283	201
Total	3,324	202	67	56	15	3,664	3,225	2,762
Annualized .....	.....	.....	.....	.....	.....	366	367	368

Notes:
(a) Total cost 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 costs of this final rule specifically attributable to the S (school bus) endorsement training requirement were evaluated separately in the RIA, because, while Section 32304 of MAP-21 mandates training for entry-level drivers who wish to obtain a CDL or a P or H endorsement, the statute is silent with respect to the S endorsement. Inclusion of the S endorsement training requirement increases the total cost of the rule by only approximately 0.82 percent. On an annualized basis at a 7 percent discount rate, this equates to an increase in the total cost of the rule from \$365 million to \$368 million. Details of these comparative analyses of the costs of the rule and the reasons for this relatively small change in costs resulting from the inclusion of the S endorsement training requirement are presented in Section 3 of the RIA.

This final rule will result in benefits to CMV operators, the transportation industry, the traveling public, and the environment. FMCSA estimated benefits in two broad categories: Safety benefits and non-safety benefits. Training related to the performance of complex tasks

may improve performance; in the context of the training required by this final rule, improvement in task performance constitutes adoption of safer driving practices that the Agency believes will reduce the frequency and severity of crashes, thereby resulting in safer roadways for all. The training related to fuel efficient driving practices that will be taught under the ‘speed management’ and ‘space management’ sections of the curriculum reduce fuel consumption and consequently lower environmental impacts associated with carbon dioxide emissions. As discussed in Section 4.1.1 of the RIA for today’s rule, FMCSA does not believe that the training in fuel efficient driving practices addressed by this rule will contribute to measurably longer trip times, as the curricula focus on factors such as maintaining safe distances between vehicles and avoiding hard acceleration and braking, rather than reducing vehicle speed. The Agency therefore assumes in its analysis that these fuel efficient driving practices will not contribute to measurably longer trip times.

Safer driving and better-informed drivers will reduce maintenance and repair costs. Table 2 below presents the directly quantifiable benefits that FMCSA projects will result from this final rule (all in 2014 dollars, values rounded to the nearest million). Due to wide ranges of estimates in studies relevant to the quantified benefits of the rule and the lack of studies that specifically focus on the curricula prescribed by this rule,² the Agency presents benefits estimated under alternate benefit scenarios in Table 3 and Table 4. These alternate scenarios are derived from the low and high benefit cases (see sensitivity analyses in Sections 4.1.1 through 4.1.3 of the RIA) in which the fuel savings, CO₂ emissions reductions, and maintenance and repair cost savings are 50 percent lower (low benefits case) and 50 percent greater (high benefits case) than the central estimates that the Agency relied on in developing the values presented in Table 2. Further discussion of the low and high benefits cases is reserved to the RIA for the final rule.

TABLE 2—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[Central case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction (a)	Maintenance and repair cost savings	Total (b)	Discounted at 3%	Discounted at 7%
2020	\$89	\$15	\$13	\$117	\$117	\$117
2021	151	26	22	198	192	186
2022	186	31	26	243	229	214
2023	190	32	27	248	227	206
2024	194	32	27	253	225	197
2025	197	33	27	257	222	188
2026	202	34	28	263	220	181
2027	205	34	28	266	217	172
2028	207	35	28	270	214	165

² As described in Sections 4.1.1 through 4.1.3 of the RIA, the Agency identified a variety of relevant studies related to each of the quantified benefits.

With particular respect to the estimated fuel and CO₂ savings the Agency was unable to identify any

studies that perfectly align with the curricula of this rule.

TABLE 2—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE—Continued
[Central case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^(a)	Maintenance and repair cost savings	Total ^(b)	Discounted at 3%	Discounted at 7%
2029	211	35	28	274	210	157
Total	1,830	306	253	2,389	2,073	1,783
Annualized				239	236	237

Notes:

^(a) The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^(b) 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).

TABLE 3—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[Low benefits case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^(a)	Maintenance and repair cost savings	Total ^(b)	Discounted at 3%	Discounted at 7%
2020	\$44	\$8	\$6	\$58	\$58	\$58
2021	75	13	11	99	96	93
2022	93	16	13	121	114	107
2023	95	16	13	124	114	103
2024	97	16	13	127	112	99
2025	99	17	14	129	111	94
2026	101	17	14	131	110	90
2027	102	17	14	133	108	86
2028	104	17	14	135	107	82
2029	106	17	14	137	105	78
Total	915	153	127	1,195	1,036	891
Annualized				119	118	119

Notes:

^(a) The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^(b) 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).

TABLE 4—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[High benefits case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^(a)	Maintenance and repair cost savings	Total ^(b)	Discounted at 3%	Discounted at 7%
2020	\$133	\$23	\$19	\$175	\$175	\$175
2021	226	38	32	295	287	278
2022	278	47	38	363	343	321
2023	285	48	39	371	340	308
2024	291	49	40	379	337	295
2025	296	50	40	385	332	282
2026	302	50	41	393	329	271
2027	307	51	41	399	324	258
2028	311	52	41	405	320	246
2029	316	52	42	410	314	235
Total	2,745	459	372	3,576	3,100	2,668

TABLE 4—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE—Continued
[High benefits case, in millions of 2014\$]

Year	Undiscounted			Discounted		
	Value of fuel savings	Value of CO ₂ reduction ^(a)	Maintenance and repair cost savings	Total ^(b)	Discounted at 3%	Discounted at 7%
Annualized	358	353	355

Notes:

^(a) The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^(b) 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).

While FMCSA believes that this final rule will at minimum achieve cost-neutrality, the net of quantified costs and benefits (presented in Table 5 below) results in an annualized net cost of \$131 million at a 7 percent discount rate. This estimate is based only on *quantifiable* costs and benefits (central case) attributable to this rule. Safety benefits are assessed separately via a threshold analysis discussed in detail in Section 4.2 of the RIA.

TABLE 5—NET COST OF THE FINAL RULE (CENTRAL CASE), ABSENT QUANTIFIABLE SAFETY BENEFITS
[In millions of 2014\$]

Year	3% Discount rate	7% Discount rate
2020	\$298	\$298
2021	151	144
2022	107	97
2023	100	85
2024	94	77
2025	89	69
2026	84	61
2027	79	55
2028	77	49
2029	73	44
Total	1,152	979
Annualized	131	131

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. Discussion regarding the efforts undertaken by FMCSA and its partners in the negotiated rulemaking process to estimate such a quantitative link is presented in Section 4.2 of the RIA. In the NPRM, the Agency again requested any additional data on the safety benefits of requiring ELDT, but did not receive any information that could be used to reliably quantify safety benefits associated with pre-CDL driver training.

In the absence of a clear 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 will need to occur as a consequence of this final rule in order for the rule to achieve cost-neutrality.³ As presented and discussed in detail in Section 4.2 of the RIA, the central estimate of this analysis is that a 3.61 percent improvement in safety performance (that is, a 3.61 percent reduction in the frequency of crashes involving those entry-level drivers who would receive additional pre-CDL training as a result of this final rule

during the period for which the benefits of training are estimated to remain intact) is necessary to offset the \$131 million (annualized at 7 percent) net cost of this final rule.⁴ Note that under the low and high benefits cases presented in Table 3 and Table 4, the net cost of this final rule ranges from \$13 million to \$250 million (annualized at 7 percent), suggesting the improvement in safety performance necessary to offset the rule’s costs may be as low as 0.36 percent and as high as 6.89 percent (see Section 4.2 of the RIA for the final rule for further detail).

Table 6 below presents the projected number of crash reductions involving entry-level drivers that must occur under the central case in each of the 10 years following this final rule’s implementation and in the aggregate, in order to offset the net cost (\$131 million annualized at 7 percent). It is the sum of the monetized value of *all columns* of Table 6—not the sum of the monetized value of any individual column—that results in cost-neutrality.

³ Office of Management and Budget, Circular A-4. *Regulatory Analysis*. September 17, 2003. Available at: https://www.whitehouse.gov/omb/circulars_a004_a-4/ (accessed July 25, 2016).

⁴ Some commenters to the RIA that was performed for the NPRM for this rule incorrectly interpreted the breakeven percentage reduction in crashes estimated here as being relative to *all* CMV crashes *industry-wide*, rather than being relative to only to the much smaller sub-set of crashes involving entry-level drivers that are affected by the rule. Note that with respect to the magnitude of the reduction in the frequency of all crashes involving

large trucks and buses that the annual average crash reductions presented in Table 6 represent, the Agency notes that there were an estimated total 3,649 fatal, 93,000 injury, and 379,000 PDO crashes in 2014 (see U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), *2016 Pocket Guide to Large Truck and Bus Statistics*, May 2016, pages 33 and 34, available at: http://ntl.bts.gov/lib/59000/59100/59189/2016_Pocket_Guide_to_Large_Truck_and_Bus_Statistics.pdf (accessed July 1, 2016)). Therefore, viewed in this manner, based on the annual average number of crash reductions necessary for this final

rule to achieve cost-neutrality (shown in the second row from the bottom of Table 6), this equates to a reduction of only 0.14% of fatal, 0.11% of injury, and 0.11% of PDO crashes, respectively (relative to calendar year 2014). These percentage reductions are calculated as follows: Fatal = 5 ÷ 3,649; Injury = 102 ÷ 93,000; PDO = 432 ÷ 379,000. It should be re-emphasized, however, that this view of the data taken by some of the commenters is *incorrect*, and that the breakeven percentage reduction in crashes estimated here is relative to only the much smaller sub-set of crashes involving entry-level drivers that are affected by the rule.

TABLE 6—CRASH REDUCTIONS INVOLVING ENTRY-LEVEL DRIVERS, BY TYPE, NECESSARY TO ACHIEVE COST-NEUTRALITY
[For the Central Case]

Year	Number of fatal crashes	Number of injury crashes	Number of property damage only (PDO) crashes
2020	3	54	231
2021	4	91	386
2022	5	109	463
2023	5	109	463
2024	5	109	463
2025	5	109	463
2026	5	109	463
2027	5	109	463
2028	5	109	463
2029	5	109	463
Annual Average ^(a)	5	102	432
Total ^(b)	49	1,016	4,319

Notes:^(a) Rounded to the nearest whole number.^(b) The individual values shown may not sum to the totals shown due to rounding.**III. Abbreviations and Acronyms**

Full name	Abbreviation or acronym
Advocates for Highway and Auto Safety	Advocates
Advance Notice of Proposed Rulemaking	ANPRM
American Association for Justice	AAJ
American Association of Motor Vehicle Administrators	AAMVA
American Bus Association	ABA
American Public Power Association	APPA
American Transportation Research Institute	ATRI
American Trucking Associations	ATA
Americans with Disabilities Act	ADA
Anti-lock Braking Systems	ABS
Assessing the Adequacy of Commercial Motor Vehicle Driver Training	Adequacy Report
Associated General Contractors	AGC
Association American of Railroads	AAR
Behind the wheel	BTW
California Department of Motor Vehicles	CA DMV
Clean Air Act	CAA
Code of Federal Regulations	CFR
Commercial Driver's License	CDL
Commercial Driver's License Information System	CDLIS
Commercial Learner's Permit	CLP
Commercial Motor Vehicle	CMV
Commercial Motor Vehicle Safety Act of 1986	CMVSA
Commercial Vehicle Safety Alliance	CVSA
Commercial Vehicle Training Association	CVTA
Delaware Department of Education	DDE
Delaware Department of Motor Vehicles	DE DMV
Delaware Motor Transport Association	DMTA
Delaware Technical Community College	DTCC
Director, Office of Carrier, Driver, and Vehicle Safety Standards	Director
Driver and Vehicle Services Division of the Minnesota Department of Public Safety	Minnesota
Driver Holdings, LLC	Driver Holdings
Edison Electrical Institute	EI
Entry-Level Driver Training	ELDT
Entry-Level Driver Training Advisory Committee	ELDTAC
Executive Order	E.O.
Federal Motor Carrier Safety Administration	FMCSA
Federal Motor Carrier Safety Regulations	FMCSRs
Gross Vehicle Weight Rating	GVWR
Hazardous Materials	HM
Hazardous Materials Endorsement	H
Hazardous Materials Safety Permit	HMSP
Hours of Service	HOS
International Union of Operating Engineers	IUOE
Iowa Department of Transportation	Iowa

Full name	Abbreviation or acronym
Iowa Motor Truck Association	IMTA
Minnesota Chauffeured Limousine Association	MCLA
Model Motorcoach Curriculum	MMC
Motor Carrier Safety Act of 1984	MCSA
Motor Carrier Safety Advisory Committee	MCSAC
Moving Ahead for Progress in the 21st Century Act	MAP-21
National Association of Publicly Funded Truck Driving Schools	NAPFTDS
National Association of Small Trucking Companies	NASTC
National Association of State Directors of Pupil Transportation Services	NASDPTS
National Council of Farmer Cooperatives	NCFC
National Environmental Policy Act	NEPA
National Feed and Grain Association	NFGA
National Governors' Association	NGA
National Ground Water Association	NGWA
National Highway Traffic Safety Administration	NHTSA
National Limousine Association	NLA
National Motor Freight Traffic Association	NMFTA
National Propane Gas Association	NPGA
National School Transportation Association	NSTA
Natural Rural Electric Cooperative Association	NRECA
New York Association for Pupil Transportation	NYAPT
New York Department of Motor Vehicles	NY DMV
North Dakota Motor Carriers Association	NDMCA
Notice of Proposed Rulemaking	NPRM
Office of Management and Budget	OMB
Oregon Department of Transportation	ODOT
Out-of-service	OOS
Owner-Operator Independent Drivers Association, Inc.	OOIDA
Petroleum Marketers Association of America	PMAA
Pipeline and Hazardous Materials Safety Administration	PHMSA
Privacy Impact Assessment	PIA
Professional Truck Driver Institute	PTDI
Property Damage Only	PDO
Regulatory Impact Analysis	RIA
State Driver Licensing Agency	SDLA
State of Michigan, Bureau of Driver and Vehicle Licensing Programs, Department of State	Michigan
State of Utah, Department of Public Safety	Utah
State of Washington Department of Licensing	Washington
Training Provider Registry	TPR
United Motorcoach Association	UMA
United Parcel Service	UPS
United States Code	U.S.C.
United States Court of Appeals for the District of Columbia Circuit	D.C. Circuit
United States Department of Education	ED
United States Department of Transportation	DOT
Virage Simulation	Virage
Virginia Department of Motor Vehicles	Virginia
Virginia Trucking Association	VTA
Werner Enterprises	Werner
West Virginia Trucking Association	WVTA

IV. Legal Basis for the Rulemaking

This rule 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 MAP-21, requiring the establishment of minimum driver training standards for certain individuals required to hold a CDL. The NPRM preceding this final rule reflected the recommendations of FMCSA’s ELDTAC, comprised of 25 industry stakeholders and FMCSA, convened through a negotiated rulemaking in 2015, as discussed below.

Today’s rule retains a number of those recommendations.

The Motor Carrier Act of 1935, codified at 49 U.S.C. 31502(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 rule improves 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 safely; (4) the operation of CMVs does not have a deleterious effect on 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 rule 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 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 rule 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 in today’s rule address FMCSA’s medical requirements for CMV drivers, section 31136(a)(3), 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 theory training curricula for Class A and B CDLs include 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 (CMV) (49 U.S.C. 31305(a)). The requirement of today’s rule that States test only those entry-level CDL applicants who have completed the requisite training 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 (Pub. L. 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 a CDL for the first time 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 address both classroom and behind the wheel (BTW) 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 rule by requiring that ELDT regulations apply to individuals operating CMVs in both interstate and intrastate commerce. The ELDT requirements are codified in section 31305 of Title 49 of the U.S. Code, 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 both interstate and intrastate commerce.

The final rule includes a school bus (S) endorsement curriculum, as proposed in the NPRM. Although MAP–21 did not specifically mandate training for this endorsement, the current FMCSRs require that an applicant for the S endorsement must pass the knowledge and skills test for a passenger vehicle (P) endorsement (49 CFR 383.123(a)(1)). FMCSA believes that because 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, the inclusion of the S endorsement training curriculum in the final rule is consistent with that mandate.

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 addressed in the Regulatory Impact Analysis (RIA) associated with this rulemaking and are summarized above.

V. Background

Regulatory History

On March 7, 2016, FMCSA published a notice of proposed rulemaking (NPRM), Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators, in the **Federal Register** (81 FR 11944). FMCSA received 338 submissions during the NPRM public comment period. FMCSA and its predecessor agency, the Federal Highway Administration, Office of Motor Carriers, have previously addressed the issue of CMV driver training. The regulatory and legal history of these efforts is summarized in the table below.

TIMELINE OF REGULATORY AND JUDICIAL ACTIONS RELATED TO ENTRY-LEVEL DRIVER TRAINING

Title	Type of action	Citation, date	Synopsis
Model Curriculum for Training Tractor-Trailer Drivers.	Federal Highway Administration (FHWA) Recommendations.	1985	The Model Curriculum provided suggestions and recommendations for training providers covering curriculum, facilities, vehicles, instructor qualifications hiring practices, graduation requirements, and student placement.
Commercial Motor Vehicles: Training for All Entry Level Drivers.	ANPRM by FHWA.	June 21, 1993; 58 FR 33874.	The ANPRM 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.
Assessing the Adequacy of Commercial Motor Vehicle Training.	FHWA Report	1995	It concluded, among other things, that effective ELDT needs to include BTW instruction.
Relief from Unlawfully Withheld Agency Action, In re Citizens for Reliable and Safe Highways.	Court Action	November 2002	Sought an order directing the DOT to promulgate various regulations, including one establishing ELDT.
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.	FMCSA’s NPRM	August 15, 2003; 68 FR 48863.	FMCSA proposed standards for mandatory training requirements for entry-level operators of commercial motor vehicles (CMVs) who are required to hold or obtain a commercial driver’s license (CDL).

TIMELINE OF REGULATORY AND JUDICIAL ACTIONS RELATED TO ENTRY-LEVEL DRIVER TRAINING—Continued

Title	Type of action	Citation, date	Synopsis
	FMCSA's Final Rule.	May 21, 2004; 69 FR 29384.	The final rule included the four training elements proposed in the NPRM: driver medical qualification and drug and alcohol testing; driver hours of service limits; driver wellness; and whistleblower protections.
Advocates for Highway and Auto Safety v. Federal Motor Carrier Safety Administration.	Court Action	429 F.3d 1136 (D.C. Cir., December 2, 2005).	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. The Court did not vacate the 2004 final rule.
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.	FMCSA's NPRM	December 26, 2007; 72 FR 73226.	FMCSA proposed regulations requiring both classroom and BTW training from an accredited institution or program.
Moving Ahead for Progress in the 21st Century Act (MAP-21).	Congressional Action.	July 6, 2012; Public Law No. 112-141, § 32304, 126 Stat. 405, 791.	MAP-21 requires DOT to regulate ELDT.
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.	FMCSA's Withdrawal Notice.	September 19, 2013; 78 FR 57585.	Based on a number of considerations, FMCSA withdrew its December 26, 2007, NPRM that proposed new ELDT standards for individuals applying for a commercial driver's license to operate CMVs in interstate commerce.
ELDT Negotiated Rulemaking	FMCSA's Public Notices.	August 19, 2014; 79 FR 49044.	FMCSA formally announced that it was considering addressing the rulemaking mandated by MAP-21 through a negotiated rulemaking.
		December 10, 2014; 79 FR 73274.	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.
		February 12, 2015; 80 FR 7814.	The Agency published a Federal Register notice listing the ELDTAC members as required by the Negotiated Rulemaking Act.
	Public Meetings	February–May 2015.	The ELDTAC met for a series of six two-day meetings to produce a consensus agreement, which formed the basis for the NPRM.
In Re Advocates for Highway and Auto Safety, the International Brotherhood of Teamsters; and Citizens for Reliable and Safe Highways vs. Anthony Foxx, Secretary of the United States Department of Transportation, et al.	Court Action	September 18, 2014; No. 14-1183, D.C. Circuit (2014). March 10, 2015	FMCSA and DOT are 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. The court ordered that the petition for writ of mandamus be held in abeyance pending a further order of the court to permit the DOT to issue final regulations pursuant to MAP-21.
Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators.	FMCSA's NPRM	March 7, 2016; 81 FR 11944.	Based on the consensus findings of the Entry-Level Driver Advisory Committee, FMCSA proposed new training standards for certain individuals applying for their initial 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; and a "refresher" training curriculum.

VI. March 7, 2016, Proposed Rule

MAP-21 mandated that the FMCSA issue regulations to establish minimum entry-level training requirements for interstate and intrastate applicants obtaining a CDL for the first time, CDL holders seeking license upgrades, and those seeking passenger (P) or hazardous materials (H) endorsements. In response to that statutory mandate, the Agency published an NPRM, "Minimum Training Requirements for Entry-Level Commercial Motor Vehicle Operators," on March 7, 2016. In the NPRM, FMCSA proposed the ELDTAC's consensus recommendations "to the maximum extent possible consistent with its legal obligations" as required under the Negotiated Rulemaking Act (5 U.S.C. 563(a)(7)).

The proposed regulations addressed the knowledge and/or skills training required for entry-level CMV drivers. Additionally, the NPRM outlined new eligibility standards that training providers must meet to deliver ELDT. Finally, while not specifically required by MAP-21, the NPRM reflected the ELDTAC's consensus that training should also be required for applicants seeking a school bus (S) endorsement and for CDL holders disqualified for safety-related CMV driving violations (refresher training).

The proposed rule generally applied to those individuals who obtain a CDL (or a CDL upgrade or endorsement) on or after the compliance date of the final rule and did not otherwise amend substantive CDL requirements in 49 CFR

parts 383 and 384. The NPRM identified specific categories of drivers excluded from the rule, based on current exceptions in part 383.

The proposed rule also applied to entities that train CDL applicants. Such providers would, at a minimum, provide instruction in accordance with a training curriculum that meets all FMCSA standards as set forth in the NPRM. Under the NPRM, training providers would attest to their compliance with the eligibility requirements set forth in proposed subpart G of part 380. These proposed requirements addressed the following areas: Course administration; instructional personnel qualifications; training vehicles; training facilities (e.g., classroom and range); curricula; and

proficiency assessment of driver-trainees. Training providers meeting these proposed requirements would be eligible for listing on FMCSA's Training Provider Registry (TPR) and would also be required to meet the criteria for continued listing on the TPR. The NPRM proposed that training providers would, at FMCSA's request, be required to supply specified documentary evidence to verify their compliance with the TPR eligibility requirements.

The NPRM described factors that would justify FMCSA's removal of a training entity from the TPR, setting forth procedures the Agency would follow before removing an entity from the TPR. The NPRM also proposed procedures that training providers would follow in order to challenge a proposed removal and to apply for reinstatement to the TPR following involuntary removal.

The NPRM proposed that training providers would electronically notify the TPR by the close of the next business day after driver-trainees completed training. The submission of this documentation would ensure that each individual received the required training from a provider listed on the TPR prior to taking the State-administered CDL skills test for the Class A or B CDL and/or the passenger or school bus endorsement, or the knowledge test for the hazardous materials endorsement.

The NPRM proposed core curricula for Class A CDL and Class B CDL applicants; curricula for the P, S, and H endorsements; and a "refresher" training curriculum. The proposed core curricula for Class A and Class B CDL training programs, as well as the P and S curricula, were subdivided into theory and BTW (range and public road) components. The H endorsement training curriculum was proposed as theory-only training because there is no CDL skills test currently required for those seeking an H endorsement. The NPRM did not propose that any minimum number of hours be spent by driver-trainees in completing the theory portions of any of the individual curricula, though training providers must cover all elements of the applicable curriculum and trainees must achieve an overall score of at least 80 percent on the written theory assessment.

The NPRM proposed that a minimum number of BTW hours be required for the Class A and Class B curricula. Class A applicants would be required to complete at least 30 hours of BTW training, while Class B applicants would need to complete a minimum of 15 hours BTW. The NPRM did not propose

that driver-trainees spend any minimum number of hours to complete the BTW portion of the P or S curriculum. The preamble to the proposed rule stated that, for BTW training, "[a]ll required driving maneuvers must be performed to the satisfaction of the instructor . . ." As proposed, a CDL holder disqualified from operating a CMV due to safety-related violations would need to complete refresher training requirements before applying for reinstatement of his/her CDL. Similar to the other proposed curricula, the refresher curriculum included both theory and BTW components; however, the NPRM did not propose that a minimum number of hours be required to complete any portion of the refresher curriculum. The Agency proposed 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 proposed compliance date for this rule was three years after the effective date of the final rule. The Agency believed 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.

VII. Discussion of Comments and Responses on the NPRM

There were 338 submissions on the proposed rule, 190 of which provided substantive comments. In addition to private citizens, the following types of entities commented on the proposed rule: Academic institutions, agriculture industry, motor carriers, CMV driver trainers, electric utilities, professional associations, owner/operators, safety advocacy groups, State DMVs and other governmental entities, school bus operations, and trade associations.

Commenters generally supporting the proposed rule endorsed setting minimum standards, which they said would improve road safety and reduce crashes involving CMVs. While a number of commenters asserted that over the long term, entry-level driver training would result in greater highway safety and efficiencies and savings for the industry, none of those comments

included quantitative data to support that assertion.

Commenters generally opposing the NPRM made several arguments. The most frequent assertions were that an entry-level driver training program would exacerbate a commercial driver shortage (especially for school bus drivers), that an ELDT rule was unnecessary because carrier-based or other existing training regimens already work, that FMCSA had no data to support the proposed requirements, and that FMCSA exaggerated savings or underestimated costs of the ELDT proposal.

1. Applicability of the ELDT Requirements

The ELDT requirements proposed in the NPRM pertain to drivers who meet the definition of "entry-level driver" in § 380.605 and who intend to drive CMVs in interstate and/or intrastate commerce. As proposed, drivers holding a valid Class A or Class B CDL or a P, S, or H endorsement issued before the compliance date of the final rule would not be subject to ELDT requirements. Under the NPRM, the following categories of drivers, who are currently excepted or may, at the State's discretion, be excepted from CDL requirements, would also be excepted from the ELDT requirements: (1) Drivers excepted from the CDL requirements under § 383.3(c), (d), and (h), which includes individuals who operate CMVs for military purposes, farmers, firefighters, emergency response vehicle drivers and drivers removing snow and ice, and drivers of "covered farm vehicles"; (2) drivers applying for a restricted CDL under § 383.3 (e) through (g); and (3) veterans with military experience who meet the requirements and conditions of § 383.77.

Comments: FMCSA received numerous comments from various industry segments requesting exceptions from the ELDT final rule. Comments filed jointly by the American Public Power Association (APPA), the Edison Electrical Institute (EEI), and the National Rural Electric Cooperative Association (NRECA) requested that FMCSA exclude electric utility drivers from the ELDT requirements. These commenters stated that driving represents a small proportion of a utility worker's daily responsibilities and that electric utility drivers have excellent safety records.

The Association of American Railroads (AAR) commented that several of the proposed training standards should not apply to railroad employees required to hold a CDL. For example, AAR stated that FMCSA

should not require railroad employees who hold CDLs for their duties to demonstrate skills such as alley dock backing or other skills that are not necessary for the performance of their specific job functions. The Brotherhood of Railroad Signalmen also requested an exception for railroad employees who hold CDLs. An individual commenter requested that truck repair technicians be able to obtain a “special” CDL because they normally travel only short distances to repair facilities.

FMCSA received a large number of comments from the custom harvester industry requesting an exception from the ELDT rule. The commenters generally cited the following arguments in support of their request. First, custom harvesters hire and train seasonal CDL drivers, most of whom do not already have a CDL. Consequently, the custom harvester typically provides training to enable the driver to obtain a CDL. Because many entry-level drivers in the custom harvester industry cannot afford training costs and other CDL-related expenses, the employer must directly pay for, or absorb the cost of, providing CDL-related training. Custom harvester employers therefore believed that the ELDT training requirements would impose additional costs on them.

Second, the custom harvester industry argued that because the CMV testing and licensing standards in certain foreign jurisdictions do not meet the CDL testing standards established in part 383, a temporary worker who holds an H2–A visa must obtain a non-domiciled CDL. Non-domiciled CDLs are valid only for the length of the holder’s work visa, which is normally six to eleven months. Commenters felt it was unfair for them to incur the cost of training drivers who obtain a CDL that is valid only for the length of their employment in the United States, and for whom they usually have to pay transportation expenses to and from the United States.

Third, custom harvester industry commenters asserted that they have a strong driver safety record in the United States. The National Council of Farmer Cooperatives (NCFC) noted that agricultural services “present a lower risk relative to other types of commercial vehicle operations due to the nature of agricultural production and the way trucks and application equipment are used.” NCFC specifically cited less traffic congestion in rural areas and fewer total miles driven than the “general commercial trucking industry.” NCFC requested that FMCSA therefore grant recognition for “existing training programs, previous driving experience, and current industry

practices for non-accredited entry-level driver classroom and behind-the-wheel training requirements for farm-related industries.”

The Oregon Department of Transportation (ODOT) supported the proposed exception for holders of valid CDLs issued before the compliance date of the final rule, as provided in § 380.603(b), but noted that the language “except as otherwise specifically provided” is very unclear.

FMCSA Response: The ELDT requirements established in today’s rule are aligned with the existing CDL requirements in part 383. The final rule does not create any new exceptions. Therefore, any individual who is currently excepted from taking a skills test in order to obtain a Class A or Class B CDL or a P or S endorsement would not be subject to the final rule.

FMCSA acknowledges the concerns raised by the custom harvest industry and others who believe that the specialized nature of their industries makes mandated ELDT unnecessary or unduly burdensome. In response, FMCSA emphasizes that any entity or employer currently providing training would be eligible for listing on the TPR, as long as the applicable minimum curricula and instructor requirements set forth in today’s rule are met. Additional costs for such providers would include online registration for the TPR, which the Agency estimates will be minimal (see RIA for discussion of these costs). In addition, as noted in the NPRM and elsewhere in this preamble, today’s rule does not impose any new Federal accreditation requirements on either classroom or BTW training providers.

Further, the fact that CDL applicants in a specific industry expect to perform job functions that are more limited than the scope of the required curricula, or who may be expected to travel relatively short distances in the course of their employment, is not a valid basis for exception from ELDT requirements. Entry-level drivers obtaining a Class A or B CDL or a P, S, or H endorsement for the first time are presumed competent to safely operate the type of CMV for which they have received a license. Accordingly, CDL holders should be capable of operating the vehicle in appropriate settings and circumstances, which may go beyond the specific purpose or employment for which they initially obtained the CDL or endorsement. Regardless of an applicant’s intentions at the time he or she obtains a CDL or endorsement, the individual is in fact credentialed to operate a range of CMVs falling within the CDL class of license or endorsement

received. Therefore, based on the current CDL program, it is reasonable for FMCSA to require these individuals to receive training commensurate with the CMV driving credentials they hold.

Additionally, FMCSA notes that it would be virtually impossible to implement and enforce exemptions from the ELDT requirements in today’s rule based either on the driver’s industry or anticipated use of a CMV for which a CDL or endorsement is required.

The Agency also notes that the training requirements established in today’s rule are generally imposed on a one-time-only basis. This also holds true for non-domiciled CDL holders; once they complete training for the non-domiciled CDL class or endorsement, they would not be required to repeat that same training upon their return to the United States in subsequent years. Therefore, H2–A workers in the custom harvest industry would need to complete the applicable ELDT requirements only once. In addition, because the final rule permits driver-trainees to obtain theory and BTW training from separate providers, absent a conflicting State requirement, foreign workers can complete the theory portion of the training online in order to reduce ELDT related costs.

Finally, as proposed, the ELDT requirements do not apply to individuals holding a valid CDL or a P, S, or H endorsement issued before the compliance date of the final rule. Due to other changes in the final rule discussed below, FMCSA deletes the language “except as otherwise specifically provided” from § 380.603(b).

2. ELDT Requirements for CDL Applicants Obtaining a CLP Before the Compliance Date of the Final Rule

As proposed, § 380.603(c)(1) required that individuals who obtain a CLP before the compliance date of the final rule would not be subject to ELDT requirements if they obtain a CDL within 360 days of obtaining a CLP. Therefore, under the NPRM, CLP holders who fail to obtain a CDL within the 360-day time frame would be required to complete ELDT before taking the required State-administered skills test.

Comments: The New York Department of Motor Vehicles (NY DMV) commented that “360 days is too limited and problematic” because the States regulate how long a driver may wait from expiration of the original CLP before renewing that CLP. Because a CLP holder does not necessarily renew the CLP exactly on the date of expiration, the period of time from the

original CLP issuance date to the expiration date of the renewed CLP may be longer than 360 days. The ODOT asked that the 360-day limit be changed to one year. The Virginia Department of Motor Vehicles (Virginia), noting that “a CLP (original and renewal) could potentially be issued for a period of 390 plus days based on Virginia’s 30-day grace period,” requested that the period be for the full duration of the CLP instead of 360 days.

FMCSA Response: The Agency based the proposed 360-day time period on current CLP requirements, which state that the CLP must be valid for no more than 180 days from the date of issuance; States may renew the CLP for an additional 180 days without requiring the applicant to retake applicable knowledge tests (§ 383.25(c)). However, the comments illustrate that, in practice, the requirements related to CLP renewal vary among the States, thereby resulting in an amount of time between the date of initial CLP issuance and the expiration date of the renewed CLP that may be longer than 360 days. Accordingly, FMCSA revises the language in § 380.603(c)(1) to state that individuals who obtain a CLP before the compliance date of the final rule are not subject to ELDT requirements as long as they obtain a CDL before the expiration date of the CLP or renewed CLP. Any CLP holder who fails to obtain the CDL within that period would be subject to the ELDT requirements established in the final rule. The Agency believes this approach provides sufficient flexibility for the States.

In addition, under revised § 380.603(c)(1), CLPs with endorsements are included within the scope of this exception. Accordingly, any applicant who obtains a P or S endorsement on his or her CLP before the compliance date of the final rule is not required to complete the P or S endorsement training curriculum if the applicant receives the endorsement before the initial or renewed CLP expires.

This requirement would not apply to individuals seeking the H endorsement, who are not required to take a skills test, and therefore do not need to obtain a CLP. Unlike the P and S endorsements, the H endorsement is not linked to any specific class or type of vehicle. Accordingly, applicants for the H endorsement will already hold a Class A or B CDL, or will be concurrently obtaining a Class A or B CDL at the time they apply for the H endorsement, or intend to transport hazardous materials in a vehicle for which a Class A or B CDL is not required (e.g., a pick-up truck).

3. ELDT Requirements for CDL Applicants Obtaining a CLP After the Compliance Date of the Final Rule

The NPRM proposed that individuals obtaining a CLP on or after the compliance date of the final rule must comply with applicable ELDT requirements. The Agency received no comments on this requirement and it is retained, as proposed, in § 380.603(c)(2).

4. ELDT Requirements for Driver-Trainees Who Obtain ELDT After the Compliance Date of the Final Rule

The NPRM proposed that, except for driver-trainees seeking the H endorsement, driver-trainees must complete the theory and skills portion of the training within 360 days (§ 383.71(a)(4)).

Comments: AAMVA requested “clarification on whether satisfactory completion before the 360 day expiration is based on the date of completion of the [theory] portion of the curriculum, the completion of the behind-the-wheel portion of the training, successful completion of the skills test, or the issuance of the CDL.”

FMCSA Response: The proposed requirement that theory and BTW training be taken within a defined period of time reflects the ELDTAC’s concern that, given the integrated nature of the training, waiting too long to complete both portions of the curriculum may diminish the overall value of the training experience. The Agency retains that concept in the final rule. However, for clarity and consistency, we changed the applicable time period from 360 days to one year and moved the provision from part 383 to part 380. Accordingly, under new § 380.603(c)(3), on or after the compliance date of the final rule, individuals who take ELDT related to the Class A or Class B CDL, or the S and/or P endorsement, must complete both portions of the training (theory and BTW) within one year of completing the first portion. As discussed below, today’s rule does not require that theory and BTW training be taken in a particular sequence.

5. Impact of the NPRM on ELDT Requirements Imposed by the States

The NPRM proposed minimum training standards for entry-level CMV drivers, minimum qualification requirements for individuals providing theory and/or BTW instruction, and minimum eligibility requirements for training providers.

Comments: Several comments addressed differences between the NPRM and existing State requirements

related to ELDT. The State of Washington Department of Licensing (Washington) commented that its minimum commercial driver training requirements, adopted in 2009, include more required hours for entry-level drivers than the NPRM, and urged FMCSA “to adopt requirements with greater hours that are more comparable to our state’s requirements.” The New York Association for Pupil Transportation (NYAPT) commented that “FMCSA should consider ways to grandfather existing State programs that meet or exceed the proposed high training standards to continue in place, particularly within the school bus industry.”

The State of Michigan, Bureau of Driver and Vehicle Licensing Programs, Department of State (Michigan), recommended that the final rule require that theory/classroom training be coordinated with BTW training, adding that “[i]f not required by the rule, States should be allowed to require such coordination.” Michigan also noted that, because “some States do not presently allow the use of online training courses for driver education,” the final rule should not require that States accept online training.

A commenter representing the Driver and Vehicle Services Division of the Minnesota Department of Public Safety (Minnesota) noted that “Minnesota’s licensed CDL behind-the-wheel instructor qualifications refer to hours of experience, by a showing of 3,000 hours within the last five years operating the class of vehicle for which instruction will be provided.” Also discussing the NPRM’s requirements for BTW instructors, Virginia requested that “the proposed language be revised to indicate these are minimum requirements so that States have flexibility in requiring additional criteria.”

FMCSA Response: Today’s rule implements MAP-21’s mandate that FMCSA establish minimum entry-level training requirements for individuals who operate CMVs in intrastate and interstate commerce for which a specified class of CDL or endorsement is required. The rule amends the current entry-level driver training requirements in 49 CFR part 380, the training section of the CDL regulations. The CDL program does not have preemptive effect. In order to remain eligible to receive certain Federal aid highway funds pursuant to 49 U.S.C. 31314, States must adopt regulations that comply substantially with the requirements of the CDL program. Today’s rule generally does not replace or otherwise supersede State-based

ELDT requirements that exceed these minimum Federal standards when an entry-level driver obtains training in that State. The Agency believes that Congress, by expressly requiring that the Secretary establish *minimum* training requirements for entry-level CMV drivers, intended this result.

In order to comply with the requirements of today's rule, entry-level drivers must obtain BTW and/or theory training from a provider listed on the TPR. Under the final rule, the BTW portion of the required training must be completed before the applicant can take the State-administered skills test, except for H endorsement applicants, who must complete the H endorsement theory curriculum before taking the State-administered knowledge test.

The question of which, if any, additional State-based ELDT-related requirements apply to the applicant will be determined by where he or she obtains their BTW and/or theory training for the Class A or Class B CDL and/or the P, S, or H endorsements.

The Agency anticipates that most driver-trainees will obtain ELDT in their State of domicile. Under the final rule, driver-trainees who obtain BTW and/or theory training in their State of domicile are subject to any additional ELDT requirements that State imposes on CDL applicants.

For example, if a State requires that entry-level drivers complete a CDL training program with a prescribed minimum number of BTW hours, a driver-trainee who is domiciled there and obtains BTW training there, must comply with that requirement in order to take the State-administered the skills test. Similarly, driver-trainees who take theory training in their State of domicile would be required to comply with any State-based requirements applicable to theory training. Therefore, if a driver-trainee's State of domicile prohibits online CDL-related theory training, the individual would be required to obtain theory training in a classroom or other "live" setting permitted by the State. In these examples, the applicant's State of domicile is both the training State and the licensing State.

However, the final rule does not prohibit driver-trainees from obtaining training outside their State of domicile, if they so choose. Under § 383.79, which currently permits a non-domicile State to administer CDL skills testing to an applicant who has taken training in that State, but is to be licensed in his or her State of domicile, requires the applicant's licensing State to accept the results of that skills testing. This could occur, for example, if the applicant's prospective employer provided the

training in a State other than the applicant's State of domicile. Under today's rule, any ELDT requirements that may exist in the licensing State (*i.e.*, the applicant's State of domicile) would not be applicable to the driver-trainee who obtained skills training outside that State, even if the he or she returns to the licensing State to take the skills test (as permitted under § 383.79).

Consequently, an applicant's State of domicile must issue a CDL to him or her, even if the BTW training requirements imposed by the training State do not conform with those in the State of domicile, as long as the applicant obtained the training from a provider listed on the TPR.

Driver-trainees who elect to obtain theory training outside their State of domicile would also be subject to any additional theory training requirements imposed on CDL applicants by the training State. Accordingly, driver-trainees, when selecting a training provider, will need to understand the specific State-based ELDT requirements (if any) where they intend to obtain either type of training. FMCSA notes that the final rule does not require that driver-trainees obtain theory training prior to taking the State-administered knowledge test (except for H endorsement applicants), nor does it require that driver-trainees obtain theory training in the same State where they intend to take the State-administered knowledge test for any CDL license class or endorsement covered by the rule.

The minimum standards in today's rule also apply to ELDT providers and instructors. Training providers must meet and continue to comply with eligibility requirements, set forth in §§ 380.703 and 719 of the final rule, including utilizing qualified theory and BTW instructors. In order to be eligible for listing on the TPR, training providers must also comply with applicable State requirements in each State where in-person training is conducted, and must utilize theory and/or BTW instructors who comply with applicable qualification requirements in each State where in-person training is conducted. The Agency notes that, just as States may impose additional requirements on entry-level drivers who obtain training in their State, the final rule also permits States to impose requirements beyond the training or instructor/provider qualification standards adopted today.

For example, States are free to require that ELDT instructors in their State have more years of experience operating the class of vehicle for which instruction will be provided than the two-year minimum established in the final rule.

States would also be free to add ELDT instructor qualifications, such as a required level of vocational or academic education (neither of which is required by today's final rule); or to impose additional bases for disqualification of training instructors. In these situations, training providers must comply with the additional requirements imposed in their respective States in order to meet the TPR eligibility requirement set forth in § 380.703(a)(5)(i).

In today's rule, the only exception to this requirement is for training providers who provide theory training exclusively online. While online content must be prepared and delivered by instructors meeting the qualification requirements of the final rule, the provider is not required to utilize instructors complying with State-based theory instructor qualifications. As explained below in the discussion of the definition of "theory instructor," online providers cannot reasonably be expected to require that their theory instructors comply with multiple, and potentially conflicting, qualification requirements in any State where the online training might be taken.

As our discussion of these hypothetical examples illustrates, the purpose of this final rule is to establish a floor, not a ceiling, by requiring, at a minimum, that entry-level CMV drivers demonstrate proficiency in the applicable theory and BTW curricula established today. The Agency believes that, to the extent practicable, and consistent with Congressional intent, the final rule allows States the flexibility to impose additional ELDT requirements on driver-trainees who obtain training in their State and on training providers and instructors who deliver training in their State. That said, we are aware that questions concerning the relationship between Federal and State ELDT requirements will inevitably arise, and the Agency will provide additional post-rule guidance to address those issues, as necessary.

6. Application of ELDT Requirements to CMV Drivers Operating in Intrastate and Interstate Commerce

As proposed, ELDT requirements apply to all entry-level drivers operating CMVs in intrastate and interstate commerce, subject to the limited exceptions noted above.

Comments: The State of South Dakota suggested a less burdensome option requiring training only for drivers who will be operating CMVs in interstate commerce. South Dakota stated the training would be a burden, and in some cases would prevent children from getting to school, citizens from receiving

fuel for heat, grain elevator/co-op businesses from providing services to farmers, and public transit services (especially in rural areas) from finding drivers.

FMCSA Response: The Agency does not believe that today's rule will unduly burden intrastate commerce. In any event, FMCSA has no legal authority to exclude intrastate CMV drivers from the final rule. As noted in the Legal Basis for the Rulemaking, MAP-21 requires that ELDT regulations, as a CDL-related mandate, apply to prospective CDL holders operating in either intrastate or interstate commerce. Accordingly, the scope of operations covered by the final rule is unchanged from the NPRM.

7. Definition of Training Provider

The NPRM defined "training provider" as "an entity that is listed on the FMCSA TPR, as required by subpart G of this part." In the preamble, the Agency noted that training providers could be training schools, educational institutions, motor carriers providing "in-house" training to current or prospective employees, local governments, or school districts.

Comments: The National Motor Freight Traffic Association (NMFTA) acknowledged the preamble's reference to the fact that motor carriers offering in-house training to entry-level drivers could be eligible for listing on the TPR. NMFTA noted, however, that the NPRM did not "expressly acknowledge the right of motor carriers to continue offering training under the new regulatory scheme" and requested that the Agency do so in the final rule. The Associated General Contractors also requested that the rule "be expanded to include a listing of the types of entities that can offer training programs and include in-house providers."

FMCSA Response: FMCSA intends that any entity meeting the eligibility requirements established in subpart G of today's rule can be listed on the TPR and thus be qualified to provide ELDT that would satisfy the rule's requirements. In order to clarify our intent, in the final rule, we amend the definition of "training provider" in § 380.605 to specifically identify types of entities that may be eligible for listing on the TPR. The Agency included, as examples, training schools, educational institutions, rural electric cooperatives, motor carriers, State/local governments, school districts, joint labor management programs, owner-operators, and individuals, in this definition. In addition, FMCSA notes that eligible providers may provide training either on a "for-hire" or "not-for-hire" basis. Examples include motor carriers who

provide ELDT at no cost to current or prospective employees, independent training schools charging tuition, and individuals who train family or friends (either at no cost or for a fee). We note that this list of entities which could potentially qualify for TPR listing is *not* exclusive. Our purpose in amending the definition of "training provider" in today's rule is to identify specific examples of potentially eligible entities. We emphasize, however, that *any* training provider meeting the eligibility requirements could be qualified to provide ELDT in accordance with the final rule, regardless of whether they fall within a category specifically identified in § 380.605. Additional descriptive information on the various types of training providers covered by the final rule are addressed in the TPR registration instructions accompanying this rule.

8. Definition of "Range"

In the NPRM, FMCSA said a range was "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."

Comments: Several commenters asked whether the proposed definition of "range" would permit small and mid-sized entities to conduct BTW range training in their yards. One commenter noted that it is neither practical nor cost effective for smaller trucking companies to set up or rent a practice driving range. OOIDA supported the proposed definition because the flexibility to conduct range training in any suitable location meeting the definitional requirements is "especially critical to small business truckers who would be able to utilize these areas for training." Vincennes University (VU) noted that the NPRM includes references to both "range" and "driving range" and asked whether the two terms are interchangeable.

FMCSA Response: In today's rule, FMCSA retains the definition of "range" as proposed in the NPRM. This definition gives training providers the flexibility to conduct BTW range training in *any* area that meets the three basic requirements outlined in the NPRM. Accordingly, this approach does not require that any training provider maintain its own designated range for BTW training. As discussed in the NPRM, the ELDTAC took into account the impact of the rule on smaller training providers by proposing a definition of "range" that does not require any training provider to maintain or rent a private facility or space in which to conduct BTW range

training. Under this definition, range training could be conducted in public areas, such as a mall or office building parking lot during "off" hours. It is up to the training provider to ensure that the required elements, such as sufficient space in which to safely maneuver the CMV, are met. However, if a training provider chooses to conduct range training in a publicly accessible area, all CLP requirements apply. Finally, in order to avoid confusion, the Agency deletes the term "driving range" from the regulatory text of the final rule. The relevant term, as defined in § 380.605, is "range."

9. Can BTW-range and BTW-public road training be obtained from separate training providers?

As proposed, training in the theory and BTW portions of the curricula may be delivered by different training providers, as long as each provider is listed on the TPR. The NPRM was silent on whether the range and public road portions of the Class A and B curricula could be delivered by different providers.

Comments: An individual commenter asked whether the range and public road portion of the BTW training could be obtained from different training providers. The commenter stated that this approach would be helpful to "some BTW providers who will struggle to secure a range that meets FMCSA requirements, but could easily deliver the public road portion of the training."

FMCSA Response: While today's rule does permit BTW (range and public road) and theory training to be obtained from separate training providers, FMCSA believes it is necessary that driver-trainees receive both the range and public road portions of BTW training from the same provider. FMCSA clarifies this requirement in the final rule. The reason is that meaningful instruction in the range and public road portions of BTW training requires that the provider be able to assess the driver-trainee's skill proficiency in the two settings and to adjust the amount of time or emphasis spent on the range or public road maneuvers accordingly. This integrated approach to BTW instruction permits the training provider to obtain a complete picture of the individual driver-trainee's abilities when operating CMVs for which a Class A or Class B CDL is required.

Further, in the case of BTW training for the S and P endorsements, the range and public road portions are not set out separately as they are for the Class A and B CDL core curricula. Instead, they are combined into a single BTW (range and public road) curriculum, effectively

requiring that the BTW training be obtained from one provider.

Finally, as noted above in the discussion of the definition of “range,” training providers are not required to maintain or rent a private range in order to conduct BTW training. Publicly accessible areas can be used for this purpose, as long as the area affords sufficient space in which the required range maneuvers can be performed safely and other basic requirements are met.

10. Small Training Entities

The NPRM proposed that training providers who train, or expect to train, three or fewer entry-level drivers per year be exempt from two requirements applicable to all other providers. First, in order to qualify as a theory instructor, small training entities would not be required to have previously audited or instructed that portion of the theory curriculum they intend to instruct. Second, small entities would not be required to provide written training materials for any of the curricula. The purpose of these exemptions was to lessen the administrative burden on small training entities.

Comments: The Delaware DMV commented that exemptions for small training entities should be removed, noting that “[t]he size of the provider should not be taken into account if the goal is to sanction a consistent [training program] for all entry level commercial motor vehicle operators.” Another commenter objected to the exemption related to written training materials, stating that “all driver-trainees should be treated the same.” The Delaware DMV pointed out that, for many providers, the number of entry-level drivers trained in the course of a year fluctuates and may be difficult to predict. Since small training entities would have to identify their status on the Training Provider Identification Report form, the commenter noted that it would be cumbersome for providers to amend the form every time they fell above or below the three driver limit.

IUOE observed that “[s]ince written materials are integral components of high quality training, this exemption from providing written materials to trainees is contrary to the goals of this rulemaking.” IUOE also noted that the use of written training materials “is an obvious prerequisite to taking a test in a written or electronic format to demonstrate mastery of the information.”

FMCSA Response: After consideration of comments, FMCSA concludes that the two small training entity exemptions proposed in the NPRM, as described

above, are inconsistent with a uniform Federal minimum ELDT standard. The Agency agrees with commenters who questioned the benefit and efficacy of these relatively minor distinctions between small training entities and other training providers. We therefore remove the exemptions from the final rule. Accordingly, all training providers subject to this rule, regardless of size, must meet the same eligibility criteria and other requirements established in subpart G.

The Agency does not anticipate that removal of the two exemptions will result in undue hardship on small training entities. For example, the AAMVA CDL manual or other existing training materials could be used to satisfy the requirement that written training materials be provided. We also note that, because the rule permits driver-trainees to obtain theory and BTW instruction from separate training providers, small entities can opt not to offer theory instruction if they so choose.

Further, as discussed below in the Explanation of Changes from the NPRM, FMCSA deletes from the definition of “theory instructor” in the final rule the proposed alternate theory instructor qualification requiring that instructors must have previously audited or instructed that portion of the theory curriculum they intend to instruct. Accordingly, the proposed small entity exemption to that requirement is also deleted.

Finally, FMCSA notes that the NPRM requested comments regarding any specific changes to the proposal that would lessen its regulatory impact on small business entities. The Agency did not receive any comments in response to that request.

11. Required Minimum Number of BTW Hours

FMCSA proposed a minimum number of required BTW hours for the range and public road portions of the Class A and Class B CDL curricula: Class A CDL driver-trainees would be required to receive a minimum of 30 hours of BTW training, with a minimum of 10 hours spent on a range, and either 10 hours spent driving on a public road or 10 public road trips (each no less than 50 minutes in duration). The remaining 10 hours of required BTW training could occur on either the range, public road, or some combination of the two, depending on the instructor’s assessment of the individual driver-trainee’s needs. Additionally, the NPRM proposed that all required driving maneuvers must be performed to the satisfaction of the instructor. In the

NPRM, the definitions of “BTW range training” and “BTW public road training” each included a requirement that the training occur when a “driver-trainee has actual control of the power unit during a driving lesson” conducted on a range or public road.

As proposed, Class B CDL trainees would receive a minimum of 15 hours of BTW (range and public road) training, with a minimum of seven hours of public road driving. Again, the instructor would determine how the remaining eight hours are spent, as long as all the BTW elements of the range curriculum are covered.

FMCSA did not propose a minimum number of BTW hours for either the P or the S endorsement curricula.

The Agency requested comment on various aspects of this approach, including whether there should be a required minimum number of BTW hours for the Class A and Class B curricula and, if so, what the minimum number of BTW hours should be. In addition, we requested comment on whether any minimum number of BTW hours should be required for the P and S endorsements. The Agency also asked what alternatives to a required minimum number of BTW hours, such as a requirement expressed in terms of outcomes rather than specifying the means to those ends, would be appropriate to ensure an adequate level of BTW training for Classes A and B.

Comments in support of minimum BTW hours: The Agency received numerous comments in response to its questions. Some commenters thought that the number of proposed minimum BTW hours was too low. Jeff Frank, a CMV driver training instructor, commented that “[t]he proposed 15 hours for Class B and 30 hours for Class A of behind the wheel time fall short of a quality standard.” Mr. Frank stated that “doubling the proposed hours would improve skill sets in most beginners.” The American Association for Justice believes that “[w]hen considering the average amount of time a CMV driver can do within a week, it is clear that these requirements are inadequate.” Washington commented that the NPRM “does not include enough required hours for an entry-level driver” and encouraged FMCSA to increase the number of required BTW hours. The Utah Department of Public Safety (Utah) stated that “a lengthier requirement for BTW training seems more appropriate.” The National Ground Water Association (NGWA) proposed that “30 hours is the minimum that should be required, regardless of class of license (A or B).” IUOE commented that the proposed

minimum BTW hours is below the level of BTW training currently required by “the more prominent providers and certifiers,” as well as a number of States.

OOIDA commented that it “would like to see significantly more robust training requirements than currently proposed; however the required 30 hours BTW training is a necessary first step.” Similarly, although Delaware Technical Community College (DTCC) is “satisfied with the consensus reached by the ELDTAC for 30 hours of BTW time for Class A,” it supports a “stronger BTW requirement.” Specifically, DTCC proposed increasing the BTW hours for Class B from 15, as proposed, to 20, with a minimum of 10 hours of public road driving. The Delaware Motor Transport Association (DMTA) also supported increasing the minimum number of BTW hours for the Class B CDL from 15 to 20.

Other commenters, including the American Bus Association (ABA), United Motorcoach Association (UMA), Advocates for Auto and Highway Safety (Advocates), San Juan College, the National Association of State Directors of Pupil Transportation Services (NASDPTS), VU, VA DMV, and the Commercial Vehicle Training Association (CVTA), supported the minimum number of required BTW hours for Class A and/or Class B as proposed. NASDPTS commented that “[t]he [Class B] proposal is consistent with best practices and the high regard for safety exhibited within the nation’s student transportation community.” Advocates, a member of the ELDTAC, characterized the required minimum number of BTW hours as “a common sense and essential component of the performance-based standard adopted by the ELDTAC.” Advocates also noted that this approach “reflects the consensus determination of the ELDTAC about the lowest level of BTW training that is necessary under the training curriculum.” The ABA, also a member of the ELDTAC, commented that the BTW hours issue was discussed extensively during the Committee’s deliberations and that “[t]he minimum was based on the experience of current training providers’ ability to deliver a basic program and ensure that all of the material was covered.”

The State of Michigan supported a required minimum number of BTW hours from which driver-trainees should not be permitted to “opt out,” but had no position on what the number of hours should be. The Iowa DOT also supported the “concept of minimum hours of BTW training,” but said that driver-trainees demonstrating proficiency should be able to “opt out”

of the requirement. Minnesota commented that “[r]equired minimum hours is needed,” but questioned how compliance with an hours requirement would be documented. Schneider National (Schneider) agreed with FMCSA’s proposal of 30 BTW hours for a Class A license, but recommended that hours spent on a public road specifically include practicing entry and exit of the interstate.⁵ IUOE supported “mandatory use of a ‘Master Trip Sheet,’ combined with a minimum number of BTW training [hours], as the most effective means to ensure that training providers furnish high quality training and that they thoroughly assess the skills of the trainees.” Minnesota commented that “[i]f minimum hours are not specified, then the potential for fraud within the training programs will be a concern.”

Several commenters supported adding a required number of minimum BTW hours to the P and S curricula. AAMVA recommended that FMCSA analyze the minimum number of hours required to complete the curricula “and use that number to set the baseline for the BTW requirement for the S and P endorsements . . .” The Iowa DOT supported a “limited amount of BTW training” for the S and P endorsements. San Juan College stated that “[e]ntry-level Class C bus drivers should not be able to obtain a CDL without BTW hours that are required of other initial CDL applicants.”

Comments opposed to minimum BTW hours: A number of commenters opposed any minimum number of required BTW hours. Those opposing an hours-based requirement included ATA, the Iowa Motor Truck Association (IMTA), American Truck Dealers (ATD), Driver Holdings LLC, Werner, C.R. England, Petroleum Marketers Association of America (PMAA), Virginia Trucking Association (VTA), SNAC International, the National Propane Gas Association (NPGA), UPS, the North Dakota Motor Carriers Association (NDMCA), and the National Feed and Grain Association (NFGA). Most of those opposing the requirement alleged that the minimum BTW hours requirement is arbitrary, given the lack of any scientific evidence or data showing that an hours-based training requirement results in fewer crashes. Some commenters also cited the lack of flexibility inherent in a minimum hours requirement. Many of these commenters instead supported an “alternative” approach in which a driver-trainee’s

successful completion of the Class A and B BTW curricula is determined solely by his or her demonstrated proficiency (discussed below). National Association for Pupil Transportation (NAPT) commented that “[s]etting arbitrary, one-size-fits-all hours of training as a standard would be overly restrictive in a world where actual performance should matter more.” VTA asserted that the minimum BTW hours requirement “will require additional equipment and trainers which will increase costs for training providers, who will have to pass those costs onto students.” Other commenters, including PMAA, ATD and NFGA, were concerned that the BTW hours requirement would discourage entry-level drivers from obtaining a CDL. NFGA also noted that the requirement could “dissuade employers from providing opportunities for CDL training.”

ATA, a member of the ELDTAC, viewed the proposed BTW hours requirement as unnecessary and not supported by any research indicating “a relationship between the number of hours spent in training and a reduction in crashes.” Noting that “what little data is available does not support a minimum hours-based approach,” ATA cited the American Transportation Research Institute’s (ATRI) 2008 analysis of the effect of CDL driver training on safety performance. According to ATA, the ATRI study 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.”

In its comments, C.R. England summarized a study it conducted among 2,929 of its drivers “to test whether an hours-based program that requires 30 BTW hours or more, results in better performance than a performance-based program that requires fewer than 30 BTW hours.” In analyzing this data, C.R. England found, among other things, that “drivers from the shorter programs have fewer crashes and less severe crashes,” thus showing “a negative correlation between increased required hours and negative safety outcomes.” C.R. England therefore recommended that, “[g]iven the gaping lack of evidence to support the BTW requirement and the arbitrary selection of the number of required hours,” FMCSA drop the requirement from the final rule.

ATA and other commenters also stated that the BTW hours requirement contravenes Executive Orders 12866 and 13563, both of which express a preference for establishing performance

⁵ FMCSA added this topic to the Theory and BTW (public road) portions of the Class A and B core curricula. See, Appendix A and B to Part 380.

objectives rather than requiring regulated entities to adopt specific means of compliance. ATA asserted that, during the ELDTAC negotiations, “it became clear that several parties would refuse to yield to the majority of members who preferred a performance-based standard to be instituted at least until such time as actual data from real-world experience demonstrates the need for a minimum hours requirement.”

Two commenters opposed a minimum BTW hours requirement for the P and S endorsements. NASDPTS commented that “[g]iven the unparalleled high level of safety already provided by school bus transportation, we do not see any safety need or justification for further extending the specific BTW hours requirement to include the passenger and school bus curricula . . .” San Juan College stated that for P and S endorsement applicants taking their State-administered skills test in a bus, “no additional BTW should be required.”

Comments regarding alternatives to a minimum hours requirement: Most commenters who proposed alternatives to a required minimum number of BTW hours identified a competency or proficiency-based approach as a preferable means of ensuring an adequate level of BTW training for the Class A and B curricula. For example, the West Virginia Trucking Association (WVTA) commented that “[m]any prospective drivers may demonstrate complete proficiency and competence behind-the-wheel before reaching the minimum hours requirement, while the possibility exists that by achieving this hour threshold, a prospective driver may erroneously convey competency and possession of the skills needed to safely operate a commercial vehicle.” WVTA concluded that the final rule should “focus on competency and performance outcomes rather than the number of hours logged.” UPS commented that “specific hours and curricular requirements are no substitute for performance-based skills testing,” also noting that experienced drivers “will not benefit from some portion of a mandatory training regime targeted at less-experienced drivers.” The Iowa DOT commented that “[a]n appropriate alternative would be establishing a method of allowing a driver to ‘pass out’ of the BTW requirement.”

Several commenters, including ATA, Werner and C.R. England, favored the use of a “Master Trip Sheet” to document the repeated successful demonstration of required skills as an alternative to the BTW hours requirement. Commenters identified a

Master Trip Sheet as a document used to record a driver-trainee’s successful, repetitive demonstration of required maneuvers. ATA commented that the Master Trip Sheet “represents a clear performance objective—the demonstration of competence— . . . preferable to an arbitrarily assigned number of hours.”

Additionally, ATA stated that FMCSA, by failing to quantify or qualify the Master Trip Sheet alternative to the minimum BTW hours requirement adopted by the ELDTAC, did not comply with the requirements of OMB Circular A–4. According to ATA, had the Agency followed the directives of Circular A–4 and conducted a detailed analysis on the Master Trip Sheet solution offered by ELDTAC members, “a performance-based BTW requirement would have prevailed because, as demonstrated by ELDTAC, it is feasible, and produces a more favorable cost benefit analysis.”

IUOE also supported the mandatory use of a Master Trip Sheet, but stressed that it should be combined with a minimum BTW hours requirement, which would be “the most effective means to ensure that training providers furnish high quality training and that they thoroughly assess the skills of the trainees.”

On the other hand, NASDPTS stated it is “unaware of any practical, measurable and universally acceptable means of employing an outcomes-based approach in lieu of a required number of BTW hours.” Minnesota stated that if “performance standards” are adopted in lieu of a minimum BTW hours requirement, “[t]his would defeat the purpose of requiring comprehensive entry-level driver training and will add another skewing variable to the purposed baseline of measuring the effectiveness of training in reducing crashes by tracking it through CDLIS.” CVTA thought FMCSA’s question regarding possible alternatives to a minimum BTW hours requirement was misleading, “as the FMCSA seems to suggest that a performance or outcomes approach has not been selected. Clearly it has.”

FMCSA Response: For the reasons discussed below, this final rule does not require any minimum number of BTW hours for the completion of the Class A and B curricula, as proposed in the NPRM. In today’s final rule, the proficient completion of the BTW portions of the Class A and B curricula is based solely on the training instructor’s assessment of each driver-trainee’s individual performance of the required BTW elements of the range and public road training. The final rule

retains the definitions of “BTW range training” and “BTW public road training,” as proposed, so that successful completion of the training requires that, unless otherwise noted, all elements of the BTW curricula be proficiently demonstrated while the driver-trainee has actual control of the power unit during a driving lesson on a range or public road. Consistent with the NPRM, the final rule does not require a minimum number of BTW hours for either the P or S endorsement curriculum.

FMCSA carefully considered all comments submitted in response to the questions noted above. Clearly, as evidenced by the volume and breadth of comments received on the proposed BTW hours requirement, this issue is significant for a variety of stakeholders affected by today’s rule. And, as we noted in the NPRM, “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” (81 FR 11944, 11956 (March 7, 2016)). The Agency’s conclusion that the final rule should not, at this time, impose a mandatory minimum number of BTW hours for the Class A and Class B training, is primarily due to the fact that, despite the best efforts of FMCSA and the ELDTAC, we were not able to obtain sufficient quantitative data linking mandatory minimum BTW training hours with positive safety outcomes, such as crash reduction, following publication of the NPRM.

Consistent with the Agency’s objective to produce data-driven regulations that balance motor carrier safety with efficiency, FMCSA has long recognized the value of quantitative correlative evidence supporting ELDT. For example, in withdrawing the 2007 NPRM to establish minimum training requirements for entry-level CMV operators, which proposed a required minimum number of BTW hours, FMCSA noted the need “to gather supporting information on the effectiveness of ELDT” (78 FR 57585, 57587 (September 19, 2013)). Indeed, at the ELDTAC’s initial meeting on February 26, 2015, the Agency presented on the topic of data gathering and economic analysis as a rule development priority, and a Cost-Benefit Analysis/Data Needs Work Group was established within the ELDTAC.⁶ In the March 2016 NPRM,

⁶ ELDTAC Meeting Minutes, February 26–27, 2015. For more information concerning the Cost-Benefit Analysis/Data Needs Work Group’s efforts to compile data related to the efficacy of entry-level

FMCSA again requested “any additional data on the safety benefits of requiring EDLT . . . (e.g., demonstrated crash reduction as a result of training)” (81 FR 11944, 11953 (March 7, 2016)). Unfortunately, the Agency did not receive any data that could be used in a quantitative analysis to support the rulemaking.⁷

As several commenters who opposed the minimum hours requirement noted, Executive Order 12866, as supplemented by Executive Order 13563, requires that Federal agencies propose or adopt regulations that “to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt”.⁸ In light of this Executive Order, and bearing in mind the Agency’s obligation to identify and use “the least burdensome tools for achieving regulatory ends,”⁹ FMCSA has determined not impose a mandatory minimum BTW hours requirement in today’s rule. In the Agency’s judgment, a training standard in which BTW proficiency is achieved according to the instructor’s assessment of individual performance of required range and public road maneuvers is a more flexible, and thus less burdensome, option than mandatory minimum hours because it recognizes that driver-trainees will complete BTW training at a pace that reflects their varying levels of individual ability. FMCSA emphasizes, however, that instructors must cover all elements of the curricula and document the driver-trainee’s demonstration of proficiency in the required BTW skills, as proposed.

In order to fulfill the statutory mandate set forth in MAP-21, the Agency established the ELDTAC and, as required under the Negotiated Rulemaking Act, relied on the Committee’s consensus findings to the maximum extent possible as the basis for the NPRM. In the hope that the final

driver training, see the Work Group’s meeting minutes posted on the ELDTAC’s Web site, at eldtac.dot.gov.

⁷ FMCSA specifically addresses the ATRI and C.R. England studies, referenced in comments, in the RIA. For the reasons discussed therein, the Agency does not rely on either of those studies to draw conclusions regarding the correlation between training hours and safety outcomes. Further, we note that the ATRI conclusions on which ATA and other commenters rely are described by ATRI as “preliminary results.” ATRI concludes its analysis with the observation that its findings “indicate the need for further research on driver training and driver safety, beginning with additional data collection and analysis as part of the present study.”

⁸ Executive Order 12866, section 1(b)(8) (October 4, 1993); Executive Order 13563, section 1(b)(4) (January 21, 2011).

⁹ Executive Order 13563, section 1(a).

rule development process would yield reliable data to support mandatory minimum BTW hours, FMCSA, as a member of the ELDTAC, supported the requirement in combination with an outcomes-based approach, as reflected in the Committee’s Consensus Agreement.

FMCSA believes it was appropriate to propose minimum BTW hours for the Class A and B curricula, based on the ELDTAC’s estimation of the time an average driver-trainee would need to demonstrate BTW proficiency. However, as some commenters noted, that approach could potentially result in the unintended consequence of effectively penalizing high-performing trainees who may be capable of achieving BTW proficiency in less time than the proposed required minimum. Based on the ELDTAC discussions, the Agency does not believe the proportion of high-performing trainees capable of completing the BTW curricula in significantly less time than the proposed minimums represents a substantial percentage of entry-level drivers. However, it is important to avoid, if possible, imposing unnecessary training costs on that population.

FMCSA acknowledges the numerous comments supporting minimum BTW hours as a “common sense” and intuitively effective means of ensuring that entry-level drivers receive adequate training to safely operate CMVs. As noted below, the Agency will continue to evaluate the impact of minimum BTW hours on CMV safety. Because the final rule does not include a minimum hours requirement as proposed, many of the comments that raised concerns regarding that approach are now moot. Accordingly, FMCSA does not specifically respond to comments suggesting that the requirement would discourage prospective applicants from obtaining a CDL, dissuade motor carrier employers from providing ELDT, or require training providers to obtain additional equipment.

The Agency’s adoption of a proficiency-based BTW training standard in lieu of minimum hours notwithstanding, FMCSA believes that the ELDTAC process was highly constructive, and we greatly appreciate the time, effort and expertise put forth by ELDTAC members. The Committee’s collective expertise allowed us to propose detailed minimum ELDT curricula and training instructor qualifications, which are largely retained in the final rule.

Our decision not to include the minimum BTW hours as part of the Class A and B curricula should not necessarily be construed as the Agency’s

last word on this subject. In order to gather data which will allow FMCSA to perform a thorough post-rule evaluation, we require in today’s rule that all individual training certifications submitted to the TPR by training providers include the total number of BTW hours spent by each driver-trainee in achieving proficiency, as determined by the training instructor. Collecting this information will allow the Agency to compare the CMV driving records of drivers who received varying amounts of BTW training, and to draw conclusions regarding the extent to which hours of BTW training correlate to safer driving outcomes. This data will also assist in the Agency’s oversight of training providers.

The Agency will thus continue to assess whether minimum BTW hours requirements are necessary to improve CMV safety, and, if so, at what levels. Should FMCSA ultimately decide, on the basis of post-rule quantitative data, to revisit the issue of mandatory minimum BTW hours for entry-level driver training, we will do so through notice-and-comment rulemaking. We note, however, that today’s rule does not prohibit States or training providers from requiring a minimum number of BTW hours, as many CMV driver training programs currently do.

While the final rule does not impose mandatory minimum BTW hours, FMCSA nevertheless expects that, based on the extensive experience of CMV driver training organizations represented on the ELDTAC,¹⁰ most

¹⁰ Members of the ELDTAC included a variety of CMV driver training experts, including the Professional Truck Drivers Institute (PTDI), a non-profit organization that develops uniform skill performance, curriculum and performance standards for the trucking industry; the National Association of Publicly Funded Truck Driving Schools (NAPFTDS), a non-profit organization whose membership includes more than 100 publicly funded schools that operate truck driver training programs; and the Commercial Vehicle Training Association (CVTA), a national trade association representing the proprietary truck driving schools in the U.S. and Canada, with member school locations in 41 states graduating approximately 50,000 entry-level drivers per year. In addition to FMCSA, the remaining members of the ELDTAC 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

driver-trainees will still spend approximately 30 and 15 hours BTW demonstrating proficiency in the required Class A and Class B curricula elements, respectively. The 30 BTW hours for Class A and the 15 BTW hours for Class B are based on the ELDTAC's informed estimation of the minimum amount of time the average driver-trainee would need to repetitively and proficiently demonstrate all of the required BTW skills set forth in the curricula. As described by the ABA, a member of the ELDTAC, in its comments, "[t]he minimum [required BTW hours] was based on the experience of current training providers' ability to deliver a basic program and ensure that all of the material was covered." Similarly, Advocates, also a member of the ELDTAC, commented that the minimum BTW hours requirement "reflects the consensus determination of the ELDTAC about the lowest level of BTW training that is necessary under the training curriculum" Accordingly, the Agency is retaining 30- and 15-hours for the Class A and B curricula, respectively, as the basis for estimating the costs of the final rule, as discussed in the RIA.

In the Agency's judgment, the extensive CMV driver training expertise represented on the ELDTAC is a credible basis for FMCSA's assessment of the cost of compliance with the BTW portions of the Class A and Class B curricula. FMCSA expects, however, that some trainees will demonstrate BTW proficiency in less than 30 or 15 hours and that others will require more time to achieve a proficient level of performance of the required BTW elements of those curricula. Accordingly, actual costs of compliance for these trainees will be lower or higher than the costs estimated in the RIA, but the Agency currently has no data on which to determine variations in cost for trainees who achieve BTW proficiency in either less time or more time than the average student.

Under today's rule, BTW proficiency is determined solely by the instructor's evaluation of how well the driver-trainee performs the fundamental vehicle control skills and driving procedures set forth in the curricula. In the final rule, FMCSA clarifies this point in the introduction to the Class A and B curricula. As a number of commenters observed, a proficiency-

based standard based entirely on individual skill levels and learning abilities, rather than a mandatory minimum number of hours spent on either a range or public road, will permit skilled trainees to demonstrate proficiency more efficiently than adherence to a minimum training time. Accordingly, since the final rule does not require minimum BTW hours, there is no need to permit highly proficient trainees to "opt out" of that requirement, as several commenters requested.

Instructors will also determine how much or how little training is required for individual skills, as proposed in the NPRM. The final rule, therefore, emphasizes the individual trainee's attainment of performance goals as set forth in the curricula and evaluated by the instructor. As IOUE noted in its comments, since there is no requirement that training providers devote a specified amount of time to individual curriculum topics in the core BTW curricula, training programs will have "the latitude to emphasize topics that present the greatest safety challenges" in the operation of CMVs in various segments of the motor carrier industry.

Although today's rule adopts a minimum set of driving skills in which proficiency must be demonstrated, the Agency does not define "proficiency". The instructor, based on his/her professional judgment, must decide at what point the driver-trainee demonstrates the proficient performance of required skills and the instructor will determine the amount of time each driver-trainee needs to spend on the range and public road portions of the curricula. However, FMCSA believes that demonstrated proficiency requires some level of successful repetition of the required BTW curricula elements, as determined by the instructor. In other words, performing each required maneuver correctly one time does not mean that the trainee has demonstrated proficiency. In the Agency's view, a "one and done" approach is essentially the equivalent of the CDL skills tests. MAP-21 requires that FMCSA establish ELDT requirements addressing the knowledge and skills necessary for the safe operation of a CMV (49 U.S.C. 31305(c)(1)(A)). Since the CDL skills testing protocols in part 383 were in place years before Congress enacted the ELDT requirements in MAP-21, we conclude that Congress intended that the BTW training requirements be more extensive than a simple one-time demonstration of skills. In addition, as noted above, the ELDTAC's estimation of the 30 and 15 hours to successfully complete the BTW elements of the Class

A and B curricula assumed some level of repetition of required skills.¹¹

Further, the Agency notes that a number of commenters opposed to the BTW minimum hours requirement proposed a "Master Trip Sheet" as a preferable alternative. Trip sheets are a means to document the repeated successful demonstration of required skills. The Master Trip Sheet specifically considered by the ELDTAC, and endorsed by ATA¹² and other commenters, contained the individual BTW Class A curriculum elements; it also included space for the instructor to note that the driver-trainee correctly performed each BTW element, a total of five times, in order to demonstrate proficiency. (The ELDTAC assumed fewer repetitions would be necessary to demonstrate proficiency in Class B BTW skills).¹³ The use of that Master Trip Sheet as a means of documenting proficiency therefore assumes that effective BTW training involves some degree of repetition, or practice, of the required skills. (The use of a Master Trip Sheet as a tool for documenting driver-trainees' proficiency under today's rule is discussed further below.)

Additionally, individual commenters also endorsed the value of the repeated demonstration of required skills. For example, Werner Enterprises noted that "[a] requirement expressed in terms of consistent demonstration of applicable skills is more appropriate [than minimum BTW hours] and would serve as a better predictor of increased safety outcomes." Similarly, TCA stated that "[t]ruck driving is a skill . . . through which repetition and practice will almost certainly increase a driver's awareness and performance when operating equipment on our highways."

In the Agency's judgment, safe CMV driving, like many other skills, requires some level of repetition and practice. Repetition of required skills also increases the likelihood that driver-trainees will have the opportunity to demonstrate their proficiency under a wider array of road and weather conditions than a "one time" demonstration, particularly with regard to public road training. For example, the proficient entry and exit of an interstate

¹¹ ELDTAC Meeting Minutes, May 28–29, 2015, p. 17.

¹² See Final Regulatory Impact Analysis for FMCSA's response to ATA's assertion that, had the Agency conducted a detailed analysis of the ELDTAC Master Trip Sheet alternative, in accordance with the directives of OMB Circular A-4 "a performance-based BTW requirement would have prevailed" over the minimum hours requirement because it would have produced a more favorable cost benefit analysis.

¹³ ELDTAC Meeting Minutes, May 28–29, 2015, p. 17.

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.

or other controlled access highway could potentially be demonstrated in both wet and dry weather, which would provide the instructor with a more complete picture of the trainee's ability to successfully navigate real-world situations. The importance of training under conditions trainees will face as CMV drivers was noted in a December 2015 survey of long-haul truckers, conducted by the National Institute for Occupational Safety and Health (NIOSH). The NIOSH survey found that 38 percent of the respondents believed they did not receive adequate entry-level driver training to "safely drive a truck *under all road and weather conditions*" (emphasis added).¹⁴ However, under the final rule, training instructors maintain the flexibility to determine the extent to which the successful repetitive performance of required skills demonstrates proficiency for individual driver-trainees on a case-by-case basis.

As proposed in the NPRM, instructors also maintain flexibility to select the specific means or method by which a driver-trainee's proficient performance of required BTW skills is recorded in order to comply with the documentation requirements in § 380.715(b). As noted above, instructors will also need to capture the total number of hours spent by each driver-trainee in completing BTW training, so that this information can be included in the training certifications submitted to the TPR, as required in § 380.717. Nothing in today's rule prohibits the use of Master Trip Sheets to document either the driver-trainee's proficient demonstration of BTW skills or the total number of hours spent in completing the BTW curriculum, as required in § 380.715(b).

The NPRM did not propose a minimum hours requirement for BTW training in either the P or the S endorsement curricula, and, for the reasons discussed above, the final rule does not include such requirements. However, the final rule does require that training providers who certify, through the TPR, the successful completion of the P and/or S BTW (range and public road) curricula, must indicate the total number hours spent by each driver-trainee in completing the BTW curriculum. FMCSA will use this information to assist us in a post-rule evaluation of whether, and to what extent, varying amounts of BTW training impact the safe operation of

passenger-carrying CMVs and school busses.

12. Minimum Number of Theory Hours

The NPRM set forth minimum theory curricula requirements for the Class A and Class B CDLs and the P, S, and H endorsements. As proposed, the training provider must cover all curriculum topics and assess driver-trainees' understanding of the material in a written or electronic format. Driver-trainees must receive a minimum score of 80 percent on the theory assessment. FMCSA did not propose a minimum number of required hours for any of the theory curricula.

Comments: The VA DMV recommended a minimum number of hours for theory instruction in order to provide consistency across training programs. VA DMV also noted that "not having a minimum period assigned to the theory training will make it difficult for FMCSA or SDLA auditors to ensure the necessary training is provided."

FMCSA Response: Today's final rule does not impose any minimum number of required hours for completion of any of the theory curricula. The Agency believes that the final rule ensures an appropriate minimum standard for entry-level driver theory instruction by prescribing specific topics for each of the five theory curriculum, requiring the training provider to cover all topics, and requiring that driver-trainees demonstrate their understanding of the material by achieving on overall minimum score of 80 percent on the theory assessment. Each of these requirements is verifiable through an audit by FMCSA or its authorized representative.

Further, this approach retains flexibility for training providers and driver-trainees to cover the required topics at a pace that is comfortable for them. FMCSA also notes that, as with the other requirements established in the final rule, the individual topics of the theory curricula represent the minimum amount of knowledge necessary for ELDT. Today's rule permits States and individual training providers to require that driver-trainees complete additional theory topics.

13. Clock vs. Academic Hours

In the NPRM, FMCSA proposed allowing training providers flexibility by using either clock-hours or academic hours (*i.e.*, 50 minutes) depending on the type of entity that offers the training (*e.g.* motor carriers vs. community college). FMCSA requested comment on this proposal and asked whether there is a discernible difference between the two concepts.

Comments: The NSTA commented that, since there is a need for set-up and administrative time prior to actual training, "the concept of academic hours is appropriate for all training providers," regardless of type. CVTA stated that, while "training providers should be allowed to use whichever unit is best for their program," the ELDTAC Consensus Agreement "clearly indicated that BTW should be measured in 50 minute hours." Accordingly, CVTA believes that in the final rule, BTW time should be based on academic hours, which is "the predominant measurement of schools and training providers."

Other commenters, including NAPT, ABA, Schneider, and the VA DMV, supported the NPRM's approach of allowing training providers to decide whether they would use clock or academic hours because the flexibility would accommodate the specific training being delivered. These commenters generally did not perceive a discernible difference between the two concepts.

The DMTA thought there was an obvious difference between the two concepts, but did not object to the use of academic hours "so long as an equivalency is maintained so that the actual time spent at activities is equal to the clock hours required by FMCSA." Utah commented that if the Agency "is going to allow the usage of credit hours, FMCSA needs to define how many practical hours should be considered a credit hour."

An individual commenter noted that for every six academic hours, "you have lost one hour of clock hour training time." Other commenters said that if academic hours are allowed, then the total hours should be increased to match the clock hours. The Delaware Department of Education (DDE) commented that, while trainers understand what an hour on the clock means, many would not know how to interpret an academic hour. Michigan commented that, in its experience, truck schools misuse terms such as "academic hours" and "credit hours" to "grossly" misrepresent actual training time. DTCC and NGWA also recommended that clock hours should be used as the standard training unit.

FMCSA Response: In today's final rule, the Agency uses the term "clock hours" (*i.e.*, 60 minutes) as the standard measurement of BTW training time. We note that the resolution of this issue remains relevant. Although the final rule does not mandate minimum BTW hours, training providers must document and report the actual number of hours that each driver-trainee spends

¹⁴ G.X. Chen, et al., *Accident Analysis and Prevention*, NIOSH national survey of long-haul truck drivers: Injury and safety (2015), available at <http://dx.doi.org/10.1016/j.aap.2015.09.001> (accessed October 20, 2016).

in completing BTW training (under §§ 380.715 and 380.717, as revised).

Based on the commentary, FMCSA is concerned that exclusive use of the term “academic hour,” or permitting either term to be used at the training provider’s discretion, would cause confusion and inconsistency in the documentation of BTW delivery, even if FMCSA attempted to convert “academic hours” to “clock hours,” or vice-versa, as some commenters suggested. FMCSA therefore believes that “clock hour” is a term that is easily understood by all training entities and consistent with a uniform minimum standard

14. Duplication Between CLP Knowledge Test and Theory Training

FMCSA requested comment on whether there is duplication between ELDT theory training and the CLP exam and, if so, whether such duplication should be minimized or eliminated.

Comments: FMCSA received a number of comments in response to this question. Most commenters, including OOIDA, Schneider, DTCC, NYAPT, Delaware Motor Transport Association, DDE, and Werner, asserted that, to the extent duplication exists, it serves to reinforce key concepts and should not be eliminated. Werner noted, however, that “[a]ny duplication that does not have a demonstrable benefit to the driver-trainee or the general public should be minimized to the extent practical.” The VA DMV commented that “[r]eceiving the information in multiple mediums will assist in reinforcing the information with drivers and lead to better retention of the information.”

Michigan believes that, while the CLP exam and ELDT theory training cover the same subject matter, each serves a distinct purpose. “The CLP exam measures for minimum competency for the purposes of allowing a driver to begin training. The theory training should build on that minimum competency and improve the entry-level driver’s skills . . .” CVTA also noted that, while the CLP exam and theory training address many of the same topics, “. . . the theory portion should not be eliminated or minimized because it teaches many additional subjects, in greater depth than are covered on the Commercial Learner’s Permit exam.”

NRECA did not find any duplication between theory training and the CLP exam. On the other hand, Driver Holdings LLC believed there is duplication and requested that it “be eliminated from the ELDT theory training.” Several individual CMV driving trainers also requested that duplication be minimized or eliminated.

Farris Brothers, Inc. commented that, if driver-trainees complete ELDT theory training, a CLP should then be issued. Utah, noting that “applicants who are completing the minimum training will have already completed the knowledge exam,” asked whether driver-trainees’ knowledge should, in effect, be tested twice, or would it be better to “test the application of that knowledge through various skills tests.” The Iowa DOT commented that “[i]t would be reasonable through training to eliminate the need for knowledge tests at the SDLA . . . while allowing the SDLA to test randomly or when evidence exists to warrant a re-test.”

FMCSA Response: FMCSA agrees with commenters who suggest that, to the extent duplication between the CLP knowledge test and ELDT theory training exists, it should not be minimized or eliminated because some degree of repetition benefits driver-trainees by reinforcing the core concepts of safe CMV driving. Therefore, as proposed, all of the curricula in today’s rule retain a theory training component.

As several commenters noted, the CLP knowledge test and ELDT theory training serve separate and distinct functions in CMV driver education. Theory training, as set forth in today’s rule, is designed to provide driver-trainees with substantive understanding of the operating characteristics of the vehicles they intend to operate, safe driving practices, and the legal and medical requirements related to CMV driving. The CLP knowledge test is designed to assess whether CDL applicants have sufficient knowledge of basic concepts related to the safe operation of CMVs. FMCSA believes that the two approaches each represent important and distinct elements of CMV driver education.

15. Core Curricula—Class A and Class B CDLs

FMCSA proposed a Class A and B CDL core curriculum. The Class A curriculum addressed the knowledge and skills necessary to safely operate combination vehicles (Group A), while the Class B curriculum pertains to heavy straight vehicles (Group B). The proposed curricula set forth training topics specific to the underlying CDL class, all elements of which must be taught and assessed. The Agency requested comment on the scope and content of the proposed curricula.

Comments: The Agency received a number of comments regarding the content of the individual core curricula. Some commenters suggested adding topics to one or more of the curricula,

while others believed that certain elements should be removed.

Schneider recommended that the Class A BTW-public road curriculum include a requirement to practice entry and exit of the interstate, noting that it “often encounters newly licensed drivers who enter its finishing program without any experience operating a CMV on a highway or interstate.” CM Air Brake and Electrical Training Services, LLC, commented that the ELDT rulemaking presents a unique opportunity to “ensure that drivers have a sufficient understanding of air brake systems to actually recognize whether or not the brake systems on their vehicles are functioning properly.”

The AAR supported the NPRM’s requirement that driver-trainees be trained in recognizing potential dangers and appropriate safety procedures for use at railroad grade crossings. AAR suggested that, in addition, driver-trainees should be instructed that railroads have personnel available at the posted Emergency Notification System (ENS) telephone numbers to receive notification of any information relating to an unsafe condition at the railroad-highway grade crossing, such as a warning system malfunction at the railroad-highway grade crossing, or a disabled vehicle or other obstruction blocking a railroad track at the railroad-highway grade crossing.

An individual commenter, noting that improperly inflated tires increase braking distances and contribute to punctures and blowouts, suggested that load-to-tire inflation tables be included in the ELDT curricula.

Truckers Against Trafficking (TAT) suggested adding an element to the Class A and B curricula addressing human trafficking in the trucking industry, focusing on “the understanding and recognition of this crime, along with the action steps to be taken.” Other commenters suggested adding the following training topics: (1) As part of trip planning—instruction, practice, and evaluation for map reading utilizing an atlas; (2) overview of the requirements of the ELDT regulation along with information on how to report a non-compliant school; (3) whistleblower protection regulations in 29 CFR part 178 and the procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries; (4) driver wellness and basic health maintenance that affect a driver’s ability to safely operate a CMV; and (5) Federal rules pertaining to physical qualifications of CMV drivers, including medical certification and medical examination procedures.

The Agency also received comments suggesting that certain topics be removed from various curricula, primarily because the topic did not directly apply to the commenter's occupation or segment of the industry. For example, AAR said that railroad employees should not be required to demonstrate skills like alley dock backing or other skills similarly unrelated to their job functions. UPS commented that several proposed elements in the theory portion of the Class A curriculum, including photographing the scene and assessing weather and signage conditions post-crash, "do not correspond to specific substantive safety requirements and are inconsistent with prudent operations."

Minnesota suggested that the rule "address training requirements for non-fifth wheel combinations in addition to the traditional tractor-trailer combinations," noting that if CDL holders are restricted to operating a non-fifth wheel combination, "training curricula needs to be developed to address the needs of operating this type of class A combination vehicle safely."

DDE commented that school bus drivers will typically have a Class B CDL with P and S endorsements. DDE noted that many elements of the Class B theory curriculum are not applicable to school buses, including coupling and uncoupling combination vehicles, hazardous materials regulations, stopping at weigh stations, awareness of surroundings including truck stops/rest areas, tire chain procedures, theory of cargo weight distribution, cargo securement, and hours of service.

Finally, several commenters, including Minnesota DPS, DTCC, and Century College, suggested that certain "dangerous driving maneuvers" or "extreme driving conditions" in the Class A and B BTW public road curricula, such as skid control and recovery, should be removed from the BTW portion of the curricula and retained as theory topics only. DTTC commented that "[i]t would be impractical at best and dangerous at worst to mandate [skid control and recovery] as part of BTW training."

FMCSA Response: In today's final rule, FMCSA revises the Class A and B CDL curricula to add topics that, as suggested by commenters, will improve the safe operation of CMVs, including proper entry and exit of ramps on the interstate and other controlled access highways and notification to railroad personnel of an unsafe condition at the railroad-highway grade crossing.

FMCSA adds specific cross references to applicable pre- and post-trip inspection sections of the FMCSRs (*i.e.*,

§§ 392.7 and 396.11) to all of the theory curricula, which include for example: tires, wheels and rims, emergency equipment, and steering mechanisms.

Although brakes were identified as a key vehicle system in the "Identification and diagnosis of malfunctions" portion of the proposed Class A and B theory curricula, in the final rule the Agency expanded the term to include specific types of CMV braking systems, including ABS, hydraulic and air, as applicable. In response to the comment regarding non-fifth wheel combinations for Group A vehicles, we note that techniques for the proper coupling and uncoupling of combination vehicles are included in the Class A theory curriculum and that "coupling devices" are included within the scope of both pre-trip and post-trip inspections in §§ 392.7 and 396.11, respectively. In addition, FMCSA adds the words "as applicable" after "coupling and uncoupling combination vehicle units" in the Class A curriculum to indicate that more than one type of coupling device exists.

The Agency also made various conforming and organizational changes to the curricula for purposes of clarity and consistency, most of which are specifically noted below in the section-by-section explanation of changes from the NPRM.

The Agency notes that many of the suggested additions to the training curricula were proposed in the NPRM and remain in the final rule, including whistleblower protection in 29 CFR part 1978, reporting incidents of coercion to FMCSA, physical qualification of drivers, and driver wellness. While we did not include the reporting of non-compliant training providers as a topic in the curricula, instructions for doing so will be available on the ELDT Web site. FMCSA considers human trafficking, suggested by TAT as an additional topic for the training curricula, to be an extremely important issue. However, it is not directly related to safe CMV driving skills, and therefore was not included in the final rule. FMCSA notes that training providers are free to add any topics they consider relevant to the training experience, as long as the required elements of the ELDT curricula are taught and assessed in compliance with today's rule.

Additionally, FMCSA removed several elements from the "Post-crash procedures" portion of the Class A and B theory curricula that, as UPS noted, do not directly impact the safe operation of CMVs, including photographing the scene, obtaining witness information, assessing skid measurements, and assessing signage, road, and weather

conditions. We also note that the NPRM inadvertently included "tire chaining procedures" in the BTW-public road portion of the Class B curriculum; the Agency removed that element in the final rule. Tire chaining procedures remain in the Class A and B theory curricula, as proposed.

Finally, FMCSA disagrees with commenters suggesting that certain training topics be deleted from the proposed curricula, or should not apply to certain CDL holders, because they are not relevant to a particular occupation or vehicle. Regardless of an applicant's intentions at the time he or she obtains a CDL or endorsement, the individual is in fact credentialed to operate a range of CMVs falling within the CDL class or endorsement received. For example, although an individual may intend to make a living as a school bus driver, if he or she holds a Class A or Class B license in addition to the S and P endorsements, that individual is considered qualified to operate any CMV falling within those classifications, including straight trucks. Accordingly, it is reasonable to require that these individuals receive training commensurate with the CMV driving credentials they hold.

In response to comments suggesting that certain driving skills, such as hazard perception and skid control and recovery, be removed from the Class A and Class B BTW public road curricula and retained as theory topics only, FMCSA notes that these skills are not necessarily intended to be performed by the driver-trainee. In the NPRM, the following BTW skills were specifically designated as "appropriate for discussion during public road training or simulated, but *not necessarily performed*" (emphasis added): Hazard perception, railroad (RR)-highway grade crossing, night operation, extreme driving conditions, emergency maneuvers/skid avoidance, and skid control and recovery (81 FR 11944, 11973 (March 7, 2016)).

These topics remain in the BTW public road curricula because they are appropriate for commentary instruction, in which the instructor discusses the proper techniques for responding to these conditions while the driver-trainee is behind-the-wheel of a CMV, even when such conditions may not actually be encountered during the training session. For example, an instructor could discuss adjustments to speed and following distance that need to be made during periods of heavy rain, even when actual driving conditions are dry. FMCSA believes that commentary instruction during public road training provides a valuable opportunity for

driver-trainees to reinforce safe driving behaviors in a contextual learning environment. The Agency therefore retains these topics in both the public road and theory portions of the curricula, as proposed. The final rule clarifies that instructors *must* provide commentary instruction for these elements of the BTW curricula. The final rule also states that driver-trainees are not required to demonstrate proficiency in these elements of the BTW curricula.

a. Night Driving/Operation

As proposed, Class A and B CDL trainees would be required to receive both theory and BTW (public road) instruction in night operation of a CMV in order to recognize and respond to the special problems that night driving presents. While training providers were strongly encouraged to offer driver-trainees actual night-driving experience where feasible, they would not be required to do so.

Comments: Comments were mixed on the need to require driver-trainees to operate CMVs at night. Truckers for a Cause stated that the final rule should require “actual BTW instruction during times of darkness.” One commenter suggested that the BTW hours requirement should be no less than 200 hours, 50 of which should be night driving hours.

On the other hand, several training providers supported the NPRM’s approach of not making nighttime driving a requirement. Century College commented that “[a]dding a night driving component would add instructional costs and insurance costs that would be prohibitive,” noting that drivers could learn night driving operations from specific employers after obtaining a CDL.

FMCSA Response: In today’s final rule, the BTW public road core curricula do not require driver-trainees to operate a CMV at night. Therefore, night driving must be discussed during public road training, but not necessarily performed. In order to ensure that this topic is sufficiently addressed during BTW public road training when actual night driving is *not* feasible, the training instructor would, for example, provide commentary instruction to convey how night driving conditions differ from daytime driving, such as the impact of nighttime glare on a driver’s mirrors. As noted above, the final rule does not require driver trainees to demonstrate proficiency in BTW elements they are not required to perform, such as night driving.

b. Substitution of Simulators for BTW Training

As defined in the NPRM, BTW training means training provided by a qualified driver-instructor when driver-trainees have actual control of the power unit during a driving lesson conducted either on a range or public road. Therefore, as proposed, time spent on a driving simulation device would not substitute for actual “hands on the wheel” training on a range or public road. The NPRM did, however, include “driving simulation devices” within the scope of “theory instruction,” thus permitting simulator use to fulfill the proposed theory curricula requirements.

Comments: Virage Simulation (Virage) commented that three research studies demonstrated that backing skills learned on a driving simulator are equal to training in the truck. Virage stated that the “continued lack of support by the FMCSA for substitution of BTW hours with simulation hours is somewhat perplexing in light of the express purpose of the ELDT NPRM to establish ‘more extensive entry-level driver training.’” Virage proposed that FMCSA allow simulator-based training for the substitution of up to 50 percent of the required BTW hours.

Schneider suggested allowing for 10 percent of the BTW training hours to be completed using driving simulation, noting that simulator use will allow the training provider to expose the driver-trainee to adverse conditions that are (1) not readily accessible in the training provider’s region (e.g., snow in the south or mountains in the Midwest); and/or (2) too dangerous to purposefully recreate on the open road for training purposes (e.g., a tire blowout or severe wind). According to Schneider, allowing for simulated drive time will also have the additional benefits of reducing fuel cost and lowering emissions in the cost-benefit analysis for this rulemaking. ABA requested that FMCSA “recognize the value of simulators, and provide additional flexibility for their use under this proposal.”

FMCSA Response: The final rule does not require that a minimum number of BTW training hours be completed. Accordingly, whether or not simulation devices can be used to fulfill part of the proposed BTW hours requirement is no longer an issue. However, in the Agency’s judgment, there is simply no substitute for the time a driver-trainee actually spends behind the wheel and in direct control of a CMV during range and public road training. Today’s rule therefore does not permit BTW training to be conducted by using a driving

simulation device, and a driver-trainee may not use a simulation device to demonstrate proficiency. However, as discussed below, simulators may be used in theory training.

FMCSA agrees that simulators can provide valuable learning opportunities to entry-level drivers to improve driving techniques and introduce them to hazards and driving conditions they may expect to encounter in their driving career. The Agency has previously recognized the value of specified simulation technology for entry-level training of CMV drivers.¹⁵ Accordingly, the final rule retains the definition of “theory instruction” proposed in the NPRM, which specifically includes “driving simulation devices.” Consequently, training providers may use simulation technology in meeting any of the theory curricula requirements for the Class A and B CDLs and the P, S, or H endorsements. For example, simulation devices can allow a driver to better understand how to react in potentially hazardous situations, which cannot be prudently demonstrated on a public road. Simulators are also useful in helping students understand how to effectively manage emergency situations, such as tire blowouts, skid avoidance or control, and collision avoidance.

16. Manual v. Automatic Transmission—Class A and B Curricula Requirements

As proposed in the theory portion of the Class A and B curricula, the topic “shifting/operating transmissions” is described as an introduction to “basic shifting patterns and procedures,” which will enable the trainee to perform basic shifting maneuvers, including executing “up and down shifting techniques on multi-speed dual-range transmissions if appropriate.” The description of the “shifting/transmission” topic in the BTW-public road curricula requires driver-trainees to “demonstrate proficiency in proper techniques for performing safe and fuel-efficient shifting and making any necessary adjustments in the process.”

Noting that some carriers utilize only CMVs equipped with automatic transmissions, FMCSA invited comment on whether there should be an option to forego this element of the training for driver-trainees who intend to operate only automatic transmission-equipped CMVs. The NPRM also noted that, currently, drivers who take their CDL skills test in a CMV equipped with an

¹⁵ Commercial Motor Vehicle Driving Simulator Validation Study (SimVal): Phase II (Report No. FMCSA-RRR-10-044, October 2010).

automatic transmission must have an indication on their CDL that the driver is restricted from operating a CMV with a manual transmission, 49 CFR 383.95(c)(1).

Comments: Most of the comments on this issue said driver-trainees should be trained in the type of CMV they intend to operate. Werner Enterprises (Werner) commented that FMCSA should permit operators of automatic transmission vehicles to forego the instruction on manual shift transmissions, noting that requiring manual transmission training for drivers who intend to operate CMVs equipped only with automatic transmissions “will take valuable training time which could be better devoted to further developing other skill areas.” According to Werner, approximately 70 percent of CMVs currently produced are equipped with automatic transmissions; both manufacturers and carriers agree that this trend towards automatic transmission CMVs is likely to continue. ATA, stating that it “foresees broad adoption of automatic transmissions in the future,” suggested that “FMCSA should seriously consider giving training providers the flexibility to train drivers for the equipment they expect to drive.”

C.R. England also stated that the NPRM “lacks flexibility because it does not allow reduced training hours for restricted licenses.” Noting, for example, that “if a driver intends to drive an automatic transmission vehicle and receive a restricted license, less training is required” C.R. England suggested that “required BTW time for a Class A or Class B license with a manual transmission restriction be reduced by $\frac{1}{3}$.”

Schneider and the California Department of Motor Vehicles (CA DMV) both noted that, if driver-trainees opt to receive training only in an automatic transmission vehicle, the training provider would need to indicate that on the training certificate uploaded to the TPR and States must be able to accept and store that information on the electronic driving record.

NASDPTS noted that since almost all school buses are now equipped with automatic transmissions, there is no value in qualifying school bus drivers to operate manual transmission-equipped vehicles. DDE and NAPT also supported the option to forego the manual transmission element because school buses have automatic transmissions.

However, several commenters opposed permitting driver-trainees to obtain training only in an automatic transmission-equipped CMV. The Iowa DOT said “the training should be

inclusive and not specific to the transmission.” In addition, the Iowa DOT thought the NPRM was unclear regarding the situation in which a driver changes jobs or the type of vehicle, asking whether a driver “would have to take the training over again if they drive a manual transmission because they were trained in the ‘automatic only’ curriculum?”

FMCSA Response: FMCSA agrees that ELDT requirements should be flexible enough to accommodate a driver-trainee’s choice to operate a CMV equipped with an automatic transmission. The final rule does not require that ELDT occur in a CMV equipped with a manual transmission. On further review of the ELDTAC meeting record, the Agency believes this flexibility was already intended. For example, during the development of the “shifting/operating transmissions” component of the theory portion of the Core A and B curricula, the words “if appropriate” were added to the topic description, so that it would read as follows: “[t]his must include training each trainee to execute up and down shifting techniques on multi-speed dual-range transmissions, *if appropriate*” (emphasis added).¹⁶ A slightly revised version of the “shifting/operating transmissions” topic, which included the “if appropriate” modifier, appeared in the NPRM. FMCSA therefore infers that the ELDTAC recognized that training in this theory topic would necessarily vary according to the type of transmission the driver-trainee intends to operate.

The description of “shifting/transmission” as a component of the BTW-public road training for Class A, initially presented to the ELDTAC by the Core Curriculum Working Group at its third meeting on April 9–10, 2015, remained largely unchanged throughout the remainder of the ELDTAC’s meetings.¹⁷ The description, cited above, simply refers to the driver-trainee’s ability to demonstrate proficiency in “proper” shifting techniques and to make “necessary adjustments.” There is no reference to either manual or automatic transmissions.¹⁸ An identical

¹⁶ “Proposed Core Curriculum”, ELDTAC Meeting, April 23–24, 2015, available at www.FMCSA.dot.gov/advisory-committees/eldtac/meetings.

¹⁷ The words “safe and fuel efficient” were added to the BTW-public road description of the “shifting/transmission” topic and the word “required” was deleted at the ELDTAC meeting on May 14–15, 2015. See ELDTAC Meeting Minutes, May 14–15, 2015.

¹⁸ Section 383.5 defines a manual transmission as “a transmission utilizing a driver-operated clutch

description of the “shifting/transmission topic” was subsequently adopted as part of the Class B BTW-public road curriculum. Again, the Agency infers that the proposed definition was intentionally *not transmission-specific* in order to permit driver-trainees to receive BTW training in the type of CMV they intend to operate.

FMCSA’s conclusion is further supported by the fact that, as several commenters noted, the prevalence of automatic transmission-equipped vehicles in the Group A and B classifications is currently significant and is widely expected to increase over time. In light of this clear trend toward automatic transmission-equipped CMVs, it defies logic to presume that the ELDTAC intended to require that all driver-trainees receive training on a manual transmission, regardless of whether they intend to operate a CMV so equipped, or would be required to do so in the course of their employment. The Agency regrets any confusion caused by posing the question of whether driver-trainees should be permitted to “opt out” of manual transmission training. Further, FMCSA notes that States, in administering the CDL skills test, “must check the vehicle in which the applicant takes his or her test is representative of the vehicle group the applicant has certified that he or she operates or expects to operate” (§ 383.73(b)(2)). Accordingly, the NPRM proposed, and the final rule requires, that training vehicles must be in the same group and type that the driver-trainee intends to operate for the CDL skills test (§ 380.711(b)). The Agency notes that, in addition to the manual transmission restriction discussed above, other restrictions currently apply to air brakes and non-fifth wheel connections (§ 383.95(a), (b) and (d)). In the final rule, the Agency adds “as applicable” to the brake-related topic descriptors in the Class A and B curricula and the coupling descriptor in the Class A curricula, to clarify that driver-trainees are free to select a training curriculum that is appropriate for the type of CMV they intend to operate.¹⁹

Because the final rule does not require that driver-trainees complete a minimum number of BTW training

that is activated by a pedal or lever and a gear-shift mechanism operated by either hand or foot.”

¹⁹ Existing regulations require that, if a CDL applicant fails the air brake component of the knowledge test, the State must indicate that restriction on the applicant’s CLP (§ 383.95(a)(1)). In such cases, the applicant could complete BTW training only in a vehicle that is not equipped with any type of air brakes.

hours, the question of whether required minimums should be lowered if BTW training occurs in an automatic transmission-equipped vehicle is now moot. However, FMCSA does not believe there would have been any basis on which to reduce the proposed required BTW time when driver-trainees receive training in a specific type of CMV, such as an automatic-transmission equipped vehicle or a vehicle not equipped with air brakes. First, we note that the BTW hours requirements proposed in the NPRM reflected the *total* minimum amount of time it would take the average driver-trainee to proficiently perform the required skills; the ELDTAC did not ascribe any set number of hours to the performance of specific tasks. More importantly, as explained above, the Agency believes that, by keeping the curriculum topic descriptions broad, the ELDTAC intended to permit flexibility in the type of training delivered, based on the driver-trainee's choice of vehicle within a designated group. The ELDTAC agreed to assign a specified number of BTW hours for the Class A and B curricula *after* the curricula had been unanimously adopted by the full committee. FMCSA therefore concludes that, if the proposed BTW minimum hours requirements had been retained in the final rule, a reduction in the minimum number of BTW hours based on any specific vehicle type would not have been justified. The Agency therefore continues to assume that most driver-trainees will spend at least 30 and 15 hours to complete the Class A and Class B BTW curricula, respectively.

Contrary to the assertion of commenters who noted that, if a driver-trainee completes training in an automatic transmission-equipped vehicle, the training provider would need to indicate that on the trainee's ELDT certification the provider electronically submits to the TPR, there is no need to identify the specific transmission type in which the driver completed BTW training. As noted in the NPRM and in today's rule, each BTW curriculum requires only that the training be conducted in a vehicle representative of the applicable class or endorsement. As explained above, there is no "automatic transmission only" training designation. Driver-trainees will take BTW training in the type of CMV they intend to operate and, consequently, in which they expect to take the CDL skills test. The training certificate would simply indicate, for example, that the individual completed

training applicable to a Class A or Class B CDL.

In response to the Iowa DOT's question concerning what, if any, ELDT requirements would apply to drivers who obtain "automatic transmission only" training and subsequently have that restriction removed from the CDL by taking a skills test in a manual transmission-equipped vehicle, the answer is that no further ELDT would be required. Again, FMCSA notes there is no "automatic transmission only" training designation. An applicant who takes the CDL skills test in a CMV subject to a restriction (e.g., a CMV equipped with an automatic transmission), and who subsequently has that restriction removed following successful completion of a skills test in a non-restricted vehicle, is not required to obtain any further ELDT. In today's rule, FMCSA revises § 380.603 to clarify that the ELDT requirements do not apply to drivers who simply have a restriction removed from their CDL.

17. Class C CDL Curriculum

FMCSA did not propose a curriculum for Class C CDL training because a Group C vehicle must 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 driver of a Group C vehicle needs a P, S, or H endorsement. The NPRM proposed training curricula for each of these endorsements. In addition, because Group C vehicles weigh less than 26,001 pounds, the Agency does not believe it is necessary to prescribe BTW training comparable to the other classes of CDL.

Comments: Washington DOL commented that "[s]ince a Class C driver must be getting a passenger, school bus or hazardous materials endorsement to obtain the CDL, Class C drivers should be required to meet the same minimum behind-the-wheel training requirements as Class B drivers to ensure public safety." The State of Michigan commented that it "is satisfied that entry-level Class C drivers will receive sufficient training through endorsement training," but noted that "if endorsement training is eliminated from the final rule then the issue of Class C training should be examined." The NYAPT commented that it is unclear whether the proposed regulations would apply to Class C CDL holders who drive smaller school buses, including "Type A" buses. NYAPT requested that FMCSA clarify that issue, stating that "these drivers should be covered by the regulations given their responsibilities for transporting our children."

FMCSA Response: FMCSA does not include a Class C CDL curriculum in today's final rule. As explained in the NPRM, the Agency believes that Class C license holders will receive the appropriate training required for any of the three endorsements applicable to a Class C license. For example, an applicant wishing to transport passengers in a Group C vehicle must complete the P endorsement training, which includes both theory and BTW components. Similarly, under today's rule, a driver, a driver of a "Type A" (i.e., "short") school buses designed to carry ten or more passengers, would be required to complete the theory and BTW portions of both the P and S curricula.

We note that, under the final rule, applicants for the H endorsement are not required to obtain BTW training because there is no State-administered skills test for the H endorsement. As noted previously, applicants for the H endorsement will already have a Class A or B CDL, or will be concurrently obtaining a Class A or B CDL at the time they apply for the H endorsement, or intend to transport hazardous materials in a vehicle for which a Class A or Class B CDL is not required. Consequently, H endorsement applicants must complete the theory curriculum set forth in Appendix E of Part 380 before taking the State-administered knowledge test required to obtain that endorsement.

18. Passenger Endorsement Training

The NPRM included a curriculum to address the specific training needs of a CMV driver seeking a P endorsement. There was no minimum number of hours proposed for either the theory or BTW (range and public road) portions of the P endorsement training, but the training provider must cover all of the topics set forth in the curriculum. Additionally, the training must be conducted in a representative vehicle for the P endorsement.

Comments: Comments on this issue were generally supportive. The ABA commented that specialized training should be required before an endorsement is conferred because motor coach driving operations require a unique skill set. ABA urged adoption of the Model Motorcoach Curriculum (MMC) and encouraged the use of motorcoach/P endorsement training providers, stating that most truck driving schools are not able to address motorcoach driving skills. ABA believes the rule will increase the transparency of training provider course offerings and make it easier for individuals to find training providers. Overall, ABA believes this will likely result in an

increase in training providers for the motorcoach industry, as well as an increase in hiring opportunities for drivers. In addition to ABA, the UMA and bus safety groups supported the P curriculum.

The DDE commented that the theory curriculum for the P endorsement had additional items not applicable to school bus operations, e.g., techniques of photographing an accident scene, skid measurements, baggage and cargo management, identifying prohibited and acceptable materials, hours of service, weigh station obligations, and CVSA out-of-service criteria. DDE stated it would not have trainers qualified to teach the additional material in the P endorsement curriculum. An individual commenter suggested that the reference to CVSA inspections be removed from the S and P curricula "since the class A/B truck driver will have a better chance of being at a roadside [inspection] than a school bus driver."

The AAR stated that certain elements of the P curriculum, including inspection of restrooms and handling of passenger baggage, should not be required for railroad employees who drive crew vehicles, as those vehicles "are not equipped with restrooms and the drivers do not handle passenger baggage."

The NYAPT had no objection to the curriculum content prescribed for attainment of the P endorsement, but expressed concern over the potential impact the rigorous training requirements will have on school bus driver recruitment and hiring.

Two commenters believed that limousine drivers should not be required to complete the proposed curriculum for the P endorsement training. Minnesota Chauffeured Limousine Association (MCLA) stated that the limousine industry "already faces difficulty trying to obtain drivers because of the stipulations put on us by the insurance companies," predicting that "with these new regulations, it will be almost impossible to hire drivers or promote drivers to achieve a passenger endorsement." The National Limousine Association (NLA) noted the positive safety record of the passenger-carrying motor vehicle industry, suggesting that the P endorsement training should not be required for smaller CMVs such as vans, shuttles, and mini-coaches. NLA is not aware of any "pressing concerns in the pre-arranged passenger ground transportation industry that would necessitate additional new training requirements for those vehicles."

In addition, NLA noted that the majority of its members own vehicle fleets comprised primarily of sedans.

The organization expressed concern that "[i]f the company has one CMV that does interstate work, then the company will be required to train all of its drivers since they may at some point be needed to drive the CMV." NLA therefore concluded that "there should be some exemption [from P endorsement requirements] for very small operators."

FMCSA Response: In today's final rule, FMCSA retains the passenger P endorsement curriculum largely as proposed. The Agency adds drawbridge safety procedures to the theory portion of the P curriculum and deletes several topics unrelated to safe operation of passenger-carrying CMVs. These changes are discussed below in the "Section-by-Section Explanation of Changes from the NPRM."

In response to ABA's suggestion that the Agency adopt the MMC, we note that the MMC is not necessarily intended for entry-level drivers. Rather, the MMC is a comprehensive training curriculum for motorcoaches, more likely to be used in "finishing" training for newly-hired drivers who have already obtained the P endorsement. In contrast, the P endorsement curriculum in today's rule focuses on the basic specific skills that a driver-trainee will need to master in order to safely operate a passenger-carrying CMV.

Part 383 currently requires that anyone seeking the S endorsement also pass the knowledge and skills tests for obtaining the P endorsement (§ 380.123(a)(1)). In response to comments that the proposed P curriculum included topics unrelated to the operation of a school bus, such as cargo management and weigh station obligations, we note that such topics are extremely relevant to common carrier motor coach operations, which are also covered by the P endorsement, and are thus retained in today's rule.

In the Agency's judgment, any CMV driver holding a P endorsement should be capable of safely operating representative passenger vehicles covered by that endorsement, regardless of whether or not the individual also holds the S endorsement and intends to drive only school buses. Similarly, Class B holders who operate railroad crew vehicles may not intend to operate other types of passenger vehicles, such as a motor coach, but holding a Class B CDL with a P endorsement permits them to do so, and they should be trained accordingly.

In addition, there is no justification for exempting drivers of "smaller CMVs such as vans, shuttles, and mini-coaches," from the P endorsement curriculum requirements, as suggested by NLA. The fact remains that these

smaller Group C vehicles are used to transport passengers. Therefore, it is important that drivers of these vehicles receive passenger endorsement-specific training which allows them to acquire the knowledge and skills necessary for their safe operation.

The Agency does not believe that the P curriculum requirements in today's rule will "kill the passenger transportation business" by making it too difficult to hire limousine drivers as MCLA asserted. To the contrary, better trained drivers may make it less difficult to obtain liability insurance. In addition, to the extent that limousine companies currently provide P endorsement training to employees or potential employees or wish to begin providing such training, they may be listed on the TPR if they meet the eligibility requirements set forth in §§ 380.703 and 380.719 of the final rule.

Finally, as noted below in the discussion of the S endorsement curriculum, FMCSA does not anticipate that the training requirements in today's rule will hinder school bus driver recruitment and hiring. The majority of jurisdictions currently impose school bus driver training requirements that meet or exceed the minimum standard established in the final rule. Under both the NPRM and the final rule, such training programs would be eligible for listing on the TPR. In order to make this clearer, we amend the definition of "training provider" in today's rule to specifically include local/State governments and school districts.

19. School Bus Endorsement Training

The NPRM included a curriculum to address the specific training needs of a CMV driver seeking an S endorsement. The NPRM did not propose a minimum number of required hours for either the theory or BTW (range and public road) portions of the S endorsement training, but the training provider must cover all of the topics in the curriculum. BTW training must also be conducted in a representative vehicle for the S endorsement.

Comments: Comments were mixed on the proposed S endorsement training. The NASDPTS believes the proposed curriculum is appropriate. Furthermore, NASDPTS is confident that training provided by most States and school districts throughout the nation is consistent with, and in many cases exceeds, the training outlined in the NPRM. The National School Transportation Association (NSTA) also endorsed the proposed curriculum, noting that it ensures that all entry-level drivers will receive the necessary amount of training on all vital elements

of safe student transportation. Other commenters also supported the proposed S endorsement curriculum, asserting that since many States already cover these topics in their mandated school bus driver training, the proposed curriculum is appropriate as a minimum national standard.

The DMTA supported S endorsement training, but stated that no BTW time should be mandated since the trainee would already have a Class B CDL or would need to meet the Class B training mandate (which includes a BTW requirement). Some commenters believed the proposed S endorsement training is unnecessary because school bus drivers in most States are currently subject to rigorous training requirements from their State Highway Patrols or Departments of Education. Consequently, they claim that school bus drivers are already among the best trained groups of CDL drivers and have the best safety record. The NYAPT expressed concern that “the rigorous training programs and provider network in place will be supplanted by these new requirements and result in lower levels of quality and intensity of training.” Accordingly, NYAPT requested that “FMCSA consider ways to grand-parent existing programs that meet or exceed the proposed high training standards . . .”

NYAPT also commented that the new requirements could likely have an effect on the shortage of school bus drivers, stating that “[t]his training regimen, however well intended, will make it more difficult for drivers to be brought on-line in school bus operations.” A number of SDLAs, including the North Dakota Department of Transportation, the Iowa DOT, and the Delaware DMV, opposed the inclusion of the S endorsement training, also asserting that requiring entry-level training for school bus drivers would negatively impact the school districts in their States, which are currently struggling to hire drivers. Several commenters also noted that MAP-21 did not mandate S endorsement training.

FMCSA Response: FMCSA retains the S endorsement training in the final rule. As we acknowledged in the NPRM, while MAP-21 did not specifically require the adoption of S endorsement training requirements, the statute did include the P endorsement within the scope of required ELDT. In light of the fact that part 383 currently requires that anyone seeking to obtain an S endorsement also obtain a P endorsement, including the S endorsement training requirements in today’s rule is entirely consistent with MAP-21. FMCSA believes that retaining

the S curriculum in the final rule will improve safety by providing a more complete approach to training that involves the transportation of all CMV passengers, including school children.

FMCSA does not believe the final rule unduly burdens those jurisdictions that already maintain reasonable S training requirements. As noted above, States or localities currently requiring that school bus drivers obtain S training that meets or exceeds the minimum standard established by today’s rule will be minimally impacted because the rule does not impose *additional* training requirements on those programs. Any provider who currently offers S endorsement training that is equivalent to, or more stringent than, the curriculum set forth in proposed § 380.621 (now appendix D to part 380) could be eligible for listing on the TPR, presuming all instructor qualifications and other requirements are met. Entities eligible for listing on the TPR include, for example, individual school districts, State agencies or departments, and third-parties that contract with States or localities. The Agency revises the definition of “training provider” in § 380.605 of the final rule to make this more clear. The Agency notes, however, that it is up to individual training providers to determine whether they meet the requirements of today’s rule.

FMCSA disagrees with the DMTA’s position that the S endorsement training curriculum should not include a BTW component. According to DMTA, S endorsement BTW training would be redundant since the driver-trainee would either already have a Class B CDL or would be required to obtain a Class B CDL and thus complete a curriculum that includes at least 15 hours of BTW training. First, we note that, even in the absence of a 15 hour minimum BTW requirement (which was not retained in the final rule), the school bus-specific BTW training requirements in today’s rule do not duplicate the Class B curriculum requirements for BTW on either the range or public road. The range/public road component of the S endorsement curriculum describes six maneuvers, specific to the operation of a school bus, in which the driver-trainee must demonstrate proficiency, as determined by the instructor.

When a driver-trainee who has not previously held a CDL intends to concurrently obtain a Class B CDL, as well as the P and S endorsements, the trainee can elect to take the Class B BTW training in a school bus. In such situations, BTW instructors will ensure that the range and road maneuvers required as part of the S endorsement training will be addressed in addition to

the maneuvers required by the Class B curriculum. It would be up to the instructor to determine the point at which the driver-trainee demonstrates the school bus-specific competencies. FMCSA also notes that, for driver-trainees who concurrently obtain training for the Class B CDL and the P and S endorsements from the same training provider, the provider would electronically submit certification to the TPR indicating that the individual completed each of the three curricula.

In addition, not all driver-trainees wishing to obtain the S endorsement will necessarily have or need to obtain a Class B CDL. Those who intend to drive “Type A” school buses below a GVWR of 26,001 pounds would not need to hold or obtain a Class B CDL in order to obtain the S endorsement. Similarly, a driver who previously obtained a Class B CDL by completing BTW training and taking the CDL skills test in a straight truck, and who subsequently wishes to add the S endorsement to his or her CDL in order to drive school buses, must complete the BTW requirements specific to the operation of a school bus.

Commenters who asserted that the S endorsement training would either cause or exacerbate a shortage of school bus drivers did not offer any specific information in support of their claims, other than to note that “additional” training requirements would make it more difficult to find qualified drivers. We do not find this generic argument a persuasive basis for either eliminating or reducing the S endorsement curriculum.

As previously discussed, for those States and localities that already require training in the safe operation of a school bus, today’s rule will likely have marginal impact as long as those training programs, at a minimum, follow the S endorsement curriculum as set forth in Appendix D and become listed on the TPR. For those jurisdictions presently without mandated training that meets this minimum standard, today’s rule “raises the bar” for safety by requiring that school bus drivers be adequately trained. In the Agency’s judgment, that is the paramount consideration for any jurisdiction or entity responsible for transporting children.

20. Hazardous Materials Endorsement Training

FMCSA proposed training for individuals seeking an H endorsement. As noted above, the current requirements to obtain an H endorsement, set forth in § 383.121, do not include a State-administered skills

test, because the H endorsement is not linked to a specific vehicle group or type of vehicle. Accordingly, the proposed H endorsement curriculum did not include a BTW component. The NPRM did not require a minimum number of hours for completing the H theory curriculum.

The Agency sought comment on the scope and content of the proposed curriculum and on whether the Pipeline and Hazardous Materials Administration's (PHMSA) hazardous materials employee training regulations in 49 CFR 172.704 could be used or modified to satisfy the proposed H endorsement training requirements.

Comments: The State of Minnesota asked whether the H endorsement training would need to be completed prior to the applicant taking the State-administered H endorsement knowledge test. Minnesota noted that since the proposed H endorsement theory curriculum "closely mirrors the information in the hazardous materials section of the AAMVA CDL manual," the proposed endorsement training may not be necessary. The NGPA also commented that the proposed H endorsement curriculum is "superfluous" because State governments already provide training guidance for the H endorsement knowledge test, which includes material that "is analogous to the proposal". Additionally, NGPA noted that propane motor carriers already have a "profound incentive to provide appropriate training on hazardous material operations, including all elements detailed in the proposal."

Schneider requested that FMCSA remove the requirement for H endorsement training or, in the alternative, demonstrate the benefit from training. Schneider noted that H endorsement applicants are already required to pass a knowledge test as a condition of obtaining the endorsement and that, under the proposed rule, "the driver would also be required to pay to complete this course work." Accordingly, "Schneider believes the driver would demonstrate the same level of knowledge with or without the ELDT training and, therefore, the benefit of this training is not likely to justify the costs."

The PMAA supported "provisions in the NPRM designed to establish an improved core curriculum for Hazardous Materials endorsements."

OOIDA does not support substituting hazardous materials regulations (HMR) training in 49 CFR 172.704 to satisfy the H endorsement training in the proposed rule, noting that "the ELDTAC hazardous materials curriculum

recommendations were carefully developed by a clear consensus." On the other hand, the Iowa DOT commented that substituting PHMSA's HMR training for the H endorsement training proposed in the NPRM "seems reasonable and would establish a more universal standard for HAZMAT training."

FMCSA Response: As noted in our discussion of the legal basis for this rulemaking, MAP-21 requires that minimum ELDT standards address the specific training needs of a CMV operator seeking an H endorsement (49 U.S.C. 31305(c)(2)). The Agency therefore does not have the legal authority to remove the H endorsement training requirements from the final rule, and they are retained as proposed. Further, FMCSA concludes that PHMSA's hazardous materials training requirements in § 172.704 may not be used to satisfy the H endorsement curriculum requirements in today's rule because the PHMSA regulations do not address the CMV-related topics included in the H endorsement curriculum. Finally, motor carriers and other entities that currently provide H endorsement training that meets or exceeds the minimum standard established in the final rule could continue to do so, as long as they are listed on the TPR in accordance with the eligibility requirements set forth in §§ 380.703 and 380.719.

21. Refresher Training

FMCSA proposed refresher training for any CDL holder who is disqualified from operating a CMV under § 383.51(b) through (e). The NPRM proposed that a CDL holder be required to complete refresher training from a provider listed on the TPR prior to retaking the State-administered skills test to reinstate his or her Class A or Class B CDL. Under the NPRM, the State may not restore full CMV driving privileges until the disqualification period is completed and the State receives notification that the driver completed refresher training. FMCSA did not propose a minimum number of required hours for the refresher training, but required that the training provider cover all topics in the curriculum. As proposed, disqualified drivers taking refresher training would obtain a restricted CDL solely for the purpose of completing the BTW portion of the refresher training curriculum. The Agency specifically invited comment on the practical implications of implementing that proposed requirement. FMCSA also invited comment on whether a driver disqualified under § 383.52 (imminent hazard) should also be required to

complete refresher training before his or her CDL is reinstated.

Comments: Several comments recognized the value of refresher training. Advocates, DMTA, and the electric trades (EEI/NRECA/APPA) supported the idea of refresher training for drivers disqualified under 49 CFR 383.51(b) through (e). The State of Michigan supports refresher training "only for reinstatement of lapsed CDLs, major CDL violations, imminent hazard, § 383.51, and § 383.52." NYAPT believes that "it is appropriate to require CDL holders who have been disqualified or put on suspension to engage in some form of corrective training before they are allowed to resume their licensed status."

Several commenters noted that the term "refresher training" may also pertain to training for CMV drivers whose CDLs have lapsed for some period of time. San Juan College suggested that, in the final rule, the Agency change the term to 'Reinstatement Training' "to differentiate the training required for "highway-safety" related issues from the current refresher training programs that are not related to a safety issue." Another commenter suggested that FMCSA make clear that refresher training is not a short cut to initially getting a license.

A number of comments opposed all or part of the refresher training proposal. The ODOT questioned FMCSA's stated premise for refresher training, noting that "[t]rained, experienced drivers may make mistakes or poor decisions in their driving behavior, but that does not mean they have suddenly lost their ability to safely operate a CMV." The North Dakota DOT commented that the proposal "will have a direct administrative impact on the State's workload and lend itself to confusion for the public." The CA DMV stated that its "system would require significant program modification in order to prevent the issuance of a CDL when refresher training was not completed." The VA DMV commented that the refresher training requirement would burden drivers subject to a 60-day disqualification, "since a driver who is convicted of two speeding tickets in a three year period would be required to obtain an "R" restriction on his CLP/CDL, complete theory and BTW training (with fees) and return to DMV to have the "R" restriction lifted." AAMVA noted that, while it "appreciates the need for refresher training, the requirement for refresher training for all violations incorporated under § 383.51 would drastically increase the volume and demand for operators requiring

such training prior to operational authorization of a commercial vehicle.”

A number of commenters pointed out various logistical and implementation issues associated with the States’ limited reinstatement of the CDL to permit driver-trainees to complete the BTW portion of the refresher training curriculum, as proposed in § 383.95(h). The State of Minnesota said that having to provide limited privileges for refresher training would be an undue burden on SDLAs. The commenter noted that, in addition, “Minnesota currently has a conflict with the ‘R’ restriction as that letter code is already used for something else in MN and this most likely is the case in many other states.” The State of Michigan commented that “the proposal for a limited license that allows for a training period when a person is currently under a suspension/revocation violates the Motor Carrier Safety Improvement Act (MCSIA) that was very specific that CDL drivers were not to be issued a limited term (restricted) license.”

The NY DMV commented that “[t]here are too many variables to consider to implement a ‘limited CDL’ and would be putting a heavy burden on the States to program and monitor.” The ODOT said that “requirement for the SDLA to issue a ‘restricted CDL’ for the purpose of the BTW portion of the refresher training is unmanageable and burdensome.” The Nebraska DMV, the State of Montana-DOJ/MVD, the Iowa DOT, the CA DMV, and the Delaware DMV also expressed concerns regarding the practical difficulties associated with a temporary reinstatement of the CDL in order for the holder to complete refresher training. AAMVA asked what evidence would be provided which would allow an individual “to operate a CMV for the sole purpose of satisfying the refresher training.”

FMCSA Response: The final rule does not include a requirement for refresher training. The Agency removed the provision based primarily on the SDLAs’ comments identifying specific ways in which implementation and administration of the proposed refresher training requirement would be difficult and burdensome to administer. Based on the comments, it is reasonable to assume that requiring an individual to obtain a restricted license solely for the purpose of completing the BTW road training would cause confusion for law enforcement, SDLAs, and individual drivers.

Further, the States impose their own reinstatement protocols on CDL holders who have been disqualified, some of which include remedial driver education and/or a requirement that the

driver re-take the State-administered skills test as a condition of CDL reinstatement.²⁰ FMCSA therefore concludes that States should maintain their current flexibility to determine when, and on what basis, disqualified CDL holders will be reinstated. Accordingly, the final rule removes any reference to or requirement for refresher training.

22. Training Requirements for Driver-Trainees Obtaining Multiple CDL Credentials

In the NPRM, FMCSA proposed a Class A CDL core curriculum; a Class B CDL core curriculum and curricula for the P, S, and H endorsements. The curricula for Class A and B CDLs and the P and S endorsements are comprised of both theory and BTW (range and public road) elements. Individuals seeking the H endorsement would be required to complete theory training only. As explained previously, the H endorsement is not linked to any specific vehicle group or type of vehicle; consequently, there is no skills test required in order to obtain it. The Agency’s responses to the comments below address the curriculum requirements applicable to driver-trainees seeking multiple CDL credentials.

Comments: The NY DMV noted that it is not clear whether a driver who is applying for a Class A or B CDL, as well as the P and S endorsements at the same time, must undergo multiple trainings and obtain certification in all three training curricula. NY DMV requested that FMCSA clarify that “more than one training curriculum and certification would be required if undertaking the skills testing at the same time for more than one of the applicable Class CDLs or endorsements.”

NY DMV also noted that the NPRM is not clear regarding the obligations of driver-trainees undertaking multiple curricula when some of those curricula have overlapping elements in theory and/or BTW instruction. They posed the following example: “a trainee undergoes the Class A curriculum, then wants to undergo the Class B curriculum, may the Training Provider offer them reduced theory and/or BTW instruction, if the trainee took the same theory and/or BTW instruction from the Class A curriculum?” Other commenters wanted to know whether a driver upgrading from a Class B CDL to a Class A CDL would have to complete the entire Class

A curriculum. The Nebraska DMV asked whether “anything completed for the Class B training count[s] toward the Class A requirement.” San Juan College, noting that the Class A and Class B curricula are virtually identical but for the inclusion of “coupling/uncoupling” in Class A training, stated that “there should be some training required to upgrade from Class B to Class A, but it should only relate to skill required for pulling a trailer.”

The DDE commented that the NPRM does not address the requirements that a driver with a Class A CDL would need to meet in order to drive a school bus, *i.e.* “just do the theory and BTW curriculum for ‘P’ & ‘S’ endorsements or also complete the Class B theory and BTW curricula?” The CA DMV noted that the NPRM apparently requires that a person seeking a P, S, and/or H endorsement for a Class A or B CDL meet the specific endorsement training requirements in addition to the “standard training requirements for the specified class of CDL.” However, CA DMV commented that “that fact is not clearly noted in the proposed language” and requested that FMCSA clarify these requirements.

The DE DMV commented that “[r]equiring additional training on top of Class A and B core ‘entry-level’ training for a specific endorsement is unnecessary” because “the applicant has already obtained the knowledge base necessary to operate a CMV.” DE DMV also noted that it currently requires 12 hours of classroom training and 6 hours of BTW training for the “S application,” which “falls short of the requirements set forth in this rule.” DE DMV asserted that if the NPRM’s S endorsement training requirements were adopted in the final rule, “major changes to our current State laws, regulations and procedures will need to be made in order to meet this mandate.”

FMCSA Response: As proposed in the NPRM, the final rule requires that a training provider cover all theory and/or BTW topics in the curriculum for the applicable Class or endorsement in order for a driver-trainee to complete the training. The Agency acknowledges that there is overlap in some of the curricula content. For example, the topics included in both theory and BTW curricula for the Class A and B CDLs are virtually identical in most respects. However, there is a significant difference in the types of CMVs to which the Class A and B CDLs apply. Group A includes combination vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 pounds or more, provided the Gross Vehicle Weight Rating (GVWR) of the vehicle

²⁰ Drivers who are required to take a State-administered skills test in order to reinstate their CDL would not be subject to the training requirements of this rule.

being towed exceeds 10,000 pounds (§ 383.91(a)(1)). Group B includes heavy straight vehicles (*i.e.*, non-combination) with a GVWR of 26,000 pounds or more, or any such vehicle towing vehicle not in excess of 10,000 pounds GVWR (§ 383.91(a)(2)).

The different operating characteristics of these two distinct vehicle groups require that many of the elements in the Class A and B curricula, though topically the same, be taught in ways tailored to the specific vehicle class. Space management, extreme driving conditions, pre-trip inspection, and backing are examples of topics that would call for different methods of instruction depending on the underlying vehicle class. The current CDL skills testing process accounts for the difference in handling characteristics between and among vehicle groups by requiring that the driving tests must be given in a representative vehicle for a given vehicle group (§ 383.91(b)). Similarly, today's rule requires that BTW training be conducted in representative vehicles for the class or endorsement for which training is provided. To the extent there is overlap between the Class A and B curricula, FMCSA agrees with the numerous commenters who noted that some level of repetition in training is acceptable as a means of reinforcing core concepts and competencies. Moreover, since the final rule does not require any minimum number of hours for BTW training, Class B CDL holders can reasonably expect to demonstrate proficiency in the Class A BTW elements in less time.

In response to the NY DMV's question regarding whether a Class A CDL holder, having already completed Class A training, who wishes to obtain a Class B CDL would have to complete the Class B training curriculum, the answer is no. Currently, any Class A CDL holder is permitted to drive a CMV in either Group B or Group C without taking the related knowledge/skills tests (§ 383.91(c)(1)). Today's rule does not change existing part 383 licensing requirements; therefore, no additional training would be required under those circumstances.

We note, however, that the ELDT requirements established in today's rule apply to persons who take a skills test either to obtain a Class A or B CDL for the first time, to upgrade to a Class A from a Class B, and to upgrade to a Class A or B from a Class C. Accordingly, after the compliance date of the final rule, a Class B CDL holder wishing to upgrade to a Class A CDL would be required to complete the entire Class A curricula (theory and BTW) before taking the

skills test for the Class A CDL. Class C CDL holders seeking to upgrade to a Class A or B CDL would need to complete that curriculum before taking the applicable skills test. In addition, anyone holding a Class A, B, or C CDL who wants to obtain a P and/or S endorsement would need to complete the entire P and/or S endorsement curricula (theory and BTW) before taking the State-administered skills test in a representative passenger vehicle. Similarly, any CDL holder seeking an H endorsement must complete the H endorsement theory curriculum before taking the State-administered knowledge test.

As noted above, the DE DMV asserted that Class A or B holders already "have the knowledge base to operate" a CMV and should therefore not be required to undergo any additional endorsement-related training. To the contrary, the Agency believes it is both necessary and appropriate that CDL holders obtaining either the P or the S endorsement be trained specifically in the safe operation of the passenger vehicle(s) they will be licensed to operate.

Several commenters had questions regarding the ELDT requirements for driver-trainees obtaining more than one CDL credential at the same time. For example, DDE asked whether a Class A CDL holder wishing to obtain the S endorsement would need to complete the Class B, S, and P endorsement curricula. In that situation, the CDL holder would need to complete both portions of the S curriculum since the applicant would be required to take a State-administered skills test in order to obtain the endorsement. Because § 383.123(a)(1) currently requires that S endorsement applicants must also pass the knowledge and skills test for obtaining the P endorsement, the applicant must also complete the theory and BTW portion of the P endorsement training curriculum. The Class A CDL holder in this example would not need to complete the ELDT curriculum for the Class B CDL because, as previously stated, under § 383.91(c)(1), a Class A CDL holder is already licensed to operate a Group B (or Group C) vehicle.

As noted above, the DE DMV expressed concern that the DDE's current training program for the S endorsement, which requires 12 hours of classroom and 6 hours of BTW training, "falls well short of the requirements set forth in this rule." We believe that concern is unfounded since the NPRM did not require any minimum number of hours for completion of either the theory or BTW portions of the S endorsement curriculum, and today's rule does not include such

requirements. In order to comply with the minimum standard established by the final rule, existing programs simply must cover the S endorsement curriculum, and the instructor must determine that the driver-trainee is proficient in the knowledge and skills covered by the training. As stated previously, States are free to impose training requirements that exceed this minimum standard.

23. Training Materials

As proposed, training providers that train more than three driver-trainees annually must provide written training materials addressing the applicable curricula to each driver-trainee. Providers training three or fewer driver-trainees annually were not subject to this requirement.

Comments: The VA DMV asked "whether FMCSA will provide training materials, such as instructor manuals and student manuals, for use by training providers or whether FMCSA will provide a list of approved vendors where compliant training materials may be obtained." NYAPT inquired "as to the intention of FMCSA to provide course of study related to the theory portion of the training to enable training entities to simply deliver already approved training programs in the future."

IUOE recommended that the Agency "post written training materials on-line and develop an interactive, on-line training program for the theory portion of the Core Curricula", noting that this approach would "provide a feasible mechanism" through which FMCSA could ensure quality and uniformity of training. IUOE also noted that FMCSA-sponsored training and testing would "reduce by one-third the costs of ELDT borne by individual workers." Similarly, OOIDA commented that "FMCSA should be able to create the necessary training and assessment for the theory curriculum", which would prevent disparity among ELDT providers and provide a basis for tracking training performance.

FMCSA Response: FMCSA does not intend to provide written or electronic training materials for any of the curricula set forth in today's rule, nor will the Agency endorse or certify specific materials or vendors. The minimum curricular standards in the final rule are designed to provide sufficient topical guidance to theory training providers, while allowing those providers to determine the specific content and format of their training materials. The Agency anticipates that there will be variations in ELDT curricula based on a training provider's

presentation preferences and the needs of the driver-trainees they serve. In addition, training providers are permitted to add additional curriculum elements they deem appropriate. Accordingly, FMCSA-provided theory training materials represents an approach entirely inconsistent with the flexibility envisioned by today's rule.

FMCSA anticipates that the final rule will encourage new entrants into the market for ELDT services, which will increase the availability of innovative and cost-effective alternatives from which driver-trainees may choose. In addition, many motor carrier employers seeking qualified driver applicants currently provide ELDT (including training materials) at little or no cost to the driver-trainee, and the Agency has no basis to anticipate that will change as a result of the final rule. Because IUOE offered no substantiation for its claim that FMCSA-provided online training materials would reduce driver-trainees' costs by one-third, the Agency is unable to respond directly to that assertion.

As noted above, the final rule makes no distinction based on the size of the training provider; therefore, smaller training entities are subject to the requirement that written training materials must be provided to driver-trainees.

24. Sequence of ELDT

In the NPRM, FMCSA did not propose that the theory, BTW-range, and BTW-public road training occur in a specific sequence, but requested comment on whether there should be a particular order for any of the required curricula. The Agency also requested comment on whether theory training should be required before a driver-trainee takes the State-administered knowledge test to obtain a CLP.

Comments: FMCSA received a number of comments supporting the NPRM's approach, which allows training providers the flexibility to determine how they would structure and sequence their programs. According to DTCC, many schools have been very successful in training CDL drivers using a variety of curricular sequencing and that "[t]o take this academic freedom away would cause undue hardship to the training providers and students alike."

ATA agreed that training providers should be granted flexibility to determine when to teach various elements of the ELDT curricula, noting that many of CDL training schools currently provide instruction in most, if not all, of the curricula elements proposed in the NPRM. Over the years,

the experience of those providers has taught them the best sequence in which to teach various elements. Additionally, ATA stated that maintaining this flexibility will encourage innovative and adaptive training programs that could greatly improve collective understanding of effective CDL training.

The VA DMV suggested that the final rule should require that theory and BTW-range instruction be provided before the BTW-public road portion of the training in order to "ensure that drivers have a basic understanding of the laws governing CMVs and what to expect before beginning operation of a vehicle." AAMVA commented that it would be "logical" to provide theory training prior to any BTW "where an increased element of danger is introduced into the environment," also noting that prior theory training would increase the value and efficiency of BTW training. AAMVA recommended that "range hours precede public road training to limit public exposure to drivers that have not had BTW training in a controlled environment." The State of Michigan favored requiring that "some" theory instruction be completed before beginning BTW training. Michigan also commented that the final rule should require that theory training "be coordinated with" BTW training and, if not, "states should be allowed to require such coordination."

VU asked whether driver-trainees will be required to complete the full ten hours of range training for a Class A CDL before proceeding to the public road portion of the training.

AAMVA also commented that theory training should not be a mandatory requirement for taking the SDLA knowledge test, but should be made available to students who may want to use theory training to aid in their preparation for obtaining a CLP. San Juan College commented that, although completion of the theory portion of the ELDT does not need to be required before taking the State-administered CLP written tests, applicants would be much better prepared to take the CLP tests after completing their theory training. VU strongly believes that driver-trainees should not be required to take theory training before obtaining a CLP, noting that a student's ability to obtain a CLP, whether prior to or during the theory training, will facilitate the timely completion of the BTW portion of the training.

FMCSA Response: In today's final rule, FMCSA retains the approach proposed in the NPRM; there is no mandatory order in which the theory, BTW-range, and BTW-public road training must be administered, nor does

the rule require that theory training must be completed before obtaining a CLP. The Agency believes it is appropriate to allow the training providers to determine how to structure their programs and best serve the needs of their students. Accordingly, the final rule does not require that a certain portion of range training precede the public road portion of BTW training for either a Class A or Class B CDL. However, as we noted in the NPRM, FMCSA expects that, for any of the BTW curricula established in today's rule, trainers will require that driver-trainees master basic vehicle control maneuvers in a controlled environment before allowing them to operate a CMV on a public road. In addition, if States currently have or wish to impose requirements for sequential or integrated ELDT, nothing in the final rule prohibits them from doing so.

25. ELDT Instructor Qualifications

The NPRM proposed that, among other things, ELDT instructors providing theory and BTW training must be "experienced drivers" having at least one year of experience in either CMV operation or driver training instruction. The Consensus Agreement noted the ELDTAC's preference for two or more years of CMV driving experience. FMCSA requested comment on whether a two-year experience requirement would affect the applicability of State laws relating to instructors or training providers.

The NPRM also proposed that BTW instructors complete training in the public road portion of the curriculum in which they are instructing.

a. BTW Instructors—Level of CMV Driving or Instruction Experience

Comments: Most commenters supported a minimum of two years of experience operating a CMV; however, several commenters thought the minimum of CMV driving experience should be five years. Truckers for a Cause strongly disagreed with the length of the proposed experience requirement, stating that "[i]t does not mandate enough experience to properly train a CLP holder." Truckers for a Cause recommended that experience be specified as either 200,000 miles of "logged over the road driving" or 3000 hours of "paycheck documented driving work time." Similarly, Minnesota noted that its CDL BTW instructor qualifications refer to hours of experience, *i.e.*, "3000 hours within the last five years of experience operating the class of vehicle for which instruction will be provided."

Other commenters, including NAPT and ATD, urged FMCSA to allow a maximum degree of flexibility in setting instructor qualifications. Virginia requested the final rule make clear “that these are minimum requirements so that the states have flexibility in requiring additional criteria.” ATD expressed concern that “overly restrictive instructor qualification requirements would unduly limit the number and availability of qualified instructor/trainers.” DTCC commented that the final rule should specify that the instructor’s experience pertain to the classification of CMV in which instruction is being provided.

FMCSA Response: In today’s rule, FMCSA increases the minimum level of CMV driving or instructional experience from one year, as proposed, to two years. Accordingly, the rule requires that BTW instructors hold a CDL of the same (or higher) class, with all endorsements necessary to operate the CMV for which training is to be provided, and have either a minimum of two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement or at least two years of experience as a BTW CMV instructor. In addition, as proposed in the NPRM, BTW instructors must meet all applicable State requirements for CMV instructors. Accordingly, nothing in the final rule prohibits States from imposing more stringent qualifications for BTW instructors, such as a requirement that they have at least five years of CMV driving experience.

FMCSA believes this approach, which reflects the ELDTAC’s preference for at least two years of CMV driving or BTW instruction experience, as well as the opinion of numerous commenters, establishes a sufficient minimum qualification standard for BTW instructors. We also note that the instructional requirements described above are now incorporated directly into the definition of “BTW instructor” in § 380.603, rather than in the definition of “experienced driver,” as proposed. Consequently, the term “experienced driver” does not appear in the final rule.

Finally, we note the final rule does not include the requirement, proposed in the NPRM, that certain BTW instructors must have completed training in the public road portion of the curriculum in which they are instructing. The Agency believes the higher level of CMV driving experience now required makes that additional requirement unnecessary.

b. Theory Instructors—Level of CMV Driving or Instruction Experience

Comments: The NY DMV requested that FMCSA clarify how the proposed definition of “experienced driver” applies to theory instructor qualification requirements.

FMCSA Response: As noted above, the final rule does not use the term “experienced driver.” The qualifications for theory instructors are now incorporated directly into the definition of “theory instructor” in § 380.605. Under the final rule, theory instructors must hold 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 have a minimum of two years of experience driving a CMV requiring a CDL of that class or endorsement or at least two years of experience as a BTW CMV instructor. The NPRM proposed that theory instructors have a minimum of one year of CMV driving or instruction experience. The two-year level of CMV driving or instruction experience is thus commensurate with the BTW instructor qualifications described above.

In addition, FMCSA deletes the proposed qualification that theory instructors must have audited or instructed the portion of theory training that they intend to provide. On further consideration, we concluded that this qualification standard is insufficient because it does not require that the theory instructor have actual CMV driving or instructional experience. In the final rule, the Agency adds an exception to the theory instructor qualifications set forth in § 380.605: An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of that class and meets all other qualification requirements. The Agency makes this change in order to permit retired CMV drivers, who may have many years of experience operating a CMV but who no longer hold a CDL, to provide theory instruction. As noted below, this change responds to a comment regarding the valuable experience that such drivers possess.

The final rule requires that, as proposed, theory instructors must also meet any applicable State requirements for CMV instructors. However, today’s rule includes a limited exception to that requirement when online theory training is provided. Because the nature of online training makes it available literally anywhere there is an internet connection, it would be impractical to

expect an online provider to meet multiple (and possibly conflicting) State-based requirements pertaining to CMV theory instructors. Therefore, State-based qualification requirements otherwise applicable to theory instructors would not apply to those instructors who provide content for online providers. The Agency adds a requirement pertaining to theory providers who offer online content in any of the theory curricula included in today’s rule: They must ensure that the online theory curriculum content is prepared and/or delivered by theory instructors who meet the qualifications described above (e.g., two years of CMV driving or BTW instruction experience).

c. Additional Instructor Qualification Issues

Comments: Truckers for a Cause suggested that “older experienced drivers who may no longer be able to obtain a DOT medical card” be able to qualify as instructors under the final rule.

FMCSA Response: FMCSA adds an exception to the BTW instructor qualifications in today’s rule: A BTW instructor who provides training on a range that is not a public road does not need to hold a CDL of the same or higher class, and with all endorsements necessary, for which training is to be provided, as long as he or she previously held a CDL of the same or higher class, and with all endorsements necessary to operate the vehicle for which training is to be provided, has at least two years of CMV driving experience or CMV instruction experience, meets applicable State requirements, and meets the driving history requirements for BTW instructors, as discussed below. This limited exception allows older drivers, some of whom may be retired from driving or are no longer medically qualified to operate a CMV on a public road, to teach entry-level drivers during the range portion of BTW training. However, since any instructor who provides BTW range training on a public road or BTW public road training would need to hold a CDL, this exception would not apply to training conducted under either of those circumstances. (See § 380.605 for BTW instructor qualifications and requirements.)

26. BTW Instructors’ CMV Driving History

The NPRM proposed that within the past two years, BTW instructors must not have had any CMV-related convictions for the offenses identified in § 383.51(b) through (e). It also required

training providers to utilize public road BTW instructors whose driving records meet applicable Federal and State requirements.

Comments: All comments addressing this issue agreed that a BTW instructor's driving record is relevant in determining whether the instructor is qualified. Both DMTA and DTCC commented that, because of the serious nature of the offenses identified in § 383.51(b) through (e), any driver disqualified for any of those offenses should be permanently barred from engaging in BTW instruction. OODA commented that three of the offenses proposed as a basis for disqualifying a BTW instructor (*i.e.*, speeding excessively, following the vehicle ahead too closely, and railroad-highway grade crossing offenses) have the potential to be "cited incorrectly" and thus should not be relied on to determine an instructor's qualification. OODA also suggested that the time period for disqualifying offenses should be five years, rather than two years as proposed.

An individual driver stated that instructors should "have no record of theft or violence of any kind, nor have had any record of drug use or DUI." The NY DMV noted that, in addition to the offenses identified in § 383.51(b) through (e), "there are many other factors on a driving record that would make an instructor undesirable, including, but not limited to, other sanctions, fraud, non-CMV violations, and accidents," suggesting that FMCSA strengthen the provision pertaining to an instructor's prior driving record. The ODOT asked what is meant by the proposed requirement that an instructor's driving record meet "applicable Federal and State requirements."

FMCSA Response: In an effort to both simplify and clarify this provision, today's rule states that if an instructor's CDL has been suspended, revoked, or cancelled due to any of the disqualifying offenses identified in § 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated following the disqualification. Anyone who loses the privilege to drive a CMV due to engaging in any of these unsafe driving behaviors should not be entrusted to teach entry-level drivers how to safely operate a CMV.

The Agency believes that the standard for BTW instructor disqualification is more appropriately based on CDL suspension, revocation, or cancellation, rather than on CMV-related convictions, as proposed. This change reflects the

fact that under § 383.51, certain offenses require more than one conviction before a driver's CDL is suspended, cancelled, or revoked, while other offenses result in loss of CDL driving privileges after the first conviction. The outcome therefore varies according to the severity of the underlying offense. Therefore, BTW instructor disqualification is based on the loss of CDL driving privileges due to unsafe driving behaviors.

We also note that the NPRM's proposed requirement that a BTW instructor's driving record meet "applicable Federal and State requirements" has been deleted from the final rule. FMCSA concludes the language is unnecessary in light of the reference to "applicable State requirements for CMV instructors" in the definition of "BTW instructor" in § 380.605.

Finally, FMCSA reiterates that States are permitted to impose more stringent BTW instructor requirements.

27. "De-Certification" of ELDT Instructors

Comments: The NY DMV noted that the NPRM did not include processes related to the "de-certification" or reinstatement of ELDT instructors.

FMCSA Response: Under today's rule, FMCSA has no role in certifying training instructors. The final rule defines a minimum qualification standard for BTW and theory instructors, but leaves it up to the training provider to determine whether those qualifications, as well as any applicable State requirements, are met. Further, FMCSA is not in a position to evaluate a training provider's compliance with State requirements. As part of the self-certification process, training providers must attest, under penalty of perjury, that they comply with the requirements of §§ 380.703 and 380.719 in order to be eligible for initial and continued listing on the TPR. Those requirements include utilizing BTW and/or theory instructors meeting the criteria set forth in § 380.713. Failure to meet State requirements could result in the training provider's removal from the TPR.

28. Self-Certification of Training Providers

As proposed, in order to be listed on the TPR, a training provider must meet the applicable eligibility requirements set forth in subpart G and electronically submit a completed Training Provider Registration Form affirming, under penalty of perjury, that the provider will teach the FMCSA-prescribed curriculum that is appropriate for the CDL class or endorsement. FMCSA did not propose

that training providers be accredited by a third-party organization in order to be eligible for listing on the TPR.

Comments: Commenters strongly supported the concept of training provider self-certification. ATA supported the proposed requirement that training providers self-certify because it will ensure there are an adequate number of training providers available when the rule is fully implemented. Furthermore, ATA believed that periodic audits will confirm that these training providers are offering fully compliant programs.

The NMFITA was also supportive. It stated that while self-certification processes are "commonly viewed as suspect," in this case FMCSA has proposed adequate safeguards to ensure they are meaningful. NMFITA cited the proposed documentation retention requirements and on-site audits or investigations by FMCSA as additional enhancements to program integrity.

ATD supports the self-certification proposal because a third-party accreditation mandate would be too bureaucratic, inflexible, and costly. They also noted that an accreditation model could result in an insufficient supply of training options to meet industry demands.

The Agency did not receive any comments opposing self-certification.

FMCSA Response: In today's rule, FMCSA retains the self-certification approach for training providers, as proposed in the NPRM. In response to specific comments, the Agency clarified some of the data elements to be included in the Training Provider Registration Form, which are discussed immediately below.

29. Training Provider Identification Form and Related Information Requirements

The proposed Training Provider Identification Report form (TPID form), available in the NPRM docket, was designed to capture the information necessary for registration on the TPR, such as identifying business and training facility information, training provider type (*e.g.*, in-house, for-hire), and type of CDL training offered (*i.e.*, specific CDL class or endorsement). The TPID also included a section titled "Third-Party Quality Control," in which providers could indicate the CMV driver training third-party certification or accreditation organizations with which they are affiliated. The proposed form identified three organizations by name (*i.e.*, PTDI, CVTA, and NAPFTDS) and also provided a blank space in which applicants could specifically identify other third-party groups to which they

belong. The NPRM proposed that training providers report changes in key information within 30 days of the change and biennially submit an updated TPID form to FMCSA. The Agency also noted that the TPR would provide a way for individuals seeking training to find an eligible provider meeting their specific needs.

Comments: The State of Michigan supports the requirement for training providers to report each training location (§ 380.703(a)(6)) and that each location have some unique identifier in the TPR, but is concerned that as proposed, the rule may not link multiple locations to one training provider. Michigan suggested that two “linked sets of unique identifiers be created—one for training providers (business entities) and another for facilities (locations used by providers).” UPS expressed concern about “the lack of clarity in the rule regarding whether each of the numerous training facilities it operates across the United States must be separately registered” and subject to biennial renewal of registration and other requirements for continued listing on the TPR.

The VA DMV asked whether there “will be an initial fee for applicants to register” or a fee associated with continued listing on the TPR. Some commenters were concerned that the registration process would be unduly burdensome and expensive. UPS said that “[t]he proposed rule would impose on UPS and other carriers with proven in-house training programs the unnecessary cost and burden of ensuring that all of its facilities meet the specific requirements” for listing on the TPR. The NSTA, citing “administrative fees and burdens” that it expects to be associated with the registration process, urged FMCSA to streamline the required information and registration process as much as possible in order to minimize costs.

Dart Transportation recommended that “motor carriers not be required to register as certified training programs as long as [they] use BTW trainers with at least one year of experience and otherwise meet all DOT qualification requirements.” UPS recommended that “any school operated by a motor carrier that employs more than 1000 CDL-licensed drivers for the purpose of training drivers that the motor carrier intends to employ, shall be conclusively presumed to satisfy the requirements for listing on the TPR.”

The VA DMV requested that FMCSA maintain a “publicly accessible listing of approved training providers that includes when providers have received a notice of proposed removal.” The

NYAPT commented that, as proposed, the TPR will “require many school districts to sign up as training providers” which “will inflate the size of the Registry significantly with entities that seek to train their own drivers and who are not intending to make their services available to other employers.”

Minnesota commented that “[t]here will need to be communication between the TPR registry and states that license CDL training schools when a training school fails to follow state requirements.” The NY DMV asked whether the State has an affirmative obligation to inform FMCSA if a training provider “ceases to be certified to provide training in that State.”

IUOE requested that FMCSA clarify that “apprenticeship programs and other joint labor-management programs satisfy the ‘third-party quality control’ section” of the TPID Report form. IUOE also noted that, in the NPRM, FMCSA stated its intention to provide post-rule guidance regarding both suggested and proposed documentation establishing a training provider’s compliance with the eligibility requirements for listing on the TPR. IUOE urged the Agency to “resolve issues related to third-party quality control through the rulemaking process, rather than through post-regulatory guidance.” The Montana Logging Association (MLA) asked that FMCSA “eliminate or modify the part where training facilities need to be accredited by an educational source.”

FMCSA Response: The Agency appreciates the comments it received on the training provider registration process, some of which led to revisions in the newly titled Training Provider Registration Form (TPRF) and/or the related instructions, both available in the docket of this rulemaking. For example, FMCSA agrees with commenters who raised questions about the registration process for training providers with multiple training facility locations. The Agency revises the registration form to accommodate Michigan’s suggestion that, for such entities, linked sets of unique identifier numbers be assigned, one for the training provider business entity and others for separate training locations operated by that entity. FMCSA intends to minimize the training location-specific information required for the biennial updates for entities that maintain multiple training locations. We also note that the TPRF is an online form that must be electronically transmitted through the TPR Web site. The Agency will not accept paper registrations forms.

There is no fee associated with either initial or continuing registration on the

TPR. Further, FMCSA expects that the registration process itself will be neither burdensome nor costly, as the process is entirely electronic and captures basic identifying and categorical information. The Agency sees no rationale under which motor carrier-operated training schools should be permitted to opt out of the TPR registration requirements on the basis of their size or safety record, as several commenters suggested. Such exceptions would defeat the very purpose of the registration process, which is to provide FMCSA with identifying information and to require all training providers to attest, under penalty of perjury, that they provide ELDT in accordance with the final rule. In addition, registration is necessary to allow for the electronic transmission of training certification information to the TPR.

FMCSA acknowledges that some training providers, including those who provide ELDT only for their own employees or prospective employees, may wish to keep their contact information private and therefore not have it publicly displayed on the TPR Web site. Accordingly, training providers who do not intend to make their services available to all driver-trainee applicants can elect not to include their contact information in the public listing that appears on the TPR Web site. This option will be made available at the time of initial registration and can be changed anytime the provider so chooses. Because these training providers do not wish to be contacted by driver-trainee applicants, they will be listed on the TPR Web site simply by name, city, and State. We note, however, that it is important that *all* training providers eligible to deliver training that complies with today’s rule be publicly listed, so that driver-trainee applicants will have a reliable means of confirming the provider’s eligibility. The publicly available information on the TPR may be accessed by anyone, at no cost. A provider listed on the TPR is eligible to provide ELDT once it has been assigned a unique training provider ID number. However, the Agency emphasizes that, as explained above in the discussion of the self-certification approach adopted in today’s rule, merely because a training provider is listed on the TPR does *not* mean that FMCSA certifies or otherwise “approves” that provider’s operations. Prospective entry-level drivers are thus encouraged to perform their own due diligence before selecting a suitable training provider.

The Agency agrees with the VA DMV’s suggestion that training providers who have received a notice of

proposed removal should be publicly identified on the TPR Web site. The final rule requires, as proposed, that training providers who receive a notice of proposed removal under § 380.723(b) to inform current driver-trainees, as well as those scheduled for future training, of the proposed removal. However, FMCSA believes this information should also be available on the TPR Web site as an additional means of putting prospective students on notice that the Agency issued a notice of proposed removal to a training provider listed on the TPR. In the event that FMCSA withdraws the notice, the Agency would remove the designation that a notice was issued. FMCSA adds this provision to § 380.723(b) of the final rule.

Several commenters asked whether a State must inform the Agency whenever a CMV driver training provider licensed, certified, or otherwise approved by that State no longer complies with the applicable requirements imposed by the State. The answer is yes, and parts 383 and 384 are revised to make that obligation clear. This notification requirement is necessary because FMCSA has no independent means by which to monitor a training provider's compliance with existing State laws and regulations. A training provider's failure to comply with the licensure, certification, or other requirements of the State in which it conducts training may result in that provider's removal from the TPR.

In response to comments by MLA and IUOE, FMCSA notes that we may have inadvertently caused confusion by labeling a section of the TPID form as "Third-Party Quality Control." As noted above, no third-party certification or accreditation requirements for training providers were proposed in the NPRM and none are adopted in the final rule. The purpose of this section on the proposed TPID form was merely to identify organizational affiliations that training providers may have. There is no requirement that training providers belong to any third-party group as a condition of listing on the TPR. In order to avoid confusion going forward, FMCSA changes the name of that section of the registration form from "Third-Party Quality Control" to "Third-Party Affiliations." We also add "joint labor-management programs" to the list of third-party organizations identified in this section of the form.

FMCSA further clarifies that the Agency does not intend to issue post-rule guidance pertaining to "third-party quality control". The guidance to which we referred in the NPRM concerned the specific documentation requirements set

forth in § 380.725. In light of the clarifying changes made in § 380.725 of the final rule discussed below, the Agency believes that post-rule guidance on training provider documentation requirements is unnecessary. In addition, draft instructions accompanying the TPRF, available in the docket for this rulemaking, provide detailed descriptions of the categories of information required for registration on the TPR.

30. Timeframe to Electronically Transmit ELDT Certification Information

FMCSA proposed that all training providers must upload training certificates to the TPR by close of the next business day after the driver-trainee completes the training.

Comments: The Delaware DOE stated that not all of its certified trainers have the hardware or software to transmit certificates. Delaware DOE, DMTA, and DTCC asserted the requirement to notify FMCSA by the next day will not be possible in all cases. DMTA and DTCC favored allowing training providers up to one week to upload training certification. Werner requested that the time for electronic transmission of certificates be extended beyond what was proposed, noting that "[a] potential daily requirement to complete and upload training certificates is an unreasonable and potentially expensive administrative burden on training providers." AAMVA recommended that "instead of using the subjective timing of when a business day 'closes,' FMCSA [should] instead use 'midnight of the next business day'."

FMCSA Response: FMCSA acknowledges that, for a variety of reasons, training providers may need more than one business day to transmit the training certification information to the Agency through the TPR. Accordingly, in today's rule, training providers have until midnight of the second business day after a driver-trainee completes training to electronically transmit the ELDT certification to the TPR. In addition, the final rule requires that providers electronically submit training certification information, as defined in § 380.717, to the TPR through an online form, rather than uploading the training certificate, as proposed. FMCSA believes this method of data transmission is more efficient and ensures that the required informational elements will be uniformly understood and reported.

31. FMCSA's Transmittal of ELDT Certification and Related Information Requirements

As proposed, following a driver-trainee's completion of ELDT administered by a training provider listed on the TPR, the provider will electronically transmit to the TPR a certificate of completion which contains specified information, including the driver-trainee's name, CLP/CDL number and the CDL class and/or endorsement training the driver-trainee received. FMCSA would then instantaneously transmit the certificate to the SDLA via CDLIS for entry into the appropriate driver record. In the NPRM, the Agency indicated that it would not retain a copy of the trainee certificate in any Agency system of records. For Class A or B CDLs or P, S, or H endorsements issued after the compliance date of the final rule, FMCSA proposed that, before issuing a CDL, States be required to initiate a check with CDLIS to determine that the applicant completed the required ELDT from a training provider listed on the TPR.

Comments: A number of commenters had questions related to the process by which SDLAs would confirm that a CDL applicant completed the required ELDT. AAMVA and the ODOT asked whether SDLAs would be permitted to accept paper training certificates. Other commenters recommended that FMCSA retain the training certificate as "back-up" documentation in the event the SDLAs do not receive the information or there is a verification problem. The Connecticut DMV asked FMCSA to clarify how States will be notified when the Agency removes a training provider from the TPR.

AAMVA noted further that it is unclear how quickly the SDLAs would be notified after the ELDT certificate is uploaded to the TPR and requested that the Agency clarify the time frame in the final rule. AAMVA also asked FMCSA to clarify how long SDLAs have to post the ELDT certificates and for what length of time the States must retain the information. South Dakota DPS commented that if license examiners must record the training certificate when the driver applied for a CDL, there would be longer wait times at examining stations, requiring States to hire additional staff. The ABA asked whether FMCSA intends to make ELDT certificates available to motor carriers seeking to hire qualified drivers.

The NY DMV commented that FMCSA "has not set any regulations or guidelines as to the establishment of [the TPR] or the integration of the transmittal of TPR certification data to

CDLIS." AAMVA noted that, while § 380.717 identified the information that a training provider must submit to the TPR, the NPRM did not include a list of proposed data elements that need to be posted to the CDLIS driver record. AAMVA requested that FMCSA clarify "which data elements CDLIS and the SDLAs will be required to accommodate." ODOT observed that, because CDLIS does not retain CDL issuance history, "after only a few years, every driver will appear to be under the training requirement." Accordingly, ODOT suggested that the Agency add specific data elements for recording in CDLIS, such as whether the ELDT requirements applied to an individual driver as of the compliance date of the final rule and what class of CDL and/or endorsements the driver received.

ATA commented that "[i]t is imperative that training providers are able to electronically transmit training certificates to the SDLAs, and that the SDLAs are able to append the certificate, or confirmation thereof, to the driver's [CDLIS] record prior to implementation of this rule." Similarly, NY DMV recommended that the TPR be "fully established and operational to integrate the training certifications to CDLIS prior to" the compliance date of the final rule. AAMVA suggested that the TPR send an inquiry to CDLIS to verify that the training certification can be matched to a CDLIS Master Pointer record prior to the TPR's transmission of ELDT certification to the SDLA.

FMCSA Response: In the final rule, FMCSA will not, as proposed, transmit the training certificate to the States through CDLIS for entry on the driver's record. Instead, the Agency intends to provide the relevant ELDT certification information through data elements added to CDLIS that will be entered by the SDLAs directly onto the driver's record. At a minimum, these additional data elements will include the training provider's unique ID number (assigned upon initial listing on the TPR), the date the applicant completed applicable ELDT, and the type of ELDT the applicant received (e.g., Class A, Class B and/or the P, S, or H endorsements). The Agency intends to transmit the training certification information as soon as FMCSA confirms the information is complete. Under this approach, States will not be required to verify that the applicant received ELDT from a training provider on the TPR, as proposed. Consequently, there is no need for FMCSA to notify States if a provider in their State is removed from the TPR. SDLAs will simply need to confirm, by checking the applicant's driver record, that he or she has

completed requisite ELDT before allowing the individual to take the applicable skill test(s) or, in the case of the H endorsement, the knowledge test. In addition, the final rule does not require that States separately retain the training certification information, since the relevant data will be entered directly onto the driver's record through CDLIS.

Contrary to the position that FMCSA expressed in the NPRM, the Agency will retain the training certification information electronically transmitted to the TPR. Upon consideration, FMCSA believes retention of this information is prudent in the event that data transmission to CDLIS is unsuccessful, as several commenters noted. Further, as noted previously, the Agency intends to use the specific training information contained in the certificates to assess the impact of ELDT on motor carrier safety and to monitor the effectiveness of individual training providers. FMCSA will not make individual driver-trainee ELDT certification information available through the TPR to potential employers or any entity other than the SDLAs. The means by which FMCSA will protect the personally identifiable information (PII) contained in the training certification information is discussed in the Privacy Impact Assessment associated with this rulemaking.

The Agency will not issue paper training certificates for use by the SDLAs; FMCSA's transmittal of ELDT certification information to the SDLAs will be entirely electronic through CDLIS. The Agency believes that the use of paper training certificates is susceptible to fraud. Accordingly, in the final rule, FMCSA revises § 383.73(b)(10) to clarify that States must accept only electronic notification of ELDT certification. However, today's rule does not prohibit training providers from issuing paper certificates to individual driver-trainees, who may wish to have their own documentation of ELDT completion.

The comments submitted by SDLAs and training providers have raised important questions and concerns regarding the transmittal of ELDT certification information to the States through CDLIS. Many of the operational details will necessarily be developed during the implementation phase of the TPR, and the Agency will take these comments into account during that process. In addition, FMCSA will work closely with AAMVA and the SDLAs during the implementation phase to address these issues in a way that minimizes the administrative burden on States to the greatest possible extent.

a. Separate Training Providers

The NPRM permitted theory and BTW training to be delivered by separate providers. The Agency noted that it "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." (81 FR 11960)

Comments: The NY DMV wanted to know whether, if the training is completed by two different providers, both providers would be required to complete a training certification. If so, how would separate certifications "be reconciled for transmittal of a single certification of driver training completion to CDLIS?" NY DMV recommended that "the training certification not be issued and pushed to CDLIS until both components of the training are completed." Similarly, the CA DMV noting that "[t]he proposed language seems to indicate the DMV will receive multiple electronic completion notices when separate training providers deliver the theory and BTW training," commented that "it would be less complicated if the states only receive one certification per curriculum."

FMCSA Response: If a driver-trainee completes BTW and theory training delivered by two separate providers, each provider must transmit its certification to the TPR. The Agency will not transmit notice of ELDT certification through CDLIS until both portions of the training are completed. Therefore, as the NY and CA DMVs suggested, there will be a single notification to SDLAs indicating that the CDL applicant complies with applicable ELDT requirements. We also note that, as discussed above, today's rule requires that the range and public road components of BTW training be obtained from the same training provider.

32. Audits, Investigations, and Documentation Requirements—*FMCSA's "Authorized Representative"*

As proposed, one of the requirements that training providers must meet in order to remain listed on the TPR is to allow an audit or investigation of their operations conducted by FMCSA or its authorized representative (§ 380.719(a)(6)). Training providers must also ensure that all required documentation is available upon request by FMCSA or its authorized representative.

Comments: Several commenters questioned the meaning of the term "authorized representative" as used in

the NPRM. The NY DMV commented that it “does not have the funding or the resources & expertise to undertake such a task if FMCSA decided to utilize state agencies.” The Nebraska DMV stated that “SDLAs not be considered an ‘authorized representative’ now or any time in the future,” requesting that FMCSA make this clear in the final rule.

FMCSA Response: The provisions in § 380.719(a)(6) and (7), cited above, remain unchanged in the final rule. By using the term “authorized representative”, FMCSA does not intend to impose any audit, investigation, or documentation inspection requirement on the States. The term simply indicates that the Agency may fulfill these functions by using third party representatives as appropriate.

33. *Involuntary Removal From the TPR—Due Process*

As proposed, § 380.723 set forth procedures related to the voluntary and involuntary removal of a training provider from the TPR.

Comments: Driver Holdings LLC (Driver Holdings) noted that under proposed § 380.723, any training provider to whom FMCSA issues a notice of proposed removal must notify current students, as well as students scheduled for future training, of the proposed removal “and all training after that date is not compliant.” Driver Holdings commented that § 380.723 “does not appear to provide due process” because “[t]here does not seem like there is an opportunity for the [training provider] to correct the problem, short of suspending its program.”

FMCSA Response: The procedures set forth in § 380.723 are largely retained as proposed. Under § 380.723(b), FMCSA initiates the process for removing a training provider by issuing a notice of proposed removal from the TPR, setting forth the reasons for the proposed removal and any corrective actions necessary for the provider to remain listed on the TPR.

The Agency acknowledges the commenter’s concern that the proposed language does not appear to afford the training provider an opportunity to correct noted deficiencies “short of suspending its program.” In response, FMCSA deletes the proposed language in § 380.703(b) stating that “no training conducted after issuance of a notice of proposed removal will be considered to comply with this subpart until FMCSA withdraws the notice.” Accordingly, under the final rule, training providers who receive a notice of proposed removal can continue to conduct training during the period in which they

are undertaking the necessary corrective actions, which is generally 60 days. However, the final rule requires, as proposed, that providers who receive a notice of proposed removal must inform driver-trainees currently enrolled in training, as well as those scheduled for future training, of the proposed removal. In addition, as noted below, FMCSA will indicate on the TPR Web site that it has issued a notice of proposed removal to the training provider. (The Agency will remove that notation from the TPR Web site if it withdraws the notice.) If FMCSA subsequently removes the provider from the TPR because it did not respond to the notice or proposed removal within 30 days, or because it did not complete the required corrective actions, any training conducted after the date of removal is invalid.

In the Agency’s judgment, this approach balances the needs of training providers who wish to correct deficiencies in their program and driver-trainees who are already receiving training from a provider to whom FMCSA issues a notice of proposed removal. Finally, we note that, under the emergency removal procedures in § 380.723(e), FMCSA can immediately remove any training provider engaged in fraud, criminal behavior or when the public interest or safety requires.

The rest of § 380.723(c)(1) remains largely as proposed. The Agency, therefore, believes that the final rule offers training providers significant due process protections which allow them to: (1) Respond to the notice of proposed removal by explaining why the proposed removal is not warranted or by agreeing to take specified corrective actions; (2) conduct training following issuance of the notice of proposed removal (3) avoid removal from the TPR by taking prescribed corrective actions; (4) request administrative review of removal; and (5) apply for reinstatement to the TPR no earlier than 30 days after involuntary removal.

34. *Scheduling the State-Administered CDL Skills Test*

The NPRM did not address when a driver-trainee may schedule his or her State-administered CDL skills test. Under existing regulations, a CLP holder is not eligible to take the CDL skills test in the first 14 days after initial issuance of the CLP (§ 383.25(e)). However, part 383 does not prohibit a CDL applicant from scheduling a skills test before that date.

Comments: Several commenters suggested that driver-trainees should be permitted to schedule skills testing prior to the completion of the required ELDT

and urged FMCSA to address the issue in the final rule. Most commenters cited State CDL skill testing delays as the reason for their request that scheduling be permitted before ELDT is completed.

FMCSA Response: The final rule does not prohibit an applicant from scheduling a skills test in advance of his or her completion of the required training. However, the rule is very clear that a State may not administer a skills test until a driver-trainee completes the training for the CDL or endorsement for which he or she is applying. Today’s rule will better prepare the applicant to take the skills test, thereby reducing the chance of failure and the need to take the test more than once.

35. *Third-Party Skills Testers—Verification of ELDT Certification*

The NPRM did not address whether, or how, a third-party CDL skills tester would access a driver-trainee’s training certification information. Under § 383.75, States may currently authorize a third-party tester to administer the CDL skills tests, as long as specified conditions are met.

Comments: AAMVA commented that, as an agent of the State, a third-party CDL skills tester would need to verify that the applicant completed the required ELDT, but noted that “[n]o consideration of this verification process by third-party providers is included in the NPRM. . . .” AAMVA suggested that, in the final rule, FMCSA permit third-party testers to “submit a search inquiry to the TPR and obtain the necessary certificate data to administer the skills test.” Similarly, ATA observed that, absent granting third-party skills testers access to CDLIS, they “would have no way to verify the course has been completed.” However, ATA opposed granting third-party testers access to the TPR to obtain the information, citing privacy concerns. The State of Michigan also noted the third-party tester’s need to confirm the ELDT certification, suggesting that the certificates be submitted to the Commercial Skills Test Information Management System (CSTIMS).

FMCSA Response: The Agency acknowledges that third-party skills testers may need to obtain ELDT certification information. Currently, however, individual States decide whether to use third parties to administer the CDL skills test and, if so, how the third-party testers verify the applicant’s eligibility. Therefore, it would not be feasible for the Agency to set forth third-party testing ELDT verification requirements in today’s rule. FMCSA will work with AAMVA and the SDLAs during the

implementation phase to address the process by which a third-party tester may determine whether the driver-trainee has completed the applicable ELDT.

36. Compliance Date for ELDT Requirements

As proposed, the compliance date will be three years after the effective date of the final rule.

Comments: FMCSA received a number of comments from State licensing authorities asserting that three years does not allow sufficient time for the States to make necessary adaptations to their IT systems and record the CDL applicant's training certificate information on the driver's record through CDLIS. The State of Michigan commented that, "[g]iven these training requirements have been many years in the making, ELDT requirements should be effective 5 years (not 3) after the effective date of the final rule." Noting that "three years to implement this program is a very short and unreasonable amount of time," the Delaware DMV suggested a minimum of seven years from publication of the final rule. Some SDLAs cited the refresher training requirements, including the issuance of a restricted CDL, as particularly problematic. For example, Oregon DMV stated that "[i]ssuing a restricted CDL as described in this rulemaking would require a very lengthy programming effort . . ."

AAMVA commented that "[t]he registry of entry-level training providers and the process for transmittal and acceptance of all applicable information associated with the entry-level training certification must be in place before the compliance date." AAMVA requested that the three year compliance date be specifically predicated on the completion of all process and functional requirements associated with the final rule. Similarly, the Connecticut DMV asked the Agency to extend the compliance date "until all process requirements of the rule and [the TPR] are functional." The NY DMV also commented that the compliance date should be tied directly to the functionality of the TPR, suggesting that the date be no earlier than one year after the "fully established and operational training Registry."

In addition to SDLAs, several other commenters expressed concern regarding the proposed compliance date. The NYAPT commented that FMCSA could place the State licensing agencies in the difficult position of having to implement requirements before the related systems changes are fully operational. UMA reminded the

Agency "of the importance of a fully functional electronic system between schools, FMCSA and states prior to full implementation."

FMCSA Response: The compliance date of today's rule remains as proposed, three years after the effective date of the final rule. While FMCSA acknowledges the implementation concerns raised by commenters, the Agency nevertheless believes that three years allows adequate time for the States to pass implementing legislation and modify their technology platforms accordingly. FMCSA intends to work closely with AAMVA to address CDLIS-related implementation issues as expeditiously as possible and to provide post-rule implementation guidance to assist SDLAs in addressing specific implementation issues. Further, we note that because the final rule does not include a refresher training requirement (as proposed), SDLAs will not need to modify their systems in order to issue restricted CDLs for the purpose of completing BTW refresher training on a public road.

Finally, unlike FMCSA's phased approach to the Medical Certification and National Medical Registry implementation, the Agency will not provide SDLAs with paper training certificates, nor will SDLAs be permitted to accept paper certificates as evidence of ELDT compliance. Accordingly, FMCSA believes that the underlying information systems can be integrated and operational by the compliance date of today's rule.

37. Bond Requirements for Training Providers

The NPRM did not propose any bond requirements for training providers listed on the TPR. However, in the preamble, the Agency noted that the ELDTAC considered the effect of a training provider's involuntary removal from the TPR on driver-trainees who had already paid tuition, but had not yet completed their training. The ELDTAC determined the issue should be resolved between the training provider and the driver-trainee.

Comments: The Virginia DMV and the ODOT both expressed concern about the NPRM's lack of consumer protection for a driver-trainee who paid tuition to a training provider that, due to non-compliance with today's rule, is involuntarily removed from the TPR before the driver-trainee completes his or her training. The commenters suggested that training providers be required to submit a surety bond in order to provide recourse to driver-trainees under such circumstances. The ODOT noted that, in the absence of a

bond requirement, driver-trainees will look to their State licensing or education authorities, neither of which would be in a position to offer assistance. In support of its request for a bond requirement for training providers, the ODOT cited an FMCSA regulation requiring third-party CDL skills testers to maintain a bond.

FMCSA Response: As noted above, the NPRM did not require training providers to maintain a surety bond in order to be eligible for listing on the TPR and neither does today's rule. The Agency agrees with the ELDTAC's assessment that the issue of tuition reimbursement related to the training provider's involuntary removal from the TPR is appropriately addressed directly by driver-trainees and the training providers they choose. Prudent driver-trainees will assess the provider's training operations before making a financial commitment. Potential sources to assist in such evaluation include State or local consumer protection agencies, third party training accreditation entities, State Departments of Education or Transportation, and the U.S. Department of Education. We also note that the final rule does not prohibit a State from requiring a training provider to post or maintain a surety bond as a condition of doing business in that State.

The bond requirement for third-party skill examiners, referenced by the ODOT, is not an appropriate precedent for requiring training providers to maintain a bond under today's rule. Section 383.75(a)(8)(v), provides that when the State has an agreement with a third party to administer CDL skills testing, that agreement must include a provision requiring the third-party tester to initiate and maintain a bond, in an amount determined by the State, sufficient to pay for re-testing drivers in the event the third-party is involved in fraudulent activities related to conducting skills testing for CDL applicants. That bond requirement is therefore part of a contractual agreement between the State and third-party, non-government entities who provide testing services for the State.

No contractual relationship exists between a training provider and FMCSA. In order to be eligible for listing on the TPR, training providers need only attest, under penalty of perjury, that they meet the eligibility criteria to provide ELDT and that they agree to comply with other requirements set forth in subpart G. This self-certification approach is very different from the way that third-party CDL skills examiners are regulated under part 383. Section 383.75 requires, for example,

that States authorizing third-party testers to conduct CDL skills testing do the following: (1) Perform onsite inspections of the testers; (2) periodically validate the legitimacy of the testers' skills testing operations; (3) include specified contractual provisions in agreements between the State and the third-party; and (4) take prompt remedial action against testers failing to comply with CDL program standards. Since today's rule does not impose any similar regulatory requirements related to the oversight of training providers, the Agency does not believe there is sufficient basis to implement a bond requirement related to ELDT.

However, the Agency recognizes that driver-trainees should be timely informed about the status of providers from whom they obtain, or plan to obtain, ELDT. The final rule requires, as proposed, that training providers inform driver-trainees currently enrolled in training, as well as those scheduled for future training, of the proposed removal (§ 380.723(b)). Further, as noted above, the Agency adds a provision to § 380.723(b) stating that, if the provider is listed on the TPR Web site, FMCSA will indicate on the Web site that it has issued a notice of proposed removal to the provider. (In the event that FMCSA withdraws the notice, that designation will be removed from the provider's TPR listing.)

As noted above, in today's rule, FMCSA deletes the proposed provision stating that training conducted after the Agency's issuance of a notice of proposed removal is invalid until FMCSA withdraws the notice. Under § 380.723(b) of the final rule, training conducted following issuance of a notice of proposed removal is generally considered compliant until the provider is actually removed from the TPR. Therefore, a driver-trainee in the process of receiving ELDT from a provider to whom FMCSA issues a notice of proposed removal will very likely be able to complete their training before the provider can be removed, which is a minimum of 30 days following issuance of the notice. (Any training provided after the date of removal from the TPR is not valid.)

Further, FMCSA expects that the potential imposition of civil and criminal penalties on training providers failing to comply with the requirements of today's rule will, in most cases, deter fraudulent conduct. However, in the event that driver-trainees become aware of fraudulent training operations, they are encouraged to report the activity to the DOT Office of Inspector General (OIG). Instructions for reporting fraud, waste and abuse are available on the

OIG's Web site, www.oig.dot.gov/hotline, and will also be available on the TPR Web site.

38. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

E.O. 13045 requires that Federal agencies, consistent with their mission, identify whether "economically significant" rules pose environmental health risks and safety risks that may disproportionately affect children. In the NPRM, FMCSA stated that, while the proposed rule was economically significant, the Agency does not anticipate that this regulatory action could in any way create an environmental or safety risk that could disproportionately affect children.

Comment: NAPT took "strong exception" to the Agency's assertion that the NPRM does not create an environmental health or safety risk that could disproportionately affect children and therefore does not invoke E.O. 13045. NAPT commented that the S endorsement training requirements will lead to school bus driver shortages, resulting in children having to find alternative and less safe means of transportation to and from school. NAPT concluded that the NPRM would thus create "a very real situation that may indeed disproportionately affect children since they are the primary beneficiaries of school bus service."

FMCSA Response: E.O. 13045 defines "environmental health risks and safety risks" as risks that "are attributable to products or substances that the child is likely to come in contact with (such as the air we breathe, the food we eat, the water we drink or use for recreation, the soil we live on, and the products we use or are exposed to)." (E.O. 13045, Section 2–203.) This rulemaking does not pose any risks "attributable to products or substances [a] child is likely to come in contact with." As previously discussed, today's rule retains the S endorsement training requirements proposed in the NPRM. The S endorsement curriculum is intended to *enhance* the safety of school bus transportation by ensuring that all school bus drivers have the requisite knowledge and skills to operate the vehicle safely. As we explained in the discussion of the Agency's decision to retain the S endorsement training requirement, we do not anticipate that this requirement will result in reduced school bus service. FMCSA therefore disagrees with NAPT's assertion that the rule poses a safety risk that disproportionately affects children.

VIII. Discussion of Comments and Responses on the Analysis

Opportunity Costs

Comment: An individual commenter stated that the tuition costs do not take into account the fact that driver-trainees would not be earning an income while they are in training, and that all training was uncompensated time that the Agency did not account for.

FMCSA Response: FMCSA discussed this issue in Section 3.1.3 (Opportunity Cost of Time) of the RIA for the NPRM and for today's rule. FMCSA first estimated the total amount of time that a driver-trainee would spend in training—both theory and BTW hours—for each of the proposed curricula. Additionally, FMCSA estimated the cost of this time using the appropriate driver wage rate; that is, presuming that the time driver trainees spend in training is time they could otherwise be working as a driver.

Carrier Opportunity Cost

Comment: The NPGA stated that FMCSA did "not account for the opportunity cost of the propane motor carrier while the potential driver receives training from an institution."

FMCSA Response: FMCSA discussed this issue in Section 3.2.1 (Opportunity Cost of Entry-Level Driver Training to Motor Carriers) of the RIA for the NPRM and for today's rule. FMCSA estimated that the opportunity cost of the motor carriers, that is, the best alternative to the carriers in the absence of regulatory action, would have been the value of drivers' labor under the carriers' employ and consequently, the carriers earning some increment of profit or value from each of those drivers' labor hours of work.

Barrier To Entry for Prospective Drivers

Comments: FMCSA received numerous comments regarding the effect of the proposed ELDT requirements on the supply of CMV drivers. Most of these commenters, which included the school bus industry, custom harvesters, the limousine industry, and some SDLAs, believe that the rule may inhibit the entry of new drivers into the CMV industry, thereby making it more difficult for carriers to hire drivers, and more expensive for carriers to employ those drivers once they are hired. A number of commenters asserted that, accordingly, the proposed rule would exacerbate any preexisting CMV driver shortage.

FMCSA Response: FMCSA does not believe that today's rule will impose a barrier to entry or exacerbate any preexisting CMV driver shortage. As

discussed in Section 2.4.1 (Number of Entry-Level CDL Drivers Annually) and Section 2.4.6 (Current Entry-Level Driver Training Efforts) of the RIA, the rule is estimated to have minimal impact on drivers because most of them already receive training that meets or exceeds the requirements of today's rule, and therefore it seems unlikely that significant barriers to entry would be imposed in the CDL driver labor market as a result of the ELDT rule.

FMCSA's Tuition Estimate

Comment: C.R. England stated that FMCSA underestimated tuition costs because BTW hours are more costly than theory hours, and under the current baseline, which does not include a Federal minimum hours requirement, the number of BTW hours in the existing training programs identified by FMCSA would be fewer than the minimum of 30 BTW hours for Class A training.

FMCSA Response: As explained in Section 3.1.2 (Tuition Costs) of the RIA for today's rule, the Agency concludes that it overestimated tuition costs in the RIA for the NPRM. In the final rule, the Agency has eliminated the minimum hours requirement for Class A and Class B BTW training, but retains the requirement for instructors to determine that entry-level drivers have achieved proficiency in the required BTW skills. FMCSA disagrees with the commenter's statement that the number of BTW hours in existing training programs identified by FMCSA would be fewer than the estimated average 30 hours of BTW training for the Class A curricula and estimated average 15 hours of BTW training for the Class B curricula that some entry level drivers will receive as a result of this final rule. As discussed in Section 2.4.6 (Current Entry-Level Driver Training Efforts) in the RIA, the Class A programs provided by the approximately 865 CDL training programs identified by FMCSA mostly consist of programs with substantially more hours of BTW, and more hours of theory training, than the estimated average 30 hours of BTW training for the Class A curricula and estimated 60 hours theory in the ELDT rule. Therefore, if anything, the Agency's original tuition estimates in the RIA for the NPRM were likely overly conservative in that they would overestimate the cost of tuition given that both the estimated average 30 hours of BTW training for the Class A curricula, and the estimated 60 hours of theory training, are less than that generally observed on average.

FMCSA acknowledges that the costs per hour for delivering BTW training

may exceed the costs per hour for delivering theory training, given that one includes the costs of more one-on-one instruction and observation of the student operating a CMV on the range and road, while the other involves the costs of theory instruction which may be provided simultaneously in a classroom setting to multiple students or via online training. The Agency does not believe this fact is relevant to the content of the rule or the estimates of the costs for completing all the training necessary to obtain the CDL.

Non-Safety and Safety Benefits

Comment: An individual commenter stated that reduced fuel consumption, while admirable, is not a safety issue, and that therefore fuel savings should not be evaluated in the RIA.

FMCSA Response: FMCSA interprets this comment not as a challenge to the methodology by which fuel savings were estimated, but rather more broadly to suggest that no RIA should quantify any ancillary benefits that would arise from regulation. The commenter is correct in that none of the quantified benefits (fuel savings, CO₂ emissions reductions, and maintenance and repair cost savings) are primary goals of this rule. However, it is appropriate for the Agency to quantify each of these because they are legitimate benefits resulting from the rule. OMB Circular A-4 encourages agencies to consider and, if possible, monetize both ancillary benefits (*i.e.*, favorable impacts of the rule that are typically unrelated or secondary to the statutory purpose of the rulemaking), and undesirable side effects or countervailing risks (*i.e.*, adverse consequences of a rule not already accounted for in other direct cost estimates of the rulemaking).²¹ FMCSA's evaluation of ancillary costs, but not ancillary benefits, would result in an incomplete and inconsistent accounting of regulatory impacts.

Comment: The National Rural Electric Cooperative Association (NRECA) stated that the social cost of carbon (SC-CO₂ or SCC) is highly uncertain and its applicability to benefit-cost analysis is inappropriate and results in arbitrary analysis.

FMCSA Response: FMCSA disagrees with these contentions. For a history of the development of the SC-CO₂ that documents the lengths to which the Administration has gone to ensure the scientific accuracy and transparency of the preparation of the SC-CO₂ guidance,

the recent White House guidance addressing the quantification of SC-CO₂ benefits states "Federal agencies will continue to use the current SCC estimates in regulatory impact analysis until further updates can be made to reflect the forthcoming guidance from the Academies."²² We note further that FMCSA opted not to quantify or monetize the reduction of other harmful emissions and criteria pollutants that would result from reduced fuel consumption in order to ensure that the aggregate environmental benefits estimated in the RIA are conservatively low. In the RIA for today's final rule, an expanded and enhanced fuel savings (and consequently, SC-CO₂) sensitivity analysis has been added to better reflect the uncertainty regarding the extent to which driver training may result in fuel savings.

Additional details can be found in Section 4.1.1 (Savings from Reduction in Fuel Consumption) and Section 4.1.2 (Monetized CO₂ Impacts—Social Cost of Carbon Dioxide Emissions) of the RIA.

Comment: The NPGA also commented on the projected reduction in CO₂ emissions, stating that FMCSA failed to account in the NPRM RIA for the cost or effect of the increase in CMV operations and emissions to comply with the rule. NPGA's comment was made in the context of a broader argument that a purely "performance-based" BTW standard (which does not include a minimum number of required BTW hours) would *not* result in these purported costs or effects.

FMCSA Response: In the final rule, the Agency has eliminated the minimum hours requirement for Class A and Class B BTW training, but retains the requirement for instructors to determine that entry-level drivers have achieved proficiency in the required BTW skills. Nonetheless, FMCSA disagrees with NPGA's assumption that FMCSA failed to account for the cost or effect of an increase in CMV operations and emissions to comply with the rule. Throughout the RIA, FMCSA consistently applies the assumption that, in the absence of the rule, those entry-level drivers who would continue to receive no or minimal BTW training would be hired sooner by motor carriers and thus begin to drive on the job sooner. Regardless of whether these entry-level drivers are driving in the employ of motor carriers, or with instructors providing pre-CDL BTW

²¹ Office of Management and Budget. *Circular A-4. Regulatory Analysis*. September 17, 2003. Available at: <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf> (accessed June 21, 2016).

²² "Estimating the Benefits from Carbon Dioxide Emissions Reductions," Shelanski, H. and Obstfeld, M. The White House, July 2015. Available at <https://www.whitehouse.gov/blog/2015/07/02/estimating-benefits-carbon-dioxide-emissions-reductions> (accessed June 21, 2016).

training, fuel is combusted, CO₂ is emitted, and vehicle operational costs are incurred. The Agency therefore concludes there is no net increase in CO₂ emissions or vehicle operational costs at the societal level resulting from this rule.

Comments: ATA and C.R. England commented that the studies FMCSA relied on to estimate a 5 percent fuel economy improvement are “irrelevant” and overstate any fuel economy benefit attributable to this rule.

FMCSA Response: The Agency disagrees with the commenters that the 5 percent fuel economy improvement is incorrect, overstated, based on faulty premises, or lacking in relevance. In the RIA for the NPRM, FMCSA evaluated several studies (see February 2016 RIA, pp. 79–81) that covered a broad range of fuel economy improvements resulting from a variety of factors impacting driver behavior. FMCSA understands that some of those studies used approaches beyond the scope of this rulemaking (such as in-cab feedback technologies to provide drivers with real-time analysis of fuel economy, the use of simulators, or the use of incentive schemes to reward fuel-efficient driving). However, the Agency believes these studies have value because they demonstrate that driver behavior can substantially alter fuel consumption. Again, in order to be conservative, FMCSA, in identifying a 5 percent reduction in fuel consumption, chose to rely on the value at the lowest end of the estimates, which is not predicated on in-cab technologies, incentives, simulators or other factors that could reasonably be expected to improve fuel economy.

In Section 4.1.1 of the RIA (Savings from Reduction in Fuel Consumption), the Agency demonstrates that the 5 percent fuel economy benefit attributable to this final rule is conservative, because it is predicated on only a few key training concepts, encompassed in the Class A and Class B curricula, that could reasonably be expected to improve fuel economy (e.g., speed management, space management and avoidance of rapid acceleration and sudden deceleration).

Additionally, due to wide ranges of estimates in studies relevant to the quantified benefits of the rule and the lack of studies that specifically focus on the curricula prescribed by this rule,²³

²³ As described in Sections 4.1.1 through 4.1.3 of the RIA, the Agency identified a variety of relevant studies related to each of the quantified benefits. With particular respect to the estimated fuel and CO₂ savings, the Agency was unable to identify any studies that perfectly align with the curricula of this rule.

the Agency presents benefits estimated under alternate benefit scenarios in which the fuel savings, CO₂ emissions reductions, and maintenance and repair cost savings are 50 percent lower (low benefits case) and 50 percent greater (high benefits case) than the central benefits estimates, which are based on the 5 percent fuel economy improvement. Further discussion of the low and high benefits cases is presented in the RIA for today’s rule (see sensitivity analyses in Sections 4.1.1 through 4.1.3 of the RIA for today’s rule).

Impact of Automatic Transmission on Potential Fuel Saving

Comment: ATA commented that the industry is increasingly moving toward the use of automatic shift transmissions and that this trend reduces the potential fuel savings that may result from ELDT.

FMCSA Response: FMCSA acknowledges that the prevalence of automatic transmission-equipped CMVs appears to be on the rise. Although training on shifting is expected to produce fuel savings benefits, particularly for entry-level drivers operating manual transmission-equipped vehicles, the Agency did not quantify this impact in its analysis. Instead, the estimated 5 percent fuel savings attributable to this rule is based solely on the portion of the training related to driving with the flow of traffic. A more extensive discussion of this issue is presented in Section 4.1.1 (Savings from Reduction in Fuel Consumption) of the RIA.

In addition, FMCSA accounted more broadly for other external factors related to vehicle technology by adjusting downward the baseline fuel consumption projection to reflect the possible impact of the joint EPA/NHTSA Phase 2 Medium- and Heavy-Duty Vehicle Fuel Efficiency and Greenhouse Gas Standards rule.²⁴ This adjustment, discussed in Section 4.1.1 (Savings from Reduction in Fuel Consumption) of the RIA, ensures that the fuel savings benefits attributable to this final rule does not overlap with benefits that would be achieved by other emerging technologies.

Maintenance and Repair Cost Savings

Comment: ATA claims that maintenance and repair cost savings

estimated in the RIA for the NPRM would not occur as drivers are already required to perform pre-trip, en-route and post-trip inspections daily to identify potential equipment failure before an accident occurs.

Additionally, ATA commented that the RIA does not estimate the cost of additional maintenance that would be required for the non-safety benefits to be achieved.

FMCSA Response: The Agency excludes this element from the estimation and monetization of maintenance and repair cost savings attributable to this final rule, but notes in Section 4.1.3 (Maintenance and Repair Cost Savings) of the RIA for today’s rule that it may nonetheless yield some potential additional benefits that are not quantified in the RIA. It is irrelevant that these daily inspections are already performed in the absence of this rule. The relevant point is that a better-informed driver, with greater understanding of inspection procedures and of vehicle hardware, can more readily observe and note minor maintenance needs that, if left undetected, may eventually require more costly fixes and greater vehicle downtime. While there is a cost associated with attention to maintenance needs that would remain unobserved by some entry-level drivers in the baseline, the Agency considers the benefits of that additional maintenance to exceed the corresponding costs. Various sources support the link between the identification of the need for preventive maintenance and—contingent upon the performance of such maintenance—a reduction in the likelihood and severity of breakdown and repair costs. These sources are discussed in more detail in Section 4.1.3 (Maintenance and Repair Cost Savings) of the RIA for today’s rule. Despite this, the Agency is unable to quantify the magnitude of the net benefit of the additional identification of necessary preventive maintenance resulting from enhanced driver awareness resulting from this final rule, and therefore, as noted earlier, excludes this element from the estimation and monetization of maintenance and repair cost savings attributable to this final rule. Finally, the estimated decrease in maintenance and repair costs attributable to this final rule has been reduced by approximately 75 percent relative to the RIA for the NPRM, which is discussed in more detail in Section 4.1.3 of the RIA for today’s rule.

²⁴ Environmental Protection Agency (EPA), and U.S. Department of Transportation, National Highway Traffic Safety Administration (NHTSA). *Greenhouse Gas Emissions and Fuel Efficiency Standards for Medium- and Heavy-Duty Engines and Vehicle—Phase 2*. October 25, 2016. 81 FR 73478–74274. Available at: <https://www.gpo.gov/jdsys/pkg/FR-2016-10-25/pdf/2016-21203.pdf> (accessed October 26, 2016).

Improvements in Safety That Would Occur in the Absence of This Final Rule

Comment: C.R. England states that FMCSA did not account for the speed at which new technology will result in improvements in CMV safety.

FMCSA Response: The Agency assumed no growth in the absolute number of crashes per year, despite projected growth in CMV vehicle miles traveled. By holding this number constant throughout the analysis period for this rule, this implicitly includes safety benefits that are independent of this rule, such as new CMV safety technologies. For more information, see Section 4.2 (Safety Benefits) of the RIA.

Threshold Analysis

Comments: Multiple commenters, including ATA, ODOT, NPGA, and C.R. England, found overly optimistic the 8.15 percent reduction in crashes, estimated in the RIA for NPRM as necessary for the costs and benefits of the rule to be equal.

FMCSA Response: FMCSA believes that commenters incorrectly characterized the reduction in crashes necessary for the rule to be cost-neutral as a reduction in the *total* industry-wide number of crashes involving the operation of trucks and buses. This 8.15 percent reduction does not mean an 8.15 percent reduction in the *total* number of large truck and bus crashes. Rather, the 8.15 percent reduction is specific to the *subset* of the most recent year's crash totals (2013 in the RIA for the NPRM) involving the 14 percent of entry-level drivers estimated to receive no pre-CDL training in the baseline. With respect to the magnitude of the reduction in the frequency of *all* crashes involving large trucks and buses relative to the 8.15 percent reduction noted above from the NPRM, there were an estimated total 3,806 fatal, 86,000 injury, and 299,000 property damage only (PDO) crashes in 2013.²⁵ Based on the annual average number of crash reductions necessary for the NPRM to achieve cost-neutrality (11 fatal, 236 injury, and 786 PDO), this equates to the reduction of *only* 0.29 percent of fatal, 0.27 percent of injury, and 0.26 percent of PDO crashes, respectively (relative to large truck and bus crash totals for calendar year 2013).²⁶ Therefore,

FMCSA disagrees that the 8.15 percent reduction in the subset of crashes as presented in the RIA for NPRM is overly optimistic. This rule requires only a small change in behavior to have a significant impact.

FMCSA notes that these numbers have been updated in the RIA for today's rule and can be found in Section 4.2 (Safety Benefits).

Crash Reduction Data

Comments: In the NPRM, the Agency acknowledged that “[o]ne of the most significant challenges faced by both FMCSA and the ELDTAC is the limited qualitative or quantitative data correlating the provision of *any type* of ELDT with positive safety outcomes, such as crash reduction.” There were numerous comments concerning the lack of data linking ELDT with crash reduction and the corresponding relation to the Agency's break-even analysis. Commenters on this issue included ATA, C.R. England, the North Dakota DOT, Driver Holdings LLC, NRECA, Delaware DMV, Werner, Southern Company, Virginia DMV, and the Oregon DMV.

FMCSA Response: When it is not possible to quantify and monetize the estimated benefits (or costs) of a rule, OMB guidance, as set forth in Circular A-4, is to perform a threshold or break-even analysis.²⁷ Other agencies have conducted threshold analyses in their regulatory evaluations of safety training rules (noted in both the RIA for the NPRM, and in the RIA for today's rule). These include rulemakings from FRA, FTA, USCG, and OSHA. The 8.15 percent crash reduction the Agency estimated in the RIA for the NPRM as necessary for the rule to be cost-neutral is on the low end of the range relative to other agencies' rulemakings. The Agency sought data related to the correlation between training and safety through the ELDTAC and specifically requested such data in the NPRM (81 FR 11959). Detailed discussion of the Agency's efforts to obtain correlative data, and the shortcomings of data and studies that were provided to FMCSA, are noted in Section 4.2 (Safety Benefits) of the RIA for today's rule.

Comment: ATA asserted that, in the absence of correlative data, FMCSA's use of a threshold analysis to estimate the benefits necessary to produce a cost-neutral rule “should have led the agency to pick the alternative that would produce the maximum net

benefit.” ATA concluded that the Agency's failure to analyze the “performance-based” Master Trip Sheet alternative to BTW training offered by some ELDTAC members, “would have prevailed because . . . it produces a more favorable cost benefit analysis.”

FMCSA Response: ATA provided no analysis to support their conclusion that an outcomes-based approach would result in lower costs. Further, based on currently available data and information as discussed in the RIA, FMCSA has no basis to believe that such an outcomes-based approach would, in fact, result in lower costs. Nonetheless, in the final rule, the Agency has eliminated the minimum hours requirement for Class A and Class B BTW training, but retains the requirement for instructors to determine that entry-level drivers have achieved proficiency in the required BTW skills.

H Endorsement Benefits

Comment: Schneider National requested that FMCSA separately quantify the benefits of the H endorsement training.

FMCSA Response: The nature of the likely benefits from the H endorsement training is specific to safety. As explained above, FMCSA lacked sufficient empirical data to quantify the safety benefits of the H endorsement training; therefore, a threshold analysis is appropriate and was performed in Section 4.2 (Safety Benefits) of the RIA. Furthermore, as noted above, the H endorsement training is required by MAP-21.

Training Provider Eligibility and Costs Related To Training

Comments: Many current entities that provide in-house entry-level driver training commented that they would not be able to afford to send their entry-level drivers to a “formal” CDL training school. Other commenters that provide in-house entry-level driver training stated that the burden to become a “certified” training provider is so great that they would not be able to continue training entry-level drivers.

FMCSA Response: Any entity currently providing in-house entry-level driver training can continue to offer such training under the rule by becoming listed on the TPR.

FMCSA does not believe the final rule imposes a heavy burden or cost on training providers seeking to be listed on the TPR. As discussed above, FMCSA does not “certify” training providers under the final rule, instead relying on a self-certification approach for training providers who want to be eligible for listing on the TPR. Training

²⁵ U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA). 2016 *Pocket Guide to Large Truck and Bus Statistics*. Pages 33 and 34. Available at: http://ntl.bts.gov/lib/59000/59100/59189/2016_Pocket_Guide_to_Large_Truck_and_Bus_Statistics.pdf (accessed July 1, 2016).

²⁶ Necessary reductions' shares of total crashes calculated as follows: Fatal = 11 ÷ 3,806; Injury = 236 ÷ 86,000; PDO = 786 ÷ 299,000.

²⁷ Office of Management and Budget. *Circular A-4. Regulatory Analysis*. September 17, 2003. Available at: <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf> (accessed June 21, 2016).

provider costs are based on four separate activities: (1) Completing the initial TPRF, (2) a biennial update to the TPRF, (3) compliance audits, and (4) submission of certification information to the TPR. The average cost for submitting certification information to the TPR is estimated at about \$7 per student,²⁸ and the training provider's total cost associated with submission certification information to the TPR will vary depending on the number of students the provider trains. FMCSA notes that the anticipated costs are greatest in the first year and therefore uses the estimated first year costs as a basis for determining the impact per training provider in order to ensure that costs were conservatively estimated. Based on the information presented in Section 3.3 (Costs to the Training Providers) of the RIA for today's rule, we calculate that the average total cost in the first year for a training provider that trains only one student would be approximately \$189, and the average total cost for a training provider that trains ten students would be approximately \$251.

State Costs Related to the Rulemaking

Comments: Some SDLAs and AAMVA commented that the proposed rule would result in implementation costs for the States. These costs would be related to revising CDL license processing programs, modification of State driver records, accommodation of data transferred from the TPR, an additional CDLIS Central Site, as well as costs associated with ongoing maintenance of effort. The ODOT expected an impact of \$1.1 million for modification of State driver-records in the State of Oregon.

FMCSA Response: FMCSA recognizes that there will be costs associated with CDLIS modifications and other systems-related changes necessary for implementation of the final rule. In the RIA for the NPRM, FMCSA estimated that the State implementation costs would total approximately \$500,000 per SDLA. In the RIA for today's rule, FMCSA increases its estimate of the State implementation costs to \$1.1 million per SDLA. For a further discussion of how FMCSA estimated these costs, see Section 3.4 (Costs to the State Driver Licensing Agencies) of the RIA for today's rule.

²⁸The calculated \$7 cost on a per-student basis is based on the estimated 5 minutes necessary for a training provider to upload certification information for an entry-level driver, multiplied by the total hourly compensation as shown in Section 2.3.2 of the RIA for the "training and development managers" occupational category ($\$7.17 = \$86 \times (5/60)$).

Applicability

Comments: A number of commenters, including the American Pyrotechnics Association, NRECA, NGWA, NGPA, the New England Fuel Institute, the Associated General Contractors of America, PMAA, and the IUOE, observed that the analysis did not address specific industries that fall outside of the motor carrier industry, but that nevertheless require drivers to obtain a CDL for ancillary parts of their jobs.

FMCSA Response: In the RIA for the NPRM, FMCSA estimated the number of entry-level CDL drivers annually using different methods, and using data from a variety of sources (including CDLIS, and the SDLAs themselves). These data include all entry-level CDL drivers, regardless of the particular occupation or industry in which they are ultimately employed. Therefore, all entry-level CDL drivers are fully represented in FMCSA's estimate of the number of entry-level drivers annually. For further discussion on this topic, see Section 2.4.1 (Number of Entry-Level CDL Drivers Annually) of the RIA for today's rule.

IX. Section-By-Section Explanation of Changes From the NPRM

As discussed in the response to comments, the final rule makes the following changes to the NPRM:

Subpart F—Entry-Level Driver Training Requirements

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

This section remains as proposed. Compliance is required with this subpart three years after the effective date of the final rule.

§ 380.601 Purpose and Scope

As proposed, this subpart established training requirements for entry-level drivers, minimum curricula contents, and standards for training providers. It also stated that ELDT, as defined in this subpart, applies only to individuals who apply for a CDL or CDL upgrade or endorsement and does not otherwise amend substantive requirements in part 383.

In the final rule, FMCSA deletes the reference to "standards for training providers", which the Agency inadvertently included in this section. (Training provider standards are addressed in subpart G, discussed below.) We also make conforming changes to reflect the revised definition of "entry-level driver," as discussed

below. The provision remains otherwise unchanged.

§ 380.603 Applicability

The Agency makes several clarifying and conforming changes to this section, which explains how ELDT requirements apply to drivers who intend to operate CMVs in intrastate and/or interstate commerce.

First, in § 380.603(a), we add an exception: CMV drivers applying for removal of a restriction in accordance with § 383.135(b)(7) are not subject to the training requirements set forth in today's rule (§ 380.603(a)(4)).

The meaning of § 380.603(b), which stated that drivers holding a valid CDL issued before the compliance date of the final rule are not subject to ELDT requirements, remains essentially as proposed. However, FMCSA deletes the term "valid CDL" and adds clarifying language in order to make this provision explicitly consistent with the scope of today's rule. Accordingly, the subsection now states that anyone holding a Class A or Class B CDL, or the passenger (P), school bus (S), or hazardous materials (H) endorsement, issued before the compliance date is not subject to ELDT requirements pertaining to that CDL or endorsement. We also delete the words "except as otherwise specifically provided".

Section 380.603(c)(1) proposed that individuals holding a CLP before the compliance date of the final rule are not subject to ELDT requirements if they obtain a CDL within 360 days of obtaining the CLP. In the final rule, the Agency adds clarifying language to specify that individuals who obtain a CLP before the compliance date of the final rule are not subject to ELDT requirements if they obtain the underlying CDL and/or endorsement to which the CLP applies before the CLP or renewed CLP expires. As noted in the response to comments, the deletion of "360 days" accounts for the fact that individual States address the renewal of CLPs differently. Section 380.603(c)(2), which proposed that individuals obtaining a CLP after the compliance date of the final rule are subject to ELDT requirements, remains as proposed.

FMCSA adds new subsection § 380.603(c)(3). Originally proposed as new § 383.71(a)(4), this requirement stated that, except for individuals seeking the H endorsement, individuals successfully completing the theory portion of the training had to complete the BTW portion within 360 days. In the final rule, FMCSA moves this requirement to § 380.603(c) and changes "360 days" to "one year". We also clarify that theory and BTW portions of

the training do not need to be taken in a particular sequence (as the proposed language implied), as long as the two training components are completed within one year. Accordingly, the requirement now states that, except for individuals obtaining the H endorsement, the theory and BTW portions of ELDT must be completed within one year of completing the first portion.

In the final rule, the Agency deletes proposed § 380.603(d), which stated that, except for those persons subject to the proposed refresher training requirements, a person who received ELDT qualifying him or her to take the skills test for a CDL or endorsement would not be required to obtain such training again before reapplying for a CDL or endorsement. FMCSA believes that the revised definition of “entry-level driver” in § 380.605, discussed below, makes this provision unnecessary.

The Agency also deletes proposed § 380.603(e), which required that a CDL holder disqualified from operating a CMV under § 383.51(b)–(e) must complete refresher training as proposed in § 380.625. Because the final rule does not include a refresher training requirement, this provision is no longer necessary.

§ 380.605 Definitions

The Agency makes various clarifying and conforming changes to this section, as discussed below, but does not add any new definitional terms in the final rule.

“Behind-the-Wheel (BTW) Instructor”

As proposed, the definition of “behind-the-wheel (BTW) instructor” required that the instructor be an “experienced driver” as defined in this section and must have completed training in the public road portion of the curriculum in which they are instructing, except that BTW instructors utilized by “providers that train, or expect to train, three or few drivers annually” are not required to comply with that requirement.

In the final rule’s definition of BTW instructor, we delete the reference to the term “experienced driver” as well as the reference to providers training three or fewer drivers annually because the final rule does not retain the proposed distinction between large and small training entities.

In addition, the Agency incorporates the qualification requirements for BTW instructors, proposed as § 380.713(b) (and cross-referenced to the proposed definition of “experienced driver” in § 380.605), directly into the definition of

BTW instructor in the final rule. The qualifications are also revised to reflect comments suggesting that BTW instructors should have a minimum of two years of relevant driving or instructional experience, rather than the one year of experience, as proposed.

Accordingly, in the final rule, the definition of BTW instructor means an individual providing BTW training involving the actual operation of a CMV on a range or public road who meets one of the following qualifications: 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; has a minimum of two years of experience driving a CMV requiring a CDL of that class or endorsement; and meets all applicable State requirements for CMV instructors; or 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; has a minimum of two years of experience as a BTW CMV instructor; and meets all applicable State requirements for CMV instructors.

In addition, FMCSA adds an exception to the definition of BTW instructor: instructors who provide BTW training solely on a private range are not required to currently hold a CDL of the same or higher class and all endorsements necessary to operate the CMV for which training is provided as long as they previously held that class of CDL. As noted in the response to comments, FMCSA makes this change to permit non-CDL holders, such as retired CMV drivers, or CMV drivers not medically certified, to provide training on a private range.

Finally, FMCSA revises the BTW training instructor qualification requirement pertaining to the instructor’s CMV driving record. As proposed in § 380.713(b), during the two years prior to engaging in BTW instruction, instructors must not have had any CMV-related convictions for the offenses identified in § 383.51(b)–(e) and the instructor’s driving record must meet applicable Federal and State requirements.

In the final rule, if an instructor’s CDL has been cancelled, suspended, or revoked due to any of the disqualifying offenses identified in § 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated following the disqualification. FMCSA adds this provision to the definition of “BTW instructor” in the final rule.

“Theory Instructor”

As proposed, “theory instructor” was defined as 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 they intend to instruct.

FMCSA makes several substantive changes to this definition, as well as conforming changes to account for the fact that, as noted above, the definition of “experienced driver” is not retained in the final rule. The qualifications for theory instructors are now incorporated directly into the definition of the term, just as they are for BTW instructors.

In the final rule, theory instructors must hold 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 have a minimum of two years of experience driving a CMV requiring a CDL of that class or endorsement, or at least two years of experience as a BTW CMV instructor. The NPRM proposed that theory instructors have a minimum of one year of CMV driving or instruction experience. The two-year level of CMV driving or instructional experience in the final rule is thus commensurate with the revised BTW instructor qualifications described above. The Agency also adds an exception to this definition: An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, as long as the instructor previously held a CDL of that class and meets all other qualification requirements. The Agency makes this change in order to permit retired CMV drivers, who may have many years of experience operating a CMV but who no longer hold a CDL, to provide theory instruction.

FMCSA also adds the following provision to the definition of “theory instructor” in the final rule: If an instructor’s CDL has been cancelled, suspended, or revoked due to any of the disqualifying offenses identified in § 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated following the disqualification. As noted above, a similar provision is also included in the definition of “BTW instructor”. FMCSA adds the provision to the definition of “theory instructor” because we believe the instructor’s CMV driving record is also a relevant qualification for individuals who provide theory

instruction in the safe operation of CMVs.

In addition, as discussed in the response to comments, FMCSA deletes the proposed qualification standard a theory instructor must have previously audited or instructed that portion of the theory training course they intend to instruct.

“Experienced Driver”

As proposed, an “experienced driver” was defined as 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; has at least one year of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement or has at least one year of experience as a BTW CMV instructor; and meets all applicable State training requirements for CMV instructors. That proposed definition was cross-referenced in proposed § 380.713, which set forth the theory and BTW instructor qualification requirements. As described above, the proposed definition of “experienced driver” is not retained in the final rule. The Agency revises the instructor qualification requirements proposed in § 380.713 and incorporates them into the definitions of “BTW instructor” and “theory instructor” in the final rule.

“Behind-the-Wheel (BTW) Range Training”/“Behind-the-Wheel (BTW) Public Road Training”

The definitions of BTW range training and BTW road training remain as proposed, except that FMCSA changes the term “driver-instructor” to “BTW instructor” in each definition.

“Entry-Level Driver”

As proposed, the definition of “entry-level driver” included 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 B CDL, or obtaining the P, S, or H, endorsement. Individuals for whom States waive the CDL skills test under 49 CFR 383.77 were excepted from the proposed definition.

As discussed above, the Agency received a number of comments stating that the proposed definition was unclear. Accordingly, in the final rule, FMCSA revises the definition of “entry-level driver” as follows: An individual who must complete the CDL skills test requirements under § 383.77 prior to receiving a Class A or Class B CDL for the first time, upgrading to a Class B or a Class A CDL, or obtaining a P, S, or H, endorsement for the first time.

FMCSA believes that the phrase “receiving a Class A or Class B CDL for the first time” is clearer than the term “initial CDL”, as proposed. This phrase is also consistent with the language of MAP-21, which requires that FMCSA establish entry-level training requirements addressing the knowledge and skills that “must be acquired before obtaining a commercial driver’s license for the first time,” 49 U.S.C. 31305(c)(1)(B).

The Agency deletes the reference to “having a CDL reinstated” primarily because the proposed refresher training requirement is not retained in the final rule. In addition, as noted above in the explanation of changes to § 380.603(a), FMCSA adds an exception for individual drivers applying to have a restriction removed from their CDL. The exception for individuals for whom the States waive the skills test under § 383.77 remains as proposed.

“Entry-Level Driver Training”

FMCSA makes conforming changes to the definition of “entry-level driver training” in the final rule in order to reflect the revised definition of “entry-level driver” described above.

Accordingly, ELDT means training that an entry-level driver receives from an entity listed on the TPR prior to taking the CDL skills test required to receive a Class A or Class B CDL for the first time or upgrade to a Class B or a Class A CDL; taking the CDL skills test required to obtain a P and/or S endorsement for the first time; or taking the CDL knowledge test required to obtain the H endorsement for the first time.

“Refresher Training”

As proposed, “refresher training” was defined as training that a CDL holder who has been disqualified from operating a CMV must take. For reasons explained in FMCSA’s response to comments on the proposed refresher training requirement, we delete this definition (along with the refresher training curriculum) from the final rule.

“Training Provider”

As proposed, “training provider” was defined as an entity listed on the TPR, as required by subpart G. In the NPRM preamble, FMCSA noted that training providers could be training schools, motor carriers providing “in-house” training to current or prospective employees, local governments, or school districts.

In order to clarify that any entity meeting the eligibility requirements set forth in subpart G can be a “training provider,” FMCSA revises the definition of the term in the final rule by adding

specific examples of potentially qualifying entities. Accordingly, “training provider” is defined as an entity listed on the TPR, as required by subpart G; training providers include, but are not limited to, training schools, educational institutions, rural electric cooperatives, motor carriers, State/local governments, school districts, joint labor management programs, owner-operators, and individuals. As noted in our response to comments on this issue, these examples are not intended to be a finite list; the Agency adds them to illustrate the range of entities that could potentially be eligible for listing on the TPR.

§ 380.609 General Entry-Level Driver Training Requirements

As proposed, this section explained that CDL applicants must complete training that meets the CDL class and/or endorsement (*i.e.*, Class A, Class B, P, S, or H endorsements) they wish to obtain from a provider listed on the TPR, and that CDL holders disqualified from operating a CMV must receive refresher training from a provider listed on the TPR.

While the essential meaning of § 380.609 remains unchanged in the final rule, the Agency makes various conforming changes to this section. We delete the reference to “refresher training,” as that proposed requirement is not retained in the final rule. FMCSA also clarifies that specified ELDT requirements apply to individuals who wish to obtain a Class A or B CDL for the first time and/or a P, S, or H endorsement for the first time. The Agency makes these changes to conform to the revised language in § 380.603 (Applicability), as discussed above. We make other conforming changes to reflect the fact that all of the training curricula in the final rule are included in Appendices A–E to part 380 of the final rule and are no longer set forth in §§ 380.613, 380.615, 380.619, 380.621 and 380.623, as proposed.

§ 380.611 Driver Training Provider Requirements

As proposed, this section stated that training providers seeking to be listed on the TPR must meet the requirements of subpart G, attest that they meet the requirements of this part, and supply documentary evidence of their compliance with these requirements to FMCSA or its authorized representative, upon request.

FMCSA deletes this section in the final rule. As proposed, the provision applied directly to training providers; we therefore conclude that it does not belong in subpart F. Additionally, this

section effectively duplicates requirements now set forth in §§ 380.703, 380.719, and 380.725 of subpart G, discussed below.

§ 380.613 Class A CDL—Training Curriculum

In the final rule, the Class A training curriculum is moved to Appendix A of part 380. Although the curriculum elements for the Class A CDL remain largely as proposed, FMCSA makes clarifying and conforming changes, as well as several topic-related additions and deletions, as described below. Additionally, as discussed in the response to comments, FMCSA deletes the requirement that driver-trainees complete a minimum of 30 BTW hours in order to complete that portion of the curriculum. In the introduction to the curriculum, FMCSA adds the requirement that training providers must determine that the driver-trainee has demonstrated proficiency in all elements of the BTW curriculum, unless otherwise noted. This language is consistent with the NPRM's designation of certain elements of the BTW curriculum, such as night driving or skid control, as "discussed during public road training or simulated, but not necessarily performed." The Agency also clarifies that training instructors must provide commentary instruction in those elements of the BTW curriculum. FMCSA considers these additions to be clarifying rather than substantive.

FMCSA also adds a requirement that instructors document the total number of (clock) hours that each driver-trainee spends in completing all elements of the BTW (range and public road) curriculum. As noted above, the purpose of this requirement is to allow FMCSA to collect data which will assist the Agency in assessing the effectiveness of ELDT and in monitoring the effectiveness of training providers. Finally, the Agency clarifies that BTW training may not be conducted by using a driving simulation device, nor may a driver-trainee use a simulation device to demonstrate BTW proficiency.

Additionally, in response to comments, the Agency adds two safety-related topics to the Class A curriculum. First, "entering and exiting the interstate or controlled access highway" is added to the "Basic control" unit of the theory curriculum and to the "Vehicle controls" unit of and BTW-public road portion of the curriculum. In addition, the Agency adds an element to the "Railroad-highway grade crossings" unit in the "Advanced operating practices" section of the theory curriculum, which requires that training providers instruct driver-

trainees that railroads maintain "Emergency Notification Systems" to receive notification of unsafe conditions, such as a disabled vehicle blocking the track.

The Agency deletes several topics because they are not directly related to the safe operation of a CMV, as required by MAP-21 (49 U.S.C. 31305(c)(1)(A)). In the "Fatigue and wellness awareness" unit of the theory curriculum, the Agency deletes the following topics: Diet, exercise, personal hygiene, stress, and lifestyle changes. In the final rule, this unit covers the consequences of chronic and acute driver fatigue, in addition to wellness and basic health maintenance issues that affect a driver's ability to safely operate a CMV. In the "Post-crash procedures" unit of the theory curriculum, FMCSA deletes the following topics: Responsibilities for assisting injured parties; "Good Samaritan" laws; a driver's 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. As previously noted, training providers may address these and other topics as they see fit, but they are not required curriculum elements under today's rule.

FMCSA also cross-references the current FMCSRs (*i.e.*, §§ 392.7 and 396.11) to the description of pre-trip/post-trip inspections in the theory and BTW-range portions of the curriculum. The Agency adds specific examples of braking systems (*i.e.*, hydraulic, ABS, air) "as applicable" to the description of the "Basic operation" section of the theory portion. We add "as applicable" to the description of "coupling and uncoupling" unit in the theory and BTW (range) portions of the curriculum to account for the fact that there are different types of coupling systems. The unit entitled "Distracted driving," proposed as part of the "Advanced operating practices" section of the Class A Theory curriculum, is moved to the "Safe operating procedures" section of that curriculum; the unit descriptor remains as proposed.

Finally, the Agency makes various clarifying and conforming changes to the Class A curriculum in the final rule in order to improve organizational efficiency and consistency between curricula and delete redundancies in individual curriculum topics.

§ 380.615 Class B CDL—Training Curriculum

In the final rule, the Class B training curriculum is moved to Appendix B of part 380. Although the curriculum

elements for the Class B CDL remain largely as proposed, FMCSA makes clarifying and conforming changes, as well as several topic-related additions and deletions, as described below. Additionally, as discussed in the response to comments, FMCSA deletes the requirement that driver-trainees complete a minimum of 15 BTW hours in order to complete that portion of the curriculum. In the introduction to the curriculum, FMCSA adds the requirement that training providers must determine that the driver-trainee has demonstrated proficiency in all elements of the BTW curriculum, unless otherwise noted. This language is consistent with the NPRM's designation of certain elements of the BTW curriculum, such as night driving or skid control, as "discussed during public road training or simulated, but not necessarily performed." The Agency also clarifies that training instructors must provide commentary instruction in those elements of the BTW curriculum. FMCSA considers these additions to be clarifying rather than substantive.

FMCSA also adds a requirement that instructors document the total number of (clock) hours that each driver-trainee spends in completing all elements of the BTW (range and public road) curriculum. As noted above, the purpose of this requirement is to allow FMCSA to collect data which will assist the Agency in assessing the effectiveness of ELDT and in monitoring the effectiveness of training providers. Finally, the Agency clarifies that BTW training may not be conducted by using a driving simulation device, nor may a driver-trainee use a simulation device to demonstrate BTW proficiency.

Additionally, in response to comments, the Agency adds two safety-related topics to the Class B curriculum. First, "entering and exiting the interstate or controlled access highway" is added to the "Basic control" unit of the theory curriculum and to the "Vehicle controls" unit of and BTW-public road portion of the curriculum. In addition, the Agency adds an element to the "Railroad-highway grade crossings" unit in the Advanced operating practices" section of the theory curriculum, which requires that training providers instruct driver-trainees that railroads maintain "Emergency Notification Systems" to receive notification of unsafe conditions, such as a disabled vehicle blocking the track.

The Agency deletes several topics because they are not directly related to the safe operation of a CMV, as required by MAP-21 (49 U.S.C. 31305(c)(1)(A)). In the "Fatigue and wellness

awareness” unit of the theory curriculum, the Agency deletes the following topics: Diet, exercise, personal hygiene, stress, and lifestyle changes. In the final rule, this unit covers the consequences of chronic and acute driver fatigue, in addition to wellness and basic health maintenance issues that affect a driver’s ability to safely operate a CMV. In the “Post-crash procedures” unit of the theory curriculum, FMCSA deletes the following topics: Responsibilities for assisting injured parties; “Good Samaritan” laws; a driver’s 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. As previously noted, training providers may address these and other topics as they see fit, but they are not required curriculum elements under today’s rule.

FMCSA also cross-references the current FMCSRs (*i.e.*, §§ 392.7 and 396.11) to the description of pre-trip/post-trip inspections in the theory and BTW-range portions of the curriculum. The Agency adds specific examples of braking systems (*i.e.*, hydraulic, ABS, air) “as applicable” to the description of the “Basic operation” section in the theory portion. The unit entitled “Distracted driving”, proposed as part of the “Advanced operating practices” section of the Class B theory curriculum, is moved to the “Safe operating procedures” section of that curriculum; the unit descriptor remains as proposed.

Finally, FMCSA makes various clarifying and conforming changes to the Class B curriculum in the final rule in order to improve organizational efficiency and consistency between curricula and delete redundancies in individual curriculum topics.

§ 380.619 Passenger Endorsement Training Curriculum

In the final rule, the passenger (P) endorsement curriculum is moved to Appendix C of part 380. The P curriculum remains largely as proposed. FMCSA adds language to the introduction to the curriculum clarifying that the training instructor must determine that the driver-trainee has demonstrated proficiency in all elements of the BTW curriculum. FMCSA also adds a requirement that instructors document the total number of (clock) hours that each driver-trainee spends in completing the BTW curriculum, for the reasons previously noted. The Agency adds “drawbridges” to the “Railroad-highway grade crossings” topic in the theory portion of

the P curriculum for consistency with § 383.111. FMCSA also cross-references the current FMCSRs (*i.e.*, §§ 392.7 and 396.11) to the description of pre-trip/post-trip inspections in the theory and BTW-range/public road portions of the curriculum.

In the “Post-crash procedures” unit of the P endorsement theory curriculum, FMCSA deletes the following topics: Responsibilities for assisting injured parties; “Good Samaritan” laws; a driver’s 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. As noted above, the Agency removes these topics from the curriculum because they are not directly related to the safe operation of a CMV, as required by MAP–21. In addition, FMCSA deletes paragraph (4) from the “Baggage and/or cargo management” units of the theory and BTW-range and public road portions of the curriculum, which identifies various prohibited items and materials; in the final rule, that topic is now covered in revised paragraph (2) of each unit.

FMCSA also makes clarifying and conforming changes to the P curriculum in the final rule in order to improve organizational efficiency and consistency between curricula and delete redundancies in individual curriculum topics.

§ 380.621 School Bus Endorsement Training Curriculum

In the final rule, the school bus (S) endorsement curriculum is moved to Appendix D of part 380. The S curriculum remains largely as proposed. FMCSA adds language to the introduction to the curriculum clarifying that the training instructor must determine that the driver-trainee has demonstrated proficiency in all elements of the BTW curriculum. FMCSA also adds a requirement that instructors document the total number of (clock) hours that each driver-trainee spends in completing the BTW curriculum. The Agency also cross-references the current FMCSRs (*i.e.*, §§ 392.7 and 396.11) in the description of pre-trip/post-trip inspections in the theory and BTW-range/public road portions of the curriculum.

FMCSA adds a “vehicle orientation” unit to the theory portion of the S curriculum, which covers the basic physical and operational characteristics of a school bus. This addition is made to provide consistency with the theory portions of the Class A and B and the P curricula, each of which contains a vehicle orientation unit. FMCSA deletes

the proposed theory unit entitled “antilock braking systems”, because “brake systems” are included in the vehicle orientation unit added to the S curriculum in the final rule. The Agency deletes the “Night operation” unit from the theory curriculum, because that topic, which is not unique to the operation of a school bus, is addressed in the Class A and B core curricula.

§ 380.623 Hazardous Materials Endorsement Curriculum

In the final rule, the hazardous materials (H) endorsement curriculum is moved to appendix E of part 380. The H curriculum remains essentially as proposed.

§ 380.625 Refresher Training Curriculum

As proposed, the refresher training curriculum set forth the training requirements that CDL holders who are disqualified from operating a CMV must complete before their CDL can be reinstated. As explained above, the final rule does not include any requirements related to refresher training. Accordingly, FMCSA deletes the refresher training curriculum in the final rule.

Subpart G—Registry of Entry-Level Driver Training Providers

§ 380.700 Scope

As proposed, this section stated that subpart G establishes eligibility requirements for listing on the TPR, and that drivers seeking ELDT may use only providers listed on the TPR to comply with this part. In the final rule, FMCSA clarifies that, in order to provide ELDT in compliance with this part, providers must be listed on the TPR. The Agency deletes the reference to the driver’s need to obtain ELDT only from providers listed on the TPR, as that obligation is referenced in § 380.609.

§ 380.703 Requirements for the Training Provider Registry

As proposed, this section set forth the requirements a training provider must meet in order to be eligible for initial listing on the TPR. It remains essentially as proposed.

FMCSA makes several conforming changes to reflect that, in the final rule, the ELDT curricula are set forth in Appendices A–E and that refresher training requirements are not included in the final rule. We also change the name of the registration document from “Entry-Level Driver Training Identification Report”, as proposed, to “Training Provider Registration Form”, in the final rule. Further, FMCSA clarifies that training providers must

complete the form online and electronically transmit it through the TPR Web site.

FMCSA adds new § 380.703(a)(5)(i), requiring that training providers be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations of any State where in-person training is provided. This provision, proposed as § 380.719(a)(4), is moved to § 380.703 because it is a threshold eligibility requirement; the wording of this provision remains as proposed, except for the clarifying addition of “in-person”. The Agency also adds new § 380.703(a)(5)(ii), which states that State qualification requirements otherwise applicable to theory instruction do not apply to providers who offer instruction only online. As discussed in the response to comments, this exception is necessary to account for the fact that, because online training can be delivered virtually anywhere, online providers cannot reasonably be expected to comply with multiple (and possibly conflicting) State requirements. However, as noted above in the discussion of the revised definition of “theory instructor” in § 380.605, online providers must ensure that the training content is delivered and/or prepared by theory instructors meeting the definition.

Finally, the Agency deletes the reference to the creation and maintenance of driver-trainee records of completion and/or withdrawal, as proposed in § 380.703(a)(7). The Agency will have access to the pertinent information through the providers’ transmission of ELDT certification information for each driver-trainee completing their training program.

§ 380.707 Entry-Level Training Provider Requirements

As proposed, this section set forth the requirements applicable to ELDT providers. It mandated that providers require that all accepted applicants for BTW public road training meet Federal, State and/or local laws pertaining to drug screening, controlled substances testing, age, medical certification, licensing and driving record. This section also required that training providers cover all required elements of the BTW (range and public road) and theory curricula, as applicable. As proposed, providers training more than three driver-trainees annually must provide training materials to each trainee addressing the applicable curricula; providers training three or fewer trainees annually were not subject to this requirement. This section also

stated that separate training providers may deliver the theory and BTW portions of the curricula.

FMCSA makes several changes to this section in the final rule. The Agency makes conforming changes to reflect that the final rule does not include a refresher training curriculum and that different requirements are not imposed on providers training three or fewer trainees annually, as proposed. In § 380.707(a), the Agency clarifies that accepted BTW applicants must certify that they will comply with DOT regulations, as well as State and local laws, pertaining to alcohol and controlled substances testing, age, medical certification, licensing and driving record. As proposed, the requirement could be interpreted to mean that training providers are responsible for driver-trainees’ compliance with these requirements, which was not FMCSA’s intention. FMCSA also adds a requirement that training providers verify that accepted BTW applicants hold valid CLPs/CDLs, as applicable, in order to ensure that driver-trainees operating CMVs on a public road are licensed to do so.

FMCSA clarifies in § 380.707(c) that, while separate providers may provide theory and BTW training, both the range and public road portions of BTW training must be provided by the same training entity, as noted in the response to comments. FMCSA adds a requirement that training providers offering online training must ensure that the content is prepared by a theory instructor as defined in § 380.605. Finally, FMCSA deletes the provisions, proposed as § 380.707(b) and (c), requiring that BTW and theory instruction include all elements set forth in the applicable curricula because those requirements are already imposed on training providers in § 380.703(a)(1).

§ 380.709 Facilities

As proposed, this section required that a training provider’s classroom and/or range facilities comply with all applicable Federal, State, and/or local laws. Additionally, training providers offering BTW-range training must have an instructor on site to demonstrate applicable skills and correct deficiencies of individual students; and 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.

In the final rule, FMCSA retains, as proposed, the requirement that a training provider’s classroom and/or range facilities comply with all applicable Federal, State, and/or local

laws. The Agency deletes the requirements pertaining to range instruction because they are duplicative. In the final rule, the range-related requirements proposed in § 380.709 are addressed in the introductions to the Class A, Class B, P, and S curricula in Appendices A–D and in the definition of “range” in § 380.605.

§ 380.711 Equipment

As proposed, this section required that all vehicles used in BTW must be in safe mechanical condition and that vehicles used in BTW-public road training comply with applicable Federal and State safety requirements. In addition, 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.

In the final rule, FMCSA deletes the provision requiring that all vehicles used for BTW-range training be in safe mechanical condition. The Agency believes that the requirement that vehicles used for BTW training comply with applicable Federal and State safety requirements, now in § 380.711(a), adequately addresses the issue of training vehicle safety. In addition, we delete the parenthetical references to “(A or B)” and “(bus or truck)” in response to a comment that Group C vehicles, which may be used in BTW training for the P and/or S endorsement, are not used in Class A or B CDL training and may be neither a bus nor a truck.

§ 380.713 Driver-Instructor Qualification Requirements

As proposed, this section required that training providers utilize theory and BTW instructors meeting the specified definitions in § 380.605. Additionally, this section required training providers to utilize BTW instructors whose driving record meets applicable State and Federal requirements and who, in the two years prior to engaging in BTW instruction, have not had any CMV-related convictions for the offenses identified in § 385.51(b)–(e).

FMCSA significantly revises § 380.713 in the final rule, as noted above in the explanation of changes made to § 380.605. The specific qualification requirements pertaining to theory and BTW instructors are now addressed directly in the definitions of those terms. Accordingly, in the final rule, this section simply requires that training providers utilize “theory instructors” and “BTW instructors” meeting the definition of those terms as set forth in § 380.605.

§ 380.715 Assessments

As proposed, this section required that driver-trainees successfully complete a course of instruction meeting the ELDT curriculum requirements. Training providers must use assessments (in written or electronic format) to demonstrate the trainee's proficiency in the knowledge objectives set forth in the applicable theory curriculum; trainees must achieve an overall score of 80 percent or higher on the theory assessment. Training providers are required to assess a driver-trainee's proficiency on the driving range in accordance with the applicable curriculum, as well as a trainee's proficiency in BTW driving skills on a public road in the class (A or B) and type (bus or truck) of vehicle the trainee will operate for the CDL skills test.

In the final rule, § 380.715 remains largely as proposed. FMCSA makes conforming changes to reflect that the ELDT theory and BTW curricula are now in Appendices A–E of part 380 and are no longer set forth in §§ 380.613, 380.615, 380.619, 380.621 and 380.623, as proposed. FMCSA deletes the requirement that driver-trainees must complete a course of instruction meeting the applicable ELDT requirements, because that provision is set forth in § 380.609. The Agency clarifies that training providers must document their assessment of a driver-trainee's proficiency in the BTW skills, as required in Appendices A–D, as well as the total number of (clock) hours each driver-trainee spends in completing BTW (range and public road) training, but the proficiency documentation requirement in § 380.715(b) of the final rule is now combined for all BTW skills (range and public road). Separate documentation for range and public road skills, as proposed in § 380.715(b) and (c), is therefore no longer required. FMCSA does not require any specific means or method of documentation of BTW proficiency or the number of hours spent in completing the BTW curriculum.

Finally, FMCSA deletes the proposed requirement that BTW skills assessment must occur in “a vehicle class (A or B) and type (bus or truck) that the driver-trainee will operate for the CDL skills test,” for the reason noted above in the explanation of changes to § 380.711. We also note that all of the BTW curricula in today's rule require that the training occur in a representative vehicle for the CDL class or endorsement.

§ 380.717 Training Certification

As proposed, this section required that training providers upload ELDT

certificates to the TPR by the close of the next business day after the individual's completion of the training. It also set forth the specific information elements to be included in the training certification, such as the driver-trainee's name, CLP/CDL number and State of licensure, the type of training completed the training provider's name and unique TPR identification number, and the date of training completion.

In the final rule, § 380.717 remains largely as proposed. In response to comments, FMCSA extends the time period for electronically transmitting the ELDT certification information to the TPR to midnight of the second business day following the individual's completion of the training. As noted above, FMCSA adds the total number of (clock) hours spent to complete BTW training, as applicable, to the required certification information. We also add the trainee's driver's license number as a potential data element to account for the fact that trainees who are not CDL holders and who complete the theory curricula before obtaining BTW training may not have a CLP number at that point. The Agency also requires that training providers electronically transmit the ELDT data elements to the TPR, rather than uploading a training certificate, as proposed.

§ 380.719 Requirements for Continued Listing on the Training Provider Registry

As proposed, this section identified the specific obligations imposed on training providers as a condition of continued listing on the TPR. The requirements include: Meeting the applicable requirements of this subpart; providing biennial updates to the Entry-Level Driver Training Provider Identification Report; reporting to FMCSA specified changes in key information within 30 days; being licensed, certified, registered or authorized to provide training in each State where training is provided, as applicable, and maintaining related documentation; allowing FMCSA or its authorized representative to conduct an audit or investigation of the training provider; and ensuring that all required documentation is provided within 48 hours of receiving a request for documentation from FMCSA or its authorized representative.

In the final rule, this section remains largely as proposed. The Agency clarifies that biennial updates to the Training Provider Registration Form, as well as any reports of changes in key information, must be transmitted electronically through the TPR Web site. As noted above, the requirement that

training providers meet applicable State laws and regulations in each State where training is provided, proposed as § 380.719(a)(4), is in § 380.703(5)(i) of the final rule. The Agency moves the provision to § 380.703 because it is a threshold eligibility requirement for listing on the TPR.

§ 380.721 Removal From Training Provider Registry: Factors Considered

As proposed, this section established the factors that FMCSA may consider when removing a training provider from the TPR. All training certificates issued after the training provider is removed from the TPR will be considered invalid.

In the final rule, this section remains essentially as proposed. FMCSA makes clarifying changes to § 380.721(a)(5), deleting the reference to “the SDLA CDL exam passage rate.” In the final rule, the regulatory text refers to the CDL skills test passage rate for applicants for the Class A CDL, Class B CDL, P endorsement, and/or S endorsement and the SDLA knowledge test passage rate for applicants for the H endorsement. In response to comments, the Agency also deletes “abnormally low” from this provision in order to clarify that we do not intend to establish a minimum required CDL test passage rate. FMCSA will assess the passage rate information in the context of State norms. Finally, the Agency makes a clarifying change to the proposed language stating that all training certificates issued after the date a provider is removed from the TPR will be considered invalid. In the final rule, the provision states that any training conducted after the removal date is invalid.

§ 380.723 Removal From Training Provider Registry: Procedure

As proposed, this section set forth the procedures for voluntary and involuntary removal of a training provider from the TPR. This section addresses FMCSA's initiation of the involuntary removal process, the training provider's right to respond to the notice and undertake corrective action, the provider's right to oppose FMCSA's notice of proposed removal, the provider's right to request administrative review of an involuntary removal, procedures for FMCSA's emergency removal of a provider from the TPR, and the process by which a provider may apply for reinstatement to the TPR following voluntary or involuntary removal.

In the final rule, FMCSA makes several changes to the procedures related to a training provider's involuntary removal from the TPR, as

set forth in § 380.723(b). First, in order to ensure that training providers to whom FMCSA issues a notice of proposed removal have adequate opportunity to implement corrective actions, the Agency deletes the proposed language stating that training conducted after issuance of the notice is non-compliant until FMCSA withdraws the notice. FMCSA also adds a provision to this subsection stating that the Agency will note on the TPR Web site whenever a training provider listed on the TPR is issued a notice of proposed removal, as further means of informing prospective students of the status of that provider. If FMCSA withdraws the notice, the notation will also be removed from that provider's listing on the TPR Web site.

In § 380.723(c)(1)(iii), the Agency adds a sentence stating that any training conducted after the date a provider is removed from the TPR is invalid. This provision was proposed and is retained as part of § 380.721; it is included here for clarity and consistency. Otherwise, § 380.723 remains as proposed.

§ 380.725 Documentation and Record Retention

Section 380.725 sets forth the documentation and record retention requirements that apply to training providers eligible for listing on the TPR. As proposed, providers must retain their policy containing requirements for driver-trainee applicants related to controlled substances testing, medical certification, licensing, and driving records; specified instructor qualification documentation (*e.g.*, copies of CDL/endorsements); the amount of time generally allocated to theory and BTW training, as applicable; the instructor-trainee ratio for each portion of the curriculum; the number of vehicles used in training and a description of lesson plans for theory and BTW, as applicable; and the names of all driver-trainees who completed or withdrew from instruction and who passed/failed the training provider's assessment of theory and BTW training, as applicable. In addition, training providers must generally retain these records or documentation for a minimum of three years from the date the document was generated or received.

In order to consolidate and clarify the record keeping requirements imposed on training providers, FMCSA makes several changes to § 380.725 in the final rule. The Agency deletes the proposed retention requirements for the amount of time generally allocated to theory and BTW training, proposed as § 380.725(b)(3); the instructor-driver-

trainee ratio and number of training vehicles; and the names of driver-trainees who complete or withdraw from the instruction and who passed/failed the theory or BTW assessment, proposed as § 380.725(b)(5). FMCSA will instead capture the relevant information on the Training Provider Registration Form (TPRF), so the provider does not need to retain that information separately. In addition, the Agency makes conforming changes to § 380.725(b)(1) to require the retention of self-certifications by driver-trainee BTW applicants, who must attest that they will comply with U.S. Department of Transportation regulations in parts 40, 382, 383, and 391, as well as State and local laws, related to alcohol and controlled substances testing, age, medical certification, licensing, and driving records, as required in § 380.707(a).

FMCSA adds the following record retention requirements: the TPRF, copies of a driver-trainee's CLP/CDL (as applicable), and records of ELDT assessments as described in § 380.715. FMCSA believes these revised requirements capture the information essential for the Agency to perform a meaningful audit or investigation of a training provider's operations. The three-year record retention requirement in § 380.725(c) remains as proposed.

Part 383—Commercial Driver's License Standards; Requirements and Penalties

In the proposed rule, FMCSA revised the authority citation for part 383 and made various conforming changes. The proposed rule did not make any substantive changes to the existing requirements in part 383. FMCSA discusses below only the proposed conforming changes to part 383 which were notably revised in the final rule. All other conforming changes to part 383 remain essentially as proposed.

§ 383.51 Disqualification of Drivers

In the proposed rule, new subsection (a)(8), stated that CDL holders disqualified as a result of convictions of offenses under § 383.51(b) through (e) must not be fully reinstated until completing the refresher training curriculum.

As discussed above, the final rule does not include any refresher training requirements. Accordingly, FMCSA deletes this proposed conforming amendment to § 383.51 from the final rule.

§ 383.71 Driver Application Procedures

§ 383.71(a)(3)

As proposed, new § 383.71(a)(3) required that, as of the compliance date of the final rule, a person must complete the training prescribed in subpart F of part 380 of this chapter prior to taking the skills test for a Class A CDL, Class B CDL, a P or S endorsement, or the knowledge test for the H endorsement. The training must be administered by a training provider listed on the TPR.

In the final rule, this conforming change remains largely as proposed. FMCSA adds language to this provision to clarify that the required training must be completed prior to taking the skills test for the Class A CDL or Class B CDL *for the first time*, or the skills test for a P or S endorsement *for the first time*, or the knowledge test for the H endorsement *for the first time* (emphasis added). As noted above, this language is consistent with MAP-21's requirement that training standards be established for individuals obtaining a CDL "for the first time".

§ 383.71(a)(4)

As proposed, new § 383.71(a)(4) provided that, except for driver-trainees seeking the H endorsement, driver-trainees completing the theory portion of the training must complete the skills portion within 360 days.

As discussed above, FMCSA deletes this requirement from § 383.71, as proposed, makes clarifying changes to this requirement, and moves it to § 380.603(c) of the final rule. The provision now requires that trainees complete both portions of the required ELDT within one year of completing the first portion of the training.

§ 383.71(b)(11)

As proposed, new § 383.71(b)(11) required that, as of the compliance date of the final rule, a person must complete the training prescribed in subpart F of part 380 of this chapter prior to taking the skills test for an initial Class A CDL, Class B CDL, or a P or S endorsement, or the knowledge test for the H endorsement. The training must be administered by a training provider listed on the TPR.

In the final rule, this conforming change remains largely as proposed. As noted above in the discussion of conforming changes to § 383.71(a)(3), FMCSA adds language to this provision to clarify that the required training must be completed prior to taking the skills test for the Class A CDL or Class B CDL *for the first time*, or the skills test for a P or S endorsement *for the first time*, or

the knowledge test for the H endorsement for the first time.

§ 383.71(e)(5)

As proposed, new § 383.71(e)(5) required that a person must complete the training prescribed in subpart F of part 380 of this chapter prior to taking the skills test for upgrading to a CDL from one class to another, or upgrading a CDL with a P or S endorsement, or taking the knowledge test for the H endorsement issued on a CDL. The training must be administered by a training provider listed on the TPR.

In the final rule, this conforming change remains largely as proposed. As noted above in the discussion of conforming changes to §§ 383.71(a)(3) and 383.71(b)(11), FMCSA adds language to this provision to clarify that the required training must be completed prior to taking the skills test for upgrading to a Class A or Class B CDL, adding a P or S endorsement to a CDL the first time, or taking the knowledge test for the H endorsement for the first time.

§ 383.73 State Procedures

§ 383.73(b)(3)(ii)

As proposed, this section would be amended to add, in § 383.73(b)(3)(ii), a requirement that the State check with CDLIS to determine, if the CDL was issued on or after the compliance date of the final rule, whether an applicant for a Class A or Class B CDL or a CDL with a P, S, or H endorsement has completed the training required by subpart F of this subchapter from a training provider listed on the TPR.

In the final rule, FMCSA deletes the requirement that the State determine that the required ELDT was obtained from a training provider on the TPR. As discussed in the response to comments, the Agency will not be transmitting a training certificate to the State through CDLIS, as proposed in the NPRM. Instead, data elements containing the relevant training certification information will be added to the driver's record through CDLIS. Accordingly, the State is not obligated to confirm that the applicant received training from a provider listed on the TPR; FMCSA will verify that before transmitting the data elements to the driver's record. This subsection otherwise remains as proposed.

§ 383.73(b)(10)

As proposed, new § 383.73(b)(10) provided that, beginning on the compliance date of the final rule, the State must not conduct a skills test for a Class A or Class B CDL, or a P or S endorsement, until the State verifies

that the applicant completed the training prescribed in subpart F of part 380 of this chapter from a training provider listed on the TPR.

In the final rule, FMCSA clarifies that the State must verify *electronically* the applicant's completion of the required ELDT. As discussed in the response to comments, the Agency makes this change in order to clarify that the State may not accept paper training certificates from either the applicant or the training provider as evidence that the applicant has completed the required training. In addition, for the reasons noted above in the discussion of § 383.73(b)(3)(ii), FMCSA deletes the requirement that the State determine that the required ELDT was obtained from a training provider on the TPR. This subsection otherwise remains as proposed.

§ 383.73(e)(8)

As proposed, new § 383.73(e)(8) provided that, beginning on the compliance date of the final rule, the State must require a person with a CDL upgrading from one class of CDL to another or upgrading a CDL with an H, P, or S endorsement, to complete the training prescribed in subpart F of part 380 of this chapter from a training provider listed on the TPR.

In the final rule, FMCSA makes several clarifying changes to this subsection. First, the Agency specifies that the requirement applies to upgrades to either a Class A or Class B CDL, or the addition of a P, S, or H endorsement. Additionally, for the reasons noted above in the discussion of §§ 383.73(b)(3)(ii) and 383.73(b)(10), FMCSA deletes the requirement that the State determine that the required ELDT was obtained from a training provider on the TPR.

§ 383.73(p)

Finally, the Agency adds new (p) to § 383.73 to require that, after the compliance date of the final rule, the State must notify FMCSA in the event that a training provider in the State does not meet applicable State requirements for CMV instruction. As discussed in the response to comments, this change is necessary since FMCSA has no means of independently determining whether a training provider complies with applicable State requirements for CMV instruction. If the training provider is listed on the TPR, failure to meet State requirements could result in that provider's removal from the TPR. This subsection otherwise remains as proposed.

§ 383.95 Restrictions

As proposed, new § 383.95(h) provided that the State would reinstate the CDL for a CDL holder disqualified from operating a CMV under § 383.51(b)–(e) solely for the limited purpose of completing the refresher training curriculum. The State may not restore full CMV driving privileges until receiving notification that the driver completed the refresher training curriculum.

As discussed above, the final rule does not include any refresher training requirements as proposed. Accordingly, FMCSA deletes this proposed subsection from the final rule.

§ 383.153 Information on the CLP and CDL Documents and Applications

As proposed, § 383.153(a)(10) was amended to add (ix), a new restriction (R) for refresher training only.

Because the final rule does not include any refresher training requirements as proposed, FMCSA deletes this proposed addition to § 383.153(a)(10) from the final rule.

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

In the proposed rule, FMCSA revised the authority citation for part 384 and made various conforming changes. The proposed rule did not make any substantive changes to the existing requirements in part 384. FMCSA discusses below only the proposed conforming changes to part 384 which were revised in the final rule. All other conforming changes to part 384 remain essentially as proposed.

§ 384.230 Entry-Level Driver Certification

As proposed, new § 384.230(a) required a State, beginning on the compliance date of the final rule, to follow the procedures prescribed in § 383.73 for verifying that a person received training from a provider listed on the TPR before issuing an initial Class A or Class B CDL, a CDL with an H, P, or S endorsement, upgrading a CDL from one class to another, or upgrading a CDL with an H, P, or S endorsement. In addition, under proposed § 384.230(b), States would be permitted to issue a CDL to individuals who obtain an initial CLP before the compliance date of the final rule who have not complied with the ELDT requirements in subpart F of part 380, so long as they obtain the CDL within 360 days after obtaining the initial CLP. Finally, under proposed § 384.230(c), a State may not issue a CDL to individuals who obtain a CLP on or after the compliance date of the final rule unless

they comply with the ELDT requirements in subpart F of part 380.

In the final rule, FMCSA makes several clarifying changes to § 384.230(a) and (b). In § 384.230(a), we add specific references to § 383.73(b)(3)(ii), (b)(10), and (e)(8) in order to clarify the ELDT completion verification procedures a State is required to follow and make corresponding conforming changes to the regulatory text. In § 384.230(b), the Agency makes a conforming change to clarify that a State may issue a CDL to individuals who obtain a CLP before the compliance date of the final rule who have not complied with the ELDT requirements in subpart F of part 380, so long as they obtain a CDL before the CLP or renewed CLP expires. Section 384.230(c) remains as proposed.

§ 384.235 Entry-Level Driver Training Provider Notification

FMCSA adds new § 384.235 to mandate that the State must meet the entry-level driver training notification requirement of § 383.73(p).

X. Section-by-Section

Part 380

Subpart E of Part 380

Subpart E would be retitled as “Subpart E—Entry-Level Driver Training Requirements Before February 7, 2020.” 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

This new subpart establishes the requirements for entry-level drivers, minimum curriculum content, and standards for training providers. The 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 February 7, 2020.”

New Subpart G of Part 380

This new subpart establishes the minimum qualifications for an entity to be eligible for listing on the FMCSA TPR. The TPR will be an online portal administered by FMCSA allowing training providers to register. Training providers will also transmit driver-trainee training certifications to FMCSA electronically through the TPR. The TPR allows drivers seeking training to find an eligible provider who meets their needs.

Part 383

§ 383.71 Driver Application Procedures

FMCSA adds new paragraphs—(a)(3), (b)(11), and (e)(3) through (5)—regarding the completion of the training prescribed in part 380, subpart F, before a Class A or B CDL, a passenger, school bus, or hazardous materials endorsement for the first time, or an upgrade to a Class A or Class B CDL is issued.

§ 383.73 State Procedures

FMCSA adds new paragraphs (b)(10), (e)(8), and (p) and revised paragraph (b)(3)(ii) to prohibit a State from issuing a Class A or B CDL, or a CDL with a hazardous materials, passenger, or school bus endorsement for the first time, or an upgrade to a CDL, unless the SDLA has received electronic ELDT certification information.

Part 384

FMCSA adds new §§ 384.230 and 384.235. Additionally, the Agency adds a new paragraph (j) to § 384.301.

XI. Regulatory Analyses

A. E.O. 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.) 12866,²⁹ Regulatory Planning and Review, as supplemented by E.O. 13563.³⁰ 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 Regulatory Impact Analysis (RIA) is available in the docket. That document:

- Identifies the problem targeted by this rulemaking, including a statement of the need for the action.
- Defines the scope and parameters of the analysis.
- Defines the baseline.
- Defines and evaluates the costs and benefits of the action.
- Compares the costs and benefits.
- Interprets the cost and benefit results.

The RIA is the synthesis of research conducted specific to current entry-level driver training practices, industry discussions from the ELDTAC, and research conducted on the costs and benefits of the entry-level driver training provisions of this final rule.

Entry-level drivers, motor carriers, training providers, SDLAs, and the Federal Government would incur costs for compliance and implementation. The costs of the final rule include tuition expenses, the opportunity cost of time while in training, compliance audit costs, and costs associated with the implementation and monitoring of the TPR. As shown in Table 1, FMCSA estimates that the 10-year cost of the final rule would total \$3.66 billion on an undiscounted basis, \$3.23 billion discounted at 3 percent, and \$2.76 billion discounted at 7 percent (all in 2014 dollars). Values in Table 1 are rounded to the nearest million.

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

Year	Undiscounted						Discounted	
	Entry-level drivers	Motor carriers	Training providers	SDLAs	Federal government	Total ^a	Discounted at 3%	Discounted at 7%
2020	\$324	\$20	\$9	\$56	\$6	\$415	\$415	\$415
2021	326	20	6	0	1	353	343	330
2022	328	20	7	0	1	356	336	311
2023	330	20	6	0	1	357	327	291
2024	331	20	7	0	1	359	319	274
2025	333	20	6	0	1	360	311	257

²⁹ Executive Order 12866 of September 30, 1993. *Regulatory Planning and Review*. 58 FR 51735–51744 (October 4, 1993).

³⁰ Executive Order 13563 of January 18, 2011. *Improving Regulation and Regulatory Review*. 76 FR 3821–3823 (January 21, 2011).

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

Year	Undiscounted					Discounted		
	Entry-level drivers	Motor carriers	Training providers	SDLAs	Federal government	Total ^a	Discounted at 3%	Discounted at 7%
2026	335	20	7	0	1	363	304	242
2027	337	20	6	0	1	364	296	227
2028	339	21	7	0	1	368	291	214
2029	341	21	6	0	1	369	283	201
Total	3,324	202	67	56	15	3,664	3,225	2,762
Annualized .....	.....	.....	.....	.....	.....	366	367	368

Notes:

^aTotal cost 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 costs of this final rule specifically attributable to the S endorsement training requirement were also evaluated separately in the RIA. This was done because MAP-21 mandates training for 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. Inclusion of the S endorsement training requirement increases the total cost of the rule by only approximately 0.82 percent. On an annualized basis at a 7 percent discount rate, this equates to an increase in the total cost of the rule from \$365 million to \$368 million (this can be seen in Section 3 of the RIA). Details of these comparative analyses of the costs of the rule and the reasons for this relatively small change in costs resulting from the inclusion of the S endorsement training requirement are presented in Section 3 of the RIA. The costs presented in Table 1 include this small additional incremental cost associated with the S endorsement training requirement as part of the total costs of the final rule.

This final rule will result in benefits to CMV operators, the transportation industry, the traveling public, and the

environment. FMCSA estimated benefits in two broad categories: Safety benefits and non-safety benefits. Training related to the performance of complex tasks may improve performance; in the context of the training required by this final rule, improvement in task performance constitutes adoption of safer driving practices that the Agency believes will reduce the frequency and severity of crashes, thereby resulting in safer roadways for all. The training related to fuel efficient driving practices that will be taught under the ‘speed management’ and ‘space management’ sections of the curriculum reduce fuel consumption and consequently lower environmental impacts associated with carbon dioxide emissions. As discussed in Section 4.1.1 of the RIA for today’s rule, FMCSA does not believe that the training in fuel efficient driving practices addressed by this rule will contribute to measurably longer trip times, as the curricula focus on factors such as maintaining safe distances between vehicles and avoiding hard acceleration and braking, rather than reducing vehicle speed. The Agency therefore assumes in its analysis that

these fuel efficient driving practices will not contribute to measurably longer trip times.

Safer driving will reduce maintenance and repair costs. Table 2 below presents the directly quantifiable benefits that FMCSA projects will result from this final rule (all in 2014 dollars, values rounded to the nearest million). Due to wide ranges of estimates in studies relevant to the quantified benefits of the rule and the lack of studies that specifically focus on the curricula prescribed by this rule,³¹ the Agency presents benefits estimated under alternate benefit scenarios in Table 3 and Table 4. These alternate scenarios are derived from the low and high benefit cases (see sensitivity analyses in Sections 4.1.1 through 4.1.3 of the RIA) in which the fuel savings, CO₂ emissions reductions, and maintenance and repair cost savings are 50 percent lower (low benefits case) and 50 percent greater (high benefits case) than the central estimates that the Agency relied on in developing the values presented in Table 2. Further discussion of the low and high benefits cases is reserved to the RIA for the final rule.

TABLE 2—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[Central case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^a	Maintenance and repair cost savings	Total ^b	Discounted at 3%	Discounted at 7%
2020	\$89	\$15	\$13	\$117	\$117	\$117
2021	151	26	22	198	192	186
2022	186	31	26	243	229	214
2023	190	32	27	248	227	206
2024	194	32	27	253	225	197
2025	197	33	27	257	222	188

³¹ As described in Sections 4.1.1 through 4.1.3, the Agency identified a variety of relevant studies related to each of the quantified benefits. With

particular respect to the estimated fuel and CO₂ savings the Agency was unable to identify any

studies that perfectly align with the curricula of this rule.

TABLE 2—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE—Continued
[Central case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^a	Maintenance and repair cost savings	Total ^b	Discounted at 3%	Discounted at 7%
2026	202	34	28	263	220	181
2027	205	34	28	266	217	172
2028	207	35	28	270	214	165
2029	211	35	28	274	210	157
Total	1,830	306	253	2,389	2,073	1,783
Annualized				239	236	237

Notes:

^a The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^b 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).

TABLE 3—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[Low benefits case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^a	Maintenance and repair cost savings	Total ^b	Discounted at 3%	Discounted at 7%
2020	\$44	\$8	\$6	\$58	\$58	\$58
2021	75	13	11	99	96	93
2022	93	16	13	121	114	107
2023	95	16	13	124	114	103
2024	97	16	13	127	112	99
2025	99	17	14	129	111	94
2026	101	17	14	131	110	90
2027	102	17	14	133	108	86
2028	104	17	14	135	107	82
2029	106	17	14	137	105	78
Total	915	153	127	1,195	1,036	891
Annualized				119	118	119

Notes:

^a The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^b 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).

TABLE 4—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE
[High benefits case, in millions of 2014\$]

Year	Undiscounted				Discounted	
	Value of fuel savings	Value of CO ₂ reduction ^a	Maintenance and repair cost savings	Total ^b	Discounted at 3%	Discounted at 7%
2020	\$133	\$23	\$19	\$175	\$175	\$175
2021	226	38	32	295	287	278
2022	278	47	38	363	343	321
2023	285	48	39	371	340	308
2024	291	49	40	379	337	295
2025	296	50	40	385	332	282
2026	302	50	41	393	329	271
2027	307	51	41	399	324	258
2028	311	52	41	405	320	246
2029	316	52	42	410	314	235

TABLE 4—TOTAL QUANTIFIABLE BENEFITS OF THE FINAL RULE—Continued
[High benefits case, in millions of 2014\$]

Year	Undiscounted			Discounted		
	Value of fuel savings	Value of CO ₂ reduction ^a	Maintenance and repair cost savings	Total ^b	Discounted at 3%	Discounted at 7%
Total	2,745	459	372	3,576	3,100	2,668
Annualized				358	353	355

Notes:

^a The monetized benefits associated with reduced CO₂ emissions are discounted at the 3% discount rate in both the “discounted at 3%” and “discounted at 7%” columns in this table. This is in keeping with the guidance of the Interagency Working Group that developed the OMB guidance on monetizing CO₂ reductions, and is consistent with past DOT and EPA practices. Further details on the monetization of CO₂ reductions are presented in Section 4.1.2 of the RIA.

^b 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).

While FMCSA believes that this final rule will at a minimum achieve cost-neutrality, the net of quantified costs and benefits (presented in Table 5 below) results in an annualized net cost of \$131 million at a 7 percent discount rate. This estimate is based only on *quantifiable* costs and benefits (central case) attributable to this rule. Safety benefits are assessed separately via a threshold analysis discussed in detail in Section 4.2 of the RIA.

TABLE 5—NET COST OF THE FINAL RULE (CENTRAL CASE), ABSENT QUANTIFIABLE SAFETY BENEFITS
[In millions of 2014\$]

Year	3% Discount rate	7% Discount rate
2020	\$298	\$298
2021	151	144
2022	107	97
2023	100	85
2024	94	77
2025	89	69
2026	84	61
2027	79	55
2028	77	49

TABLE 5—NET COST OF THE FINAL RULE (CENTRAL CASE), ABSENT QUANTIFIABLE SAFETY BENEFITS—Continued

[In millions of 2014\$]

Year	3% Discount rate	7% Discount rate
2029	73	44
Total	1,152	979
Annualized	131	131

In the absence of a clear 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 will need to occur as a consequence of this final rule in order for the rule to achieve cost-neutrality.³² As presented and discussed in detail in Section 4.2 of the RIA, the central estimate of this analysis is that a 3.61 percent improvement in safety performance (that is, a 3.61 percent reduction in the frequency of crashes

involving those entry-level drivers who will receive additional pre-CDL training as a result of this final rule during the period for which the benefits of training are estimated to remain intact) is necessary to offset the \$142 million (annualized at 7 percent) net cost of this final rule. Note that under the low and high benefits cases presented in Table 3 and Table 4, the net cost of this final rule ranges from \$13 million to \$250 million (annualized at 7 percent), suggesting the improvement in safety performance necessary to offset the rule’s costs may be as low as 0.36 percent and as high as 6.89 percent (see Section 4.2 of the RIA for the final rule for further detail).

Table 6 below presents the projected number of crash reductions involving entry-level drivers that must occur in each of the 10 years following this final rule’s implementation and in the aggregate, in order to offset the net cost (\$131 million annualized at 7 percent).³³ To be clear, it is the sum of the monetized value of *all columns* of Table 6—not the sum of the monetized value of any individual column—that results in cost-neutrality.

³² Office of Management and Budget. Circular A-4. *Regulatory Analysis*. September 17, 2003. Available at: <https://www.whitehouse.gov/sites/default/files/omb/assets/omb/circulars/a004/a-4.pdf> (accessed July 25, 2016).

³³ Some commenters to the RIA that was performed for the NPRM for this rule incorrectly interpreted the breakeven percentage reduction in crashes estimated here as being relative to *all* CMV crashes *industry-wide*, rather than being relative to only to the much smaller sub-set of crashes involving entry-level drivers that are affected by the rule. Note that with respect to the magnitude of the

reduction in the frequency of all crashes involving large trucks and buses that the annual average crash reductions presented in Table 6 represent, the Agency notes that there were an estimated total 3,649 fatal, 93,000 injury, and 379,000 PDO crashes in 2014 (see U.S. Department of Transportation, Federal Motor Carrier Safety Administration (FMCSA), *2016 Pocket Guide to Large Truck and Bus Statistics*, May 2016, pages 33 and 34, available at: http://ntl.bts.gov/lib/59000/59100/59189/2016_Pocket_Guide_to_Large_Truck_and_Bus_Statistics.pdf (accessed July 1, 2016)). Therefore, viewed in this manner, based on the annual average number of crash reductions necessary for this final

rule to achieve cost-neutrality (shown in the second row from the bottom of Table 6), this equates to a reduction of only 0.14% of fatal, 0.11% of injury, and 0.11% of PDO crashes, respectively (relative to calendar year 2014). These percentage reductions are calculated as follows: Fatal = 5 ÷ 3,649; Injury = 102 ÷ 93,000; PDO = 432 ÷ 379,000. It should be re-emphasized, however, that this view of the data taken by some of the commenters is *incorrect*, and that the breakeven percentage reduction in crashes estimated here is relative to only the much smaller sub-set of crashes involving entry-level drivers that are affected by the rule.

TABLE 6—CRASH REDUCTIONS INVOLVING ENTRY-LEVEL DRIVERS, BY TYPE, NECESSARY TO ACHIEVE COST-NEUTRALITY [For the Central Case]

Year	Number of fatal crashes	Number of injury crashes	Number of property damage only (PDO) crashes
2020	3	59	251
2021	5	98	418
2022	6	118	502
2023	6	118	502
2024	6	118	502
2025	6	118	502
2026	6	118	502
2027	6	118	502
2028	6	118	502
2029	6	118	502
Annual Average ^a	5	110	468
Total ^b	53	1,102	4,682

Notes:

^a Rounded to the nearest whole number.

^b The individual values shown may not sum to the totals shown due to rounding.

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. Additionally, 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.

Accordingly, FMCSA prepared an Initial Regulatory Flexibility Analysis (IRFA) for the NPRM and a Final Regulatory Flexibility Analysis (FRFA) for the Final Rule. This rule will affect all entities that choose to become training providers. As shown in the FRFA (see Section 5 of the RIA), FMCSA estimated that approximately 4.6 million small entities could employ entry-level drivers, but that only 22,000 entities will register with FMCSA to become training providers. The impact on those entities that choose to become training providers will be less than \$500 in the first year of the analysis, which is less than 1% of revenue for entities

in any of the potentially affected industries. Therefore, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

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

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

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, in the aggregate, or by the private sector of \$155 million (which is the value equivalent of \$100,000,000 in 1995, adjusted for inflation to 2013 levels) or more in any one 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 final rule 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 first-time CDL applicants, CDL holders seeking a license upgrade from one class of CDL to another, and applicants for the passenger (P) or hazardous materials (H) endorsements.³⁴ Accordingly, because

³⁴ As explained above and discussed in the RIA, mandatory school bus (S) endorsement training is also included in the final rule. While not specifically mandated by MAP–21, the Agency believes the inclusion of an S endorsement curriculum is entirely consistent with MAP–21’s

Continued

this 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

These amended regulations require training providers to obtain, collect, maintain, and in some cases transmit, information about their facilities, curricula, and the individuals who complete entry-level driver training. In accordance with the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), FMCSA has analyzed the need for these information-collection (IC) activities and how the information will be managed. On March 7, 2016, the Agency provided a preliminary estimate of the time burden that would be imposed on training providers under the proposed rules and asked for public comment (81 FR 11967). No comments were received.

The compliance date for the amended training rules is three years after the effective date of this final rule. For the next three years, the Agency's current regulations pertaining to the training of entry-level drivers (49 CFR Subpart E) will remain in place. OMB approves information-collection activities for a maximum period of 3 years. Thus, the Agency's estimate of IC burden must be based upon the current regulations. That burden was approved by OMB on December 23, 2015, after public notice and comment (80 FR 53385). The Agency at this time does not amend that approved estimate: 66,250 hours. Formal OMB approval of the IC collection to be conducted under the amended rules must be obtained before the compliance date of those rules. Therefore, in approximately two years, the Agency will submit its estimate of the burden of the amended rules to OMB for approval and provide notice and an opportunity for public comment on the estimate.

Preliminary Estimate

FMCSA offers the following preliminary estimate of the IC burden it foresees the amended training rules will impose on the compliance date three years hence.

Summary of the Collection of Information: Training providers must register each training location with the TPR by electronically submitting an

initial TPRF. Training providers must also submit an updated TPRF for each training location to the TPR every two years. In addition, training providers must electronically submit training certification information to the TPR for each individual who completes entry-level driver training.

Need for Information: The Agency must be able to assess the qualifications of training providers in order to list them on the TPR, and the identity of training locations is needed for FMCSA to be able to visit the sites to verify compliance. Finally, information about individuals who complete ELDT is needed so the Agency can inform SDLAs that CDL applicants completed the required training.

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 audits of the operations of training providers. Further, the Agency will monitor the safety performance of drivers who complete entry-level training in order to assess the efficacy of the training required by the amended regulations.

Description of the Respondents: Training providers.

Number of Respondents: 20,510.

Frequency of Response: Training providers must initially register each training location with the TPR by submitting an initial TPRF. Training providers must also submit an updated TPRF for each training location to the TPR every two years. Finally, on an irregular basis, training providers must electronically submit training certification information to the TPR for each individual who completes entry-level driver training.

Burden of Response: Over the first three years of the new rules, the Agency estimates that training providers will require 20,405 hours annually to register their training locations with FMCSA. Training providers will also require 38,625 hours annually to electronically submit training certification information to the TPR for each individual who completes entry-level driver training.

Preliminary Estimate of the Total Annual Burden of the Revised Rules on the Compliance Date (three years from this date): 59,030 hours (20,405 + 38,625).

F. Executive Order 13132 (Federalism)

A rule has implications for Federalism under Section 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 analyzed this rule in accordance with E.O. 13132 and has determined that it does not have federalism implications.

The key concept here is “substantial direct effects on the States.” Sec. 3(b) of the Federalism Order provides that “[n]ational action limiting the policymaking discretion of the States shall be taken only where there is constitutional and statutory authority for the action and the national activity is appropriate in light of the presence of a problem of national significance.” The rule amends the current entry-level driver training requirements in 49 CFR part 380, as required by the MAP-21 amendment to 49 U.S.C. 31305, the training section of the CDL statute. The CDL program does not have preemptive effect. It is voluntary; States may withdraw at any time, although doing so will result in the loss of certain Federal aid highway funds pursuant to 49 U.S.C. 31314. Because this rule makes conforming, and not substantive, changes to the requirements already imposed on participating States, FMCSA has determined that it does not have substantial direct effects on the States, on the relationship between the Federal and State governments, or on the distribution of power and responsibilities among the various levels of government.

Nonetheless, FMCSA recognizes that, as a practical matter, this rule may have some impact on the States. Accordingly, the Agency sought advice from the National Governors Association (NGA), the National Conference of State Legislatures (NCSL), the American Association of Motor Vehicle Administrators (AAMVA), and the 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 and NAPFTDS were members of the ELDTAC, whose consensus recommendations formed the basis of the NPRM. State and local governments were also able to raise Federalism issues during the NPRM comment period.

Furthermore, FMCSA sent follow-up letters to NGA, NCSL, AAMVA, and NAPFTDS on March 18, 2016, notifying them that the NPRM had been published.

recognition of the importance of ELDT in the operation of passenger-carrying CMVs. FMCSA notes that the S endorsement training requirement increases the cost of the final rule by a negligible amount (approximately 0.82%), due primarily to the fact that about 95% of entry-level school bus drivers currently receive training that is at least equal to the minimum standard established in today's rule.

G. Executive Order 12988 (Civil Justice Reform)

This final 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. Executive Order 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. Although FMCSA has determined that this in an economically significant rule, the Agency concludes, as noted in the response to comments, that this regulatory action does not present “environmental health risks and safety risks,” as that term is defined in E.O. 13045, which could disproportionately affect children.

I. Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this final 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

FMCSA conducted a privacy impact assessment (PIA) of this rule as required by section 522(a)(5) of division H of the FY 2005 Omnibus Appropriations Act, Public Law 108–447, 118 Stat. 3268 (Dec. 8, 2004). The assessment considered impacts of the final rule on the privacy of information in an identifiable form and related matters. The final rule will impact the handling of personally identifiable information (PII). FMCSA has evaluated the risks and effects the rulemaking might have on collecting, storing, and sharing PII and has evaluated protections and alternative information handling processes in developing the final rule in order to mitigate potential privacy risks.

For the purposes of both transparency and efficiency, the privacy analysis conforms to the DOT standard Privacy Impact Assessment (PIA) and will be published on the DOT Web site, <http://www.transportation.gov/privacy>, concurrently with the publication of the rule. The PIA addresses the rulemaking, associated business processes

contemplated in the rule, and any information known about the systems or existing systems to be implemented in support of the final rulemaking. While a PIA for the Entry Level Driver Training NPRM was not required, due to changes in the rulemaking and associated business processes during the final rule stage, this effort will now require the publication of a PIA. FMCSA will not be directly collecting information from individuals, but the agency will be storing and using PII collected by the training providers about individuals that received training at the facilities.

As required by the Privacy Act, FMCSA and the Department will publish, with request for comment, a system of records notice (SORN) that will describe FMCSA’s maintenance and electronic transmission of information affected by this final rule and covered by the Privacy Act. This SORN will be developed to reflect the new storage and electronic transmission of information and published in the **Federal Register** not less than 30 days before the Agency is authorized to collect or use PII retrieved by unique identifier.

K. Executive Order 12372 (Intergovernmental Review)

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

L. Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this final 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. Executive Order 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, FMCSA did not consider the use of voluntary consensus standards.

If you disagree with our analysis of the voluntary consensus standards or are aware of voluntary consensus standards that might apply but are not listed here, please send a comment to the docket using one of the methods under **ADDRESSES**. In your comment, please explain why you disagree with our analysis and/or identify voluntary consensus standards FMCSA has not listed that might apply.

O. Environment (NEPA, CAA, E.O. 12898 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 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 prepared an Environmental Assessment (EA) to review the potential impacts of the rule. Because the implementation of this action would only impose new training standards for certain individuals applying for their 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 final rule 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 final rule. 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 rule in accordance with the Executive Order, and has determined that no environmental justice issue is associated with this 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 amends 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 February 7, 2020

- 2. Revise subpart E to read as set forth above.
- 3. Add subpart F to read as follows:

Subpart F—Entry-Level Driver Training Requirements On and After February 7, 2020

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.

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

Compliance with the provisions of this subpart is required on or after February 7, 2020.

§ 380.601 Purpose and scope.

This subpart establishes training requirements for entry-level drivers, as defined in this subpart, and minimum content for theory and Behind-the-Wheel (BTW) training curricula. Entry-level driver training, as defined in this subpart, applies only to those individuals who apply for a commercial driver's license (CDL) or a CDL upgrade or endorsement and does not otherwise amend substantive CDL 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;

(3) Veterans with military CMV experience who meet all the requirements and conditions of § 383.77 of this chapter; and

(4) Drivers applying for a removal of a restriction in accordance with § 383.135(b)(7).

(b) Drivers who hold a valid Class A or Class B CDL, or a passenger (P), school bus (S), or hazardous materials (H) endorsement, issued before February 7, 2020, are not required to comply with this subpart pertaining to that CDL or endorsement.

(c)(1) Individuals who obtain a CLP before February 7, 2020, are not required to comply with this subpart if they obtain a CDL before the CLP or renewed CLP expires.

(2) Individuals who obtain a CLP on or after February 7, 2020, are required to comply with this subpart.

(3) Except for individuals seeking the H endorsement, individuals must complete the theory and BTW (range and public road) portions of entry-level driver training within one year of completing the first portion.

§ 380.605 Definitions.

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

(b) As used in this subpart:

Behind-the-wheel (BTW) instructor means an individual who provides BTW training involving the actual operation of a CMV by an entry-level driver on a range or a public road and meets one of these qualifications:

(i) 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 has at least two years of experience driving a CMV requiring a CDL of the same or higher class and/or the same endorsement and meets all applicable State qualification requirements for CMV instructors; or

(ii) 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 has at least two years of experience as a BTW CMV instructor and meets all applicable State qualification requirements for CMV instructors.

Exception: A BTW instructor who provides training solely on a range which is not a public road is not required to hold a CDL of the same (or higher) class and with all endorsements

necessary to operate the CMV for which training is to be provided, as long as the instructor previously held 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 complies with the other requirements set forth in paragraphs (1), (2), or (3) of this definition.

(iii) If an instructor's CDL has been cancelled, suspended, or revoked due to any of the disqualifying offenses identified in § 383.51, the instructor is prohibited from engaging in BTW instruction for two years following the date his or her CDL is reinstated.

Behind-the-wheel (BTW) range training means training provided by a BTW instructor when an entry-level driver has actual control of the power unit during a driving lesson conducted on a range. BTW range training does not include time an entry-level driver spends observing the operation of a CMV when he or she is not in control of the vehicle.

Behind-the-wheel (BTW) public road training means training provided by a BTW instructor when an entry-level driver 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 an entry-level driver spends observing the operation of a CMV when he or she is not in control of the vehicle.

Entry-level driver means an individual who must complete the CDL skills test requirements under § 383.71 prior to receiving a CDL for the first time, upgrading to a Class A or Class B CDL, or obtaining a hazardous materials, passenger, or school bus endorsement for the first time. This definition does not include individuals for whom States waive the CDL skills test under § 383.77 or individuals seeking to remove a restriction in accordance with § 383.135(b)(7).

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

(i) Taking the CDL skills test required to receive the Class A or Class B CDL for the first time;

(ii) Taking the CDL skills test required to upgrade to a Class A or Class B CDL; or

(iii) Taking the CDL skills test required to obtain a passenger and/or school bus endorsement for the first time or the CDL knowledge test required to obtain a hazardous materials endorsement for the first time.

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.

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 an individual who provides knowledge instruction on the operation of a CMV and meets one of these qualifications:

(i) 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 has at least two years of experience driving a CMV requiring a CDL of the same (or higher) class and/or the same endorsement and meets all applicable State qualification requirements for CMV instructors; or

(ii) 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 has at least two years of experience as a BTW CMV instructor and meets all applicable State qualification requirements for CMV instructors.

Exception: An instructor is not required to hold a CDL of the same (or higher) class and with all endorsements necessary to operate the CMV for which training is to be provided, if the instructor previously held a CDL of the same (or higher) class and complies with the other requirements set forth in paragraphs (1), (2), and (3) of this definition.

(iii) If an instructor's CDL has been cancelled, suspended, or revoked due to any of the disqualifying offenses identified in § 383.51, the instructor is prohibited from engaging in theory instruction for two years following the date his or her CDL is reinstated.

(iv) *Exception.* Training providers offering online content exclusively are not required to meet State qualification requirements for theory instructors.

Training provider means an entity that is listed on the FMCSA Training Provider Registry, as required by subpart G of this part. Training providers include, but are not limited to, training schools, educational institutions, rural electric cooperatives, motor carriers, State/local governments, school districts, joint labor management programs, owner-operators, and individuals.

§ 380.609 General entry-level driver training requirements.

(a) An individual who applies, for the first time, for a Class A or Class B CDL,

or who upgrades to a Class A or B CDL, must complete driver training from a provider listed on the Training Provider Registry (TPR), as set forth in subpart G.

(b) An individual seeking to obtain a passenger (P), school bus (S), or hazardous materials (H) endorsement for the first time, must complete the training related to that endorsement from a training provider listed on the TPR, as set forth in subpart G.

■ 5. Subpart G is added to read as follows:

Subpart G—Registry of Entry-Level Driver Training Providers

Sec.	
380.700	Scope.
380.703	Requirements for listing on the training provider registry (TPR).
380.707	Entry-level training provider requirements.
380.709	Facilities.
380.711	Equipment.
380.713	Instructor requirements.
380.715	Assessments.
380.717	Training certification.
380.719	Requirements for continued listing on the training provider registry (TPR).
380.721	Removal from Training Provider Registry: factors considered.
380.723	Removal from Training Provider Registry: procedure.
380.725	Documentation and record retention.

§ 380.700 Scope.

The rules in this subpart establish the eligibility requirements for listing on FMCSA's Training Provider Registry (TPR). In order to provide entry-level driver training in compliance with this part, training providers must be listed on the TPR.

§ 380.703 Requirements for listing on the training provider registry (TPR).

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

- (1) Follow a curriculum that meets the applicable criteria set forth in appendices A through E of part 380,
- (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)(i) Be licensed, certified, registered, or authorized to provide training in accordance with the applicable laws and regulations of any State where in-person training is conducted.

(ii) *Exception:* State qualification requirements otherwise applicable to theory instruction do not apply to providers offering such instruction only online.

(6) 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.

(7) Electronically transmit an Entry-Level Driver Training Provider Registration Form through the TPR Web site maintained by FMCSA, which attests 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 electronically transmit an Entry-Level Driver Training Provider Registration Form for each campus or training location in order to obtain a unique TPR number for each location.

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

§ 380.707 Entry-level training provider.

(a) Training providers must require all accepted applicants for behind-the-wheel (BTW) training to certify that they will comply U.S. Department of Transportation regulations in parts 40, 382, 383, and 391, as well as State and/or local laws, related to controlled substances testing, age, medical certification, licensing, and driving record. Training providers must verify that all accepted BTW applicants hold a valid commercial learner's permit or commercial driver's license, as applicable.

(b) Training providers offering online training must ensure that the content is prepared and/or delivered by a theory instructor, as defined in § 380.605.

(c) Separate training providers may deliver the theory and BTW portions of the training, but both portions (range and public road) of the BTW training must be delivered by the same training provider.

§ 380.709 Facilities.

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

§ 380.711 Equipment.

(a) All vehicles used in the behind-the-wheel training must comply with applicable Federal and State safety requirements.

(b) Training vehicles must be in the same group and type that driver-trainees intend to operate for their CDL skills test.

§ 380.713 Instructor requirements.

(a) Theory training providers must utilize instructors who are a theory instructor as defined in § 380.605.

(b) BTW training providers must utilize instructors who are a BTW instructors as defined in § 380.605.

§ 380.715 Assessments.

(a) Training providers must use assessments (in written or electronic format) to determine driver-trainees' proficiency in the knowledge objectives in the theory portion of each unit of instruction in appendices A through E of part 380, as applicable. The driver-trainee must receive an overall minimum score of 80 percent on the theory assessment.

(b) Training instructors must evaluate and document a driver-trainee's proficiency in BTW skills in accordance with the curricula in appendices A through D of part 380, as applicable.

§ 380.717 Training certification.

After an individual completes training administered by a provider listed on the TPR, that provider must, by midnight of the second business day after the driver-trainee completes the training, electronically transmit training certification information through the TPR Web site including the following:

(a) Driver-trainee name, number of driver's license/commercial learner's permit/commercial driver's license, as applicable, and State of licensure;

(b) Commercial driver's license class and/or endorsement and type of training (theory and/or BTW) the driver-trainee completed;

(c) Total number of clock hours the driver-trainee spent to complete BTW training, as applicable;

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

(e) Date(s) of successful training completion.

§ 380.719 Requirements for continued listing on the training provider registry (TPR).

(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 § 380.703.

(2) Biennially update the Entry-Level Driver Training Provider Registration Form.

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

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

(ii) Changes must be reported by electronically transmitting an updated Entry-Level Driver Training Provider Registration Form.

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

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

(6) Ensure that all required documentation, as set forth in § 380.725, is available to FMCSA or its authorized representative, upon request. The provider must submit this documentation within 48 hours of the request.

(b) [Reserved]

§ 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 any of 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, any training conducted 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 any State where in-person training is provided.

(5) The State-administered CDL skills examination passage rate for applicants for the Class A CDL, Class B CDL, passenger endorsement, and/or school bus endorsement who complete the provider's training and the CDL knowledge test passage rate for applicants for the hazardous materials endorsement who complete the provider's training.

(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 invalidate training conducted under this subpart .

§ 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 a voluntary removal notice will not be effective.

(b) *Involuntary removal; Notice of proposed removal.* Except as provided by paragraphs (a) and (e) of this section, FMCSA initiates the process for involuntary 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. If a notice of proposed removal is issued to a training provider listed on the TPR Web site, FMCSA will note on the TPR Web site that such notice has been issued. FMCSA will remove the notation if the notice is withdrawn.

(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 that 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, or as otherwise agreed to by the provider and the Director, 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. Any training conducted after the removal date is invalid.

(2) *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 subsequently affirms or modifies the notice of proposed removal. The provider must provide documentation of 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.

(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. The request must be submitted in writing to the FMCSA Associate Administrator for Policy (Associate Administrator) no later than 30 days after the effective date of the removal. 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 invalidate training conducted under this subpart. 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.* (1) Any time after a training provider's voluntary removal from the TPR, the provider may apply to the Director to be reinstated.

(2) 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. 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) *Document retention.* All training providers on the TPR must retain the following:

(1) Self-certifications by all accepted applicants for behind-the-wheel (BTW) training attesting that they will comply with U.S. Department of Transportation regulations in parts 40, 382, 383 and 391, as well as State and/or local laws,

related to alcohol and controlled substances testing, age, medical certification, licensing, and driver records, as required in 380.707(a). (2) A copy of the driver-trainee's commercial learner's permit(s) or commercial driver's license, as applicable, as required in 380.707(a).

(3) 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 BTW instructors or theory instructors, as applicable.

(4) The Training Provider Registration Form submitted to the TPR.

(5) The lesson plans for theory and BTW (range and public road) training curricula, as applicable.

(6) Records of individual entry-level driver training assessments as described in § 380.715.

(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 BTW instructor's CDL, has expired or been canceled, in which case the most recent, valid CDL should be retained, if applicable. 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.

Appendix to Part 380 [Redesignated as Appendix F to Part 380]

- 6. The appendix to part 380 is redesignated as appendix F to part 380.
- 7. Add appendices A through E to part 380 to read as follows:

Appendix A to Part 380—Class A—CDL Training Curriculum

Class A CDL applicants must complete the Class A CDL curriculum outlined in this Appendix. The curriculum for Class A applicants pertains to combination vehicles (Group A) as defined in 49 CFR 383.91(a)(1). There is no required minimum number of instruction hours for theory training, but the training instructor must cover all topics set forth in the curriculum. There is no required minimum number of instruction hours for BTW (range and public road) training, but the training instructor must cover all topics set forth in the BTW curriculum. BTW training must be conducted in a CMV for which a Class A CDL is required. The instructor must determine and document that each driver-trainee has demonstrated proficiency in all elements of the BTW curriculum, unless otherwise noted. Consistent with the definitions of BTW range training and BTW public road training in § 380.605, a

simulation device cannot be used to conduct such training or to demonstrate proficiency. Training instructors must document the total number of clock hours each driver-trainee spends to complete the BTW curriculum. The Class A curriculum must, at a minimum, include the following:

Theory Instruction

Section A1.1 Basic Operation

This section 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. Training providers will teach driver-trainees 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 familiarize themselves with the basic operating characteristics of a CMV.

Unit A1.1.1 Orientation

This unit must introduce driver-trainees to the combination vehicle driver training curriculum and the components of a combination vehicle. The training providers must teach the safety fundamentals, essential regulatory requirements (e.g., overview of FMCSRs and Hazardous Materials Regulations), and driver-trainees' responsibilities not directly related to CMV driving, such as proper cargo securement. This unit must also cover the ramifications, including driver disqualification provisions and fines, for non-compliance with parts 380, 382, 383, and 390 through 399 of the FMCSRs. 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.

Unit A1.1.2 Control Systems/Dashboard

This unit must introduce driver-trainees to vehicle instruments, controls, and safety components. The training providers must teach driver-trainees to read gauges and instruments correctly and the proper use of vehicle safety components, including safety belts and mirrors. The training providers must teach driver-trainees to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking systems (e.g., ABS, hydraulic, air), as applicable, and parking.

Unit A1.1.3 Pre- and Post-Trip Inspections

This unit must teach the driver-trainees to conduct pre-trip and post-trip inspections as specified in §§ 392.7 and 396.11, including appropriate inspection locations. Instruction must also be provided on enroute vehicle inspections.

Unit A1.1.4 Basic Control

This unit must introduce basic vehicular control and handling as it applies to combination vehicles. This unit must include

instruction addressing basic combination vehicle controls in areas such as executing sharp left and right turns, centering the vehicle, maneuvering in restricted areas, and entering and exiting the interstate or controlled access highway.

Unit A1.1.5 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 unit must include training driver-trainees to execute up and down shifting techniques on multi-speed dual range transmissions, if appropriate. The training providers must teach the importance of increased vehicle control and improved fuel economy achieved by utilizing proper shifting techniques.

Unit A1.1.6 Backing and Docking

This unit must teach 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 the use of spotters.

Unit A1.1.7 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, as applicable.

Section A1.2 Safe Operating Procedures

This section must teach the practices required for safe operation of the combination vehicle on the highway under various road, weather, and traffic conditions. The training providers must teach driver-trainees the Federal rules governing the proper use of seat belt assemblies (§ 392.16).

Unit A1.2.1 Visual Search

This unit must teach driver-trainees to visually search the road for potential hazards and critical objects, including instruction on recognizing distracted pedestrians or distracted drivers.

Unit A1.2.2 Communication

This unit must instruct driver-trainees on how to communicate their intentions to other road users. Driver-trainees must be instructed in techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. This unit must cover instruction in proper utilization of eye contact techniques with other drivers, bicyclists, and pedestrians.

Unit A1.2.3 Distracted Driving

This unit must instruct driver-trainees in FMCSRs related to distracted driving and other key driver distraction driving issues, including improper cell phone use, texting, and use of in-cab technology (e.g., §§ 392.80 and 392.82). This instruction will include 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).

Unit A1.2.4 Speed Management

This unit must teach driver-trainees how to manage speed effectively in response to various road, weather, and traffic conditions. The instruction must include methods for calibrating safe following distances taking into account CMV braking distances under an array of conditions including traffic, weather, and CMV weight and length.

Unit A1.2.5 Space Management

This unit must teach driver-trainees about the importance of managing the space surrounding the vehicle under various traffic and road conditions.

Unit A1.2.6 Night Operation

This unit must instruct driver-trainees in the factors affecting the safe operation of CMVs at night and in darkness. Additionally, driver-trainees must be instructed in changes in vision, communications, speed space management, and proper use of lights, as needed, to deal with the special problems night driving presents.

Unit A1.2.7 Extreme Driving Conditions

This unit must teach driver-trainees about the specific problems presented by extreme driving conditions. The training provide will emphasize the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. The training provider must teach proper tire chaining procedures.

Section A1.3 Advanced Operating Practices

This section 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. The training providers must teach driver-trainees about the advanced skills necessary to recognize potential hazards and must teach the driver-trainees the procedures needed to handle a CMV when faced with a hazard.

Unit A1.3.1 Hazard Perception

The unit must teach driver-trainees to recognize potential hazards in the driving environment in order to reduce the severity of the hazard and neutralize possible emergency situations. The training providers must teach driver-trainees to identify road conditions and other road users that are a potential threat to the safety of the combination vehicle and suggest appropriate adjustments. The instruction must emphasize hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. The training providers must teach driver-trainees to recognize potential dangers and the safety procedures that must be utilized while driving in construction/work zones.

Unit A1.3.2 Skid Control/Recovery, Jackknifing, and Other Emergencies

This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. The training providers must teach the importance of maintaining directional control and bringing the CMV to a stop in the shortest possible distance while operating over a slippery surface. This unit must provide instruction in

appropriate responses when faced with CMV emergencies. This instruction must include evasive steering, emergency braking, and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, and rollovers. The instruction must include a review of unsafe acts and the role the acts play in producing or worsening hazardous situations.

Unit A1.3.3 Railroad-Highway Grade Crossings

This unit must teach driver-trainees to recognize potential dangers and the appropriate safety procedures to utilize at railroad (RR)-highway grade crossings. This instruction must include an overview of various Federal/State RR grade crossing regulations, RR grade crossing environments, obstructed view conditions, clearance around the tracks, and rail signs and signals. The training providers must instruct driver-trainees that railroads have personnel available ("Emergency Notification Systems") to receive notification of any information relating to an unsafe condition at the RR-highway grade crossing or a disabled vehicle or other obstruction blocking a railroad track at the RR-highway grade crossing.

Section A1.4 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.

Unit A1.4.1 Identification and Diagnosis of Malfunctions

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.

Unit A1.4.2 Roadside Inspections

This unit must instruct driver-trainees on what to expect during a standard roadside inspection conducted by authorized personnel. The training providers must teach driver-trainees on what vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating a CMV when subject to an OOS order as defined in section 390.5.

Unit A1.4.3 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.

Section A1.5 Non-Driving Activities

This section must teach driver-trainees the activities that do not involve actually operating the CMV.

Unit A1.5.1 Handling and Documenting Cargo

This unit must teach the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and techniques for safe and efficient loading/unloading. The training providers must teach driver-trainees the basic cargo security/cargo theft prevention procedures. The training provider must teach driver-trainees the basic information regarding the proper handling and documentation of HM cargo.

Unit A1.5.2 Environmental Compliance Issues

This unit must teach driver-trainees to recognize environmental hazards and issues related to the CMV and load, and also make the driver-trainee aware that city, county, State, and Federal requirements may apply to such circumstances.

Unit A1.5.3 Hours of Service Requirements

This unit must teach driver-trainees to understand that there are different hours-of-service (HOS) requirements applicable to different industries. The training providers must teach driver-trainees all applicable HOS regulatory requirements. The training providers must teach driver-trainees to complete a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. The training providers must teach driver-trainees the consequences (safety, legal, and personal) of violating the HOS regulations, including the fines and penalties imposed for these types of violations.

Unit A1.5.4 Fatigue and Wellness Awareness

This unit must teach driver-trainees about the issues and consequences of chronic and acute driver fatigue and the importance of staying alert. The training providers must teach driver-trainees wellness and basic health maintenance information that affect a driver's ability to safely operate a CMV.

Unit A1.5.5 Post-Crash Procedures

This unit must teach driver-trainees 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. The training providers must teach driver-trainees 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; place reflective triangles and other warning devices for stopped vehicles; and properly use a fire extinguisher, if necessary. The training providers must instruct driver-trainees in post-crash testing requirements related to controlled substances and alcohol.

Unit A1.5.6 External Communications

This unit must teach driver-trainees the value of effective interpersonal communication techniques/skills to interact

with enforcement officials. The training providers must teach driver-trainees the specifics of the roadside vehicle inspection process, and what to expect during this activity. Driver-trainees who are not English speakers must be instructed in FMCSA English language proficiency requirements. The training providers must teach driver-trainees the impact that violating Federal and state regulations has on their driving records and their employing motor carrier's records.

Unit A1.5.7 Whistleblower/Coercion

This unit must teach 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. The training providers must instruct driver-trainees in the whistleblower protection regulations in 29 CFR part 1978. The training providers must teach the procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

Unit A1.5.8 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. The training providers must teach driver-trainees 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.

Unit A1.5.9 Drugs/Alcohol

This unit must teach driver-trainees the rules applicable to controlled substances (including prescription drugs) and alcohol use and testing related to the operation of a CMV.

Unit A1.5.10 Medical Requirements

This unit must teach driver-trainees 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).

Behind-the-Wheel—Range

BTW range training must teach 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. The training providers will teach activities in this unit on a driving range as defined in § 380.605. The training provider must teach "Get Out and Look" (GOAL) to the driver-trainee as it applies to units A2.2–2.6.

Unit A2.1 Vehicle Inspection Pre-Trip/Enroute/Post-Trip

Driver-trainees must demonstrate proficiency in conducting pre-trip and post-trip inspections as specified in §§ 392.7 and 396.11, including appropriate inspection

locations. Instruction must also be provided on enroute vehicle inspections.

Unit A2.2 Straight Line Backing

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

Unit A2.3 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.

Unit A2.4 Off-Set Backing

Driver-trainees must demonstrate proficiency in proper techniques for performing off-set right and left backing maneuvers to appropriate criteria/acceptable tolerances.

Unit A2.5 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.

Unit A2.6 Parallel Parking Sight Side

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

Unit A2.7 Coupling and Uncoupling

Driver-trainees must demonstrate proficiency in proper techniques for coupling, inspecting, and uncoupling combination vehicle units, as applicable.

Behind-the-Wheel—Public Road

The instructor must engage in active two-way communication with the driver-trainees during all active BTW public road training sessions. Skills described in paragraphs A3.8 through 3.12 of this section must be discussed during public road training, but not necessarily performed. Driver-trainees are not required to demonstrate proficiency in the skills described in paragraphs A3.8 through 3.12.

Unit A3.1 Vehicle Controls Including: Left Turn, Right Turns, Lane Changes, Curves at Highway Speeds, and Entry and Exit on the Interstate or Controlled Access Highway

Driver-trainees must demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, entry and exit on the interstate or controlled access highway, and stopping the vehicle in a controlled manner.

Unit A3.2 Shifting/Transmission

Driver-trainees must demonstrate proficiency in proper techniques for performing safe and fuel-efficient shifting.

Unit A3.3 Communications/Signaling

Driver-trainees must demonstrate proficiency in proper techniques for

signaling intentions and effectively communicating with other drivers.

Unit A3.4 Visual Search

Driver-trainees must demonstrate proficiency in proper techniques for visually searching the road for potential hazards and critical objects.

Unit A3.5 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 must demonstrate proficiency in 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.

Unit A3.6 Safe Driver Behavior

Driver-trainees must demonstrate proficiency in safe driver behavior during their operation of the CMV.

Unit A3.7 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.

Unit A3.8 Hazard Perception

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.

Unit A3.9 Railroad (RR)-Highway Grade Crossing

Driver-trainees must demonstrate the ability to recognize potential dangers and to demonstrate appropriate safety procedures when RR-highway grade crossings are reasonably available.

Unit A3.10 Night Operation

Driver-trainees must be familiar with how to operate a CMV safely at night. Training providers must teach driver-trainees that night driving presents specific circumstances that require heightened attention on the part of the driver. Driver-trainees must be taught special requirements for night vision, communications, speed, space management, and proper use of lights.

Unit A3.11 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, fog, snow, ice, steep grades, and sharp curves. Driver-trainees must demonstrate their ability to recognize the changes in basic driving habits needed to deal with the specific challenges

presented by these extreme driving conditions.

Unit A3.12 Skid Control/Recovery, Jackknifing, and Other Emergencies

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. 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, and rollovers.

Appendix B to Part 380—Class B—CDL Training Curriculum

Class B CDL applicants must complete the Class B CDL curriculum outlined in this Appendix. The curriculum for Class B applicants pertains to heavy straight vehicles (Group B) as defined in 49 CFR 383.91(a)(2). There is no required minimum number of instruction hours for theory training, but the training instructor must cover all the topics in curriculum. There is no required minimum number of instruction hours required for BTW (range and public road) training, but the training instructor must cover all topics set forth in the BTW curriculum. BTW training must be conducted in a CMV for which a Class B CDL is required. The instructor must determine and document that each driver-trainee has demonstrated proficiency in all elements of the BTW curriculum unless otherwise noted. Consistent with the definitions of BTW range training and BTW public road training in § 380.605, a simulation device cannot be used to conduct such training or to demonstrate proficiency. Training instructors must document the total number of clock hours each driver-trainee spends to complete the BTW curriculum. The Class B curriculum must, at a minimum, include the following:

Theory Instruction

Section B1.1 Basic Operation

This section 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. This section must also teach driver-trainees how to perform vehicle inspections, control the CMVs under various road and traffic conditions, employ shifting and backing techniques, and couple and uncouple, as applicable. Driver-trainees must familiarize themselves with the basic operating characteristics of a CMV.

Unit B1.1.1 Orientation

This unit must introduce driver-trainees to the commercial motor vehicle driver training curriculum and the components of a commercial motor vehicle. The training providers must teach driver-trainees 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, and 390 through 399 of the FMCSRs. 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.

Unit B1.1.2 Control Systems/Dashboard

This unit must introduce driver-trainees to vehicle instruments, controls, and safety components. The training providers must teach driver-trainees to read gauges and instruments correctly and the proper use of vehicle safety components, including safety belts and mirrors. The training providers must teach driver-trainees to identify, locate, and explain the function of each of the primary and secondary controls including those required for steering, accelerating, shifting, braking systems (*e.g.*, ABS, hydraulic, air), as applicable, and parking.

Unit 1.3 Pre- and Post-Trip Inspections

The training provider must teach the driver-trainees to conduct pre-trip and post-trip inspections as specified in §§ 392.7 and 396.11, including appropriate inspection locations. Instruction must also be provided on enroute vehicle inspections.

Unit B1.1.4 Basic Control

This unit must introduce basic vehicular control and handling as it applies to commercial motor vehicles. This unit must include instruction addressing basic CMV controls in areas such as executing sharp left and right turns, centering the vehicle, maneuvering in restricted areas, and entering and exiting the interstate or controlled access highway.

Unit B1.1.5 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 unit must teach driver-trainees to execute up and down shifting techniques on multi-speed dual range transmissions, if appropriate. The training providers must teach driver-trainees the importance of increased fuel economy achieved by utilizing proper shifting techniques.

Unit B1.1.6 Backing and Docking

This unit must teach 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.

Section B1.2 Safe Operating Procedures

This section must teach the practices required for safe operation of the CMV on the highway under various road, weather, and traffic conditions. The training providers must teach driver-trainees the Federal rules governing the proper use of seat belt assemblies (§ 392.16).

Unit B1.2.1 Visual Search

This unit must teach 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.

Unit B1.2.2 Communication

This unit must teach driver-trainees how to communicate their intentions to other road users. Driver-trainees must be instructed in techniques for different types of communication on the road, including proper use of headlights, turn signals, four-way flashers, and horns. This unit must cover instruction in proper utilization of eye contact techniques with other drivers, bicyclists, and pedestrians.

Unit B1.2.3 Distracted Driving

This unit must instruct driver-trainees in FMCSRs related to distracted driving and other key driver distraction driving issues, including improper cell phone use, texting, and use of in-cab technology (*e.g.*, §§ 392.80 and 392.82). This instruction will include 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).

Unit B1.2.4 Speed Management

This unit must teach driver-trainees how to manage speed effectively in response to various road, weather, and traffic conditions. The instruction must include methods for calibrating safe following distances under an array of conditions including traffic, weather and CMV weight and length.

Unit B1.2.5 Space Management

This unit must teach driver-trainees about the importance of managing the space surrounding the vehicle under various traffic and road conditions.

Unit B1.2.6 Night Operation

This unit must instruct driver-trainees in the factors affecting the safe operation of CMVs at night and in darkness. Additionally, driver-trainees must be instructed in changes in vision, communications, speed, space management, and proper use of lights, as needed, to deal with the special problems night driving presents.

Unit B1.2.7 Extreme Driving Conditions

This unit must teach driver-trainees the specific problems presented by extreme driving conditions. The training will emphasize the factors affecting the operation of CMVs in cold, hot, and inclement weather and on steep grades and sharp curves. The training providers must teach driver-trainees the proper tire chaining procedures in this unit.

Section B1.3 Advanced Operating Practices

This section 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.

The training providers must teach driver-trainees the advanced skills necessary to recognize potential hazards and must teach driver-trainees the procedures needed to handle a CMV when faced with a hazard.

Unit B1.3.1 Hazard Perception

The unit must provide instruction for recognizing potential hazards in the driving environment in order to reduce the severity of the hazard and neutralize possible emergency situations. The training providers must teach driver-trainees to identify road conditions and other road users that are a potential threat to the safety of the CMV and suggest appropriate adjustments. The instruction must emphasize hazard recognition, visual search, adequate surveillance, and response to possible emergency-producing situations encountered by CMV drivers in various traffic situations. The training providers must also teach driver-trainees to recognize potential dangers and the safety procedures that must be utilized while driving in construction/work zones.

Unit B1.3.2 Skid Control/Recovery, Jackknifing, and Other Emergencies

This unit must teach the causes of skidding and jackknifing and techniques for avoiding and recovering from them. The training providers must teach the importance of maintaining directional control and bringing the CMV to a stop in the shortest possible distance while operating over a slippery surface. This unit must provide instruction in appropriate responses when faced with CMV emergencies. This instruction must include evasive steering, emergency braking, and off-road recovery, as well as the proper response to brake failures, tire blowouts, hydroplaning, and rollovers. The instruction must include a review of unsafe acts and the role the acts play in producing or worsening hazardous situations.

Unit B1.3.3 Railroad-Highway Grade Crossings

This unit must teach driver-trainees to recognize potential dangers and appropriate safety procedures to utilize at railroad (RR)-highway grade crossings. This instruction must include an overview of various Federal/State RR grade crossing regulations, RR grade crossing environments, obstructed view conditions, clearance around the tracks, and rail signs and signals. The training providers must instruct driver-trainees that railroads have personnel available ("Emergency Notification Systems") to receive notification of any information relating to an unsafe condition at the RR-highway grade crossing or a disabled vehicle or other obstruction blocking a railroad track at the RR-highway grade crossing.

Section B1.4 Vehicle Systems and Reporting Malfunctions

This unit must provide entry-level driver-trainees with sufficient knowledge of the CMV 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.

Unit B1.4.1 Identification and Diagnosis of Malfunctions

This unit must teach driver-trainees to identify major vehicle systems. The goal is to explain their function and how to check all key vehicle systems, as appropriate (*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.

Unit B1.4.2 Roadside Inspections

This unit must instruct driver-trainees on what to expect during a standard roadside inspection conducted by authorized personnel. The training providers must teach driver-trainees on what vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating a CMV when subject to an OOS order as defined in section 390.5.

Unit B1.4.3 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.

Section B1.5 Non-Driving Activities

This section must teach driver-trainees activities that do not involve actually operating the CMV, *e.g.*, proper cargo securement.

Unit B1.5.1 Handling and Documenting Cargo

This unit must teach driver-trainees the basic theory of cargo weight distribution, cargo securement on the vehicle, cargo covering, and techniques for safe and efficient loading/unloading. The training providers must also teach driver-trainees the basic cargo security/cargo theft prevention procedures. The training providers must teach driver-trainees the basic information regarding the proper handling and documentation of HM cargo.

Unit B1.5.2 Environmental Compliance Issues

This unit must teach driver-trainees to recognize environmental hazards and issues related to the CMV and load, and also make aware that city, county, State, and Federal requirements may apply to such circumstances.

Unit B1.5.3 Hours of Service Requirements

This unit must teach driver-trainees to understand that there are different hours-of-service (HOS) requirements applicable to different industries. The training providers must teach driver-trainees all applicable HOS regulatory requirements. The training providers must teach driver-trainees to complete a Driver's Daily Log (electronic and paper), timesheet, and logbook recap, as appropriate. The training providers must teach driver-trainees the consequences (safety, legal, and personal) of violating the HOS regulations, including the fines and

penalties imposed for these types of violations.

Unit B1.5.4 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. The training providers must teach driver-trainees about wellness and basic health maintenance information that affect a driver's ability to safely operate a CMV.

Unit B1.5.5 Post-Crash Procedures

This unit must teach driver-trainees the 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. The training providers must teach driver-trainees 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; place reflective triangles and other warning devices for stopped vehicles; and properly use a fire extinguisher, if necessary. The training providers must instruct driver-trainees in post-crash testing requirements related to controlled substances and alcohol.

Unit B1.5.6 External Communications

This unit must instruct driver-trainees in the value of effective interpersonal communication techniques/skills to interact with enforcement officials. The training providers must teach driver-trainees 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. The training providers must teach driver-trainees the implications of violating Federal and state regulations will have on their driving records and their employing motor carrier's records.

Unit B1.5.7 Whistleblower/Coercion

This unit must teach 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. The training providers must instruct driver-trainees in the whistleblower protection regulations in 29 CFR part 1778. The training providers must teach driver-trainees the procedures for reporting to FMCSA incidents of coercion from motor carriers, shippers, receivers, or transportation intermediaries.

Unit B1.5.8 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. The training providers must teach driver-trainees 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.

Unit B1.5.9 Drugs/Alcohol

This unit must teach driver-trainees the rules applicable to controlled substances (including prescription drugs) and alcohol use and testing related to the operation of a CMV.

Unit B1.5.10 Medical Requirements

This unit must teach driver-trainees 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).

Behind-the-Wheel Range

This unit must teach 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. The training providers must teach driver-trainees activities in this unit on a driving range as defined in § 380.605. The training provider must teach “Get Out and Look” (GOAL) to the driver-trainee as it applies to units B2.2–2.6.

Unit B2.1 Vehicle Inspection Pre-Trip/Enroute/Post-Trip

Driver-trainees must demonstrate proficiency in conducting pre-trip and post-trip inspections as specified in §§ 392.7 and 396.11, including appropriate inspection locations. Instruction must also be provided on enroute vehicle inspections.

Unit B2.2 Straight Line Backing

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

Unit B2.3 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.

Unit B2.4 Off-Set Backing

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

Unit B2.5 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.

Unit B2.6 Parallel Parking Sight Side

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

Behind-the-Wheel Public Road

The instructor must engage in active two-way communication with the driver-trainees during all active BTW public road training sessions. Skills described in paragraphs B3.8 through 3.12 of this section must be discussed during public road training, but not necessarily performed. Driver-trainees are not required to demonstrate proficiency in the skills described in paragraphs B3.8 through 3.12.

Unit B3.1 Vehicle Controls Including: Left Turns, Right Turns, Lane Changes, Curves at Highway Speeds, and Entry and Exit on the Interstate or Controlled Access Highway

Driver-trainees must demonstrate proficiency in proper techniques for initiating vehicle movement, executing left and right turns, changing lanes, navigating curves at speed, exiting and entering the interstate, and stopping the vehicle in a controlled manner.

Unit B3.2 Shifting/Transmission

Driver-trainees must demonstrate proficiency in proper techniques for performing safe and fuel-efficient shifting.

Unit B3.3 Communications/Signaling

Driver-trainees must demonstrate proficiency in proper techniques for signaling intentions and effectively communicating with other drivers.

Unit B3.4 Visual Search

Driver-trainees must demonstrate proficiency in proper techniques for visually searching the road for potential hazards and critical objects.

Unit B3.5 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 must demonstrate proficiency in 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.

Unit B3.6 Safe Driver Behavior

Driver-trainees must demonstrate proficiency in safe driver behavior during their operation of the CMV.

Unit B3.7 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.

Unit B3.8 Hazard Perception

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 vehicle safety and suggest appropriate adjustments.

Unit B3.9 Railroad (RR)-Highway Grade Crossing

Driver-trainees must demonstrate the ability to recognize potential dangers and to demonstrate appropriate safety procedures when RR-highway grade crossings are reasonably available.

Unit B3.10 Night Operation

Driver-trainees must be familiar with how to operate a CMV safely at night. Training providers must teach driver-trainees that night driving presents specific circumstances that require heightened attention on the part of the driver. Driver-trainees must be taught special requirements for night vision, communications, speed, space management, and proper use of lights.

Unit B3.11 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, fog, snow, ice, steep grades, and curves. Training providers must teach driver-trainees the basic driving habits needed to deal with the specific challenges presented by these extreme driving conditions.

Unit B3.12 Skid Control/Recovery, Jackknifing, and Other Emergencies

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. 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, and rollovers.

Appendix C to Part 380—Passenger Endorsement Training Curriculum

Passenger (P) endorsement applicants must complete the curriculum outlined in this section, which applies to driver-trainees who expect to operate CMVs in the any of the vehicle groups defined in § 383.91(a)(1)–(3) for which a P endorsement is required.

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. There is no required minimum number of instruction hours for BTW training, but training providers must determine whether driver-trainees have demonstrated proficiency in all elements of the BTW curriculum. Training instructors must document the total number of clock hours each driver-trainee spends to complete the BTW curriculum. The training must be conducted in a passenger vehicle of the same vehicle group as the applicant intends to drive. The passenger endorsement training must, at a minimum, contain the following:

Theory Instruction*Unit C1.1 Post-Crash Procedures*

This unit must teach driver-trainees 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, training providers must teach driver-trainees 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, reflective triangles and other warning devices for stopped vehicles; and properly use a fire extinguisher if necessary.

Unit C1.2 Other Emergency Procedures

This unit must instruct driver-trainees in managing security breaches, on-board fires, emergency exit and passenger evacuation training, medical emergencies, and emergency stopping procedures including the deployment of various emergency hazard signals. Instruction must also include procedures for dealing with mechanical breakdowns and vehicle defects while enroute.

Unit C1.3 Vehicle Orientation

This unit must teach driver-trainees the basic physical and operational characteristics of passenger-carrying CMV (e.g. bus and motor coach), including overall height, length, width, ground clearances, rear overhang, Gross Vehicle Weight and Gross Vehicle Weight Rating, axle weights, wheels and rims, tires, tire ratings, mirrors, steer wheels, lighting, windshield, windshield wipers, engine compartments, basic electrical system, brake systems, as applicable, and spare tire storage. Additionally, training providers must instruct driver-trainees in techniques for proper driver seat and mirror adjustments.

Unit C1.4 Pre-Trip, Enroute, and Post-Trip Inspection

This unit must teach the driver-trainee the importance of pre-trip, enroute, and post-trip inspections; and provide instruction in techniques for conducting such inspections as stated in §§ 392.7 and 396.11, and demonstrate their ability to inspect the following:

- (1) Emergency exits;
- (2) Passenger-carrying CMV interiors (including passenger seats as applicable);
- (3) Restrooms and associated environmental requirements;
- (4) Temperature controls (for maintaining passenger comfort);
- (5) Driver and passenger seat belts.

Additionally, training providers must instruct driver-trainees 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. Finally, training providers must instruct driver-trainees in cycling-accessible lifts and procedures for inspecting them for functionality and defects.

Unit C1.5 Fueling

This unit must instruct driver-trainees on the significance of avoiding refueling a bus while passengers are onboard and the imperative of avoiding refueling in an enclosed space.

Unit C1.6 Idling

This unit must teach driver-trainees the importance of compliance with State and local laws and regulations, including for example, idling limits, fuel savings; and the consequences of non-compliance, including adverse health effects and penalties.

Unit C1.7 Baggage and/or Cargo Management

In this unit, training providers must teach driver-trainees:

- (1) Proper methods for handling and securing passenger baggage and containers, as applicable.
- (2) Procedures for identifying and inspecting baggage and containers for prohibited items, such as hazardous materials.
- (3) Proper handling and securement of devices associated with the Americans with Disabilities Act (ADA) compliance, including oxygen, wheeled mobility devices, and other associated apparatuses.

Unit C1.8 Passenger Safety Awareness Briefing

This unit must teach driver-trainees how to brief 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.

Unit C1.9 Passenger Management

In this unit, training providers must teach driver-trainees:

- (1) Proper procedures for safe loading and unloading of passengers prior to departure, including rules concerning standing passengers and the standee line.
- (2) Procedures for dealing with disruptive passengers.

Unit C1.10 Americans With Disabilities Act (ADA) Compliance

Along with addressing the proper operation of accessibility equipment (e.g., lifts), this must teach driver-trainees 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.

Unit C1.11 Hours of Service (HOS) Requirements

This unit must teach driver-trainees the HOS regulations that apply to drivers for interstate passenger carriers. Training providers must teach driver-trainees 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. Training providers must teach driver-trainees how to recognize the signs of fatigue and basic

fatigue countermeasures as a means to avoid crashes.

Unit C1.12 Safety Belt Safety

This unit must teach driver-trainees the Federal rules governing the proper use of safety restraint systems by CMV drivers, as set forth in § 392.16.

Unit C1.13 Distracted Driving

This unit must teach driver-trainees FMCSA regulations that prohibit drivers from texting or using hand-held mobile phones while operating their vehicles (e.g., §§ 392.80 and 392.82); and must teach the serious consequences of violations, including crashes, heavy fines, and impacts on a motor carrier's and/or driver's safety records, such as driver disqualification.

Unit C1.14 Railroad (RR)-Highway Grade Crossings and Drawbridges

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

Unit C1.15 Weigh Stations

This unit must teach driver-trainees the weigh-station regulations that apply to buses.

Unit C1.16 Security and Crime

This unit must teach driver-trainees the basic techniques for recognizing and minimizing physical risks from criminal activities.

Unit C1.17 Roadside Inspections

This unit must teach driver-trainees what to expect during a standard roadside inspection conducted by authorized personnel. Training providers must teach driver-trainees what passenger-carrying vehicle and driver violations are classified as out-of-service (OOS), including the ramifications and penalties for operating a CMV when subject to an OOS order as defined in § 390.5.

Unit C1.18 Penalties and Fines

This unit must teach driver-trainees 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.

Behind the Wheel—Range and Public Road

This BTW training consists of exercises related to basic vehicle control skills and mastery of basic maneuvers necessary to operate the vehicle safely. Activities in this unit will take place on a driving range or a public road as defined in § 380.605. The instructor must engage in active communication with the driver-trainees during all BTW training sessions.

Unit C2.1 Vehicle Orientation

Driver-trainees must demonstrate their familiarity with basic passenger-carrying CMV physical and operational characteristics including overall height, length, width,

ground clearances, rear overhang, gross vehicle weight and gross vehicle weight rating, axle weights, wheels and rims, tires, tire ratings, mirrors, steer wheels, lighting, windshield, windshield wipers, engine compartments, basic electric system, and spare tire storage. Additionally, driver-trainees must demonstrate techniques for proper driver's seat and mirror adjustments.

Unit C2.2 Pre-Trip, Enroute, and Post-Trip Inspection

Driver-trainees must demonstrate proficiency in conducting such pre-trip, enroute and post-trip inspections of buses and key components of §§ 392.7 and 396.11, and demonstrate their ability to inspect the following:

- (1) Emergency exits;
- (2) Passenger-carrying CMV interiors (including passenger seats as applicable);
- (3) Restrooms and associated environmental requirements;
- (4) Temperature controls (for maintaining passenger comfort); and
- (5) Driver and passenger seat belts.

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. Driver-trainees must be familiar with the operation of cycling-accessible lifts and the procedures for inspecting them for functionality and defects. For passenger-carrying vehicles equipped with said lifts and tie-down positions, trainee must demonstrate their ability to operate the cycling-accessible lifts.

Unit C2.3 Baggage and/or Cargo Management

In this unit, driver-trainees must demonstrate their ability to:

- (1) Properly handle passenger baggage and containers to avoid worker, passenger, and non-passenger related injuries and property damage;
- (2) Visually inspect baggage and containers for prohibited items, such as hazardous materials and identify such items;
- (3) Properly handle and secure devices associated with ADA compliance including oxygen, wheeled mobility devices, and other associated apparatuses.

Unit C2.4 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.

Unit C2.5 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.

Unit C2.6 Railroad-Highway Grade Crossings

Driver-trainees must demonstrate proper procedures for safely navigating railroad-highway grade crossings in a passenger-carrying CMV.

Appendix D to Part 380—School Bus Endorsement Training Curriculum

School bus (S) endorsement applicants must complete the curriculum outlined in this section, which applies to driver-trainees who expect to operate a "school bus" as defined in § 383.5. 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. There is no required minimum number of instruction hours for BTW training, but the training provider must determine whether driver-trainees have demonstrated proficiency in all elements of the BTW curriculum. Training instructors must document the total number of clock hours each driver-trainee spends to complete the BTW curriculum. The training must be conducted in a school bus of the same vehicle group as the applicant intends to drive. The school bus endorsement training must, at a minimum, include the following:

Theory Instruction

Unit D1.1 Danger Zones and Use of Mirrors

This unit must teach driver-trainees 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). Training providers must teach driver-trainees the dangers of "dart-outs." Training providers must teach driver-trainees the importance of training students how to keep out of the danger zone when around school buses and the techniques for doing so.

Unit D1.2 Loading and Unloading

This unit must be instruct driver-trainees on the laws and regulations 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.

Unit D1.3 Vehicle Orientation

This unit must teach driver-trainees the basic physical and operational characteristics of school buses, including overall height, length, width, ground clearances, rear overhang, Gross Vehicle Weight and Gross

Vehicle Weight Rating, axle weights, wheels and rims, tires, tire ratings, mirrors, steer wheels, lighting, windshield, windshield wipers, engine compartments, basic electrical system, brake systems, as applicable, and spare tire storage. Additionally, the training providers must instruct driver-trainees in techniques for proper driver seat and mirror adjustments.

Unit D1.4 Post-Crash Procedures

This unit must instruct driver-trainees on the proper procedures following a school bus crash. The instruction must include use of fire extinguisher(s), first aid kit(s), tending to injured passengers, post-crash vehicle securement, notification procedures, deciding whether to evacuate the bus, data gathering, and interaction with law enforcement officials.

Unit D1.5 Emergency Exit and Evacuation

This unit must teach driver-trainees 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.

Unit D1.6 Railroad-Highway Grade Crossings

This unit must teach driver-trainees 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.

Unit D1.7 Student Management

This unit must teach driver-trainees how 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. Training providers must teach driver-trainees to avoid becoming distracted by student behavior while driving, especially when crossing railroad tracks and during loading and unloading.

Unit D1.8 Special Safety Considerations

This unit must teach the driver-trainees the 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.

Unit D1.9 Pre- and Post-Trip Inspections

This unit must teach the driver-trainees the importance of pre-trip, enroute, and post-trip inspections; and provide instruction in techniques for conducting such inspections of buses as stated in §§ 392.7 and 396.11, and additionally demonstrate their ability to inspect the following:

- (1) Stop arms,
- (2) Crossing arms,

- (3) Emergency exits,
- (4) Fire extinguishers,
- (5) Passenger seats,
- (6) First aid kits,
- (7) Interior lights, and
- (8) Temperature control (for maintaining passenger comfort).

Training providers must instruct driver-trainees in State and local requirements, as applicable, for inspection of school bus equipment.

Unit D1.10 School Bus Security

This unit must teach driver-trainees the security issues facing school bus drivers. Training providers must also teach driver-trainees 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.

Unit D1.11 Route and Stop Reviews

This unit must teach driver-trainees the importance of planning their routes prior to beginning driving in order to avoid distraction while on the road. The training provider must also teach driver-trainees the techniques for reviewing routes and stops, as well as State and local procedures for reporting hazards along the route and at bus stops.

Behind the Wheel—Range and Public Road

This unit must consist of exercises related to basic vehicle control skills and mastery of basic maneuvers. Activities in this unit will take place on a driving range or a public road as defined in § 380.605. The instructor must engage in active communication with the driver-trainees during all active training sessions.

Unit D2.1 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 practice mirror adjustment and usage. The types of mirrors and their use are shown, and cones used to demonstrate the requirements of 49 CFR 571.111.

Unit D2.2 Loading and Unloading

Driver-trainees must demonstrate the loading and unloading techniques learned in the theory portion of the training. Driver-trainees must demonstrate checking the vehicle for sleeping children and lost items at the end of the route.

Unit D2.3 Emergency Exit and Evacuation

Driver-trainees must demonstrate their role in safely evacuating the bus in an emergency.

Unit D2.4 Special Safety Considerations

Driver-trainees must demonstrate safe backing techniques and demonstrate their ability to avoid tail swing crashes by using reference points when making turns.

Unit D2.5 Pre- and Post-Trip Inspections

Driver-trainees must demonstrate proficiency in conducting pre-and post-trip inspections, as stated in §§ 392.7 and 396.11, and of school bus-specific equipment, such as mirrors, stop arms, crossing arms,

emergency exits, fire extinguishers, passenger seats, first aid kits, interior lights, and temperature control.

Unit D2.6 Railroad-Highway Grade Crossings

Driver-trainees must demonstrate proper procedures for safely navigating railroad-highway grade crossings in a school bus.

Appendix E to Part 380—Hazardous Materials Endorsement Training Curriculum

Hazardous materials (H) endorsement applicants must complete the Hazardous materials curriculum, which apply to driver-trainees who intend to operate CMVs used in the transportation of hazardous materials (HM) as defined in § 383.5. Driver-trainees seeking an H endorsement, as defined in § 383.93(c)(4), must complete this curriculum in order to take the State-administered knowledge test for the H endorsement. There is no required minimum number of instruction hours for theory training, but the training provider must cover all the topics in the curriculum. The HM curriculum must, at a minimum, include the following:

Theory Instruction

Unit E1.1 Basic Introductory HM Requirements

This unit must teach driver-trainees the basic HM competencies, including applicable FMCSR requirements when HM is being transported. The training provider must also teach driver-trainees HM communication requirements including: Shipping paper requirements, marking, labeling, placarding, emergency response information, and shipper's responsibilities.

Unit E1.2 Operational HM Requirements

This unit must teach driver-trainees the basic competencies for transportation of HM.

Unit E1.3 Reporting HM Crashes and Releases

The unit must teach driver-trainees 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.

Unit E.4 Tunnels and Railroad (RR)-Highway Grade Crossing Requirements

This unit must teach driver-trainees the proper operation of an HM vehicle at RR-highway grade crossings and in vehicular tunnels.

Unit E1.5 Loading and Unloading HM

This unit must teach driver-trainees the proper loading and unloading procedures for hazardous material cargo. Training providers must also teach driver-trainees the requirements for proper segregation and securement of HM, and the prohibitions on transporting certain solid and liquid poisons with foodstuffs.

Unit E1.6 HM on Passenger Vehicles

This unit must teach driver-trainees 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.

Unit E1.7 Bulk Packages

This unit must teach driver-trainees 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. Training providers must teach driver-trainees methods specifically designed to reduce cargo tank rollovers including, but not limited to, vehicle design and performance, load effects, highway factors, and driver factors.

Unit E1.8 Operating Emergency Equipment

This unit must teach driver-trainees 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.

Unit E1.9 Emergency Response Procedures

This unit must teach driver-trainees 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.

Unit E1.10 Engine (Fueling)

This unit must teach driver-trainees the procedures for fueling a vehicle that contains HM.

Unit E1.11 Tire Check

This unit must teach driver-trainees the proper procedures for checking the vehicle tires at the start of a trip and each time the vehicle is parked.

Unit E1.12 Routes and Route Planning

This unit must teach driver-trainees the proper routing procedures that they are required to follow for the transportation of radioactive and non-radioactive HM.

Unit E1.13 Hazardous Materials Safety Permits (HMSP)

This unit must teach driver-trainees the proper procedures and operational requirements including communications, constant attendance, and parking that apply to the transportation of HM for which an HMSP is required.

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

■ 8. 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.

■ 9. Amend § 383.71 by adding paragraphs (a)(3) and (b)(11), revising paragraphs (e)(3) and (4), and adding paragraph (e)(5) to read as follows:

§ 383.71 Driver application and certification procedures.

(a) * * *

(3) Beginning on February 7, 2020, a person must 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 for the first time, or a skills test for a passenger (P) or school bus (S) endorsement for the first time, or the knowledge test for a hazardous materials (H) endorsement for the first time. The training must be administered by a provider listed on the Training Provider Registry.

(b) * * *

(11) Beginning on February 7, 2020, a person must 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, a passenger (P) or school bus (S) endorsement for the first time or the knowledge test for a hazardous materials (H) endorsement for the first time. 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 February 7, 2020, a person must complete the training prescribed in subpart F of part 380 of this chapter before taking the skills test for upgrading to a Class A or B for the first time; or adding a passenger or school bus endorsement to a CDL for the first time; or knowledge test for hazardous materials endorsement for the first time. The training must be administered by a provider on the Training Provider Registry.

* * * * *

■ 10. Amend § 383.73 by revising paragraph (b)(3) introductory text and

paragraph (b)(3)(ii) and by adding paragraphs (b)(10), (e)(8), and (p) 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 the CDLIS to determine whether the driver applicant already has been issued a CDL, whether the applicant's license has been disqualified, or if the applicant has been disqualified from operating a commercial motor vehicle; and beginning February 7, 2020, before an applicant is issued a Class A or Class B CDL, or a passenger (P), school bus (S), or hazardous materials (H) endorsement, whether the applicant has completed the training required by subpart F of part 380 of this subchapter;

* * * * *

(10) Beginning on February 7, 2020, not conduct a skills test of an applicant for a Class A or Class B CDL, or a passenger (P) or school bus (S) endorsement until the State verifies electronically that the applicant completed the training prescribed in subpart F of part 380 of this subchapter.

* * * * *

(e) * * *

(8) Beginning on February 7, 2020, not issue an upgrade to a Class A or Class B CDL, or a passenger (P), school bus (S), or hazardous materials (H) endorsement, unless the applicant has completed the training required by subpart F of part 380 of this subchapter.

* * * * *

(p) After February 7, 2020, the State must notify FMCSA that a training provider in the State does not meet applicable State requirements for CMV instruction.

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 February 7, 2020, a State must comply with the requirements of § 383.73(b)(3)(ii), (b)(10), and (e)(8) to verify that the applicant completed the training prescribed in subpart F of part 380.

(b)(1) A State may issue a CDL to individuals who obtain a CLP before February 7, 2020, who have not complied with subpart F of part 380 of this subchapter so long as they obtain a CDL before the CLP or renewed CLP expires.

(2) A State may not issue a CDL to individuals who obtain a CLP on or after February 7, 2020, unless they comply with subpart F of part 380 of this subchapter.

■ 13. Add § 384.235 to subpart B to read as follows:

§ 384.235 Entry-level driver training provider notification.

The State must meet the entry-level driver training provider notification requirement of § 383.73(p).

■ 14. In § 384.301, add paragraph (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 February 6, 2017, but not later than February 7, 2020.

Issued under the authority of delegation in 49 CFR 1.87: November 16, 2016.

T.F. Scott Darling, III,
Administrator.

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