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Safety Study - Training, Licensing, and Qualification Standards for Drivers of Heavy Trucks

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16. Abstract This study examines the processes by which people are prepared for employment as truck drivers and then initially are placed into service. To ensure that a driver has the skills necessary for safe operation of a truck, the Safety Board has determined that a training requirement should be established, stipulating not only that prospective truck drivers obtain instruction, but also that they demonstrate before graduating that they have mastered the skills they were taught. Once properly validated training standards are available, the Board believes a system should be adopted for using them to assess schools' courses of study, and for directing prospective students to those schools that measure up favorably.

The Safety Board has reviewed the Federal Motor Carrier Safety Regulations, pointing out loopholes and suggesting improvements. To make truck driver licensing more uniform throughout the United States, and to make it a more effective means of setting and enforcing adequate qualification standards, the Safety Board has recommended development of a national license for truck drivers. The Board also reviewed current efforts to improve the National Driver Register, as well as proposals to expand its services. The Board has developed recommendations in support of these projects.

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NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C. 20594

SAFETY STUDY

Adopted: April 17, 1986

TRAINING, LICENSING, AND QUALIFICATION STANDARDS FOR DRIVERS OF HEAVY TRUCKS

EXECUTIVE SUMMARY

This study examines the processes by which people are prepared for employment as truck drivers and then initially are placed into service. The objective has been to identify aspects of these processes that compromise highway safety, to describe current efforts for improvement, and to offer recommendations for ways to augment those efforts.

The study stresses the need for formal training to ensure that a driver has the skills necessary for safe operation of a truck. Many drivers receive no formal training. Of those who do, many are still not properly prepared, because there is no system to evaluate the instruction at all schools, and there are no widely recognized minimum school standards. The Department of Transportation recently published proposed minimum standards against which all truck driver training schools could be measured, but those standards cannot be used for that purpose until their validity has been tested with actual schools and students. The Safety Board urges that such field testing start as soon as possible. Once properly validated standards are available, the Board believes a system should be adopted for using them to assess schools' courses of study and for directing prospective students to those schools that measure up favorably.

Substantially upgrading the instruction offered by training schools cannot be expected to improve truck safety if sufficient incentives remain lacking for truck drivers to attend those schools. The Safety Board has therefore determined that a requirement of formal training should be established for truck drivers. That requirement should stipulate not only that prospective truck drivers obtain instruction, but also that they demonstrate before graduating that they have mastered the skills being taught.

Interstate truck drivers are required to meet qualifications contained in the Federal Motor Carrier Safety Regulations. There are regulations as well concerning motor carriers' practices in hiring drivers. The Safety Board has reviewed these regulations, pointing out loopholes and inconsistencies and suggesting ways to change the rules accordingly.

In its review of State driver licensing practices, the Safety Board found that all States require license applicants to take a road test, but, in 19 States and the District of Columbia, the applicant is not required to demonstrate proficiency in the type of vehicle he or she intends to drive. Thus, a person could take a road test in a small sedan, obtain a license, and then legally use that license for driving a tractor-semitrailer. Thirty-one States issue licenses corresponding to specific classes of vehicles, with the classifications usually determined by such factors as vehicle weight or number of axles. In a "classified licensing system," which the Safety Board endorses, applicants are given a road test in the type of vehicle specified in the license being sought.

In addition to the lack of classified licensing in some States, the Safety Board found that the test procedures used in many States are not sufficient for evaluating an applicant's qualifications to drive a truck. To make truck driver licensing more uniform throughout the United States, and to make it a more effective means of setting and enforcing adequate qualification standards, the Safety Board has recommended development of a national license for truck drivers. Such a national system also would help prevent truck drivers from holding more than one license at a time and spreading the traffic violations accrued among those multiple records--a ploy used by some drivers to hide their unsafe behavior from authorities.

One program already in existence to combat multiple licensing is the National Driver Register (NDR). The NDR is a central listing, maintained by the National Highway Traffic Safety Administration, of persons whose driving privileges have been withdrawn or denied. By consulting this listing, a State can avoid granting a license to an applicant for whom another State previously has withdrawn or rejected licensure. The Safety Board reviewed current efforts to improve the NDR, as well as proposals to expand its services. The Board has developed recommendations in support of these projects.

INTRODUCTION

On July 5, 1984, a tractor-semitrailer was following a car too closely on wet pavement near Ashdown, Arkansas. When the car slowed suddenly, the truck had to brake hard to avoid hitting it. The truck jackknifed, and the tractor rotated into the oncoming lane and struck a police car. All four police officers in the struck vehicle were killed. 1/

A tractor-semitrailer collided head-on with a church van in Lemoore, California, on October 8, 1982, killing all but 1 of the van's 11 occupants. There had been a stalled car blocking the truck's lane at an intersection. Instead of slowing down, the truck driver attempted to go around the car, and he lost control of the combination vehicle in the process. 2/

In Frostburg, Maryland, on February 19, 1981, the driver of a tractor-semitrailer ignored a brake check area near the top of a mountain and then failed to reduce speed, downshift, and apply brakes properly, as numerous warning signs advised. The truck accelerated out of control, sideswiping a pickup truck and forcing a car off the road on the approach to Frostburg. Once in the town's business district, the runaway truck struck eight vehicles, pushing them into six other vehicles. The detached tractor then propelled another car into a building, which caught fire and exploded. Three persons were killed, the truck driver and 10 others were injured, and property damage was estimated at more than $675,000. 3/

1/ Highway Accident Report--"Collision of DeQueen, Arkansas, Police Department Patrol Car and Terrell Trucking, Inc., Tractor-Semitrailer, U.S. Route 71, Ashdown, Arkansas, July 5, 1984" (NTSB/HAR-84/07).
2/ Highway Accident Report--"J. C. Sales, Inc., Tractor-Semitrailer, Calvary Baptist Church Van Collision, State Route 198 at 19th Avenue near Lemoore, California, October 8, 1982" (NTSB/HAR-83/02).
3/ Highway Accident Report--"Direct Transit Lines, Inc., Tractor-Semitrailer/Multiple-Vehicle Collision and Fire, U.S. Route 40, Frostburg, Maryland, February 18, 1981" (NTSB-HAR-81-3).

High speed, coupled with a surge in the liquid cargo, caused a tank truck in Moscow, Pennsylvania, to overturn onto a Microbus, crushing and instantly killing a family of four in 1971. The tank contained 45,460 pounds of a liquid sugar solution. 4/

When a driver allowed a surge to force his tank truck out of control on an interstate connector ramp in Houston, Texas, in 1976, the driver was killed in the crash that followed. Fumes from the truck's spilled cargo of anhydrous ammonia killed five others in the area and injured 178. 5/

In 1984, there were approximately 369,000 accidents involving heavy and medium trucks, 6/ according to an estimate prepared by the National Accident Sampling System (NASS). 7/ Of those accidents, approximately 117,000, or 32 percent, produced injuries. In the same year, the Fatal Accident Reporting System (FARS) recorded 4,847 fatal accidents involving heavy and medium trucks, in which 5,156 people were killed. 8/

According to a National Highway Traffic Safety Administration (NHTSA) statistical analysis, "While total [motor vehicle] fatalities declined by 17 percent between 1980 and 1983, [heavy] truck accident fatalities remained almost unchanged." 9/ Another NHTSA report indicated that in 1979-1980 (the most recent years for such analysis), heavy and medium trucks were involved in 5.7 percent of all police-reported accidents, but they were involved in 11.9 percent of all fatal accidents. 10/

When trucks are involved in accidents, it is the people outside those trucks who are at greatest risk due to the relatively large mass of a truck, as well as other factors. In 1985, for example, a tractor-semitrailer near Eufaula, Alabama, jackknifed and struck an automobile head-on. Five of the six car occupants were killed, but the truck driver was unhurt. Of the 4,908 people killed in heavy truck accidents in 1984, only 920, or 18.7 percent, were truck occupants. 11/

4/ Highway Accident Report--"Tank-Truck Combination Overturn onto Volkswagen Microbus Followed by Fire: U.S. Route 611, Moscow, Pennsylvania, September 5, 1971" (NTSB-HAR-72-6).

5/ Highway Accident Report--"Transportation Company of Texas, Tractor-Semitrailer (Tank) Collision with Bridge Column and Sudden Dispersal of Anhydrous Ammonia Cargo, I-610 at Southwest Freeway, Houston, Texas, May 11, 1976" (NTSB-HAR-77-1).

6/ According to the definition used by NHTSA, all of the following are considered heavy trucks: 1) single-unit (or "straight") truck with gross vehicle weight greater than 26,000 pounds; 2) tractor-trailer combination; 3) truck pulling one or more cargo trailers; and 4) tractor pulling no trailer. A medium truck is any single-unit truck with a gross vehicle weight between 10,000 and 26,000 pounds. While this study deals generally with drivers of heavy trucks, many of the observations apply also to those driving medium ones. Light vehicles, such as pickup trucks, are excluded.

7/ National Highway Traffic Safety Administration, "National Accident Sampling System 1984--A Report on Traffic Accidents and Injuries in the U.S.," DOT HS-806-867, November 1985. NASS data are derived from a statistical sample of approximately 10,000 accidents each year.

8/ National Highway Traffic Safety Administration, "Fatal Accident Reporting System 1984--A Review of Information on Fatal Traffic Accidents in the U.S. in 1984." FARS is a census of data on all fatal traffic accidents in the United States and Puerto Rico.

9/ Cerrelli, Ezio C., "Current Trends in Heavy Truck Accident Fatalities (1980-1984)," NHTSA, DOT HS-806-896, November 1985.

10/ Eicher, J.P., Robertson, H.D., and Toth, G.R., "Large Truck Accident Causation," NHTSA, DOT HS-806-300, July 1982.

11/ NHTSA, FARS 1984, op. cit.

Many trucks transport hazardous materials. When one of those vehicles is involved in an accident, the threat to life and property can spread well beyond the immediate site of the accident. For example, after a collision (currently under investigation by the Safety Board) involving a tractor-flatbed semitrailer and an automobile near Checotah, Oklahoma, on August 4, 1985, the initial result was only impact and fire damage to the two vehicles. But about one-half hour later, the truck's cargo, a load of ten 2,000-pound bombs, began to explode. One of the car occupants was moderately injured in the blasts, along with about 48 residents of Checotah. Explosive damage, primarily broken glass, spread throughout the town, and about 5,000 people were evacuated. The three explosions left a crater 30 feet across and 15 feet deep in the interstate highway.

Driver performance is a major factor in many of the truck accidents investigated by the National Transportation Safety Board. Safe truck driving, like many other types of vehicle operation, requires attributes such as:

-- An understanding of the handling properties of both vehicle and cargo.

-- The ability to operate the vehicle properly in all types of weather, road, and loading conditions.

-- Knowledge of correct procedures in areas such as pretrip inspection, loading, and unloading.

-- Familiarity with the requirements of state law, Federal regulations, and company policy.

-- Physical condition free from ailments or drug influence that might impair driving performance.

-- Adequate rest and nourishment.

-- An attitude that reflects courtesy, respect for the rules of the road, and appreciation of the responsibility that comes with the job.

In addition, the operation of heavy trucks places special demands on the driver, demands he or she may not always be able to meet. Long stopping distances, the possibility of brake fade on steep hills, restricted maneuverability, cargo shifting, and the danger of jackknifing are only a few of the problems that drivers of heavy trucks must face constantly, but which automobile drivers experience rarely if at all. A report from an NHTSA task force observes:

> It is commonly agreed that the skills required to drive large trucks are much more complex than those required to drive an automobile. Larger trucks often operate in traffic composed primarily of vehicles with quicker response characteristics. Therefore, truck drivers must adopt compensating driving strategies to account for the relative unwieldiness of their vehicles. These involve allowances of greater distances for passing, stopping, turning and accelerating, and a consequent need for more effective anticipation of approaching situations. 12/

12/ "Large Truck Safety: Opportunities and Challenges - A Report of the Heavy Truck Safety Task Force," Department of Transportation, unpublished report, May 1985.

Truck driving, therefore, is a specialized skill -- distinct in many ways, and more demanding than operating a smaller vehicle, such as a car.

Although there are programs for training and licensing truck drivers, as well as government regulations and motor carrier screening procedures, unqualified drivers can often slip through this system with ease. Truck driving, as demonstrated above, may be a specialized skill, but far too many people are able to enter the field without having first acquired that skill.

The Department of Labor (DOL) reports that 2,484,000 people worked as truck drivers in 1984. The work force in the field is expected to increase 17.2 percent by 1995, placing truck driving among the 37 fastest growing occupations, out of 500 studied by the DOL. 13/ Given these figures, and the destructive potential of a mishandled truck, the need becomes apparent for an effective, uniformly applied system of matching skill to task in the truck driving field.

In the research for this safety study, the Safety Board:

-- Reviewed truck accident reports, looking for the shortcomings they revealed in the qualifications of some drivers to operate heavy trucks.

-- Interviewed truck drivers, motor carrier officials, proprietors of truck driving training schools, trucking and insurance industry trade association representatives, State motor vehicle administrators, and Department of Transportation officials.

-- Examined rulemaking records of the Federal Highway Administration's Bureau of Motor Carrier Safety (BMCS).

-- Studied the development of the BMCS Proposed Minimum Standards and Model Curriculum for Training Tractor-Trailer Drivers.

-- Examined the establishment and functions of the Professional Truck Driver Institute.

-- Analyzed the sections of the Federal Motor Carrier Safety Regulations pertaining to truck driver qualifications.

-- Reviewed accident data and research reports from NHTSA, including a battery of model truck driver tests called the Truck Operator Qualifications Examination.

-- Assessed efforts to improve the effectiveness of the National Driver Register (NDR), a clearinghouse that assists the States in exchanging information regarding driving records.

-- Examined driver manuals and license examination procedures of selected States.

13/ "Nine out of 10 new jobs projected to be in service industries," Press Release, Bureau of Labor Statistics, U.S. Department of Labor, November 7, 1985.

-- Analyzed proposals for a national driver license for truck drivers and other commercial vehicle operators, as well as pending legislation on the subject.

This report was prepared pursuant to Section 304(a)(3) of the Independent Safety Board Act of 1974 (49 USC 1901), which provides that the Board shall "issue periodic reports to the Congress, Federal, State, and local agencies concerned with transportation safety, and other interested persons recommending and advocating meaningful responses to reduce the likelihood of transportation accidents . . . and proposing corrective steps to make the transportation of persons as safe and free from risk of injury as is possible, including steps to minimize human injuries from transportation accidents."

Government Authorities Regulating Truck Drivers

Throughout the United States, each truck driver, like all motor vehicle operators, is required to carry a valid driver license. Individual States issue these licenses and impose various qualifications for licensure. In addition to passing the appropriate road (or performance) test and written (or knowledge) test, applicants are customarily required to meet qualifications in areas such as medical condition, visual acuity, minimum age, and previous driving record. A discussion of State licensing practices begins on page __. Aside from license regulations, a State also may establish other rules concerning truck operations within its borders.

A truck driver working exclusively in a single State is subject to the laws of that State; must carry that State's license; and, if working for a trucking firm, is bound by that company's rules. In most cases, those are the only authorities to which such a driver must answer. However, a truck driver who drives between States comes under Federal, as well as State jurisdiction.

The Federal agency that regulates the operations of heavy trucks and other commercial vehicles 14/ is the Bureau of Motor Carrier Safety (BMCS), which is a division of the Department of Transportation's (DOT) Federal Highway Administration (FHWA). The BMCS enforces the Federal Motor Carrier Safety Regulations (FMCSR).

Some drivers who cross State lines while staying within a single "commercial zone" are exempt from portions of the FMCSR (see pages 23 and 24), and some intrastate operations involving hazardous materials are subject to Federal regulation, but for the most part, the jurisdiction of the FMCSR is limited to interstate transport. Therefore, when the FMCSR are revised with the objective of developing higher standards among truck drivers, such measures do not directly reach the intrastate drivers. For example, if, as recommended in this study, a formal training requirement for truck drivers is added to the FMCSR, interstate drivers would have to obtain training, while intrastate drivers would not. That is one reason the Safety Board is also advocating development of a national truck driver license, in which the Federal requirements could be incorporated as licensing criteria. Such a system would help apply needed qualification standards uniformly to all truck drivers.

14/ In addition to trucks, commercial vehicles include buses, and commercial interstate bus operations are regulated by the BMCS. While this study deals exclusively with truck drivers, proposals such as the National Driver License could apply also to bus drivers. The Senate bill mentioned on page 50 calls for creation of a national license for commercial drivers in general, rather than for truck drivers only.

Until a national license system is in place, it is still possible to obtain some improvements in intrastate driver qualifications through individual State action. For example, as described on page 47, the Safety Board has recommended to State motor vehicle administrators that drivers transporting hazardous materials be required to obtain special licenses. California has adopted such a program. In addition, it is possible to reach some intrastate drivers indirectly through the FMCSR. The chapter on the FMCSR describes how many states have adopted regulations similar to those found in the FMCSR. Changes in the Federal regulations may therefore be reflected on the State level. As described in the same chapter, the Motor Carrier Safety Act of 1984 may help bring some State regulations in line with the Federal ones.

There are also promising nongovernmental approaches to improving the standards of both intrastate and interstate drivers. For example, the insurance industry can serve as a safety advocate. In this study, the Safety Board recommends that insurance companies encourage their motor carrier policy holders to hire only drivers who have received formal training.

TRAINING TO DRIVE HEAVY TRUCKS

There are several ways to learn how to drive a truck. A friend or relative may provide the instruction, in much the same way that many people learn to drive a car. Or an aspiring driver may choose from a variety of formal training programs.

Under current laws and practices in this country, there is practically no regulatory incentive to choose one approach over another. Very few States impose any form of training requirement. 15/ Most stipulate only that a prospective truck driver be able to pass the road and written tests for the appropriate type of license, and meet qualifications for age, vision and previous driving record. Since most State licensing procedures test only for minimal levels of truck driving proficiency, and some do not even require that road tests for truck drivers be given in a truck, it is generally possible for a truck driver with little if any specialized training to obtain whatever license he or she needs.

Federal regulations establish no training prerequisite for interstate service. They say a person is qualified "if he . . . [c]an . . . safely operate the type of motor vehicle he drives . . . and [c]an . . . determine whether the cargo he transports . . . has been properly located, distributed, and secured in or on the motor vehicle he drives." But in both cases, those abilities can be acquired "by reason of experience, training, or both."

Similarly, motor carriers customarily set hiring standards, and these can be met by various combinations of training and experience. Few companies will refuse to consider an applicant who has a good employment record but lacks formal driver education. Independent truckers, who assume the role of both driver and owner, are unlikely to impose restrictions on themselves.

Some other countries do impose training requirements. Applicants to become drivers of heavy vehicles in the Netherlands, for example, must complete a 7-week course and earn a score of at least 92 percent on a 7-hour final examination.

15/ At least two States, Michigan and California, require training for certain drivers who transport hazardous materials. The Safety Board could find no State with a training requirement for all truck drivers.

One objective of any training effort is preparedness. The more driving skill that is obtained in a controlled environment, the less remains to be learned on the job. Therefore, an effective training system can be expected to minimize the reliance on experience to teach safe practice.

While the Safety Board was unable to find data relating driver experience to truck accident rates, it found data for age (which can be a surrogate for experience) and accident rates. According to NHTSA, several studies indicate that truck drivers "under 30 were involved in a disproportionately high percentage of both fatal and all accidents." 16/ A NHTSA study found that 13.2 percent of truck drivers were under age 30, but that age group accounted for an estimated 30.8 percent of the truck drivers involved in injury-producing accidents and 34.3 percent of the truck drivers involved in fatal accidents. 17/

Some of this disproportion may be the result of operational factors. For example, younger drivers are likely to be the employees with the lowest seniority, and some motor carriers may assign them the vehicles in the worst condition or the most demanding routes. Nevertheless, despite the possible influence of such factors, it appears likely that age is closely correlated to experience, i.e., the youngest drivers are usually the least experienced. To the extent that is so, the NHTSA findings seem to indicate a relationship between experience and accident rates. Consistent with observations from Safety Board accident investigations, this suggests that far too many truck drivers are entering the field inadequately trained and that they are being forced to learn their skills on the road, where error can lead to tragedy.

In 1980, a large, general commodities motor carrier expanded its in-house training program so that all new drivers, regardless of background, are now instructed in safe handling of vehicle and cargo. Since these training efforts were undertaken, according to company officials, the firm's linehaul accident frequency has been reduced by 13.5 percent, while linehaul mileage increased 36.8 percent. 18/

Formal instruction can be valuable in learning to drive any type of vehicle, but it becomes increasingly important as the size of the vehicle increases. The Ontario (Canada) Commission on Truck Safety observed:

> The path followed by most entrants into the trade is first to obtain a Class G licence, which permits the driving of any small straight truck up to 11,000 kg. [24,310 lbs.], and then a Class D [straight trucks with or without small trailers]. It is at this point that the informal training starts to break down. The leap from cars to small trucks to middle-size trucks is small compared with the leap to heavy trucks using air brakes. Nothing in their previous informal training has prepared the individual for the skills required. The gap between a Class D and Class A [tractor-trailer] license is wider still. The driver must learn about non-synchromesh transmissions, a new set of engines and a new set of vehicle dynamics. At this point, informal training fails completely and outside help is needed to learn to drive combination vehicles. 19/

16/ Eicher, J. P., et al., op. cit.
17/ Ibid.
18/ "ATA Awards Safest Carriers at Safety-Supervisor Meeting," Fleet Owner, August 1985; Elmer Belcher, Director of Safety and Security, ABF Freight System Inc., personal communication with Safety Board staff, December 19, 1985.
19/ Report of the Ontario Commission on Truck Safety, Ontario Ministry of Transportation and Communications, Toronto, Ontario, Canada, April 1983.

Truck Driver Training Schools

Formal truck driver education in the United States is available from three types of sources:

-- Proprietary truck driver training schools. These are usually independent businesses, established to teach this one vocational skill.

-- Nonprofit public-education institutions. Programs in truck driving may be offered by State colleges, junior colleges, or community colleges.

-- In-house motor carrier training programs. These are operated by trucking firms primarily to teach those of their own applicants who have not previously learned to drive trucks.

Several estimates place the number of schools, of all types, at around 200. Fewer than 10 of these are in-house programs. 20/ Tuition can range from $350 for instate students in some colleges to $5,000 at some proprietary schools.

There are also wide differences in course length. A State college in North Dakota offers a 12-week, 360-hour program. 21/ The course at a proprietary school in New York runs 300 hours. 22/ A school in Los Angeles sells individual 1-1/2-hour lessons and tells beginning students they will need 15-18 hours of instruction, "depending on how quickly you learn." 23/

Factors determining the effectiveness of a training program include: the number and qualifications of the instructors; the instructor/student ratio; and the availability of training aids, such as simulators. But the most crucial factor is usually the amount of time the student spends in and around the cab of a truck.

Many schools produce graduates who are competent, fully prepared drivers. For example, an official of a carrier specializing in motor freight wrote this about the graduates of one school: "We have hired many of these drivers and will continue to do so due to the high degree of standards maintained by these men." 24/

The experiences of some other students, however, have been very different. One graduate of a school in Chicago wrote:

> The "trucks" consisted of three derelict ten-speed White Freightliners and one thirteen-speed Peterbilt. One trailer actually pulled apart completely at the pickup plate and created a serious traffic problem, requiring several wreckers to remove the debris.

20/ National Association of Truck Driving Schools, "1985 Official List of Truck Driver Training Programs," Bob Knoop, National Association of Truck Driving Schools, personal communication with Safety Board staff, October 30, 1985.
21/ "Truck Driver Training Program" brochure, Dickinson State College, Dickinson, North Dakota, no date.
22/ "Student Catalog," National Tractor Trailer School Inc., Liverpool, New York, March 1985.
23/ Dootson Truck Driving Schools, brochure, no date; and personal communication to Safety Board staff, March 14, 1985.
24/ Correspondence provided to Safety Board staff, National Tractor Trailer School, Inc., November 14, 1985.

> Driving practice classes consisted of seven students and one instructor per vehicle; it took our class 1-1/2 weeks to get through shifting from 1st to 5th. In the six weeks of actual behind-the-wheel training, we had a total of five different instructors -- one was arrested for driving (a school tractor) without a state operator's license, speeding, and reckless driving. 25/

The BMCS received the following letter concerning a school in Maryland:

> The one road truck the school had us driving had an inoperable speedometer. As a result, the students were not able to judge the speed at which the tractor was moving in different gears, on turns, downshifting, etc. . . .
>
> My . . . road test certificate states that I drove 15.5 miles for my [school-administered] test. The test consisted of less than 5 miles, closer to 1 or 2 miles. I did not drive 15.5 miles the entire time in school. . . .
>
> The school does not teach a lot of very important subjects that they should so that they will be graduating safe and competent drivers. Examples are night driving, skid control and recovery, driving differences with and without a load, space management (judgment of height, width, safe following distances, stopping distances, etc.). 26/

Authorities with Jurisdiction Over Truck Driver Training Schools

Truck driver training schools may be subject to oversight and control from several sources:

- State licensing authorities.
- National accrediting bodies.
- Law enforcement agencies.
- Financial aid sources.

State Licensing of Training Schools. The States approach licensing of driver training schools in a variety of ways. Maryland is an example of a State that licenses these schools through the Motor Vehicle Administration. Pennsylvania is one where the licensing is through the Department of Education. In Indiana, it is an independent commission, called the Commission for Postsecondary Education. States such as Utah impose no regulation on schools.

In most cases, the licensing authority applies to the school as a whole, to the administrative staff, and to the instructors. Examples of areas customarily covered by regulation include:

25/ Letter quoted in "Truck Driving Schools: Education or Flim-Flam?" Overdrive, January 1978.
26/ Personal communication received by BMCS, July 5, 1984.

-- Equipment and facilities. Size and safety of the school building; condition and minimum number of training vehicles.

-- Qualifications for administrators and instructors. Age, education, physical condition, driving record.

-- Business practices. Permitted advertising claims; tuition refund policies; placement programs following graduation.

Some licensing authorities establish minimum numbers of course hours. Some also require schools applying for licensure to submit curricula for review. But what are usually absent from State regulations are specific requirements concerning course content.

Maryland, for example, sets general "student performance criteria" for all driving schools (with nothing exclusively for trucks). One such criterion says that, to earn a passing grade, a student must "identify and apply the necessary knowledges and skills required to control the motion and direction of the vehicle . . ." The Maryland regulations then state:

> The curriculum for a course in driver education, consisting of a minimum of 30 hours of classroom instruction and 6 hours of laboratory instruction, of which at least 2 hours shall be on-road, shall be designed consistent with the student performance criteria. . . 27/

Most truck safety experts would consider a 36-hour course inadequate, particularly one with only 2 hours of on-road driving instruction. In contrast, the in-house program at one large motor carrier lasts 5 weeks, with the trainee spending all but one of those weeks in the cab of a truck. 28/

The Indiana standards, which are specific to schools for truck drivers, establish 120 hours as the minimum, with at least 52 spent behind the wheel. Curriculum specifications are absent here as well, but the Indiana commission does stipulate how those 52 hours are to be allocated. For example, 2 hours are to be spent in night over-the-road driving, and at least 8 hours in similar daylight driving. 29/

Training School Accreditation. In States with licensing programs, a school must have a license to operate. There is no comparable requirement for accreditation. Only 12 truck driver training schools, with a total of 28 locations, are accredited by the National Association of Trade and Technical Schools (NATTS). The National Home Study Council (NHSC) has accredited 10 schools, in 23 locations, for truck driver training. Since some schools are accredited by both NATTS and NHSC, the total number of accredited truck driver training schools is well below the combined totals from these two accrediting bodies. NHSC is the only accrediting organization recognized by the U.S. Department of Education for correspondence schools. NATTS is the only such agency for schools in which all truck driving instruction is on school premises.

27/ "Regulations Governing Professional Drivers Schools, Instructors and Driver Education Program," Maryland Motor Vehicle Administration, no date.
28/ Belcher, op. cit.
29/ "Minimum Standards: Truck Driver Training Schools," Indiana Commission for Postsecondary Education, no date.

Those schools that choose to seek NATTS accreditation undergo a review process that can last a year or more. To qualify, a school must meet NATTS standards, which are detailed, but mostly subjective. For example, instead of specifying a maximum class size or student/teacher ratio, the standards say that at an accredited school, "The instructional staff is sufficient to properly serve the number of students enrolled and maintain a satisfactory working relationship with students in the subject taught." In lieu of specific curriculum requirements, the standards stipulate, "For every course offered there is a detailed and organized instructional outline, course of study, syllabus, or teaching guide showing a scope and sequence of subject matter sufficient to achieve the announced objectives with the students normally enrolled." 30/ Some of the other topics covered in the NATTS standards include: admission policies, student recruitment, tuition policies, and physical facilities.

Schools applying for NATTS accreditation must fill out extensive self-evaluation forms and are examined on-site by a team from the association. In the on-site examination, there may be only one member of the visiting team who is familiar with truck driving. And neither that team member nor anyone else in the review process has a uniform and specific standard against which to measure the school's course of study. There are no established minimums for classroom time or hours of instruction in a truck. There is no source that stipulates what subjects must be covered and how they are to be presented.

NHSC employs a similar accreditation procedure, including an on-site visit to the school by an examining committee. Although the NHSC accredits schools that teach by correspondence and other means for studying at home, the Council does stipulate that at least a portion of a truck driving course be conducted at a training facility. The NHSC accreditation standards require at least 40 hours of behind-the-wheel training for each student.

Law Enforcement Action Against Training Schools. State attorneys general, the U.S. Postal Service, and the Federal Trade Commission (FTC) have at times prosecuted truck driver training schools. In most cases, the charges have stemmed from the schools' business practices, rather than their course content.

Financial Aid Sources for Training School Students. As in other educational institutions, students at truck driver training schools may be eligible for several kinds of grants and loans. According to the FTC, a majority of students at proprietary vocational schools receive some form of government financial assistance. 31/ These programs conduct little if any direct scrutiny of the schools attended by grant recipients. All that is usually needed for a school's program to qualify is NATTS or NHSC accreditation, or in some cases, a State license.

Guidance for Prospective Training School Students

Some truck driver training schools produce graduates who are well versed in safe practices; others do not. The fact that a school is licensed, accredited, free from prosecution, and approved for financial aid does not ensure that its curriculum is adequate. Also, while these oversight functions are able to curb some unfair business practices, they do not eliminate them. Such practices as false advertising and deceptive sales tactics serve to compromise transportation safety as well as harm the individual

30/ "Standards for Accreditation." Accrediting Commission, NATTS, April 12, 1985.
31/ FTC, "Vocational Schools Trade Regulation Rule Statement of Basis and Purpose," Federal Register, Vol. 43, No. 250, December 28, 1978.

student. When a person is misled into enrolling in an expensive but worthless program, more is lost than that person's money and time. The opportunity also is lost to produce a qualified, safe driver.

Like any other consumer in a marketplace, the prospective truck driving student is confronted with a choice among services of varying quality. A public statement by the FTC described how most vocational school students choose their training course:

> The record evidence shows that most students make their enrollment decisions without adequate information or employment counseling. Studies have shown that most students make their enrollment decisions independently of any external sources of information and counseling, and the remainder rely more heavily on the school's advertising and sales presentations than on any other source. . . . [P]rospective students suffer from a paucity of information concerning job potential, salaries, drop-out rates and other facts relevant to their enrollment decisions. 32/

Some guidance for selecting vocational schools is available. For example, the FTC publishes a 1 1/2-page fact sheet on "Choosing a Vocational School." There are very few education efforts specific to truck driver training. Trade publications have at times run articles for prospective students. In the 1970s, the American Trucking Associations (ATA) offered a two-page pamphlet titled "What to Look for in a Truck Driver Training School." It contained a few general tips, such as, "If you have dependents, be sure they have enough to live on while you take the schooling." It also listed the subjects that should be covered in a truck driving course, with the minimum time to be spent on each, totaling 75 hours for the full course. (By contrast, the BMCS currently recommends a minimum of 320 hours for a tractor-trailer training course. See following section.)

The ATA now refers inquiries about schools to the National Association of Truck Driver Training Schools. That association sends out a six-page fact sheet, the ATA pamphlet, government publications, and reprints of magazine articles. Those materials, however, are sent out only on request. No attempt is made for outreach to prospective students.

BMCS Proposed Minimum Training Standards and Model Curriculum

Improving truck driver training would require:

- -- Uniform, authoritative standards defining what is required in a training program to produce a fully competent driver.
- -- Knowledgeable personnel to use those standards in assessing each school.
- -- A means of notifying prospective students about the results of those assessments.

A project of the BMCS is intended to provide the first of these, a set of standards for truck driver education.

32/ Ibid.

The BMCS first attempted to establish guidelines for driver education through a contract to produce a "Driver Training Program for Commercial Vehicle Drivers." The contract was awarded in 1973 and completed the following year. In the Safety Board's report on a 1973 truck-automobile-bus collision in Bordentown, New Jersey, that killed nine people, 33/ the Board took note of the project and recommended that the BMCS:

> Upon completion of the research dealing with the development of a commercial driver training course, distribute such training course information to all professional commercial driver training schools. (Safety Recommendation H-75-9)

Rather than distribute the results of the 1973-74 study, the BMCS decided the development of training guidelines would require a formal rulemaking. In 1976, the BMCS issued an Advance Notice of Proposed Rulemaking (ANPRM), which stated, in part:

> It has been concluded that there is need to improve tractor-trailer driver training programs by standardizing curriculum content and duration, specifying minimum requirements for types of training materials, types of vehicles and facilities to be used, and by specifying the qualification of instructors, in order to reduce accidents through improving tractor-trailer driver skills. 34/

The ANPRM sought public comment on a proposed 6-week, 240-hour curriculum, which BMCS staff had developed based on previous research contracts and rulemaking records. More than 100 responses to the ANPRM were received.

Following the close of the comment period in 1976, it took the BMCS 8 years to develop a training document that could be distributed to the trucking industry. The BMCS indicated that the delay resulted from contracting problems and the need to conduct additional research based on the public comments.

In 1984, Secretary of Transportation Elizabeth Dole announced that the "Proposed Minimum Standards for Training Tractor-Trailer Drivers" were publicly available. The standards call for a minimum 320-hour course, lasting 8 weeks if taken on a full-time basis. The course consists of five sections: Basic Operation; Safe Operating Practices; Advanced Operating Practices; Vehicle Maintenance; and Nonvehicle Activities. There are as many as nine separate units in each section. Under Section 1, Basic Operation, for example, there are units on such topics as Basic Control, Shifting, and Backing. Section 2, Safe Operating Practices, includes units on topics such as Speed Management, Night Operation, and Extreme Driving Conditions. Among the topics in Section 3, Advanced Operating Practices, are Hazard Perception and Skid Control and Recovery. Each unit spells out a set of training objectives and outlines how those objectives are to be achieved. For a full list of the subjects covered, see the Standards' Table of Contents in appendix C.

33/ Highway Accident Report--"George Wollman Meats, Inc., Truck/Auto/Greyhound Bus Collision and Fire, New Jersey Turnpike, Bordentown, New Jersey, October 19, 1973" (NTSB-HAR-75-3).

34/ Federal Highway Administration, "Tractor-Trailer Driver Training Standard-Recommended Practice Phase," Federal Register, Vol. 41, No. 109, June 4, 1976.

The BMCS document also establishes standards in such areas as: Instructor Qualifications, School Facilities, Graduation Requirements, and Student Placement. In addition, the course outline is organized to allow for later inclusion of specialized training. For example, a BMCS contractor is currently working on a supplement for drivers who transport hazardous materials. Once completed, that supplement will be made available to the public.

A truck driver training school could take a copy of the Standards and fashion its own curriculum in accordance with those specifications. In 1986, however, the BMCS began offering an alternative: a ready-made curriculum, developed by BMCS contractors and staff, that meets all the Standards. The Model Curriculum for Training Tractor-Trailer Drivers consists of separate manuals for the school administrator, the instructor, and the student. The set totals 2,500 pages and is available from the U.S. Government Printing Office for $73.

Uses for the BMCS Standards and Curriculum

In its report on the Bordentown, New Jersey, accident, the Safety Board noted in 1975, "There is no BMCS regulation requiring that drivers be trained through a formalized training course such as are available at professional driver training schools." That statement is still correct today. As explained in the Introduction, almost all States lack a training requirement.

The BMCS training project was originally intended to result in a fixed training requirement for tractor-trailer drivers. The 1976 Advance Notice of Proposed Rulemaking outlined a four-step process to reach that goal:

1) Development of a set of standards that would constitute a "recommended practice" for training tractor-trailer drivers.

2) With this recommended practice in sufficiently widespread use among training schools, a validation study would be conducted to make sure the standards achieved their stated aims.

3) "Upon completion of the validation study, it is FHWA's intention to issue a national training standard to replace the 'recommended practice.' The national standard would become a minimum mandatory standard, insofar as training of new drivers for employment in interstate . . . commerce is concerned."

4) "Future intentions are to closely observe these training programs and modify them as necessary due to future technological advances in vehicles, the highway environment, or training aids."

Seven years later, with even the first of these steps yet to be accomplished, the Safety Board publicly underscored the importance of training standards. In its 1983 report on the head-on collision between a truck and a church van in Lemoore, California, (see Introduction), the Board observed:

> Considering the loss of life each year in accidents involving large vehicles, the Safety Board believes that standards should be established for the training of professional drivers of large motor vehicles and that they should be adequately trained and required to demonstrate through a

> comprehensive examination their ability to operate large motor vehicles under normal and adverse conditions before being licensed to drive. 35/

The Board went on to emphasize that these standards should be incorporated into a training requirement for truck drivers:

> [T]he BMCS has stated that it intends . . . to establish recommended practices for the trucking industry. The Safety Board believes that practices that are critical to the prevention of accidents in large commercial motor vehicles should be required rather than merely recommended. Therefore, the Safety Board concludes that the BMCS should expeditiously complete its work in developing and testing Tractor-Trailer Driver Training Standards and, upon completion, add those standards to Part 391 of the FMCSR's. 36/

The Board issued a safety recommendation to that effect (H-83-21) in the Lemoore, California accident report. When the Proposed Minimum Training Standards were published in 1984, the Board said that recommendation "will continue in an 'Open--Acceptable Action' status pending regulatory action by the FHWA." 37/ However, the FHWA had already made it clear that it has no intention of making the transition from recommended practice to Federal requirement. The Introduction to the Standards states:

> [I]t must be emphasized that the provisions of the Standards are intended to serve as a guide to be used at the discretion of the reader and should not be construed as mandatory requirements. It must also be emphasized that the Bureau of Motor Carrier Safety does not intend to promulgate regulations based on these training Standards. 38/

The Safety Board continues to believe that safe truck driving requires special skill, and the most reliable way to learn that skill is through formal training. Some prospective truck drivers recognize this and seek such training of their own volition, but others will need a regulatory requirement to prompt them to obtain the necessary instruction. A Federal regulation could impose a training requirement on interstate truck drivers. Some intrastate drivers may eventually become subject to a similar rule, because, as discussed in the following chapter, some State regulations parallel the Federal ones. However, to reach all truck drivers, interstate and intrastate, the Federal qualification standards, including a training requirement, should be made criteria for a national truck driver license. That is what the Safety Board recommends.

It is not enough to stipulate that a prospective truck driver merely attend classes. To meet the recommended requirement, he or she would have to demonstrate proficiency in the skills that were taught. The BMCS Proposed Standards include instructions on how schools should test for such proficiency. Graduation standards are outlined. The BMCS is planning to develop a Final Examination Test Battery, consisting of a written test, a performance test on a closed track, and a road test. The Proposed Standards also show how schools should issue training certificates to those students who pass the tests and meet all other graduation requirements.

35/ Highway Accident Report, Lemoore, California, October 8, 1982, op. cit.
36/ Ibid.
37/ Jim Burnett, Chairman, National Transportation Safety Board, letter to Ray Barnhart, Administrator, Federal Highway Administration, August 13, 1984.
38/ Federal Highway Administration, "Proposed Minimum Standards for Training Tractor-Trailer Drivers," 1984.

One way to establish a Federal training requirement using the BMCS Proposed Standards would be through a revision in the Federal regulation that sets driver performance criteria. (Section 391.11 of the FMCSR; see following chapter.) Those performance criteria can be met "by reason of experience, training, or both." That phrase could be changed to language such as: "by reason of training conducted in a program that meets the BMCS Minimum Standards for Training Tractor-Trailer Drivers." It would then be the legal obligation of motor carriers to hire only drivers with certificates showing they successfully completed an approved course of driving instruction. Such company obligation is suggested by language from the BMCS Proposed Standards themselves (even though the Introduction to the document disavows any regulatory intent):

> No motor carrier shall permit a driver to operate a motor vehicle in interstate . . . commerce, unless that driver has first been certified as having met all the requirements of these Standards; or at least the portions thereof which are applicable to the duties to which the driver will be assigned. 39/

The driver's training certificate would be maintained in his or her personnel file and be available for inspection whenever requested by a BMCS field investigator. In the case of an owner-operator, the driver maintains his or her own personnel file, which would contain the training certificate.

Only schools accredited as having met the BMCS Standards would have the authority to issue training certificates recognized under the FMCSR. An expanded and improved accreditation system, sanctioned by BMCS, would therefore be necessary. The Professional Truck Driver Institute, which is described on page 19, could be the organization to administer such an accreditation system.

Today, even without such rule changes and new programs, the Proposed Standards are available to training schools wishing to upgrade the service they provide. With the introduction of the Model Curriculum, the BMCS project becomes an even greater asset. Schools that have adopted the Standards and Curriculum may advertise that fact to prospective students. But as long as the training materials constitute only a recommended practice, there is nothing to prevent a school from obtaining them and disregarding them, but still claiming that its program is designed and conducted according to Federal standards.

Even if the Standards remain strictly a recommended practice, the BMCS has indicated its intention to proceed with the second step outlined in the 1976 Advance Notice of Proposed Rulemaking: a validation study of the materials. If it has been quantitatively demonstrated that the Proposed Standards and Model Curriculum are able to improve driver training significantly in a cost-effective manner, it becomes increasingly likely that they will earn general acceptance by training schools and motor carriers.

Validation is also necessary for other applications of the training materials. For example, the Proposed Standards may be used in State licensing of training schools. If all States conduct licensing programs based on a uniform, proven effective, rigorously enforced set of standards, it can be expected that many inadequate training courses will be eliminated.

39/ Ibid.

The insurance industry is also likely to make use of the Proposed Standards, if they are validated. Because of factors, such as the number of truck accidents and the sharply rising costs stemming from those accidents, motor carrier insurance is becoming increasingly expensive and hard to obtain. According to one trade publication, trucking fleets are now incurring premium increases of up to 1,000 percent, as well as frequent outright cancellations. 40/ It is in the interest of both insurer and insured to reduce the number of claims, and one of the most reliable ways of doing that is to improve driver performance through upgraded training. An insurance company could make it a condition of coverage that all policy holders' drivers have completed training courses that meet BMCS minimum standards.

Such applications for the Proposed Minimum Standards can only be undertaken successfully if the authority of the Standards is unassailable. Establishing such authority requires validation, i.e. comparing the performance of a group of drivers who were trained according to the Standards with another group of drivers who were not. The experience of the State of Colorado demonstrates the dangers of proceeding without validation. As described above, the 1976 BMCS ANPRM invited public comment on a 240-hour course outline. Colorado adopted that outline as the basis for its program of licensing truck driver training schools. When a school was denied a license because its course failed to meet the newly established standard, the school sued the State, noting that the standard was based on unvalidated material.

A contractor recently developed several possible methodologies for the validation study and submitted them to BMCS. The choice among them will depend on the amounts of time and funds that are available. One group of students will be taught with the new Curriculum and Standards; another group will serve as a control.

Each of the validation methodologies calls for the two student groups to be given tests at the end of the courses to compare the skills and knowledge they have acquired. A contractor will develop 800 questions based on the Model Curriculum, for use as the Final Examination Test Battery. The test of student performance on a closed track will also be developed, as well as the road test. Following the final testing, the more extensive validation methodologies call for the two groups of students to be tested subsequently on the job, to compare factors, such as their rates of accidents and traffic violations.

The same contractor that develops the final examinations will conduct the validation study. A cost/benefit study also will be performed.

BMCS staff estimate the validation study could take as long as 5 years. Since the training standards and curriculum program has been beset by extensive delays in the past, the Safety Board is concerned that additional delays might slow it down still further. The Board, therefore, believes it is in the public interest for the validation study to begin as soon as possible. A number of other authorities in the trucking field have urged the same thing. For example, in 1985 the National Highway Safety Advisory Committee said:

> The Secretary of Transportation should give a higher priority to validating the BMCS Minimum Standards for Training Tractor/Trailer Drivers so that they may be available to industry earlier [and] publicly support their use. . . . 41/

40/ "The Hotline- Use It," Transport Topics, August 5, 1985; "Not a Moment Too Soon," Transport Topics, November 4, 1985.
41/ "Commercial Vehicle Safety: A Report to the Secretary of Transportation by the National Highway Safety Advisory Committee," May 1985.

The Professional Truck Driver Institute

As pointed out previously, improved truck driver training requires proper standards, as well as a way of applying them to the schools and a way of directing prospective students to the schools that measure up well against the standards. The BMCS Proposed Standards may meet the first of these specifications. A possible source for the second two may come from a new trucking industry program.

The Trucking Industry Alliance was established in 1983 as an informal coalition of individuals and groups in trucking and related industries, with the Motor Vehicle Manufacturers Association providing the initial coordination. The impetus for creation of the Alliance was evidence that the standing of trucking has declined in the public perception; the objective is to restore that standing.

The Alliance, in turn, established the Professional Truck Driver Institute of America, which was founded to "promote the highest standards of performance of commercial truck drivers." 42/ Originally, the first project of the Institute was to develop a system of voluntary accreditation for truck driver training schools. One section of the Institute's bylaws, dated August 14, 1985, said:

> The Institute shall develop and direct the administration of a program designed to evaluate the curricula, facilities, equipment and skill of instructors of schools that train commercial truck drivers. Based on the results of the evaluation, driving training programs will be accredited by the Institute and receive formal recognition.

One reason for planning to undertake such a program was the perception that those already involved in accrediting truck driver training schools lacked sufficient trucking expertise. The visiting team that evaluates a school for NATTS may include only a single representative from the trucking industry, often the proprietor of another truck driver training school.

Subsequently, however, Institute leaders determined that it would be difficult to obtain recognition from the U.S. Department of Education to accredit schools. Institute evaluators would know what to look for in a truck driver curriculum, but they would lack the expertise to assess the other aspects of a training facility, such as the administrative practices and physical plant. It was decided instead to develop training standards that could be used by the NATTS accreditation committee, as well as States, schools, and motor carriers.

The Institute sent a letter, dated October 1, 1985, to members of the trucking and training industries, requesting suggestions in developing training standards. (See appendix D.) The table of contents from the BMCS Proposed Minimum Standards was attached to the letter as an outline of the areas to be covered in the Institute standards. Such a project was in keeping with a recommendation of the National Highway Safety Advisory Committee, which had urged the Secretary of Transportation to support use of the BMCS Proposed Minimum Standards, but which also called on the Secretary to encourage "the trucking industry to establish its own driver training and certification standards." 43/ The Advisory Committee report gave no direct reason for this recommendation for separate industry standards.

42/ Professional Truck Driver Institute of America, Inc., "Institute Plan," no date.
43/ National Highway Safety Advisory Committee, op. cit.

As indicated in the title of the project, the BMCS standards are proposed. That means suggestions for changes are still welcome. The Institute could be a major source for such suggestions by directly reviewing the BMCS standards, and by soliciting the views of other members of the trucking and training industries. The BMCS project title also indicates that it constitutes minimum standards. Another role for the Institute therefore could be to stress this to training schools and motor carriers, urging them not merely to meet the standards, but to exceed them.

The Institute could carry out these functions without developing a separate set of standards. Training schools can be evaluated for accreditation most effectively when measured against a single set of criteria, and the BMCS Proposed Minimum Standards hold the promise of being well suited to that purpose. Both the Institute staff and the report of the National Highway Safety Advisory Committee have pointed out the long time it probably will take for the BMCS Standards to be validated. However, it does not appear likely that the Institute could complete both the development and proper validation of its own standards any sooner. For those who need training standards immediately, the unvalidated BMCS materials already are available.

The Safety Board, therefore, believes the Institute would be well advised to continue with its original plan to develop an accreditation program that would apply training school curriculum standards rigorously and uniformly. Institute members and staff are already knowledgeable about safe truck operations and effective truck driver training. With sufficient financial backing, and, if necessary, with consultation and support from other accrediting bodies, the Institute would likely be able to develop whatever other school assessment expertise it needs.

If a training requirement based on the BMCS Standards is incorporated into the Federal regulations and into the criteria for a national truck driver license, a system will be needed to identify those schools that meet the Standards. That could be the role of the Institute's school accreditation program.

There also would be a need for the Institute's accreditation function even before there is a regulatory training requirement or a national truck driver license. Today, as noted earlier, a majority of training schools are able to function without accreditation. But once there are uniform curriculum standards and an accreditation program applying them authoritatively, changes could be instituted in the trucking industry that would make it difficult for a school to remain in business without obtaining accreditation. Motor carriers, through voluntary action and under pressure from their insurers, should employ only those drivers who have been trained in accredited programs. In the case of owner-operators, shippers should require the same of the drivers with whom they contract.

The message will need to reach prospective truck drivers that, without a certificate showing successful completion of training from an accredited school, they are unlikely to find jobs in the industry. The Safety Board believes it could be an important function of the National Safety Council and other organizations that promote safe truck driving to convey that message through traditional means, such as brochures distributed to vocational guidance counselors, and also to develop new education techniques. Since, as noted earlier, most vocational school students now make enrollment decisions based on little more than school advertising, new methods must be developed to educate prospective truck drivers in a timely fashion.

Truck Driver Apprenticeship

An upgraded training system can be expected to produce increasingly skilled new drivers. As pointed out above, the more a person learns in training about proper truck handling, the less he or she will have to learn in service. Nevertheless, the instructive role of experience is unlikely to be eliminated. When a new driver is just beginning to build up on-the-job experience, qualified supervision can help ensure that he or she develops only safe driving habits. Such supervision also can minimize the risk to the driver and to others on the road. An effective way of supervising new drivers would be through an apprenticeship program. There is currently no such nationally organized program in the United States.

The U.S. Department of Labor (DOL) publishes a list of 750 "Occupations Recognized as Apprenticeable," but truck driving is not among them. 44/ DOL issues national apprenticeship standards for many occupations. There is one set, for example, for operating engineers, the workers who operate equipment, such as bulldozers, forklifts, cranes, and derricks. 45/ Another set is titled "National Apprenticeship Standards for Heavy Duty Truck Mechanic, Truck Body and Trailer Mechanic, and Truck Painter." 46/ The American Trucking Associations and the International Association of Teamsters also publish jointly a set of standards for truck mechanics. 47/

If it is argued that truck driving is an occupation that does not lend itself to apprenticeship, the experience in some other countries would prove otherwise. In the Netherlands, for example, new drivers undergo a 2-year apprenticeship. 48/ In this country, the Department of Transportation in 1971 invited comment on proposed apprenticeship programs that would have enabled persons less than 21 years old to operate commercial vehicles. That proposed rulemaking was subsequently closed without action. 49/

Most apprenticeship standards, such as those for truck mechanics, call for on-the-job training concurrent with an established amount of classroom instruction. Truck driver apprenticeship could be arranged similarly, with the alternative for those who have already completed a training school course, of strictly on-the-job instruction. Provision should be included for advancement from one type of vehicle to another, based on required levels of experience, training, and satisfactory performance. For example, the apprenticeship standards might call for a driver to demonstrate competence on straight trucks before being allowed to drive combination vehicles. Experience might be required hauling nonhazardous materials before being allowed to transport hazardous ones.

Apprenticeship standards for drivers, like those for mechanics, could be developed by the American Trucking Associations and the International Brotherhood of Teamsters, in coordination with DOL. The BMCS could incorporate an apprenticeship requirement, along with a training requirement, into the FMCSR.

44/ Bureau of Apprenticeship and Training, U.S. Department of Labor, September 1985.
45/ "National Apprenticeship Standards for Operating Engineers," Employment and Training Administration, U.S. Department of Labor, 1978.
46/ Employment and Training Administration, U.S. Department of Labor, 1978.
47/ "National Trucking Industry Apprenticeship Standards for Truck Mechanics," American Trucking Associations, Inc. and the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, 1985.
48/ Ontario Trucking Association, report submitted to Ontario Commission on Truck Safety, no date.
49/ "Apprenticeship Programs for Drivers Less Than 21 Years Old," Federal Highway Administration, Federal Register, Vol. 36, No. 178, September 14, 1971.

Truck Driver Certification

It was described on page 17 how an accredited truck driver training school could be authorized to issue certificates to its graduates, signifying that they had completed an approved course of study. Once they were widely recognized in the trucking industry, those certificates would be very helpful for a driver in gaining employment, and with training made a requirement, they would be essential. An extension of this training certificate concept would be full certification of the professional truck driver.

The person holding such a certificate would have documentation that he or she has met all the criteria established for the professional driver. Those criteria could include training at an accredited school, apprenticeship, testing, and specified levels of experience.

One of the goals set for the Professional Truck Driver Institute was a program of driver certification. The organization's bylaws state:

> The Institute shall develop and direct the administration of a program of tests designed to evaluate the competence of those engaged in driving heavy trucks. Based upon the results of these tests, individuals possessing a high degree of competence will receive formal recognition through certification by the Institute.

Institute officials stress that this program would be strictly voluntary. The chief reason a driver would apply for certification would be peer recognition. This is also considered a long-term project of the Institute; a number of years would be needed before it could be undertaken.

The Association of Certified Professional Drivers was recently founded in Nebraska. To earn certification from this organization, a driver must complete a 19-month program, consisting of 6 months of classroom instruction at a Nebraska community college, interspersed with 13 months of on-the-job training at a participating motor carrier. 50/ Professional driver certification programs also are found in countries, such as West Germany and the Netherlands. 51/

The Safety Board believes that stringent qualification standards, including a training requirement, should apply to all truck drivers. That is one reason the Board advocates a national truck driver license that would incorporate such standards. With such a system in place, the need for voluntary certification may be reduced. Until there is a national license, however, a certification program may help promote training, apprenticeship, and generally improved levels of driver performance. Motor carriers, through their hiring practices, could provide incentives for drivers to seek certification. Insurance companies could do the same by offering favorable rates to companies that employ certified drivers.

50/ Association of Certified Professional Drivers, "Program Summary," Southeast Community College, Lincoln, Nebraska, no date.
51/ Ontario Trucking Association, op. cit.

THE FEDERAL MOTOR CARRIER SAFETY REGULATIONS

The mission of the BMCS is to reduce the number and severity of accidents involving the vehicles under its jurisdiction. To carry out that mission, as explained in the Introduction, the BMCS enforces the FMCSR in Title 49 of the Code of Federal Regulations. The BMCS also administers these regulations, for example, by conducting rulemakings that may lead to revisions in the regulations. The regulations concerning driver qualifications are contained in Part 391 of the FMCSR. (See appendix A.)

The FMCSR, including Part 391, apply almost exclusively to operations in interstate commerce. The qualifications for intrastate drivers are established by State regulations. However, the regulations in a majority of States largely parallel those at the Federal level. Under the Surface Transportation Assistance Act of 1982 (P.L. 97-424), States that adopt motor carrier safety regulations comparable to those in the FMCSR receive Federal grants to aid in the enforcement of those regulations. At present, 33 States participate in that program.

In addition, the Motor Carrier Safety Act of 1984 (P.L. 98-554) includes several provisions for "improved, more uniform commercial motor vehicle safety measures and strengthened enforcement." (See appendix B.) The Act established the Commercial Motor Vehicle Safety Review Panel, which is authorized to review all State regulations dealing with commercial motor vehicle safety. If a State regulation is found to be less stringent than the FMCSR, at least some of its applications will be preempted by the Federal regulations. The 1984 Act also calls for a study of State regulation of commercial motor vehicles. By comparing the operations of intrastate motor carriers with those that cross State lines, the regulatory control under which the two currently operate, and their respective accident rates, the study will seek to determine whether intrastate vehicles should be brought under direct Federal regulation. The BMCS is conducting this study, and the Secretary of Transportation is required to submit the findings to Congress by October 1986.

The Motor Carrier Safety Act of 1984 also calls for the Department of Transportation to review and reissue the FMCSR. Consequently, in January 1985, the FHWA issued an Advance Notice of Proposed Rulemaking (Docket MC-114), requesting public comment on ways to revise the FMCSR. (See appendix F.) Based on the comments received and the agency's analysis, the FHWA is in the process of preparing a separate notice, containing proposed rules changes, for each part of the FMCSR. The notice for Part 391, the regulations on driver qualifications, will include proposed special requirements for drivers transporting hazardous materials.

Even after completion of the current review, further changes in the FMCSR are possible. Whether in the current rulemaking or subsequently, the following, in the Safety Board's view, are some of the areas in Part 391 that warrant revision. 52/

"General Exemptions" (Sec. 391.2)

Drivers who cross state lines while working exclusively within a single city, or within a "commercial zone" as defined by the Interstate Commerce Commission, are

52/ Part 391 contains some rules that apply to drivers and others that apply to motor carriers. It is the responsibility of the motor carrier to require compliance with the driver rules. The independent operator is subject to both types of rules. The FMCSR are frequently characterized as minimum standards; motor carriers are free, and in fact encouraged, to impose company rules that are more stringent than the Federal ones.

exempt from Part 391. This exemption applies even if the truck is as large and unwieldy as any operated between cities. It does not apply only if the truck is operated in Hawaii or if the truck is transporting more than 5,000 pounds of hazardous material (2,500 pounds if the material is a single "dangerous article").

The Safety Board believes that truck driver qualifications should always be commensurate with the demands of the job. There is no evidence that those demands are less driving within a city than in intercity operation. In fact, just the opposite often may be true. The American Trucking Associations noted in comments filed with the BMCS:

> Typically, commercial zone truck operations are conducted on urban expressways in heavy, fast-moving traffic. Commercial zone drivers, therefore, frequently operate under conditions more difficult and stressful than those experienced by over-the-road truck drivers. 53/

The Safety Board therefore urges an end to this exemption.

"Qualifications of Drivers" (Sec. 391.11)

This section lists and summarizes the qualifications for driving a truck or other commercial vehicle in service that falls under Federal jurisdiction. The first requirements are that a driver be at least 21 years old and be able to read and speak English. The section stipulates that the driver meet the standards contained in subsequent portions of Part 391, such as having a physical condition free from specific diseases and conditions.

What are missing from this section, as well as all of Part 391, are specific training requirements. The previous chapter discusses how training requirements based on the BMCS Proposed Minimum Standards could be incorporated into Sec. 391.11. The next chapter examines how this section could be used to establish uniform truck driver licensing criteria, which would include requirements for training and demonstrations of ability.

"Disqualification of Drivers" (Sec. 391.15)

If any State withdraws or denies a person's driving privilege, that person is also disqualified under the FMCSR, and he or she is barred from operating commercial vehicles interstate for the duration of the State action. In addition, a driver is disqualified for 1 year if he or she is convicted of any of the following offenses:

- -- Driving under the influence of alcohol or drugs.
- -- A crime involving the knowing transportation, possession, or [illegible] of drugs.
- -- Leaving the scene of an accident that resulted in injury or death.
- -- A felony involving the use of a motor vehicle.

A second conviction within a 3-year period will disqualify the driver for an additional 3 years.

53/ ATA comments to BMCS, Docket No. MC-114, January 23, 1985.

Other types of traffic violations are not considered under the Federal rules of disqualification. The Safety Board believes this should be changed. Certainly, a minor violation should not be placed in the same category with the above offenses, in which a single occurrence constitutes grounds for a year's disqualification. But a formula can and should be developed with which a driver would be disqualified for committing a specified number of violations within a specified period of time. The total should include all moving violations, but the system should be able to differentiate between offenses of greater and lesser severity. In its 1980 safety study on the detection and control of unsafe commercial drivers, 54/ the Safety Board therefore recommended that the FHWA:

> Evaluate the need for, and feasibility of, specifying in the Federal Motor Carrier Safety Regulations a level of traffic violations, based upon the total number and relative seriousness of the violations, above which a driver is disqualified to operate a commercial vehicle, and within 1 year publish the findings of the evaluation in the Federal Register for public comment or initiate appropriate rulemaking. (H-80-17)

Under Part 391.15, a driver is disqualified only if he or she committed one of the specified offenses while operating a commercial vehicle, and only if the driver was on-duty at the time. For example, if a truck driver were convicted of drunk driving while operating a company vehicle on the job, he or she would be disqualified; but if the driver were operating a private vehicle, under otherwise identical circumstances, his or her status under the FMCSR would be unaffected. The driver could even escape disqualification if convicted of driving a truck while intoxicated, as long as it could be demonstrated that the purpose of the trip was personal, rather than commercial.

In the 1980 study, the Safety Board called for elimination of this loophole. The Board said it "believes that a driver who cannot operate a private car safely should not be allowed behind the wheel of an 80,000-pound tractor-semitrailer." The study therefore contained the following recommendation to the FHWA:

> Revise the commercial driver disqualification provisions of the Federal Motor Carrier Safety Regulations to provide that the specified disqualifying driving offenses shall be disqualifying without regard to the type of highway vehicle at the time of the offense or whether the driver was on or off duty. (H-80-16)

Since those recommendations were issued, the Safety Board has continued to maintain that a truck driver's entire record, regardless of duty status and type of vehicle, has direct bearing on his or her fitness to drive a commercial vehicle. The Board has found evidence supporting this position in the accidents it has investigated. In 1985, for example, a cattle truck struck the rear of a schoolbus that had stopped to discharge passengers near Tuba City, Arizona. Two persons died in the accident, and 28 were injured. During the previous 5 years, the truck driver had been involved in two other accidents; he had been convicted five times for speeding and once for undue acceleration. All of these accidents and violations had occurred while he was driving his personal vehicle. 55/

54/ "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers . . .," op. cit.

55/ Highway Accident Report--"Collision of Tuba City Unified School District Schoolbus and Bell Creek, Inc., Tractor-Semitrailer on U.S. 160, Tuba City, Arizona" (NTSB/HAR-85/06).

While the disqualifying driving offenses are limited to four types, and only to those committed while on duty and driving a commercial vehicle, such distinctions are omitted in a related rule only two pages later in Part 391. Motor carriers are required to compile an annual list of the traffic violations charged against each of their drivers. With the exception of parking violations, that list is unrestricted, with no limitations as to vehicle, time of occurrence, or nature of violation.

In response to both Safety Board recommendations concerning driver disqualifications, the FHWA issued an ANPRM in 1982 (Docket MC-104). The notice included questions for public comment. The Notice and the Safety Board's responses to those questions are contained in appendix E. These issues are now being considered in the general review of the FMCSR. The FHWA also recently contracted for a study to determine statistically whether there is a correlation between a driver's performance on-duty in a commercial vehicle and off-duty in a private one.

"Application for Employment" (Sec. 391.21) and "Investigation and Inquiries" (Sec. 391.23)

Motor carriers must require all driver applicants to fill out an application. Within 30 days after a driver is hired, the motor carrier must inquire with State licensing authorities and previous employers about the new employee's record during the preceding 3 years.

The specifications are quite detailed for the information that must be obtained in the employment application. The prospective driver must disclose such items as current and past addresses, employers, license suspensions, accidents, and traffic violations during the preceding 3 years. However, the regulations are not similarly explicit concerning the inquiries with previous employers. The motor carrier is required to maintain a record of the investigations, which can be by telephone, letter or personal interview, and to record the responses from those contacted. But it is not spelled out what information should be obtained in these investigations. The Safety Board noted this omission in its 1980 safety study and recommended that the FHWA:

> Define fully, in the Federal Motor Carrier Safety Regulations, the information that a motor carrier must request from an applicant driver's former employer(s) when making the investigations and inquiries required by the regulations. (H-80-20)

The FHWA included questions on this issue in Docket MC-104, the ANPRM mentioned above. Like the rest of that docket, the recommendation to spell out the required information in motor carriers' investigations will be considered in the general review of the FMCSR.

"Road Test" (Sec. 391.31) and "Equivalent of Road Test" (Sec. 391.33)

Motor carriers covered by the FMCSR are required to administer road tests to new drivers to determine their fitness to handle the equipment they are to be assigned. While the regulations do not specify the qualifications of the examiner, the length of the test, or the scoring system, there is a requirement that the test be given in the type of vehicle the new driver will be operating. The test must cover at least eight aspects of truck operation, such as pretrip inspection, braking, backing, and coupling and uncoupling (when the driver will be operating combination units). Because the FMCSR road test includes these requirements, it has the potential to be more effective than many State licensing tests in determining an individual's ability to handle heavy trucks.

The motor carrier may dispense with the test if a new driver can produce a certificate showing that another company administered the required road test within the preceding 3 years. The road test also is not required if the new employee has a driver license from a State with a classified licensing system, i.e., one that conducts tests and issues licenses specific to the category of vehicle to be driven. Also, the new driver's State road test must have been given in the same type of vehicle that the motor carrier intends to assign him or her.

It is true that a classified licensing system is better suited for screening out unqualified drivers than one that is not. However, a system may be fully classified, with testing given on the appropriate type of vehicle, and still fail to provide sufficient scrutiny of license applicants. For example, even with a truck as the test vehicle, the State road test may be too brief and cover too little. In addition, this exemption requires the motor carrier either to become conversant in the licensing practices of numerous States or to take the driver's word that his or her State license road test was given on the appropriate type of vehicle. With this exemption provision, Federal regulations forfeit the opportunity to compensate for some shortcomings on the State level. Until truck driver license testing becomes uniformly rigorous throughout the United States, the Safety Board believes the exemption should be eliminated.

Even after that point is reached, it may be advisable to retain the requirement for road testing by motor carriers. Unlike a standardized licensing procedure, a trucking firm's pre-employment test can be tailored precisely to the type of work with which a new driver will be faced. Such testing also may serve to indicate when a driver's skills have deteriorated since he or she was examined for licensure.

Under the FMCSR, an owner-operator "must be given the [road] test by a person other than himself." While that person must be "competent to evaluate" the driver's skills, there are no safeguards to ensure the test administrator's objectivity. To provide such safeguards, the Safety Board believes the FMCSR should designate groups or individuals with the authority to administer the required road test.

"Written Examination" (Sec. 391.35) and "Equivalent of Written Examination" (Sec. 391.37)

In addition to the road test, motor carriers are required to administer written examinations to new drivers. Since the dictionary definition of examination is "an exercise testing knowledge or skill," 56/ the use of the term in this regulation is a misnomer. What is called an examination here does not test the person taking it. According to the FMCSR, it is "an instructional tool only," with the objective "to instruct prospective drivers in the rules and regulations established by the Federal Highway Administration pertaining to commercial vehicle safety."

The examination consists of 66 questions, which are printed, along with the answers, in the FMCSR. While taking the examination, the driver is free to refer to the Federal regulations, including the answer list, as well as any other materials. No time limit may be imposed. If, despite these provisions, the driver scores poorly, these results may not affect his or her qualifications, and employment may not be denied on the basis of a low score. The person administering the examination must point out any missed questions to the examinee; and the motor carrier is permitted, though not required, to provide further instruction based on the examination results.

56/ The American Heritage Dictionary, Houghton Mifflin Co., 1982.

At one time, Part 391 was to call for a bona fide written examination, with a minimum passing score for drivers of 70 percent. Before going into effect, that regulation was withdrawn in 1970 because it had been disapproved by the Equal Employment Opportunity Commission (EEOC). The EEOC determined that the examination, as proposed, could foster discrimination against minority group members seeking employment. The BMCS then awarded a contract to develop a new set of questions. This examination also failed to meet EEOC criteria as a pass/fail requirement but was approved as an instructional device. Aside from modifications in some of the questions, the written examination has remained in that form ever since.

In recent years, there have been some efforts involving BMCS, a firm working for the agency, EEOC, and the Department of Justice to revise the written examination requirement. Justice Department staff serve as counsel to BMCS. Consideration has been given to changing the questions and, once again, to imposing a pass/fail requirement.

Some of the questions in the current list deal with the procedural aspects of the FMCSR, rather than the portions of the FMCSR relating directly to the safe operation of a commercial vehicle. Question No. 4, for example, concerns the requirements for filling out an employment application. Some of the questions concern issues with which many drivers are not involved. One of these is question No. 9, which asks about the conditions under which a person with epilepsy is permitted to drive. Justice Department staff have advised that if a set of questions is to meet EEOC criteria and successfully constitute a pass/fail test, the questions must deal as much as possible with operational subjects, and they must apply to as broad a spectrum of drivers as possible. The Safety Board concurs in this assessment and notes also that such a set of questions, either as an instructional device or for actual knowledge testing, would be more likely than the one currently in use to promote safe truck operation.

It is possible that the most promising source for such questions will be a project already planned by the BMCS. As discussed previously, the BMCS intends to award a contract in which a battery of 800 questions will be developed, based on the agency's Model Curriculum for Training Tractor-Trailer Drivers. Training schools using the Curriculum could administer tests with questions selected from the battery. If validated, this battery of questions also could be used for the written examination specified in Section 391.35.

In 1982, the FHWA issued an Advance Notice of Proposed Rulemaking in which the Administration announced it was considering three options for the written examination:

1) Conversion to a pass/fail test requirement.

2) Rescinding the requirement entirely.

3) Retaining the requirement in its present form, but updating the questions.

Nearly two-thirds of the public comments received in response to this notice favored the first option. Only three out of 38 favored the second, rescinding the requirement. 57/ In 1985, this proposed rulemaking was included in the docket opened for the congressionally mandated general review of the FMCSR. The American Trucking Associations and the National Tank Truck Carriers were among those who commented at that time in favor of a pass/fail test.

57/ Bureau of Motor Carrier Safety, "Summary of Comments: Written Examination of Drivers" (BMCS Docket No. MC-100; Notice No. 82-3), no date.

It is the position of the Safety Board that Part 391 should continue to include a requirement for written examination of new drivers. The Board believes instruction is a worthwhile aspect of the examination, and provision should be made to preserve that function, but that should not be the only reason for administering the examination. The primary function must be to screen new employees and to help prevent those with insufficient knowledge from being assigned to drive heavy trucks. With that aim, the FMCSR should specify appropriate questions, test administration procedures, and minimum passing score.

The question may be raised why a written test is needed along with a road test. With even the most extensive road test, a great many driving situations go unexamined. In Florida, for example, safe practice in ice and snow cannot usually be included in a road test. Yet a driver hired and tested in Florida may drive cross country and soon encounter the mountains of Colorado. It would be preferable to have been able to include cold-weather operations in the driver's road test, either via real road conditions or simulation, but failing in that, the written examination can at least determine if he or she is aware of what to do in such conditions.

Another argument against the Federal examination is that it duplicates the State written licensing test. As will be demonstrated in the following chapter, most state licensing procedures establish only minimal familiarity with traffic regulations and safe vehicle operation procedures. Some do not either issue licenses or conduct tests specific to truck driving. If that situation is changed, with the development of a national driver license, so that all truck drivers are thoroughly and uniformly tested and periodically retested, the examination in Sec. 391.35 may become superfluous. Until that time, however, a pass/fail examination under the FMCSR is needed to help establish truck driver qualifications.

There is currently no provision for owner-operators to take the written examination. The Safety Board believes this should be changed, particularly if a pass/fail requirement is imposed. As with the road test, the FMCSR should designate an objective source to administer the written examination to drivers who own their own trucks. The regulations now call for a "Certificate of Written Examination" to be issued to each person who takes the examination. With the proposed change in the nature of the regulation, that certificate should be issued when a person passes the examination. As currently required, a copy of the certificate should be kept in the driver's qualifications file, which the motor carrier maintains and which is subject to review by BMCS inspectors. Owner-operators maintain their own files.

Under present regulations, a motor carrier may omit administering the written examination if a new driver can produce a certificate showing that he or she took the examination during the preceding 3 years. In the interest of tightening the scrutiny of the truck driver work force, the Safety Board believes consideration should be given to eliminating this exemption, particularly if a pass/fail requirement is imposed.

"Medical Examination; Certificate of Physical Examination" (Sec. 391.43)

Under the FMCSR, commercial drivers must be medically examined at least every 2 years. While on duty, a driver must have on hand the certificate showing that he or she passed this examination. The regulations spell out the medical conditions that are grounds for disqualification.

The Federal Aviation Administration (FAA) enforces medical standards for commercial pilots, but also maintains a network of designated medical examiners. A pilot may only be examined by one of the physicians on the FAA list, and the FAA makes sure

that each physician on that list is aware of the physical requirements for qualification. There is no comparable network of medical examiners for truck drivers. Any licensed doctor of medicine or osteopathy may perform the examination.

Part 391 contains instructions to the examining physician about what to look for. There is a form on which the examination results may be recorded and also a "Medical Examiner's Certificate" which the physician may sign and give to the driver, indicating that he or she has passed the examination. The regulation says the examination and recordkeeping must be performed "substantially in accordance" with those instructions and forms. Because that phrase is included, and because the eligible physicians are not limited to those previously briefed on FMCSR requirements, it is possible for a physician to pass a driver who has a disqualifying condition. The physician may find the driver in generally good health and not realize that something such as a history of epilepsy is grounds for disqualification. A physician may consult the Federal regulations, and of those who examine commercial drivers frequently, many do so. But there is no absolute requirement for examination by physicians familiar with the FMCSR qualifications.

The Safety Board therefore believes that medical examination and certification of drivers should be conducted in precise, not "substantial" accordance with the specifications of the FMCSR. The "Examination to Determine Physical Condition of Drivers" should be made a standardized form, one that spells out clearly the rules governing medical qualifications and disqualifying conditions. The "Medical Examiner's Certificate" should also be standardized.

In addition, Sec. 391.43 lacks a provision prohibiting a driver from falsifying or omitting medical information in connection with the physical examination required under the FMCSR. The Safety Board called for such a provision in its report on a collision in 1983 between a dump truck and a schoolbus near Willow Creek, California. 58/ Two persons died and 30 were injured in that accident, in which the truck veered left across the centerline and struck the bus head-on. Subsequent investigation revealed that the truck driver had several medical problems that could cause dizziness, loss of consciousness, and loss of vision. The driver failed to disclose this information to his employer and in several employment-related physical examinations.

In response to the Safety Board's recommendation, the Administrator of the FHWA wrote, "We plan on proposing that a prohibition on falsification related to the medical certificate process be stated in the FMCSR . . . and on the physical examination form itself." 59/ The Board has placed the recommendation in an "Open--Acceptable Action" status.

Exemptions for "Intermittent, Casual, or Occasional Drivers" (Sec. 391.63)

Sec. 395.2(f) defines a regularly employed driver as "a driver who in any period of 7 consecutive days is employed or used as a driver solely by a single motor carrier." Drivers who do not fit this description, and who "drive a motor vehicle for a single trip or on an intermittent, casual, or occasional basis," are exempt from several of the qualification regulations. For example, before assigning such a driver to a truck, a motor carrier does not have to obtain that person's employment and traffic violation history, or check with previous employers and State authorities.

58/ Highway Accident Report--"Collision of Humboldt County Dump Truck and Klamath-Trinity Unified District Schoolbus, State Route 96 near Willow Creek, California, February 24, 1983" (NTSB/HAR-83/05).
59/ R. A. Barnhart, Federal Highway Administrator, letter to Jim Burnett, Chairman, National Transportation Safety Board, March 13, 1985.

The Safety Board has found no evidence in its accident investigations to show that occasional drivers have less potential for unsafe performance than regularly employed ones. In fact, without frequent experience to maintain their truck driving skills, some occasional drivers may even represent a greater hazard. Consequently, the Board believes that occasional drivers should not be subject to lesser scrutiny, and the above exemption should therefore be eliminated.

An example of accidents involving occasional drivers is one that occurred in 1984 near Haskell Heights, Indiana. A propane tanker failed to stop at a grade crossing and struck the side of a moving freight train. The impact killed the driver, and the resulting propane explosion injured seven others. The driver was a full-time police sergeant in Elkhart, Indiana, who worked part-time as a truck driver. Prior to the accident, he had not driven a truck for approximately 2 months.

LICENSING FOR TRUCK DRIVERS

Driver licensing has two primary purposes:

1) Establishing driver qualifications, and ensuring that the driving privilege is granted only to those individuals who have attained these qualifications.

2) Providing a means of enforcing traffic laws, so that those who have been driving unsafely can be identified, and steps can be taken to either improve that behavior or withdraw the driving privilege.

One-License/One-Record Concept and the National Driver Register

In order for licensing to be effective as a monitoring system, all traffic violations committed by an individual must be included in that person's record. Once the number and type of violations in a record reach an established threshold, the State may limit or withdraw the license holder's driving privilege. The awareness among other highway users that such punishment is possible may help to further deter dangerous conduct.

The Safety Board's 1980 study of detection and control of unsafe drivers demonstrated that truck drivers are frequently able to undermine this system by obtaining and carrying more than one license at a time. With violations building up on one license, such a driver simply presents another license the next time he or she is stopped by law enforcement officers. The driver's true performance is thus hidden from motor vehicle authorities.

The "one-license/one-record concept" is a means to eliminate such abuse. It holds, for example, that:

-- A driver should hold only one license at a time, issued by the State of residence.

-- When a new resident applies for a license, he or she should be required to surrender any valid driver license issued by another State, and that license should be returned to the issuing State, with a report of action taken. 60/

60/ "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers . . .," February 15, 1980, op. cit., p. 5.

The Safety Board has recommended that the States change their licensing procedures in order to promote the one-license/one-record concept. Additionally, the States need to assure that complete reports of traffic violations are being forwarded to their driver licensing agencies from the local jurisdictions in which they are adjudicated.

In part, what is needed but still lacking is a driving-performance recordkeeping system that is all-inclusive, readily accessible, and resistant to fraudulent abuse. In addition to internal state recordkeeping systems, there also must be an effective means for one State to make information regarding license suspensions and revocations available to other States. Without such a device, it is difficult to prevent an individual who has lost his or her license from obtaining another license in a neighboring jurisdiction. The mechanism intended to serve that purpose is the National Driver Register (NDR).

The NDR, operated by the NHTSA, is a clearinghouse of data on drivers whose licenses have been suspended, revoked, or denied, or who have a record of having committed certain serious traffic offenses. It was established in 1960 to assist State driver licensing officials in exchanging driving records. Its purpose is to enable a State to determine whether another State has taken an adverse action (such as suspension or revocation) against a license applicant. 61/ States participate in the NDR voluntarily by providing information to the Register and by making inquiries regarding license applicants. They use NDR to screen license applicants to ascertain whether they previously have had a license suspended, revoked, or denied in another State or have committed serious traffic offenses.

The NDR files are only as good as the information submitted voluntarily by the States, and policies regarding the submission of data and inquiries vary from State to State. Although it is computer assisted, the NDR has relied primarily on the mail for exchanging information with the States.

Throughout its existence, the NDR has suffered from problems of incomplete (and sometimes inaccurate) information, and from slow responses to inquiries. These problems have been documented repeatedly by the Safety Board, by the NHTSA itself, and by others in studies at least as far back as 1973. For example, the Safety Board's 1980 study states:

> The information in the existing NDR file is limited to records of denials and withdrawals of the driving privilege. A problem driver who has traffic records spread among several States, but whose driving privilege has not been suspended, would not be listed in the NDR file.

61/ Legislative history makes it clear that the NDR is narrow in purpose and scope. Prior to 1982, the NDR was authorized to contain only information regarding license denials or withdrawals. Section 205 of the National Driver Register Act of 1982 (P.L. 97-364 October 25, 1982, 96 Stat 1740) expanded the categories of adverse actions to include convictions for certain serious offenses. The Act did not authorize the inclusion of a driver's complete history. Likewise, the purposes for which the NDR may be used are limited. Prior to the 1982 Act, information contained in the NDR was to be used by State officials for driver licensing purposes only. Section 206 of the 1982 Act expands access to the NDR to include employers of commercial drivers, and to allow driver licensing officials to obtain information for driver improvement and highway safety programs. But there is no authorization, for example, for police agencies to use the NDR for "on the street" traffic law enforcement.

> One alternative being considered by the Department of Transportation is the inclusion of certain serious offenses as a basis for listing drivers in a revised NDR problem driver pointer system. This improvement would increase the number of problem drivers identified to the States by the NDR. However, even on that basis many problem commercial drivers still would not meet the criteria for inclusion in the NDR. . . .
>
> Another improvement under consideration by the Department of Transportation is the conversion of the NDR to an on-line, rapid response inquiry service which would also facilitate interstate exchange of driver record information by switching an inquiring State, electronically, to States which have records pertaining to a driver. The Safety Board believes that this improvement is the most important single step to encourage more effective participation in the NDR by the States. Since the NDR was established, most States have computerized their driver records systems and provided for over-the-counter issuances of driver licenses. Currently, the NDR service does not adequately meet the needs of these States because an applicant has already been issued a license before an NDR report can be obtained. Most of the States have asked for an on-line, rapid response service which will permit them to check the NDR before issuing a driver license over-the-counter. A rapid response service which would enable a State to check a driver's nationwide driving record through an NDR switching service would also significantly enhance the interstate exchange of driver record information. 62/

In 1980, the DOT submitted a report to Congress outlining the problems of maintaining current and accurate data and pointing out the need to automate the NDR. 63/ That study recommended a system in which NDR would serve as a conduit for retrieving information from one State in response to an inquiry from another State and transmitting that information without interception. In this way, the NDR would no longer be required to maintain massive files, and the information would be as accurate as the information in the providing State's file at the time of inquiry.

In response, Congress enacted the National Driver Register Act of 1982, 64/ which mandated that the NDR be converted to a fully automated system, enabling a State to determine virtually instantly whether another State has taken an adverse action against a driver. It also established a timetable for implementation of the automated system and mandated that a pilot test of the system be conducted.

This law mandates that the NDR be changed from a system containing substantive data regarding adverse licensing actions taken by the States on their drivers and reported to the NDR, to a "pointer system" linking the States to a national communications network by means of the central computer of the NDR. Under the pointer system (termed the "Problem Driver Pointer System"), the NDR will simply be an index for directing an inquiring State to any appropriate State of record. It will not retain information beyond that necessary to identify drivers, and it will not have the capacity to

62/ "Safety Effectiveness Evaluation of Detection and Control of Unsafe Intersection Commercial Drivers . . ." February 15, 1980. p. 28.
63/ "The National Driver Register: A Part of the States Driver Licensing System;" June, 1980, U.S. Department of Transportation, National Highway Traffic Safety Administration, Document No. DOT-HS-805527.
64/ P.L. 97-364, October 25, 1982, 96 Stat. 1740.

intercept the information being exchanged between States. No longer will NHTSA be required to maintain a large data bank. Substantive data on problem drivers will remain the responsibility of the States and will not be contained in the NDR.

State participation will remain voluntary, although the terms and conditions of participation will be formalized and agreed on by both the States and NHTSA. The most significant impact of this change is that both the types and the contents of reports to be submitted to the NDR are specified by the statute. This law transfers a significant responsibility and workload to the States.

The system which has been designed will possess the following general features:

1. It will be on-line, with interactive capability.

2. It will support various operating modes of the States: those which will continue to mail inquiries, those which will submit in "remote batch" mode, and those which will operate interactively.

3. It will no longer contain detailed information about a driver--the records will be "pointer" in nature, not "substantive," i.e., the NDR record will identify only the State where the full record exists, not the specific nature of the record.

4. It will be a message switching center: if an inquiry matches a "pointer record" in the NDR file, that inquiry will be automatically relayed to the State of record. Similarly, the response from the State of record will be relayed through the NDR to the original point of inquiry.

In addition to specifying the structure and content of the "new" National Driver Register, the NDR Act of 1982 also spelled out an implementation timetable, calling for a 12-month pilot test beginning in October 1984 and an evaluation report to be sent to Congress by October 1986. 65/ Although not specified in the statute, final conversion to the new system was anticipated by October 1989.

By late 1984, however, NHTSA recognized that it would not be able to meet the mandated schedule. In November of that year, NHTSA proposed a revised implementation schedule, to which it currently is adhering. The revised schedule calls for the pilot test States to be selected in April 1986, the pilot test to begin in August 1987 (allowing 16 months for States to prepare for the pilot test), and be completed in August 1988. According to this schedule, it would be late 1988 or early 1989 before additional States could participate in the new, interactive system. Several additional years would be required to bring all (or most) States into the system.

The Safety Board is disappointed that, more than 6 years after its recommendations, and those of the NHTSA itself, regarding the need to automate the NDR, automation is still in the planning stages. Indeed, it now appears that almost 9 years will elapse before system design and testing are complete, and a dozen years will pass before the new system will be complete. These delays are attributable to system design difficulties, technical problems, delays in procurement and contracting, and problems within the State bureaucracies which must make adjustments to be compatible with the NDR design.

65/ Ibid., Section 207.

While nothing can now make up for the delays already incurred, the Safety Board urges NHTSA to expedite implementation of the automated NDR as much as possible. In particular, NHTSA should do all within its power to assist the four States that will participate in the pilot program to begin their participation as soon as possible. Other States should be encouraged to prepare for participation in the automated NDR system as soon as possible after the pilot test is complete. Although a short evaluation will be required following the pilot test, the Safety Board hopes that a significant number of States will be prepared to participate in the new NDR system within a year after the test's completion.

The Safety Board recognizes that in some cases the efforts required of some States in order to participate in the Problem Driver Pointer System will be significant and time-consuming. Although the States have automated their driver licensing operations to varying degrees, they will need to make some changes in order to accommodate the new NDR. In particular, they will need to enable the NDR to gain access to their records, and to provide this access also to commercial drivers (who for the first time will be able to check their own records in NDR). Additionally, the States will need to develop procedures to make it possible to transmit inquiries to their own files and to the NDR simultaneously.

Based on its discussion with the States, the NHTSA is allowing 16 months for the first four States participating in the Problem Driver Pointer System (the pilot test States) to make the necessary preparations, including procurement of hardware and software, testing new communications systems, testing and installing new equipment, training, and developing new internal procedures. While recognizing that these States are testing something that has not been done previously, the Safety Board hopes that these preparations can be completed in less than 16 months. Further, the Safety Board hopes that licensing officials in other States will be able to shorten this preparation time when the Problem Driver Pointer System becomes available to them.

While the NHTSA works to implement the Problem Driver Pointer System, it also has been making improvements in the quality of data stored in its NDR file, and in the promptness of its responses to State inquiries. The most significant improvement has been in the capacity of States to access the NDR file interactively. Known as the Rapid Response System, this feature will enable a State to know virtually instantly whether there is an NDR record on a license applicant. If States that issue licenses over the counter are to be able to screen an applicant before the license is issued, they must have this on-line access to the NDR file.

The Rapid Response System differs from the Problem Driver Pointer System only in that the former provides access to the data base maintained by the NHTSA, rather than direct access to other States' driver records. Those States that develop the capacity to make on-line inquiries of the NDR files are being asked by the NHTSA to do so in a way that will be compatible with the design of the Pointer System. In essence, States that participate in the Rapid Response System will be using the Pointer System to access NHTSA files instead of other States' records.

States which use the Rapid Response System will be able to initiate participation in the Pointer System more rapidly after the Pointer System has been tested and evaluated. All that will be required will be development of the capacity to receive and respond to other States' inquiries transmitted through the Pointer System. The Safety Board urges the States to participate in the Rapid Response System as soon as it becomes available, both as a means of obtaining interactive access to the NDR and as a means of preparing for participation in the Pointer System.

State motor vehicle administrators have, justifiably, grown weary of waiting for an NDR with the speed and reliability of information that meets their needs. As a result, they have begun to study the feasibility of developing their own telecommunications network. The project, known as the Alliance for Motor Vehicle Administrators' Telecommunications (AMVAT), is designed to quickly put into service a telecommunications network that will identify problem commercial drivers as well as meet other needs of the administrators. Trucking and insurance interests have joined the effort with the hope that their need for information with which to make personnel and underwriting decisions can be met. However, none of those associated with this project perceive it as being a substitute for the NDR. The AMVAT system is intended to compile information on commercial truck drivers only, while the NDR includes all problem drivers. The Safety Board commends the motor vehicle administrators and other groups involved in this project for undertaking to address the communications needs of the States. If the AMVAT system is built, it will provide to the States and others an information source that will be useful in making certain licensing, hiring, and underwriting decisions. However, it will not be a substitute for the NDR because it will not provide the complete access to State driver records that is mandated by the NDR Act of 1982.

Many trucking and insurance companies already rely on private sector search services to provide driver histories on their employees or clients. Generally, these private search services are able to provide a State's motor vehicle record to a client within 24 to 48 hours, as well as conduct a more complete background check on an individual. However, none of the private services have the ability to scan the records of all States to determine if an individual has violations or suspensions on more than one license. (The private search services generally are keyed to an individual driver license, and only search in the State in which that license was issued.) The Safety Board is not aware of any private search service that has established on-line access to any State's driver license records. All rely upon State processing of batch inquiries that are manually delivered (either paper inquiries or through an exchange of tapes).

One company is taking the search process a step further by developing its own data base on the drivers about whom its clients request background checks. The data base contains a list of all drivers about whom queries have been made, their State of license, and whatever additional background information has been provided to the company by current or previous employers. The company is seeking to expand its data base by obtaining complete lists of commercial driver license holders from the States and by obtaining background information on all drivers currently employed by its clients. This data base could become a valuable information source, especially to trucking companies and insurance underwriters, but again, it is not a substitute for the NDR. Indeed, this company's officials have indicated that they would not be able to construct the NDR any sooner than the NHTSA will be able to, and that it might not be commercially feasible to undertake such a project.

The Safety Board's analysis has led it to conclude that non-governmental groups would not be able to develop and place into service an NDR that meets the requirements of the NDR Act of 1982 any sooner than the NHTSA will be able. There are a number of private organizations that currently provide background checks on commercial drivers, a service that is not available to the trucking and insurance industries through the NDR. These services provide an important contribution to the commercial driver selection process and should be used. However, they are complementary to the NDR, and are neither designed to nor capable of replacing it. Therefore, it is essential that the NHTSA and the States continue to develop and implement the NDR as quickly as possible.

Motor Carriers' Annual Employee Review

When implemented, the "new" NDR also will be useful to motor carriers in conducting a required annual review of their employees. The FMCSR require a motor carrier to review the driving record of each of its drivers at least once a year. The reviewing official "must consider any evidence that the driver has violated applicable provisions of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations," but there are no instructions on how that evidence is to be obtained. The motor carrier "must also consider the driver's accident report and any evidence that the driver has violated laws governing the operation of motor vehicles. . ." This evidence is to be obtained strictly through self-reporting by the driver, in a list submitted to the motor carrier. In its January 31, 1983, response to the FHWA's ANPRM on Qualifications of Drivers (see appendix E), the Safety Board stated:

> Reliance on self-reporting by the driver is unrealistic. A driver . . . is not likely to report the information which could result in adverse action by the employer. Moreover, even the best-intentioned driver might inadvertently forget to report some violations which occurred early in the 12 months preceding the review.

It would be better for the motor carrier to query State motor vehicle authorities directly, and the NDR may become an important tool in doing this. Under provisions of the 1982 law, employers in States that participate in the NDR will be authorized to receive this information through the licensing officials in their States. If the NDR is able to perform as envisioned, it will ensure that employers receive complete information regarding employees' suspensions and certain serious violations.

The purpose of the annual review is "to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to Sec. 391.15 [of the FMCSR]." In the absence of explanation to the contrary, the reader must assume that a driver who is not disqualified under Sec. 391.15 has met the "minimum requirements for safe driving." Thus, it must be assumed that any driver has passed the annual review whose driving privilege has not been revoked or suspended and who has not committed one of the four types of disqualifying traffic violations listed in Sec. 391.15. (See page 24.) Yet there are instructions for the reviewing official to "give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public." Speeding and reckless driving are not among the disqualifying offenses. Furthermore, the disqualification rules make no provision for the subjective assessment implied in the admonition to "give great weight to violations . . . that indicate the driver has exhibited a disregard for the safety of the public." The Safety Board believes this regulation should be rewritten to eliminate this inconsistency and, in general, to spell out more clearly the purpose and procedures of the annual review. Such changes should be made in concert with the recommended changes in the disqualification rules of Sec. 391.15.

Secs. 391.25 and 391.27 describe the motor carrier's responsibility to conduct the annual review and to obtain a signed list from each driver of his or her traffic violations. However, in the case of the owner-operator, the motor carrier and driver are one and the same, and are, perforce, required to conduct the review on themselves. In its 1980 truck driver study, the Safety Board concluded:

> The provision of the Federal Motor Carrier Safety Regulations which requires drivers who are owner-operators to screen their own driving records and determine qualification or disqualification to operate commercial vehicles may not be effective.

One of the accidents cited to support this conclusion occurred in Hanover, Virginia, in 1978 and resulted in injuries to three persons. According to the study:

> The Safety Board's investigation of the truck driver's driving record revealed that his driving privilege was suspended by both Florida and New Jersey at the time of the accident, and he had nine other suspensions in the 4 years preceding the accident. His record at that time also included 13 traffic convictions in the 6 years preceding the accident. Although his driving privileges remained suspended in two States, the truck driver continued to drive after the accident, accumulating five more violations in the next 10 months for speeding on Florida highways.

The Safety Board therefore recommended that the Federal Highway Administration:

> Evaluate the compliance of motor carriers who are owner-operators with the driver record review and driver disqualification provisions of the Federal Motor Carrier Safety Regulations, and within 1 year publish the findings of the evaluation in the Federal Register for public comment or initiate appropriate rulemaking. (H-80-19)

The FHWA declined to conduct that evaluation, arguing, in part, that "there is no single universal definition of the term 'owner-operator.'" The FHWA also said it saw "no useful purpose" for such an evaluation. 66/ The Safety Board therefore classified this recommendation as "Closed—Unacceptable Action."

In light of the FHWA's response, an alternate approach is needed to eliminate the potential for conflict of interest inherent in a self-screening requirement. One such approach would be for the regulations to stipulate that no driver screen his or her own record. (The FMCSR already contain a similar prohibition against drivers giving themselves road tests.) There would be no need to define "owner-operator." This stipulation would apply to all drivers under Federal jurisdiction. For drivers employed by trucking firms, the reviews would continue to be performed by company officials. For drivers who own their own vehicles, the FMCSR would designate acceptable sources for the review, such as Federal or State officials, or insurance companies. It would be the driver's responsibility to submit to such a review at least once a year and to keep a record of the results in his or her qualifications file. That file is subject to examination by BMCS investigators.

Classified Driver Licensing

Aside from its use as an identifier in a traffic-violation recordkeeping system, driver licensing should "[i]deally . . . be viewed as a State effort to ensure that those licensed to drive have met minimal qualifications shown to be related to safe operation of motor vehicles," according to a report from a University of North Carolina highway

66/ Letter from FHWA Administrator to NTSB Chairman, August 21, 1980.

research team. 67/ However, only fairly recently have State licensing systems begun to reflect an understanding that the driving task can differ from one type of vehicle to another, and driving qualifications should differ accordingly.

In the United States today, there are four States, plus the District of Columbia, that issue a single type of license for all drivers. Each of the remaining 46 States offers several types of licenses, according to various categorization schemes. The practice of issuing licenses by category is not new. It has been found in many States throughout most of the twentieth century. It was included in the original Uniform Vehicle Code, which was published in 1926. There have been changes, though, in the nature of the categories.

In the past, license categories were based most frequently on the employment status of the person operating the vehicle. Under such a system, if the driver is transporting goods or persons for compensation, he or she is considered a "chauffeur," and must hold a chauffeur's license. Someone else, driving an identical vehicle but not for pay, need only have an operator's license. The fee for a chauffeur's license is often higher than for an operator's, reflecting the commercial distinction between the two.

Mississippi is one of the States that differentiates driver licenses based on the employment status of the license holder. One section of the Mississippi Driver's Manual explains:

> A commercial license is required only when you are operating a vehicle commercially. You are exempt from having a commercial license when the vehicle is being operated for private use. 68/

A Mississippi operator license costs $13; the commercial license costs $21. Both are good for 4 years.

The alternative to licensing based on employment status is a system based on vehicle type. Under such a system, now generally called classified licensing, a driver may operate a given vehicle only after demonstrating his or her proficiency at handling that type. The driver's purpose in operating the vehicle is not a consideration. The categories in a classified system may be differentiated according to such factors as a vehicle's weight, dimensions, or number of axles.

The latter system clearly has the greater potential for producing competent, safe drivers. Classified licensing establishes ability as a condition of operating authority; licensing by employment status does not. The Secretary of Transportation recently observed that in States without classified licensing:

> . . . any person who is licensed to drive an automobile can also legally drive a tractor-trailer without first meeting any formal state training, testing or operator licensing requirements. Quite frankly, this is outrageous. It should worry any American who drives or rides as a passenger on the same roads shared with tractor-trailer vehicles. 69/

67/ Waller, Patricia F., Woodward, Ann R., Ma, Juliana M., and Stutts, Jane C., "Driver License Renewal Procedures: An Evaluation of the Nebraska Program," University of North Carolina Highway Safety Research Center, July 1984.
68/ Mississippi Department of Public Safety, September 1985.
69/ "Remarks Prepared for Delivery by Secretary of Transportation Elizabeth Hanford Dole at the 16th Annual Meeting of the Highway Users Federation for Safety and Mobility," November 7, 1985.

The classified system is the more recent of the two approaches to licensing. It was not incorporated into the Uniform Vehicle Code until 1968. In the 1970s, the NHTSA and the American Association of Motor Vehicle Administrators (AAMVA) developed a model State classified licensing program. By now, 31 States have some form of licensing by vehicle type, with Oregon scheduled to follow suit in October 1986; 14 States issue chauffeur and operator licenses; and, as mentioned above, 4 States and the District of Columbia issue a single, all-purpose license.

That does not mean, however, that States with classified licensing administer the system uniformly. Massachusetts issues five classes of licenses. New York issues eight, with several classes broken into subgroups. Michigan issues a chauffeur's license, but with classified endorsements corresponding to vehicle type. Among States with classified licensing, at least five different systems can be found for categorizing vehicles: weight, number of axles, configuration (straight truck, combination unit, etc.), weight and axles, and weight and configuration.

In the NHTSA-AAMVA model licensing program, and in most other classified systems, each succeeding category becomes less restrictive than the one below it. Thus, in the NHTSA-AAMVA system, the holder of a "C" license may drive automobiles and other vehicles of less than 24,000 pounds gross vehicle weight. The vehicles of that size may also be towing a vehicle of no more than 10,000 pounds. With a Class "B" license, the driver may operate any vehicle allowed under "C," plus buses and vehicles over 24,000 pounds. The towed vehicle is still restricted to 10,000 pounds. Under Class "A," there is no restriction on the weight of the power unit or the towed vehicle. No one holding any of the above licenses alone may drive a motorcycle or other motor-driven cycle; there is a separate category for these. Some programs, such as the one in Michigan, place buses in a similar separate category. (Appendix G contains the NHTSA-AAMVA model classified licensing program.)

The road test in a classified system should generally be given in the largest type of vehicle allowed under the license being sought. According to a study for NHTSA 70/, some States issue licenses classified by vehicle type, but have no such testing requirement. This defeats the purpose of classified licensing. The study reports that some other States require only that the test vehicle be "suitable," leaving it to the applicant and examiner to agree upon the appropriate specifications. Only seven States have regulations spelling out those specifications.

In 1984, the Safety Board issued two recommendations aimed at providing classified license testing for bus drivers. One of those recommendations urged the governors of Nevada, Georgia, North Carolina, South Carolina, Kansas, Minnesota, and Washington to:

> Revise current State motor vehicle licensing procedures to require all applicants for commercial or noncommercial bus licenses to take an appropriate written examination and a road test in the size vehicle for which the license is to be issued. (H-84-70)

70/ A. J. McKnight, S. L. Kelsey, M. L. Edwards, "Development of Knowledge and Performance Tests for Heavy Vehicle Operators," NHTSA Contractor: National Public Services Research Institute, DOT HS-806-688, December 1984.

Corresponding provisions should be made for truck drivers. It is the Safety Board's position that all drivers should be licensed under a classified system. The regulations governing such systems should ensure precise congruence between the type of vehicle used in the road test and the class of license the applicant is seeking. The written test should be made similarly appropriate.

Safety advocates, such as the Insurance Institute for Highway Safety, have urged nationwide conversion to classified licensing. The AAMVA, with support from the NHTSA, has done the same, through development and distribution of the model program mentioned above. The National Highway Safety Advisory Committee has called on the Secretary of Transportation to promote the classified licensing system.

Resistance among the States to classified licensing has generally resulted from concerns about the cost and administrative problems in changing the system, rather than objections to the classification principle. For example, when asked in a survey about their willingness to adopt a system like the AAMVA's classified program, Vermont officials replied, "Legislature will not approve funding for classified licensing." West Virginia said, "Yes, but cost would be a problem." Montana replied, "No, unless it can be shown to be cost-effective." 71/ The same survey, conducted by NHTSA, also questioned States that had changed their licensing systems. According to the report on the survey:

> It costs [a state] less than $100,000 the first year of operation, on an average, to implement a classified licensing program. It is assumed (confirmed by reports from several States) the cost of the second and subsequent years of operation do not exceed the costs of the previous system. 72/

State License Testing Procedures

Although nationwide adoption of classified licensing is urgently needed, it is not sufficient, by itself, to bar unqualified individuals from driving heavy trucks. Classified licensing provides only that an applicant will be tested on a vehicle corresponding to the type he or she intends to drive. The effectiveness of the licensing system as a screening device depends on the rigorousness of the testing procedure.

Driving is commonly referred to as a privilege, not a right. In this country, it is a privilege readily granted. Most licensing programs, even the classified ones, do not serve as selection systems, but rather, establish only that each license holder has attained a minimum level of driving skills. It is a level that nearly every applicant can meet. Some applicants, particularly those who have just become old enough to apply, may fail in their first attempt to obtain a license. Approximately 15 percent of all applicants fail the knowledge examination on the first attempt. 73/ But ultimately, fewer than three percent of U.S. applicants are unable to obtain a driver license. For truck drivers and other commercial operators, the level is even lower. 74/ The length, degree of difficulty, and cost of the examination procedure ensure the near-universal attainability of the driver license.

71/ "Classified Driver Licensing in the United States," NHTSA, DOT HS-305-532, December 1980.
72/ Ibid.
73/ Tannahill, W. J., NHTSA, Personal Communication to Safety Board staff, October 30, 1985.
74/ Ibid.

For the truck driver, however, the driver license is also an occupational license. The practice of numerous other occupations requires state licensure, particularly those that may have an impact on public health and safety. The evaluation of prospective physicians, plumbers, and many other practitioners is usually much more extensive than for applicants for any class of driver license. The degree of selectivity, or the failure rate, is generally much higher. Usually, the State's cost in conducting such scrutiny is also substantially higher, so the application fees for many other occupational licenses are set accordingly higher than for driver licenses. Another justification for the higher fees is the opportunity for earnings that an occupational license provides.

The earnings potential for a truck driver is at least as great as for many other licensed professionals. The hazards posed by allowing an unqualified individual to practice may be even greater than in many other licensed fields. The Safety Board finds it to be a sensible and worthwhile safety goal to bring the licensing treatment of truck drivers in line with that to which other professionals are submitted. Given the current low cost of a truck driver license, compared to other occupational licenses, it does not not seem unreasonable to raise licensing fees enough to cover the necessary improvements.

As described above, the purpose of a licensing program may be to screen out all but the fully qualified; alternatively, the program may simply ensure that all license holders have attained a minimum level of skill. Even if it is not possible to change truck driver licensing from the minimum-setting to the selectivity model, it should be possible at least to raise those minimum standards appreciably. In order to accomplish that, the following are some of the areas that deserve review.

The Performance Test. In the performance test, the license examiner assesses the applicant's ability to handle a vehicle safely. All States administer the test on public thoroughfares, and about a third also use a closed track to evaluate some maneuvers. Of the 30 States reporting in a recent survey, 25 had heavy-vehicle performance tests lasting 30 minutes or less. 75/ In both the United Kingdom and Switzerland, the test takes longer than an hour.

Surveys have shown there is wide variance in the content of the performance tests the States administer. In one study, 76/ the NHTSA identified 16 maneuvers "that a driver encounters in any mix of vehicular traffic and under all circumstances." Among these are: right turn, quick stop, start/stop on grade, backing, and uncontrolled intersection. It was reported that Massachusetts, a State with a classified licensing system, includes all 16 maneuvers in its performance test for tractor-trailer drivers. The Virginia system, also classified, includes only seven of the maneuvers. Even though a significant portion of heavy-vehicle accidents involves equipment failure, license examiners in fewer than 25 percent of the States in this country score truck driver applicants on their ability to conduct a pretrip inspection. 77/

There are aspects of truck driving that generally go unexamined in a performance test. Few tests include driving on an open road, even though that is where many of the most serious accidents occur. Most drivers can expect eventually to encounter adverse weather conditions, which can greatly increase the difficulty of the task, but the Mississippi Driver's Manual stipulates, "No driving test will be given when the streets are wet or slippery."

75/ McKnight, et al., op cit.
76/ "Comparative Data State and Provincial Licensing Systems," National Highway Traffic Safety Administration, DOT-HS-805-335, October 1980.
77/ McKnight, et al., op. cit.

During the course of a truck driver's career, he or she will be called upon to operate vehicles that are empty, partially loaded or full, as well as some that are evenly loaded and others where the loading is uneven. Drivers of combination vehicles may drive single, double, or triple trailers, or operate the tractor by itself. With each change in load or configuration, the handling characteristics of the vehicle change significantly. Yet few if any State performance tests include provision for this variety of conditions. In all license examinations, the applicant supplies the test vehicle. Even if a truck is used for a truck test, as required under a classified system, the applicant is likely to provide a vehicle that is as easy to drive as possible. For example, a trailer's wheels can be adjusted for maximum ease in turning, even if actual operations would call for a different setting. It may not be possible to devise a performance test that can gauge an applicant's ability to handle the full range of driving conditions, but it is at least advisable to aim for as much realism as possible.

The Knowledge Test. One means of evaluating the points that could not be covered in a performance test is through the knowledge test. All States include such a test as part of the license examination process. Thus, if the weather was warm when an applicant was given a performance test, so winter driving procedures could not be evaluated, the knowledge test can at least include questions on the proper precautions to take in ice and snow. A practical demonstration of those skills would of course be preferable, but this at least helps make it likely that the driver has the necessary knowledge.

When the heavy-vehicle operator knowledge tests of 32 States were analyzed in a study for the NHTSA, operating practices and general traffic safety were found to make up 34 percent of the test questions. Traffic laws, signals and markings, along with vehicle and equipment regulations, constituted about 64 percent. 78/ While it is important for drivers to know both safe practices and legal requirements, another study, 79/ also prepared for NHTSA, suggests that this ratio is not properly suited to the needs of the commercial driver. According to a description of that study, both novice and experienced drivers "were most deficient in their knowledge of safe operating practices and least deficient in their knowledge of traffic laws." 80/

Other research has demonstrated that most driver license knowledge tests have not been developed and validated according to established test construction principles. According to the University of North Carolina Highway Safety Research Center:

> If [driver license tests] are to function optimally, it is essential that they be scientifically constructed rather than consist of test items that have simply been made up with no analyses or independent validation. Good performance on knowledge tests does not guarantee good future driving performance, but it is possible to improve the relationship considerably over what is currently true of most driver license knowledge examinations. 81/

Driver's Manual. The Maryland Driver's Handbook begins with this message from the state's Motor Vehicle Administrator:

78/ Ibid.
79/ Mcknight, A. J., and Edwards, R., Safety Driving Knowledge Dissemination and Testing Techniques, prepared for National Highway Traffic Safety Administration, September 1978.
80/ McKnight, et al., op. cit.
81/ Waller, et. al., op. cit.

> This instructional handbook has been prepared to provide you with concise and clear information to enable you to pass your written and driving tests, regardless of the class of license you are seeking, and to help make you a safe driver. 82/

The Maryland book, like most State manuals, provides the material from which the knowledge test is drawn. It also tells the applicant what to expect in the performance test. But few if any manuals could serve by themselves as a sufficient guide to safe practice. In apparent recognition of this limitation, the Mississippi manual includes this notice on the first page: "The supply of manuals is limited. Please return this book to the License Examining Station."

For a large number of drivers, though, including many professional truck drivers, the State manual is the only reference book on safe practice they will see. In Ohio, which does not have a classified licensing system, the manual includes six pages on operating "other vehicles" such as trucks and buses. Maryland, with a classified system, includes five pages. Michigan provides a separate, 15-page book. In contrast, the student manual in the BMCS Model Training Curriculum is 393 pages long.

It would be unrealistic to expect each State to develop and distribute manuals that could serve as truck driver training documents, and it would be a substantial duplication of effort as well. But since some truck drivers will have contact with no other professional guide than the State manual, it would be worthwhile for most States to improve and expand the sections on safe truck driving practice in those manuals.

In a study for the NHTSA, 45 driver license manuals were reviewed. While a majority of the manuals did discuss safe driving practices, a greater percentage dealt with prelicensing requirements, traffic laws and regulations. According to the study, these findings "do not imply that other topics are addressed in excess, but rather that the treatment of safe operating practices in particular is deficient." 83/

License Renewal. Only 18 States require all license renewal applicants to take the knowledge test again; only five require another road test. 84/ It is only in 37 States that the applicant even has to appear in person at a license station for every renewal. 85/ That means that in most parts of the country, a truck driver who remained in the same State could go through an entire career without any recurrent State-level proficiency or knowledge checks. If the driver remained with the same motor carrier, he or she could avoid the federally required recurrent checks as well.

The NHTSA Truck Operator Qualifications Examination

One effort to foster improvements in truck driver licensing procedures has been the development of a battery of model driver tests. The tests, a contracted project of the NHTSA, are called the Truck Operator Qualifications Examination, or TORQUE.

Key components of TORQUE are:

82/ Mati Koiva, Administrator, Maryland Department of Transportation, no date.
83/ McKnight, et al., op. cit.
84/ Comparative Data State and Provincial Licensing Systems, op. cit.
85/ Waller, et. al., op. cit.

-- Operator's Manual

-- Knowledge Test

-- Pretrip Inspection

-- Off-Street Test

-- Road Test (called TORT, for Truck Operator Road Test)

Both the manual and the knowledge test emphasize safe driving procedures, which are frequently addressed inadequately in current State manuals and tests. The TORQUE manual includes sections on: 1) Controlling the Vehicle; 2) Operating on the Road; 3) Emergencies; and 4) Handling Accidents. The knowledge test, a battery of 96 multiple-choice questions, "functions solely as an incentive to induce people to read the [manual] and acquire its contents, and a quality control device to assure they have done so before they are licensed to operate on the public highway," according to the project report. 86/

TORT is based on a different evaluation method from what is currently used in most States. In the traditional road test, the examiner assesses the applicant's overall performance and decides accordingly whether he or she has passed. In TORT, the examiner observes the applicant's performance step-by-step and records whether the execution of each maneuver has met certain objective criteria. The score resulting from those observations determines pass or fail.

TORT was intended as an improved system that could be adopted under conditions currently found in many States. It was therefore designed to function under these limitations:

-- Administration of the test by examiners who are not professional heavy vehicle operators and have had limited training.

-- Testing time limited to approximately 30 minutes.

-- Test maneuvers limited to those that can be demonstrated in the highway and traffic situations to be found in the vicinity of almost all licensing stations. 87/

Proponents of TORT say it is an improvement over what is found in most States, and since adopting it would not place excessive demands on State resources, that safety improvement is one that could be realistically pursued. Opponents say the objective scoring system provides little benefit, and efforts should be directed instead at making State road tests longer and more thorough, and at training examiners to make proper subjective evaluations.

A field test using a group of tractor-trailer drivers indicated that TORT has a low level of statistical reliability. According to TORQUE's own project report, "only about 14 percent of variance in TORT scores can be attributed to stable, driver-related variables." 88/ The report therefore concludes:

86/ McKnight, et al., op. cit.
87/ Ibid.
88/ Ibid.

> While the results of the field test are not sufficiently encouraging to warrant aggressive marketing of the TORT itself among State licensing agents, the objective measuring techniques used in the TORT appear to have a sufficiently well demonstrated value over the more subjective techniques used in typical state road tests to warrant efforts to see that the techniques are widely used. 89/

Those techniques have not yet been put into practice in any State. TORQUE was first released in December 1984, and has since been distributed by both the NHTSA and the AAMVA.

Specialized Truck Driver Licensing

As indicated earlier, the Safety Board endorses a driver licensing system based on vehicle characteristics, such as weight and number of axles. But two vehicles may weigh the same and have the same number of axles but require different qualifications in their drivers, because of the nature of their cargoes. If a licensing system is to be fully responsive to the demands of safe practice, it must include provision for these differing requirements.

As noted in the Introduction, when a truck transporting hazardous materials is involved in an accident, the threat to people and property spreads widely. Two examples from Safety Board investigations demonstrate the potential for loss:

-- In 1971, an automobile and tractor-semitrailer collided head-on near Waco, Georgia. The truck was carrying a load of dynamite, which exploded soon after. Six people were killed, 33 were injured, and property damage exceeded $1 million.

-- The explosion in 1975 of a truckload of liquid propane gas near Eagle Pass, Texas, killed 16 people and injured 35. Three mobile homes were destroyed, along with a building and 50 parked vehicles. The explosion resulted when a tractor-tank semitrailer struck the concrete wall of an irrigation canal.

Because of the dangers posed by hazardous materials, the drivers transporting them must be among the most skilled. They should have truck driving experience gained with nonhazardous cargoes before being allowed to haul hazardous ones.

This need was illustrated in a 1984 single-vehicle accident in Denver, Colorado. The driver of a tractor-semitrailer attempted to negotiate an interstate connecting ramp at too high a speed, and the truck overturned. Fortunately, the truck's cargo, six U.S. Navy torpedoes, did not explode, but the disastrous potential of this accident was demonstrated the following year. In an accident cited in the Introduction, a truckload of bombs did explode, causing damage and injuries throughout the town of Checotah, Oklahoma.

The driver in the Denver accident had received 7 weeks of instruction at a truck driver training school associated with a large motor carrier. Three days after completing the program, she began driving for the firm. One week after that, she transported her first load of Class A explosives. The accident occurred a little more than 2 months later.

89/ Ibid.

In its investigation, the Safety Board concluded, "The driver's inexperience in driving a tractor-semitrailer contributed to the loss of control of the vehicle." 90/

In addition to a high degree of general truck driving skill and experience, drivers transporting hazardous materials also need specialized knowledge. They must know the properties of their cargo and the rules of the road concerning the transportation of those materials. In the event of mishap, they will be among the first persons at the scene, so they must be familiar with emergency response procedures. If loading and unloading are part of their responsibilities, they must know the correct procedures for those operations.

The Safety Board believes that before drivers are allowed to transport hazardous materials, they should be required to obtain a special class of license, or a special endorsement that could be applied to an existing license. In order to obtain such a license or endorsement, the driver would have to meet special criteria in such areas as age, years of truck driving service, and previous driving record. The applicant would have to demonstrate proficiency in handling hazardous materials trucks, as well as mastery of the knowledge related to hazardous materials transport. A related training requirement also may be worthwhile.

Based on this position, the Safety Board issued the following recommendation to the AAMVA in 1983:

> Develop recommended criteria for use by the States in requiring and issuing a special license or an endorsement on a commercial truckdriver license to operate trucks transporting hazardous materials. Parameters should include, but not be limited to: the minimum qualification level of operational experience and disqualifying factors, such as the number of traffic accidents, number and type of traffic violation convictions, and number of driver license suspensions. (H-83-31)

The Board also recommended that the AAMVA: coordinate a program among the States to develop the data on which these license criteria would be based, develop testing criteria for the special license, and encourage the States to implement such licensing programs uniformly. Recommendations also were issued to the following organizations, calling on them to assist the AAMVA in this effort:

- -- International Association of Chiefs of Police
- -- American Trucking Associations
- -- National Tank Truck Carriers Association
- -- American Petroleum Institute
- -- Commercial Vehicle Safety Alliance

90/ Hazardous Materials Accident Report--"Overturn of a Tractor-Semitrailer Transporting Torpedoes, Denver, Colorado, August 1, 1984" (NTSB/HZM-85/02).

The AAMVA responded, "There was a strong consensus of our Board that AAMVA is the logical organization to coordinate development and implementation of such programs." 91/ The organization indicated in the same letter that it would seek Federal funding for this project, but since 1983, no further activity has been reported.

Individually, however, several States have taken action. In 1985, California began requiring that hazardous materials drivers meet the qualifications in a separate certificate. There is also a separate certificate for drivers hauling hazardous waste. The driver qualification sections of the Michigan Motor Carrier Safety Rules match Part 391 of the FMCSR nearly word for word, but with the addition of safeguards concerning hazardous freight. Drivers transporting hazardous materials in that State must be at least 21 years old, must undergo special training, and must have accrued at least 3 years or 3,000 hours of experience driving heavy trucks with nonhazardous loads.

Organizations, such as the American Trucking Associations and the National Tank Truck Carriers, have expressed concern that, if many States adopt separate, perhaps conflicting, qualification requirements for hazardous materials drivers, it will become difficult for those drivers to operate interstate.

New York City also has established qualifications for hazardous materials drivers, and the National Master Freight Agreement, ratified in 1985, calls for union and management to establish hazardous materials training and certification for drivers covered by the agreement.

Aside from their hazardous potential in an accident or spill, some products may require special driver qualifications for safe transport because of the products' effects on a vehicle's handling characteristics. Perhaps the most prevalent of such cargoes are bulk liquids. Product surge in a tank can cause a sudden shift in the vehicle's center of gravity. The phenomenon is most pronounced when the tank is neither full nor empty. In the 1971 surge accident in Moscow, Pennsylvania, mentioned in the Introduction, the tanker that overturned, killing a family of four, was filled to 75 percent capacity. The tank truck carrying anhydrous ammonia that went out of control in Houston, Texas, in 1976 was 71.8 percent full. The State of California, recognizing the danger of cargo surge and the driver skill needed to avoid it, included bulk liquid transport in the driver certification program begun in 1985. Before a driver is permitted to transport bulk liquids in combination trucks (separate tractor and trailer), he or she must earn a separate certificate similar to the one for hazardous materials drivers. Since many hazardous materials are liquids, drivers frequently need both types of certificates.

There may be need for further differentiation in classified driver licensing. There are many types of trucks, and many types of corresponding handling characteristics. Research is needed to determine which others of these types, if any, merit special license or endorsement requirements for safe operation. The American Automobile Association 92/ recommends that commercial driver licensing be divided into the following classifications:

91/ Donald J. Bardell, Executive Director, American Association of Motor Vehicle Administrators, Letter to Jim Burnett, Chairman, National Transportation Safety Board, November 9, 1983.

92/ "A National Truck Driver's License: A proposal of the American Automobile Association," draft pamphlet, no date.

-- Bus

-- Straight Truck

-- Straight Truck (Tank)

-- Tractor Semitrailer

-- Tractor Semitrailer (Tank)

-- Tractor Semitrailer Full Trailer

-- Tractor Semitrailer Full Trailer (Tank)

-- Tractor Semitrailer Multiple Trailers

The Need for a Uniform National Licensing System

State governments vary widely in their approaches to driver licensing. According to University of North Carolina researchers:

> Some States have fairly stringent requirements for motor vehicle operation, while other States appear to place little emphasis on the value of licensing other than for purposes of revenue collection and possibly record compilation. 93/

There is even substantial variance in the way the licensing programs are administered. In Idaho, for example, there is no State system of testing license applicants. Instead, county sheriffs, working independently of any central authority, administer both performance and knowledge tests. In Indiana, license bureaus have been part of the political patronage system, with jobs in those offices awarded to members of the party in power.

One goal in upgrading truck driver licensing therefore should be uniformity. A uniform, coordinated system would:

1) Provide every part of the U.S. highway system with the same degree of protection against unfit truck drivers.

2) Ensure equal treatment for truck drivers throughout the country by holding them all to a single set of qualification standards.

3) Eliminate the concern expressed by many in the trucking industry that a multiplicity of State licensing provisions would obstruct interstate operations.

4) Help prevent truck drivers from maintaining multiple licenses in order to obscure their driving records and forestall enforcement action.

5) Standardize enforcement policy, so that in all States, license suspension and revocation would be imposed on the basis of comparable levels of traffic violations.

93/ Waller, et al., op. cit.

It is unlikely that States will be able to develop a uniform system on their own, since up to now they have acted with such diversity. This conclusion is also based on the lack of unified State action in response to the Safety Board's 1983 recommendations concerning special licensing for hazardous materials drivers. The Board, therefore, believes that a National Driver License is needed for truck drivers and other commercial operators.

The Safety Board previously raised the possibility of national licensing in a 1981 special study of grade crossing accidents involving trucks transporting hazardous materials. 94/ The Board observed, "Licenses might best be coordinated at the national level to prevent a driver from having several licenses or endorsements from different States which allow the driver to operate a truck transporting bulk hazardous materials." The special study contained the following recommendation to the FHWA:

> Study the feasibility of requiring drivers to have an additional national or State license or endorsement to drive trucks used to transport bulk hazardous materials. The study should establish criteria for prior driving record and training in handling hazardous materials and in emergency procedures. (H-81-76)

Work began on the program in 1985. Also, as noted in the previous chapter, the FHWA's Bureau of Motor Carrier Safety has indicated its intention to propose Federal driver qualifications specific to hazardous materials transport.

The national license the Safety Board now proposes would encompass not only hazardous cargoes, but the full range of trucking operations. This type of program has received support from both the American Automobile Association and the Insurance Institute for Highway Safety. A bill has been introduced in the U.S. Senate (S. 1903) that directs the Secretary of Transportation to establish a national commercial driver license within 18 months of the bill's enactment into law.

The following are some of the issues that will have to be addressed in developing a national truck driver licensing program, as well as some of the features that the Safety Board believes such a program should contain.

Training Requirement and Other Qualification Standards. This study has previously advocated that a training requirement be incorporated into Part 391 of the FMCSR. In order to apply that requirement to intrastate drivers as well as interstate, the requirement also should be established as a prerequisite for obtaining the National Driver License. Other uniform qualification standards are needed for the License, for example, in areas such as minimum age, medical condition, and previous driving record. These qualifications should probably be derived from the Federal regulations.

License Classification and Differentiation. The national licensing system should be classified by vehicle size, as well as other vehicle factors determining the skills needed for safe operation. Perhaps using the AAMVA's model program and other existing classification schemes as reference, the framers of this system will have to arrive at a standard series of license classes. The system should stipulate that road tests for each class be given in the largest type of vehicle allowable in that class. There should be a separate license or endorsement for hazardous materials drivers.

94/ Special Study--"Railroad/Highway Grade Crossing Accidents Involving Trucks Transporting Bulk Hazardous Materials" (NTSB-HZM-81-2).

Performance Test Procedures. A standardized performance test procedure will be needed. The TORQUE test battery may be useful in the development of this procedure. In addition to such questions as test length and content, the choice will have to be made between the objective test approach recommended in TORQUE and the more subjective system currently found in most States. Uniform eligibility and training standards also will be needed for license examiners.

Certificates of Proficiency. In some States, a motor carrier can issue a certificate indicating that a driver has been tested and meets the company's performance standards, and the State will accept that certificate in lieu of a road test. A review is needed of the safety implications of this practice, to determine whether it should be permitted in the national system.

Knowledge Test and Driver's Manual. TORQUE may be one reference in developing uniform knowledge tests that feature substantial emphasis on safe driving practice. It may be advisable to include questions on the operational requirements of the Federal Motor Carrier Safety Regulations. The test battery being developed for the BMCS Model Training Curriculum would be another promising source. All questions in the knowledge test should be properly validated before being put into use.

The standard driver's manual also may be drawn from portions of the BMCS curriculum. Although individual States probably would have to augment the manual with information on their own traffic regulations, each State would no longer have to develop a full driving handbook on its own.

License Renewal. Each person holding the National Truck Driver License should be required to undergo a full retest of knowledge, performance, and vision each time that license is due for renewal.

One-License/One-Record Concept. One of the most important reasons for establishing the National Truck Driver License is to promote the one-license/one-record concept. With a single system for issuing licenses and recording traffic violations, it will be much harder than it is now for a driver with a bad record to avoid detection.

In order to make that system truly effective, it will be necessary for the national license to supplant all others. Persons operating vehicles not covered by the national system would continue to drive on whatever type of license they received from the State. But those wishing to drive qualifying commercial vehicles would have to surrender all other driver licenses before being issued a new, national license. After that, any traffic violation, regardless of the type of vehicle driven, would be recorded on the national license. The situation must be avoided in which a driver would maintain one license for driving a truck and another for driving a private automobile. That would run counter to the principle of one-license/one-record. Furthermore, as stated in the previous chapter, it is the Safety Board's position that everything a person does on the highway, regardless of vehicle, has bearing on his or her fitness to drive a truck.

Program Administration. Administering the National Truck Driver License involves developing uniform qualification standards and licensing procedures and then implementing them throughout the United States. The roles of State and Federal governments in these functions must be determined.

At present, driver license administration is close to an exclusively State operation, and, as shown, this arrangement is in need of improvement. At the other extreme, licensing could be made an exclusively Federal function, analogous to the Federal Aviation Administration's licensing of pilots. That would require the creation of a new network of licensing bureaus, and since there are many more commercial drivers than pilots, the costs of such a network would be prohibitive. The most realistic course, therefore, would be a partnership between governments on the State and Federal levels.

Testing applicants and examining their qualifications should remain a State function, using the motor vehicle bureaus already in place. The Federal government, working with the States and other interested parties, should develop uniform standards and testing procedures, and ensure that these are adhered to in all States. One possible way to obtain compliance would be to incorporate the standards and procedures into one of the Highway Safety Program Standards that the DOT has issued for the States. Standard No. 5, which deals with driver licensing, was issued in 1967. However, these standards have come to serve strictly as general guidelines, and highway safety grant funds have never been withheld from a State for failure to comply.

Another approach would be to adopt the standards and test procedures through Sec. 391.11 of the FMCSR. Current or future general reviews of the FMCSR could provide the framework for adding these provisions. Also, as described earlier, the Motor Carrier Safety Act of 1984 includes provision for Federal preemption of State motor carrier regulations, and the Act calls for a study examining whether all motor carrier operations should be brought under Federal jurisdiction.

The other functions in the national licensing program will include:

1) Issuing the licenses, and making sure that each driver under the system obtains only one.

2) When warranted because of the license holder's record, suspending or revoking the driving privilege, or taking other enforcement action. (The program will have to establish uniform criteria for such action.)

3) Maintaining records on all license holders.

There will be roles for both State and Federal authorities in carrying out these functions. It should be the responsibility of the DOT, based on public comment and its own analysis, to assign those roles.

The DOT will have to determine how and where the license records will be kept. The recordkeeping function will be essential to the success of a National Driver License system. Without a single, complete file on each license holder that includes all traffic violations and other relevant information, it would be impossible to detect and take action against unsafe drivers. Whether the records are kept by the States (presumably the State issuing the license) or the Federal government, the accuracy of those records will depend on an effective communications system. Notification of every violation must be transmitted to the recordkeeping entity. If the records are maintained by the States, there probably would have to be a central listing of all license holders, indicating the licensing State and containing sufficient identifying information on the license holder to prevent that driver from obtaining more than one license.

Extent of Program Jurisdiction. If a national program is established to license truck drivers, the goal should be for that program to cover all truck drivers--current and future, intrastate and interstate.

Drivers already holding valid commercial licenses should be required to obtain the new type of license. If a "grandfather provision" is instituted, allowing current drivers to obtain the national license without all the testing that a novice would undergo, sufficient applicant screening safeguards should be imposed to ensure that unqualified applicants are not automatically licensed.

Intrastate drivers could be brought under the jurisdiction of the national system through provisions of the 1984 Motor Carrier Safety Act. Some amendments to the Act may be necessary.

SUMMARY

In 1984, 2.5 million truck drivers drove more than 138 billion miles. In dollar terms, they hauled 77 percent of all movable freight in the United States. 95/ The Department of Transportation has estimated that between 5 and 15 percent of all trucks on the road at any time are carrying hazardous materials. 96/ Nevertheless, there is no effective system to ensure that all truck drivers have the skill, knowledge, and inclination to drive safely.

The components of an effective driver qualification system already exist. All that is needed is to develop them sufficiently and to coordinate them. There are authorities on the Federal, State, and private-sector level to:

- -- Provide training.
- -- Establish standards for knowledge, skill, physical condition, and driving record.
- -- Enforce those standards by screening drivers, both initially and recurrently.

Truck Driver Training

Training is available from proprietary, State, and motor carrier-owned schools, but at present there are few safeguards to ensure quality of instruction and insufficient incentives for a prospective truck driver to enroll in any school. Even though truck driving is a specialized skill, with the potential for disastrous consequences when performed improperly, there is no training requirement for the practitioners of that skill.

Two recent developments hold the promise of bringing significant improvement to the field of truck driver training: the Proposed Minimum Standards and Model Curriculum for Training Tractor-Trailer Drivers, introduced by the Bureau of Motor Carrier Safety, and the establishment of the Professional Truck Driver Institute.

95/ U.S. Department of Labor (see footnote 13); Donohue, Thomas J., President, American Trucking Associations, Statement before the Committee on Commerce, Science and Transportation, United States Senate, October 29, 1985.
96/ Safety Effectiveness Evaluation--"Federal and State Enforcement Efforts in Hazardous Materials Transportation by Truck" (NTSB-SEE-81-2).

Three elements are needed to significantly upgrade the quality of formal truck driver training programs and to increase their utilization throughout the industry:

-- A single, universally accepted set of criteria against which all training schools can be measured for accreditation.

-- A system of evaluating each school and certifying whether it has met the criteria.

-- A means of encouraging prospective truck drivers to obtain training, and only at schools that meet the criteria.

The BMCS Proposed Minimum Standards appear well suited to satisfy the first of these requirements, and the Model Curriculum offers a ready-made plan with which a school could meet those Standards. Once members of the trucking and training industries have had the chance to examine and work with these materials, they may point out ways to improve the Standards and Curriculum. It could be an important role of the Professional Truck Driver Institute to develop such suggestions and submit them to the BMCS. The scheduled BMCS validation study and cost/benefit analysis of the training materials also may reveal needed improvements. The study and analysis also are needed to establish the authority of the Standards for school-evaluation purposes. The Department of Transportation, therefore, should begin these reviews as soon as possible, so that drivers, school administrators, and, ultimately, all highway users can soon enjoy the benefits of a successful project.

The BMCS Proposed Minimum Standards are already being used by some schools in shaping their curricula. Once validation and any necessary revisions are complete, all schools should be measured against the Standards. The Department of Transportation will need to develop or designate a system of conducting those evaluations. The Professional Truck Driver Institute is a promising source for such a system. It may be advisable for the Institute to work in conjunction with accrediting bodies already in existence, such as the National Association of Trade and Technical Schools and the National Home Study Council, because these groups have experience in assessing schools' business and educational practices. But the area of greatest safety concern, course content, is the one where the Institute can be expected to have preeminent expertise. If the authority is granted by DOT, it is the Institute that should be responsible for authoritatively gauging whether each truck driver training school measures up to the BMCS Standards. The Standards also should be adopted by State governments as criteria in licensing training schools.

While a single set of standards is needed with which to evaluate training schools, it must be made clear to those who train and hire truck drivers that these standards serve strictly as minimum performance levels. The task of the Professional Truck Driver Institute should therefore be not merely to obtain compliance with the BMCS Standards; rather, the Institute should encourage industry to exceed those performance levels substantially.

The Safety Board believes that truck drivers, as professional vehicle operators, should be subject to a training requirement. The new Standards provide the means of imposing that requirement. Part 391 of the FMCSR should stipulate that all drivers under its jurisdiction be trained in a program that meets these Standards. To qualify under the Regulations, drivers also should be required to demonstrate that they have mastered the skills they were taught in training.

Guidance for prospective students will always be an important part of the training process, but particularly so until a training requirement is adopted. With the Standards in place, along with evaluators to apply them, prospective training school students must be strongly advised to enroll only in schools that have been approved. The Safety Board urges that the National Safety Council join with other organizations involved in promoting safe truck driving to develop an effective and far-reaching guidance program.

However, efforts to improve the quality and increase the prevalence of formal training for truck drivers certainly do not have to wait for validation of the BMCS Standards and Curriculum, or for adoption of a Federal training requirement. Even though they have not yet been validated, the BMCS materials are already publicly available. Training schools and motor carriers can adhere at once to the Standards and adopt the Curriculum, a step that will serve immediately to upgrade the overall level of truck driver education in this country. As noted above, some schools and motor carriers have already begun adopting the materials, and the Safety Board urges all others to follow suit as soon as possible.

While a Federal training requirement based on the validated BMCS Standards will ultimately do the most to ensure that all truck drivers are adequately trained, measures are both possible and urgently needed today to help prevent inadequately trained people from driving trucks. Motor carriers should immediately adopt policies to hire only drivers who have been formally trained. Later, when there are validated BMCS Standards, motor carriers should stipulate that the training be in programs that meet the Standards, but it is important that companies not wait for completion of the validation process to begin requiring that their drivers obtain formal training. Shippers should also impose such requirements on the drivers they hire.

Insurance companies can take similar immediate action, and in doing so, provide strong encouragement to promote formal training. They can offer financial incentives, such as reduced premiums, to motor carrier policy holders whose drivers have received formal training. At such time that the BMCS Standards are validated, the insurance companies can modify the incentive system, offering the rate reductions only when the driver training has met the Standards. But, as with the trucking companies, it is in the interest of public safety that the insurance companies begin such programs as soon as possible and not delay by waiting for completion of the validation study.

Another safety measure that can proceed without delay is development of truck driver apprenticeship programs. Once such nationally organized programs are available, insurance companies can also support them through financial incentive systems.

Driver Standards and Screening

After training, the other two functions in driver qualification are establishing and applying driver standards. These functions are performed through both State and Federal regulations, and may be attempted by some private-sector programs, primarily the Professional Truck Driver Institute. There are numerous loopholes at both the Federal and State levels, which allow unqualified operators to drive trucks. And so far, neither the Institute nor any other private group appears ready to administer a far-reaching driver certification program.

The congressionally mandated review of the FMCSR provides the opportunity to eliminate many of the loopholes in the Federal driver standards. The Safety Board has offered its views on the changes that are needed. For example, defining fully the information motor carriers must request from a driver applicant's previous employers, and stipulating that any traffic offense that would disqualify a driver if committed while driving a commercial vehicle on-duty should have the same effect if committed at any time and with any vehicle.

To eliminate the loopholes currently found at the State level, the Safety Board believes that every commercial vehicle operator should be subject to a licensing system that:

-- Is classified by vehicle factors, such as weight and configuration.

-- Includes a special license or license endorsement for hazardous materials drivers and for drivers of vehicles with special handling characteristics.

-- Thoroughly tests an applicant's vision, vehicle-handling ability, and knowledge of safe practice.

-- Fully retests the driver at each license renewal.

-- Prevents a driver from holding more than one license at a time, and makes sure that all traffic violations are included in a driver's record.

Incorporating all of these features into a national licensing program will promote uniformity and efficient recordkeeping. A training requirement and possibly an apprenticeship program also should be included, when the materials on which they would be based are available. However, a national licensing program can be successfully developed and implemented without waiting for inclusion of the training and apprenticeship components. That means work can and should begin immediately on program elements, such as uniform license eligibility criteria; uniform truck driver performance and knowledge test procedures, for use throughout the national system; a standard truck driver's manual, to be issued as part of the licensing process; and a system, involving both State and Federal authorities, for testing, license issuance, and keeping records on all license holders.

Development of a national truck driver license should serve to coordinate the standard setting and screening functions currently performed nearly independently by the states and the Federal government. One effective qualification system is preferable to two or more faulty ones. Enforcement of the requirements in Part 391 of the FMCSR (with a training requirement added) would be improved if they are made criteria for national licensure. Areas of overlap may also be eliminated. For example, with an adequate national system of initial and recurrent testing of driver knowledge and performance, it may be justifiable to remove or alter the testing required by Part 391. However, until such a national program is in place, those current Federal requirements should be enhanced as recommended in this study, not diminished.

If a national licensing system is developed that effectively serves to bar unqualified individuals from driving trucks, the need for a voluntary certification program may be reduced. Without the national license, though, certification would clearly be valuable. Therefore, until the future of the national license is determined, the Professional Truck Driver Institute is correct in its decision to turn first to training school issues, and after that to the possibility of conducting driver certification.

In order for a licensing system to be effective, all traffic violations committed by an individual must be included in that person's record. The present system is being undermined because drivers are able to obtain and keep licenses from more than one State, and thereby prevent the authorities from knowing their complete record. The NDR is intended to prevent this by enabling State driver licensing officials to exchange motor vehicle driving records, particularly license suspensions and revocations. However, the NDR suffers from incomplete information and processing times that are too lengthy to be useful, especially to those states that issue licenses over the counter. The NHTSA has been mandated by Congress to develop an automated NDR that will enable the States to have on-line access to the records of other States. This has been a lengthy project which is still years from completion. Critical to the success of NHTSA's effort is the cooperation of the State motor vehicle licensing agencies, since they will bear primary responsibility for maintaining and transmitting records in the new NDR. In addition to the NDR, there are a number of private search services available to motor carriers that can provide prompt information for use in conducting federally required annual driver reviews and in initial hiring decisions. These services can be an important complement to the NDR, although they are neither intended to nor capable of substituting for the NDR.

FINDINGS

1. Many truck driver training schools provide fully adequate instruction, but some do not. There is no system to evaluate training schools properly and to inform prospective students about the results.

2. The Federal Highway Administration's Bureau of Motor Carrier Safety has developed a set of Proposed Minimum Standards for Training Tractor-Trailer Drivers, along with a Model Curriculum based on the Standards. These materials can already be used to improve truck driver training programs. In addition, they could constitute a uniform standard against which driver training schools could be judged. However, the applicability of the Standards and Curriculum to that purpose will be limited until a knowledge test battery and road test procedure based on the curriculum are developed, and the materials are subjected to a validation study and cost/benefit analysis.

3. There is no Federal requirement that drivers of heavy trucks receive any degree of formal training.

4. No nationally organized truck driver apprenticeship training programs have been established by labor and management organizations.

5. Truck drivers working exclusively within a single city or "commercial zone" are exempt from Federal driver qualification regulations. This exemption applies regardless of truck size. It is only in Hawaii, or when certain amounts of hazardous materials are transported, that the exemption does not apply.

6. A commercial driver may be disqualified under the Federal Motor Carrier Safety Regulations only if his or her State driving privilege has been suspended or revoked, or if he or she committed one of four types of traffic violations. With this limitation, a disqualification judgment cannot be made based on all the evidence to be found in a driver's record.

7. The Federal Motor Carrier Safety Regulations permit a driver who commits a specified disqualifying offense to escape disqualification if the individual was driving a noncommercial vehicle, or was driving a commercial vehicle off-duty, at the time of the offense.

8. The Federal Motor Carrier Safety Regulations require a motor carrier to investigate the background of a driver applicant by contacting the applicant's former employers, but the Regulations do not define the information a motor carrier is required to request.

9. Initial investigation of prospective driver employees and the federally required annual review of drivers' traffic records will become more comprehensive when the National Driver Register is able to reveal a driver's serious offenses and adverse license actions, and when motor carriers have full access to the system.

10. The Federal Motor Carrier Safety Regulations provide unclear guidelines about the purpose of the motor carrier's annual driver record review and the procedures to be followed in conducting that review.

11. Truck drivers who own their own vehicles are required under the Federal Motor Carrier Safety Regulations to review their own driving records each year. When an owner-operator takes the required performance test, someone other than that driver must administer the test, but there are no regulations to ensure the examiner's objectivity. Owner-operators do not have to take the knowledge examination required of other drivers.

12. Although the Federal Motor Carrier Safety Regulations require that motor carriers administer a knowledge examination to newly hired drivers, the individuals taking the examination are free to consult any materials, including the answer sheet, during the test, and no adverse action may be taken against them on the basis of their test scores. Some of the examination questions do not concern situations encountered by most drivers, and some questions do not deal with aspects of safe operating practice.

13. The Federal Motor Carrier Safety Regulations spell out the physical conditions that disqualify a driver from service, but there is no requirement for use of a standard form indicating to examining physicians what those conditions are. The regulations also lack a provision prohibiting a driver from falsifying or omitting medical information in connection with the required physical examination.

14. Individuals who are not regularly employed by a motor carrier and who drive commercial vehicles on an occasional basis are exempt from several of the qualification standards of the Federal Motor Carrier Safety Regulations.

15. There is substantial variance in State driver licensing practice, with some States failing to issue licenses based on the characteristics of the vehicle to be driven. Some States that do issue licenses classified by vehicle type fail to require that performance tests be given on a vehicle corresponding to the type specified in the license.

16. The performance and knowledge tests in many States are inadequate for accurately gauging an applicant's qualifications for licensure as a truck driver.

17. Many States do not require a full retest of a truck driver's knowledge, performance, and vision when he or she is applying for license renewal.

18. Transporting hazardous materials safely requires special skill and knowledge on the part of the driver. The same can be said for driving certain vehicles with special handling characteristics, such as tankers.

19. Licensing practices in many States are such that it is possible for a driver to obtain more than one license at a time, from different States, thus enabling that person to hide his or her true driving record from authorities by dividing reported traffic violations among the licenses.

20. The National Driver Register is intended as a clearinghouse of information on problem drivers, enabling a State licensing agency to determine in a timely manner whether an applicant for a driver license has had any action taken against his or her driving privileges in other states.

21. Although the National Highway Traffic Safety Administration is not able to meet the congressionally mandated schedule for automating the National Driver Register (NDR), it is adhering to the revised schedule it proposed in 1984. Private firms would not be able to make the automated NDR operational at a date earlier than NHTSA will be able to do so.

22. The pace at which the automated NDR is implemented will depend largely on the speed with which the States are able to prepare their license recordkeeping systems for participation in the new system. One way in which the States can prepare for the automated NDR is to use the Rapid Response System to access the current NDR files.

23. There are private companies that provide assistance to motor carriers in screening the driving records of current or prospective employees. The services provided by these firms are complementary to the function of the NDR, but are not a substitute for it.

RECOMMENDATIONS

Legislation is pending in Congress to establish a National Driver License Program for commercial drivers. The Safety Board supports that concept and believes that under such a program:

1) State agencies should test applicants' knowledge and performance, and check their qualifications, using uniform standards and test procedures developed by the Department of Transportation. A requirement for formal training should be included in the prerequisites for obtaining a national license.

2) The functions of issuing the national license, maintaining driver records, and suspending and revoking licenses should be shared by Federal and state authorities, according to a plan developed by the Department of Transportation.

3) Applicants for the National Driver License should be required to surrender previously issued state driver licenses. Once a driver would be issued a national license, all traffic violations, regardless of vehicle driven, should be recorded in a single corresponding file.

4) A recordkeeping system should be developed for those files, identifying all license holders, so that no commercial driver could obtain more than one license.

Therefore, the National Transportation Safety Board made the following recommendations:

--to the Secretary of Transportation:

Develop a program under which State and Federal authorities would jointly administer a National Driver License for commercial truck drivers. Such a program should implement the one-license/one-record concept, and a system should be developed that will keep track of the records of all individuals holding a National Driver License. (Class II, Priority Action) (H-86-8)

Develop uniform licensing criteria, a set of uniform performance and knowledge test procedures, and a driver's manual for use by State agencies in a National Driver License program for commercial truck drivers. The criteria should be derived from the driver qualification standards of Part 391 of the Federal Motor Carrier Safety Regulations and should also include formal training as a prerequisite for licensure. The test procedures should be based on a classified licensing system, with separate licenses or license endorsements for individuals transporting hazardous materials or driving vehicles with special handling characteristics. (Class II, Priority Action) (H-86-9)

--to the American Association of Motor Vehicle Administrators:

Develop recommendations on how a National Driver License for commercial truck drivers could be administered jointly by State and Federal authorities, and submit these recommendations to the Secretary of Transportation. (Class II, Priority Action) (H-86-10)

Urge all States to implement the Rapid Response System of the National Driver Register (NDR) as soon as feasible, both to obtain prompter access to NDR records and to prepare for use of the Problem Driver Pointer System when it becomes available. (Class II, Priority Action) (H-86-11)

--to the American Insurance Association, the Alliance of American Insurers, the National Association of Independent Insurers, and the Insurance Services Office, Inc.:

> Undertake a program encouraging member companies to offer financial incentives such as reduced premiums to motor carrier policy holders whose drivers have received formal training. Once the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers have been validated, stipulate that the training be conducted in programs that meet the Standards. Encourage member companies to offer similar incentives for drivers who have participated in apprenticeship programs once such programs become available. (Class II, Priority Action) (H-86-12)

--to the Canal Insurance Company and American International Group Transport, Inc.:

> Undertake a program to offer financial incentives such as reduced premiums to motor carrier policy holders whose drivers have received formal training. Once the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers have been validated, stipulate that the training be conducted in programs that meet the standards. Offer similar incentives for drivers who have participated in apprenticeship programs once such programs become available. (Class II, Priority Action) (H-86-13)

--to the Professional Truck Driver Institute of the Trucking Industry Alliance:

> Compile and submit to the Bureau of Motor Carrier Safety (BMCS) the views of members of the trucking and truck driver training industries concerning any needed revisions in the BMCS Proposed Minimum Standards and Model Curriculum for Training Tractor-Trailer Drivers. (Class II, Priority Action) (H-86-14)

> Develop a program for evaluating truck driver training schools, using the Bureau of Motor Carrier Safety Minimum Standards as criteria, once the standards have been validated. Such a program could be established in coordination with the National Association of Trade and Technical Schools and the National Home Study Council. (Class II, Priority Action) (H-86-15)

> Work with the National Safety Council to develop a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training, and the factors to consider in selecting a truck driver training school. The program also should inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-16)

--to the National Safety Council:

> Coordinate development of a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training and the factors to

consider in selecting a truck driver training school. The program should also inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-17)

--to the American Trucking Associations, Inc.:

Work with the National Safety Council to develop a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training, and the factors to consider in selecting a truck driver training school. The program also should inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-18)

In cooperation with the International Brotherhood of Teamsters, develop guidelines and requirements for an apprenticeship training program for commercial truck drivers. (Class II, Priority Action) (H-86-19)

Undertake a program urging member companies to hire only drivers who have received formal truck driver training. Once the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers have been validated, stipulate that only drivers who have graduated from schools that have met the criteria established by those standards should be hired. The program also should encourage member firms to participate in apprenticeship training programs. (Class II, Priority Action) (H-86-20)

--to the Private Truck Council of America, Inc.:

Work with the National Safety Council to develop a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training, and the factors to consider in selecting a truck driver training school. The program also should inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-21)

Undertake a program urging member companies to hire only drivers who have received formal truck driver training. Once the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers have been validated, stipulate that only drivers who have graduated from schools that have met the criteria established by those standards should be hired. The program also should encourage member firms to participate in apprenticeship training programs. (Class II, Priority Action) (H-86-22)

--to the Owner-Operator Independent Drivers Association of America and the National Association of Truck Driving Schools:

> Work with the National Safety Council to develop a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training, and the factors to consider in selecting a truck driver training school. The program also should inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-23)

--to the International Brotherhood of Teamsters:

> Work with the National Safety Council to develop a guidance program designed to reach as many people as possible who are considering a career in commercial truck driving. The program should explain the considerations in such a vocational choice, the value of formal training, and the factors to consider in selecting a truck driver training school. The program also should inform prospective students about which schools have met the criteria established by the Bureau of Motor Carrier Safety Minimum Standards. (Class II, Priority Action) (H-86-24)

> In cooperation with the American Trucking Associations, Inc., develop guidelines and requirements for an apprenticeship training program for commercial truck drivers. (Class II, Priority Action) (H-86-25)

--to the United States Department of Labor:

> Draft and issue national standards for apprenticeship programs in commercial truck driving, and include commercial truck driving in the Department of Labor's list of Occupations Recognized as Apprenticeable. (Class II, Priority Action) (H-86-26)

--to the Federal Highway Administration:

> Expedite development of a battery of knowledge test questions and performance test procedures, based on the Model Curriculum of the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers, and begin as soon as possible the validation study and cost/benefit analysis of the Proposed Standards and Model Curriculum. (Class II, Priority Action) (H-86-27)

> Undertake a program urging all States to impose licensing requirements on the truck driver training schools in their jurisdictions, and, once the Bureau of Motor Carrier Safety Proposed Minimum Standards for Training Tractor-Trailer Drivers have been validated, urge all States to adopt these standards in evaluating truck driver training schools when they apply for State licensure. (Class II, Priority Action) (H-86-28)

Develop a program for evaluating truck driver training schools, using the Bureau of Motor Carrier Safety Proposed Minimum Standards, once they have been validated. If the Professional Truck Driver Institute of the Trucking Industry Alliance, or another body, is designated to perform this evaluation function, provide advice and support to that organization. (Class II, Priority Action) (H-86-29)

Eliminate the exemption from Part 391 of the Federal Motor Carrier Safety Regulations granted to commercial drivers who work exclusively within a single city or commercial zone. (Class II, Priority Action) (H-86-30)

Clarify the purpose and procedures of the annual review of employee drivers' traffic records, which Section 391.25 of the Federal Motor Carrier Safety Regulations requires of motor carriers. (Class II, Priority Action) (H-86-31)

Stipulate in the Federal Motor Carrier Safety Regulations that no driver may screen his or her own driving record in the annual review required by the regulations. Designate an impartial source to which commercial truck drivers who work independently must turn for the annual review. This same source should administer the required road test to independent operators. Require that independent operators using this source take the knowledge examination required of other drivers. (Class II, Priority Action) (H-86-32)

Restructure the written examination required of commercial drivers by the Federal Motor Carrier Safety Regulations. A battery of test questions should be developed dealing with issues of safe operating practice frequently encountered by most drivers. Drivers should be prohibited from consulting answer sheets or other reference materials while taking the examination, and a minimum passing score should be established. (Class II, Priority Action) (H-86-33)

Eliminate the exemptions from portions of the Federal Motor Carrier Safety Regulations granted to drivers not regularly employed as drivers who operate commercial vehicles on an intermittent, casual, or occasional basis. (Class II, Priority Action) (H-86-34)

--to the National Highway Traffic Safety Administration:

Take necessary action to assure that the Problem Driver Pointer System is fully operational and available to the States for their use by the Department of Transportation's published target date of February 1989. (Class II, Priority Action) (H-86-35)

Encourage State driver licensing authorities to use the Rapid Response System feature of the National Driver Register (NDR) at the earliest practicable date both to obtain prompter access to NDR records and to prepare for use of the Problem Driver Pointer System when it becomes available. (Class II, Priority Action) (H-86-36)

> Actively work with the States to prepare them to participate in the Problem Driver Pointer System by encouraging the adoption of necessary statutory changes, provision of adequate budget and other resources, implementation of appropriate administrative and technical changes, and other preparations as needed. (Class II, Priority Action) (H-86-37)

Also, the Safety Board reiterated Safety Recommendation H-83-21 made to the Bureau of Motor Carrier Safety on May 3, 1983:

> Upon completion of the testing of the Tractor-Trailer Driver Training Standards, the Sample Model Curriculum, and final examination criteria,. amend Part 391, "Qualifications of Drivers," of the Federal Motor Carrier Safety Regulations to include criteria and standards for the training of tractor-trailer drivers.

and Safety Recommendation H-83-68 made to the Federal Highway Administration on December 5, 1983:

> Revise Federal Motor Carrier Safety Regulation 49 CFR 391.43 to incorporate a provision, similar to that specified in 14 CFR 67.20(a) for airmen medical certification, which will prohibit the falsification or omission of medical information in connection with a medical certification physical examination.

BY THE NATIONAL TRANSPORTATION SAFETY BOARD

/s/ JIM BURNETT
Chairman

/s/ PATRICIA A. GOLDMAN
Vice Chairman

/s/ JOHN K. LAUBER
Member

/s/ JOSEPH T. NALL
Member

April 17, 1986

APPENDIXES

APPENDIX A

FMCSR, PART 391

person or persons having personal knowledge of the material covered thereby.

(41 FR 34969, Aug. 18, 1976)

PART 391—QUALIFICATIONS OF DRIVERS

Subpart A—General

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391.2 General exemptions.
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391.61 Drivers who were regularly employed before January 1, 1971.
391.62 Drivers of lightweight vehicles.
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391.65 Drivers furnished by other motor carriers.
391.67 Drivers of articulated (combination) farm vehicles.
391.69 Drivers operating in Hawaii.
391.71 Intrastate drivers of vehicles transporting combustible liquids.

AUTHORITY: Sec. 204, Interstate Commerce Act, as amended, (49 U.S.C. 304) sec. 6, Department of Transportation Act, (49 U.S.C. 1655), delegation of authority in 49 CFR Part 1 and § 389.4, unless otherwise noted.

SOURCE: 35 FR 6460, Apr. 22, 1970, unless otherwise noted.

EDITORIAL NOTE: For nomenclature changes see 39 FR 32561, Sept. 9, 1974.

Subpart A—General

§ 391.1 Scope of the rules in this part; additional qualifications; duties of carrier-drivers.

(a) The rules in this part establish minimum qualifications for persons who drive motor vehicles as, for, or on behalf of motor carriers. The rules in this part also establish minimum duties of motor carriers with respect to the qualifications of their drivers.

(b) The rules in this part, and in other parts of this subchapter, do not prevent a motor carrier from imposing more stringent or additional qualifications, requirements, examinations, or certificates than are imposed by those rules.

(c) A motor carrier who employs himself as a driver must comply with both the rules in this part that apply to motor carriers and the rules in this part that apply to drivers.

§ 391.2 General exemptions.

(a) *Intracity operations.* The rules in this part do not apply to a driver wholly engaged in exempt intracity operations as defined in § 390.16 of this chapter.

(b) *Passenger car operations.* The rules in this part do not apply to a driver who drives only a motor vehicle that—

(1) Is a passenger-carrying vehicle built on a passenger car chassis with a seating capacity of 10 or less persons, including the driver; and

(2) Is not transporting passengers for hire; and

(3) Is not transporting hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title.

(c) *Certain farm vehicle drivers.* The rules in this part do not apply to a farm vehicle driver except a farm vehicle driver who drives an articulated (combination) motor vehicle that has a gross weight, including its load of more than 10,000 pounds. (For limited exemptions for farm vehicle drivers of heavier articulated vehicles see § 391.67.)

(d) *Farm custom operations.* The rules in this part do not apply to a driver who drives a motor vehicle controlled and operated by a person engaged in custom-harvesting operations, if the vehicle is used to—

(1) Transport farm machinery, supplies, or both, to or from a farm for custom-harvesting operations on a farm; or

(2) Transport custom-harvested crops to storage or market.

(e) *Apiarian industries.* The rules in this part do not apply to a driver who is operating a motor vehicle controlled and operated by a beekeeper engaged in the seasonal transportation of bees.

(f) *Lightweight mail truck drivers.* The rules in this part do not apply to a driver who drives only a motor vehicle that—

(1) Is used exclusively to transport mail under contract with the U.S. Postal Service; and

(2) Has a manufacturer's gross vehicle weight rating of 10,000 pounds or less.

[36 FR 24219, Dec. 22, 1971, as amended at 37 FR 26112, Dec. 8, 1972]

§ 391.3 Definitions.

(a) The term "motor carrier" includes a motor carrier and the agents, officers, representatives, and employees of a motor carrier who are responsible for the hiring, supervision, training, assignment, or dispatching of drivers.

(b) The term "Director" means the Director of the Bureau of Motor Carrier Safety.

(c) A motor carrier "employs" a person as a driver within the meaning of this part whenever it requires or permits that person to drive a motor vehicle (whether or not the vehicle is owned by the motor carrier) in furtherance of the business of the motor carrier.

(d) The term "farm vehicle driver" means a person who drives only a motor vehicle that is—

(1) Controlled and operated by a farmer; and

(2) Being used to transport either—

(i) Agricultural products; or

(ii) Farm machinery, farm supplies, or both, to or from a farm; and

(3) Not being used in the operations of a common or contract carrier; and

(4) Not carrying hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title; and

(5) Either—

(i) A vehicle having a gross weight, including its load, of 10,000 pounds or less; or

(ii) A vehicle being used within 150 miles of the farmer's farm.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 24219, Dec. 22, 1971]

§ 391.5 Familiarity with rules.

Each motor carrier and each driver shall know, and be familiar with, the rules in this part.

§ 391.7 Aiding or abetting violations.

No person shall aid, abet, encourage, or require a motor carrier or a driver to violate the rules in this part.

Subpart B—Qualification and Disqualification of Drivers

§ 391.11 Qualifications of drivers.

(a) A person shall not drive a motor vehicle unless he is qualified to drive a motor vehicle. Except as provided in § 391.63, a motor carrier shall not require or permit a person to drive a motor vehicle unless that person is qualified to drive a motor vehicle.

(b) Except as provided in Subpart G of this part, a person is qualified to drive a motor vehicle if he—

(1) Is at least 21 years old;

(2) Can read and speak the English language sufficiently to converse with

the general public, to understand highway traffic signs and signals in the English language, to respond to official inquiries, and to make entries on reports and records;

(3) Can, by reason of experience, training, or both, safely operate the type of motor vehicle he drives;

(4) Can, by reason of experience, training, or both, determine whether the cargo he transports (including baggage in a passenger-carrying motor vehicle) has been properly located, distributed, and secured in or on the motor vehicle he drives;

(5) Is familiar with methods and procedures for securing cargo in or on the motor vehicle he drives.

(6) Is physically qualified to drive a motor vehicle in accordance with Subpart E—Physical Qualifications and Examinations of Part 391;

(7) Has been issued a currently-valid motor vehicle operator's license or permit;

(8) Has prepared and furnished the motor carrier that employs him with the list of violations or the certificate as required by § 391.27;

(9) Is not disqualified to drive a motor vehicle under the rules in § 391.15;

(10) Has successfully completed a driver's road test and has been issued a certificate of driver's road test in accordance with § 391.31, or has presented an operator's license or a certificate of road test which the motor carrier that employs him has accepted as equivalent to a road test in accordance with § 391.33;

(11) Has taken a written examination and has been issued a certificate of written examination in accordance with § 391.35, or has presented a certificate of written examination which the motor carrier that employs him has accepted as equivalent to a written examination in accordance with § 391.37; and

(12) Has completed and furnished the motor carrier that employs him with an application for employment in accordance with § 391.21.

[35 FR 6460, Apr. 22, 1970, amended at 35 FR 17420, Nov. 13, 1970; 35 FR 19181, Dec. 18, 1970; 36 FR 222, Jan. 7, 1971, 36 FR 24220, Dec. 22, 1971; 45 FR 46424, July 10, 1980]

§ 391.15 Disqualification of drivers.

(a) *General.* A driver who is disqualified shall not drive a commercial motor vehicle. A motor carrier shall not require or permit a driver who is disqualified to drive a commercial motor vehicle.

(b) *Disqualification for loss of driving privileges.* A driver is disqualified for the duration of his loss of his privilege to operate a commercial motor vehicle on public highways, either temporarily or permanently, by reason of the revocation, suspension, withdrawal, or denial of an operator's license, permit, or privilege, until that operator's license, permit, or privilege is restored by the authority that revoked, suspended, withdrew, or denied it.

(c) *Disqualification for criminal misconduct*—(1) *General rule.* A driver who is convicted of, or forfeits bond or collateral upon a charge of, a disqualifying offense specified in paragraph (c)(2) of this section is disqualified for the period of time specified in paragraph (c)(3) of this section if—

(i) The offense was committed after December 31, 1970; and

(ii) The offense was committed while the driver was driving a motor vehicle in the employ of a motor carrier or in furtherance of a commercial enterprise in interstate, intrastate, or foreign commerce.

(2) *Disqualifying offenses.* The following offenses are disqualifying offenses:

(i) Operating a motor vehicle while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a derivative of a narcotic drug.

(ii) A crime involving the knowing transportation, knowing possession, or unlawful use of amphetamines, narcotic drugs, formulations of an amphetamine, or derivatives of narcotic drugs.

(iii) Leaving the scene of an accident which resulted in personal injury or death.

(iv) A felony involving the use of a motor vehicle.

(3) *Duration of disqualification for criminal misconduct*—(i) *First offenders.* A driver is disqualified for 1 year after the date of his conviction or for-

feiture of bond or collateral if, during the 3 years preceding that date, he was not convicted of, and did not forfeit bond or collateral upon a charge of, an offense that would disqualify him under the rules of this section.

(ii) *Subsequent offenders.* A driver is disqualified for 3 years after the date of his conviction or forfeiture of bond or collateral if, during the 3 years preceding that date, he was convicted of, or forfeited bond or collateral upon a charge of, an offense that would disqualify him under the rules in this section.

[37 FR 24902, Nov. 23, 1972]

Subpart C—Background and Character

§ 391.21 Application for employment.

(a) Except as provided in Subpart G of this part, a person shall not drive a motor vehicle unless he has completed and furnished the motor carrier that employs him with an application for employment that meets the requirements of paragraph (b) of this section.

(b) The application for employment shall be made on a form furnished by the motor carrier. Each application form must be completed by the applicant, must be signed by him, and must contain the following information:

(1) The name and address of the employing motor carrier;

(2) The applicant's name, address, date of birth, and social security number;

(3) The addresses at which the applicant has resided during the 3 years preceding the date on which the application is submitted;

(4) The date on which the application is submitted;

(5) The issuing State, number, and expiration date of each unexpired motor vehicle operator's license or permit that has been issued to the applicant;

(6) The nature and extent of the applicant's experience in the operation of motor vehicles, including the type of equipment (such as buses, trucks, truck tractors, semitrailers, full trailers, and pole trailers) which he has operated;

(7) A list of all motor vehicle accidents in which the applicant was involved during the 3 years preceding the date the application is submitted, specifying the date and nature of each accident and any fatalities or personal injuries it caused;

(8) A list of all violations of motor vehicle laws or ordinances (other than violations involving only parking) of which the applicant was convicted or forfeited bond or collateral during the 3 years preceding the date the application is submitted;

(9) A statement setting forth in detail the facts and circumstances of any denial, revocation, or suspension of any license, permit, or privilege to operate a motor vehicle that has been issued to the applicant, or a statement that no such denial, revocation, or suspension has occurred;

(10) A list of the names and addresses of the applicant's employers during the 3 years preceding the date the application is submitted, together with the dates he was employed by, and his reason for leaving the employ of, each employer; and

(11) The following certification and signature line, which must appear at the end of the application form and be signed by the applicant:

This certifies that this application was completed by me, and that all entries on it and information in it are true and complete to the best of my knowledge.

_____
(Date)

_____
(Applicant's signature)

(c) A motor carrier may require an applicant to provide information in addition to the information required by paragraph (b) of this section on the application form.

(d) Before an application is submitted, the motor carrier shall inform the applicant that the information he provides in accordance with paragraph (b)(10) of this section may be used, and the applicant's prior employers may be contacted, for the purpose of investigating the applicant's background as required by § 391.23.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

§ 391.23 Investigation and inquiries.

(a) Except as provided in Subpart G of this part, each motor carrier shall make the following investigations and inquiries with respect to each driver it employs, other than a person who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971:

(1) An inquiry into the driver's driving record during the preceding 3 years to the appropriate agency of every State in which the driver held a motor vehicle operator's license or permit during those 3 years; and

(2) An investigation of the driver's employment record during the preceding 3 years.

(b) The inquiry to State agencies required by paragraph (a)(1) of this section must be made within 30 days of the date the driver's employment begins and shall be made in the form and manner those agencies prescribe. A copy of the response by each State agency, showing the driver's driving record or certifying that no driving record exists for that driver, shall be retained in the carrier's files as part of the driver's qualification file.

(c) The investigation of the driver's employment record required by paragraph (a) (2) of this section must be made within 30 days of the date his employment begins. The investigation may consist of personal interviews, telephone interviews, letters, or any other method of obtaining information that the carrier deems appropriate. Each motor carrier must make a written record with respect to each past employer who was contacted. The record must include the past employer's name and address, the date he was contacted, and his comments with respect to the driver. The record shall be retained in the motor carrier's files as part of the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

§ 391.25 Annual review of driving record.

Except as provided in Subpart G of this part, each motor carrier shall, at least once every 12 months, review the driving record of each driver it employs to determine whether that driver meets minimum requirements for safe driving or is disqualified to drive a motor vehicle pursuant to § 391.15. In reviewing a driving record, the motor carrier must consider any evidence that the driver has violated applicable provisions of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. The motor carrier must also consider the driver's accident record and any evidence that the driver has violated laws governing the operation of motor vehicles, and must give great weight to violations, such as speeding, reckless driving, and operating while under the influence of alcohol or drugs, that indicate that the driver has exhibited a disregard for the safety of the public. A note, setting forth the date upon which the review was performed and the name of the person who reviewed the driving record, shall be included in the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

§ 391.27 Record of violations.

(a) Except as provided in Subpart G of this part, each motor carrier shall, at least once every 12 months, require each driver it employs to prepare and furnish it with a list of all violations of motor vehicle traffic laws and ordinances (other than violations involving only parking) of which the driver has been convicted or on account of which he has forfeited bond or collateral during the preceding 12 months.

(b) Each driver shall furnish the list required in accordance with paragraph (a) of this section. If the driver has not been convicted of, or forfeited bond or collateral on account of, any violation which must be listed, he shall so certify.

(c) The form of the driver's list or certification shall be prescribed by the motor carrier. The following form may be used to comply with this section:

MOTOR VEHICLE DRIVER'S CERTIFICATION

[I certify that the following is a true and complete list of traffic violations (other than parking violations) for which I have been convicted or forfeited bond or collateral during the past 12 months]

Date of conviction	Offense	Location	Type of vehicle operated

If no violations are listed above, I certify that I have not been convicted or forfeited bond or collateral on account of any violation required to be listed during the past 12 months.

(Date of certification)	(Driver's signature)
(Motor carrier's name)	(Motor carrier's address)
(Reviewed by: Signature)	(Title)

(d) The motor carrier shall retain the list or certificate required by this section, or a copy of it, in its files as part of the driver's qualification file.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

Subpart D—Examinations and Tests

§ 391.31 Road test.

(a) Except as provided in §§ 391.33, 391.61, and 391.67, a person shall not drive a motor vehicle unless he has first successfully completed a road test and has been issued a certificate of driver's road test in accordance with this section.

(b) The road test shall be given by the motor carrier or a person designated by it. However, a driver who is a motor carrier must be given the test by a person other than himself. The test shall be given by a person who is competent to evaluate and determine whether the person who takes the test has demonstrated that he is capable of operating the vehicle, and associated equipment, that the motor carrier intends to assign him.

(c) The road test must be of sufficient duration to enable the person who gives it to evaluate the skill of the person who takes it at handling the motor vehicle, and associated equipment, that the motor carriers intends to assign to him. As a minimum, the person who takes the test must be tested, while operating the type of motor vehicle the motor carrier intends to assign him, on his skill at performing each of the following operations:

(1) The pretrip inspection required by § 392.7 of this subchapter;

(2) Coupling and uncoupling of combination units, if the equipment he may drive includes combination units;

(3) Placing the vehicle in operation;

(4) Use of the vehicle's controls and emergency equipment;

(5) Operating the vehicle in traffic and while passing other vehicles;

(6) Turning the vehicle;

(7) Braking, and slowing the vehicle by means other than braking; and

(8) Backing and parking the vehicle.

(d) The motor carrier shall provide a road test form on which the person who gives the test shall rate the performance of the person who takes it at each operation or activity which is a part of the test. After he completes the form, the person who gave the test shall sign it.

(e) If the road test is successfully completed, the person who gave it shall complete a certificate of driver's road test in substantially the form prescribed in paragraph (f) of this section.

(f) The form for the certificate of driver's road test is substantially as follows:

CERTIFICATION OF ROAD TEST

Driver's name ————————————
Social Security No ————————————
Operator's or Chauffeur's License No ——
State ————————————
Type of power unit ———— Type of trailer(s) ————————————

If passenger carrier, type of bus ————

This is to certify that the above-named driver was given a road test under my supervision on ————, 19—, consisting of approximately —— miles of driving.

It is my considered opinion that this driver possesses sufficient driving skill to operate safely the type of commercial motor vehicle listed above.

————————————

(Signature of examiner)

————————————

(Title)

————————————

(Organization and address of examiner)

(g) A copy of the certificate required by paragraph (e) of this section shall be given to the person who was examined. The motor carrier shall retain in the driver qualification file of the person who was examined—

(1) The original of the signed road test form required by paragraph (d) of this section; and

(2) The original, or a copy of, the certificate required by paragraph (e) of this section.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971]

§ 391.33 Equivalent of road test.

(a) In place of, and as equivalent to, the road test required by § 391.31, a person who seeks to drive a motor vehicle may present, and a motor carrier may accept—

(1) A valid operator's license which has been issued to him by a State that licenses drivers to operate specific categories of motor vehicles and which, under the laws of that State, licenses him after successful completion of a road test in a motor vehicle of the type the motor carrier intends to assign to him; or

(2) A copy of a valid certificate of driver's road test issued to him pursuant to § 391.31 within the preceding 3 years.

(b) If a driver presents, and a motor carrier accepts, a license or certificate as equivalent to the road test, the motor carrier shall retain a legible copy of the license or certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a license or certificate as equivalent to the road test to take a road test or any other test of his driving skill as a condition to his employment as a driver.

§ 391.35 Written examination.

(a) Except as provided in §§ 391.37, 391.61, and 391.67, a person shall not drive a motor vehicle unless he has first taken a written examination and has been issued a certificate of written examination in accordance with this section.

(b) The objective of the written examination is to instruct prospective drivers in the rules and regulations established by the Federal Highway Administration pertaining to commercial vehicle safety. It is an instructional tool only, and a person's qualifications to drive a motor vehicle under the rules in this part are not affected by his performance on the examination. Motor carriers subject to title VII of the Civil Rights Act of 1964 (42 U.S.C. 2000e-1-2000e-15), Executive Order 11246, or both, are cautioned that neither the written examination requirements in this section nor any other rule in this part authorizes a motor carrier to violate the provisions of the Act, the Executive Order, or regulations issued under them with respect to equal opportunity in employment.

(c) The written examination shall be given by the motor carrier or a person designated by it, on a form prescribed by the motor carrier.

(d) Prior to, and during, the examination, the person who takes it shall be permitted to examine and consult a copy of the Federal Motor Carrier Safety Regulations (Subchapter B of this title) in addition to any other material explaining the provisions of those regulations that the motor carrier may provide. There is no time limit for completing the examination, and persons taking it shall be so advised in advance.

(e) The examination shall consist of 66 questions, covering the examinee's knowledge of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. However, a person who is being examined with a

view to employment as the driver of a motor vehicle which will not transport hazardous materials of a type or quantity that requires the vehicle to be marked or placarded in accordance with § 177.823 of this title need not answer questions 58-66, inclusive. The questions given during the examination must be the questions published in Appendix C to this subchapter.[1]

(f) After the examinee completes the examination, the person who administered it shall advise him of the correct answers to any questions he failed to answer correctly. The motor carrier may also provide the examinee with such additional instruction in the pertinent regulations as appears to be warranted on the basis of his performance on the examination.

(g) The motor carrier, or the person who administered the examination on the motor carrier's behalf, shall provide every person who completes the examination with a certificate in substantially the following form:

CERTIFICATE OF WRITTEN EXAMINATION

This is to certify that the person whose signature appears below has completed the written examination under my supervision in accordance with the provisions of § 391.35 of the Federal Motor Carrier Safety Regulations.

_____
(Signature of person taking examination)

_____
(Date of examination)

_____
(Location of examination)

_____
(Signature of examiner)

_____
(Title)

_____
(Organization and address of examiner)

(h) A copy of the certificate required by paragraph (g) of this section shall be given to the person who was examined. The motor carrier shall retain, in the driver qualification file of the person who was examined—

(1) The original, or a copy of, the certificate required by paragraph (g) of this section;

(2) The questions asked on the examination; and

(3) The person's answers to those questions.

[35 FR 19182, Dec. 18, 1970, as amended at 36 FR 223, Jan. 7, 1971; 39 FR 20795, June 14, 1974]

§ 391.37 Equivalent of written examination.

(a) In place of, and as equivalent to, the written examination required by § 391.35, a person who seeks to drive a motor vehicle may present, and a motor carrier may accept, a valid certificate of written examination issued pursuant to paragraph (g) of that section within the preceding 3 years.

(b) If a motor carrier accepts a certificate as equivalent to the written examination, it shall retain a legible copy of the certificate in its files as part of the driver's qualification file.

(c) A motor carrier may require any person who presents a certificate as equivalent to the written examination to take the written examination prescribed in § 391.35 or participate in any other instructional process designed to acquaint him with the provisions of Parts 390-397 of this subchapter.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970]

Subpart E—Physical Qualifications and Examinations

§ 391.41 Physical qualifications for drivers.

(a) A person shall not drive a motor vehicle unless he is physically qualified to do so and, except as provided in § 391.67, has on his person the original, or a photographic copy, of a medical examiner's certificate that he is physically qualified to drive a motor vehicle.

[1] Copies of the list of questions (and answers to the questions) may be obtained by writing to the Director, Bureau of Motor Carrier Safety, Washington, D.C. 20590, or to any Regional Federal Highway Administrator at the address given in § 390.40 of this subchapter.

(b) A person is physically qualified to drive a motor vehicle if that person—

(1) Has no loss of a foot, a leg, a hand, or an arm, or has been granted a waiver pursuant to § 391.49;

(2) Has no impairment of:

(i) A hand or finger which interferes with prehension or power grasping; or

(ii) An arm, foot, or leg which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or any other significant limb defect or limitation which interferes with the ability to perform normal tasks associated with operating a motor vehicle; or has been granted a waiver pursuant to § 391.49.

(3) Has no established medical history or clinical diagnosis of diabetes mellitus currently requiring insulin for control;

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

(5) Has no established medical history or clinical diagnosis of a respiratory dysfunction likely to interfere with his ability to control and drive a motor vehicle safely;

(6) Has no current clinical diagnosis of high blood pressure likely to interfere with his ability to operate a motor vehicle safely;

(7) Has no established medical history or clinical diagnosis of rheumatic, arthritic, orthopedic, muscular, neuromuscular, or vascular disease which interferes with his ability to control and operate a motor vehicle safely;

(8) Has no established medical history or clinical diagnosis of epilepsy or any other condition which is likely to cause loss of consciousness or any loss of ability to control a motor vehicle;

(9) Has no mental, nervous, organic, or functional disease or psychiatric disorder likely to interfere with his ability to drive a motor vehicle safely;

(10) Has distant visual acuity of at least 20/40 (Snellen) in each eye without corrective lenses or visual acuity separately corrected to 20/40 (Snellen) or better with corrective lenses, distant binocular acuity of at least 20/40 (Snellen) in both eyes with or without corrective lenses, field of vision of at least 70° in the horizontal Meridian in each eye, and the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber;

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

(12) Does not use an amphetamine, narcotic, or any habit-forming drug; and

(13) Has no current clinical diagnosis of alcoholism.

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 223, Jan. 7, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978]

§ 391.43 Medical examination; certificate of physical examination.

(a) Except as provided in paragraph (b) of this section, the medical examination shall be performed by a licensed doctor of medicine or osteopathy.

(b) A licensed optometrist may perform so much of the medical examination as pertains to visual acuity, field of vision, and the ability to recognize colors as specified in paragraph (10) of § 391.41(b).

(c) The medical examination shall be performed, and its results shall be recorded, substantially in accordance with the following instructions and examination form:

INSTRUCTIONS FOR PERFORMING AND RECORDING PHYSICAL EXAMINATIONS

The examining physician should review these instructions before performing the physical examination. Answer each question yes or no where appropriate.

The examining physician should be aware of the rigorous physical demands and mental and emotional responsibilities placed on the driver of a commercial motor vehicle. In the interest of public safety the examining physician is required to certify that the

driver does not have any physical, mental, or organic defect of such a nature as to affect the driver's ability to operate safely a commercial motor vehicle.

General information. The purpose of this history and physical examination is to detect the presence of physical, mental, or organic defects of such a character and extent as to affect the applicant's ability to operate a motor vehicle safely. The examination should be made carefully and at least as complete as indicated by the attached form. History of certain defects may be cause for rejection or indicate the need for making certain laboratory tests or a further, and more stringent, examination. Defects may be recorded which do not, because of their character or degree, indicate that certification of physical fitness should be denied. However, these defects should be discussed with the applicant and he should be advised to take the necessary steps to insure correction, particularly of those which, if neglected, might lead to a condition likely to affect his ability to drive safely.

General appearance and development. Note marked overweight. Note any posture defect, perceptible limp, tremor, or other defects that might be caused by alcoholism, thyroid intoxication, or other illnesses. The Federal Motor Carrier Safety Regulations provide that no driver shall use a narcotic or other habit-forming drugs.

Head-eyes. When other than the Snellen chart is used, the results of such test must be expressed in values comparable to the standard Snellen test. If the applicant wears corrective lenses, these should be worn while applicant's visual acuity is being tested. If appropriate, indicate on the Medical Examiner's Certificate by checking the box, "Qualified only when wearing corrective lenses." In recording distance vision use 20 feet as normal. Report all vision as a fraction with 20 as numerator and the smallest type read at 20 feet as denominator. Note ptosis, discharge, visual fields, ocular muscle imbalance, color blindness, corneal scar, exophtalmos, or strabismus, uncorrected by corrective lenses. Monocular drivers are not qualified to operate commercial motor vehicles under existing Federal Motor Carrier Safety Regulations. If the driver habitually wears contact lenses, or intends to do so while driving, there should be sufficient evidence to indicate that he has good tolerance is well adapted to their use. The use of contact lenses should be noted on the record.

Ears. Note evidence of mastoid or middle ear disease, discharge, symptoms of aural vertigo, or Meniere's Syndrome. When recording hearing, record distance from patient at which a forced whispered voice can first be heard. If audiometer is used to test hearing, record decibel loss at 500 Hz, 1,000 Hz, and 2,000 Hz.

Throat. Note evidence of disease, irremediable deformities of the throat likely to interfere with eating or breathing, or any laryngeal condition which could interfere with the safe operation of a motor vehicle.

Thorax-heart. Stethoscopic examination is required. Note murmurs and arrhythmias, and any past or present history of cardiovascular disease, of a variety known to be accompanied by syncope, dyspnea, collapse, enlarged heart, or congestive heart failures. Electrocardiogram is required when findings so indicate.

Blood pressure. Record with either spring or mercury column type of sphygomomanometer. If the blood pressure is consistently above 160/90 mm. Hg., further tests may be necessary to determine whether the driver is qualified to operate a motor vehicle.

Lungs. If any lung disease is detected, state whether active or arrested; if arrested, your opinion as to how long it has been quiescent.

Gastrointestinal system. Note any diseases of the gastrointestinal system.

Abdomen. Note wounds, injuries, scars, or weakness of muscles of abdominal walls sufficient to interfere with normal function. Any hernia should be noted if present. State how long and if adequately contained by truss.

Abnormal masses. If present, note location, if tender, and whether or not applicant knows how long they have been present. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Tenderness. When noted, state where most pronounced, and suspected cause. If the diagnosis suggests that the condition might interfere with the control and safe operation of a motor vehicle, more stringent tests must be made before the applicant can be certified.

Genito-urinary. Urinalysis is required. Acute infections of the genito-urinary tract, as defined by local and State public health laws, indications from urinalysis of uncontrolled diabetes, symptomatic albumin-urea in the urine, or other findings indicative of health conditions likely to interfere with the control and safe operation of a motor vehicle, will disqualify an applicant from operating a motor vehicle.

Neurological. If positive Romberg is reported, indicate degrees of impairment. Pupillary reflexes should be reported for both light and accommodation. Knee jerks are to be reported absent only when not obtainable upon reinforcement and as increased when foot is actually lifted from the floor following a light blow on the patella, senso-

ry vibratory and positional abnormalities should be noted.

Extremities. Carefully examine upper and lower extremities. Record the loss of impairment of a leg, foot, toe, arm, hand, or fingers. Note any and all deformities, the presence of atrophy, semiparalysis or paralysis, or varicose veins. If a hand or finger deformity exists, determine whether sufficient grasp is present to enable the driver to secure and maintain a grip on the steering wheel. If a leg deformity exists, determine whether sufficient mobility and strength exist to enable the driver to operate pedals properly. Particular attention should be given to and a record should be made of, any impairment or structural defect which may interfere with the driver's ability to operate a motor vehicle safely.

Spine. Note deformities, limitation of motion, or any history of pain, injuries, or disease, past or presently experienced in the cervical or lumbar spine region. If findings so dictate, radiologic and other examinations should be used to diagnose congenital or acquired defects; or spondylolisthesis and scoliosis.

Recto-genital studies. Diseases or conditions causing discomfort should be evaluated carefully to determine the extent to which the condition might be handicapping while lifting, pulling, or during periods of prolonged driving that might be necessary as part of the driver's duties.

Laboratory and other special findings. Urinalysis is required, as well as such other tests as the medical history or findings upon physical examination may indicate are necessary. A serological test is required if the applicant has a history of luetic infection or present physical findings indicate the possibility of latent syphilis. Other studies deemed advisable may be ordered by the examining physician.

Diabetes. If insulin is necessary to control a diabetic condition, the driver is not qualified to operate a motor vehicle. If mild diabetes is noted at the time of examination and it is stabilized by use of a hypoglycemic drug and a diet that can be obtained while the driver is on duty, it should not be considered disqualifying. However, the driver must remain under adequate medical supervision.

The physician must date and sign his findings upon completion of the examination.

EXAMINATION TO DETERMINE PHYSICAL CONDITION OF DRIVERS

Driver's name ———— ☐ New Certification
Address ———— ☐ Recertification
Social Security No. ————
Date of birth ———— Age ——

Yes	No	Health History
☐	☐	Head or spinal injuries.
☐	☐	Seizures, fits, convulsions, or fainting.
☐	☐	Extensive confinement by illness or injury.
☐	☐	Cardiovascular disease.
☐	☐	Tuberculosis.
☐	☐	Syphilis.
☐	☐	Gonorrhea.
☐	☐	Diabetes.
☐	☐	Gastrointestinal ulcer.
☐	☐	Nervous stomach.
☐	☐	Rheumatic fever.
☐	☐	Asthma.
☐	☐	Kidney disease.
☐	☐	Muscular disease.
☐	☐	Suffering from any other disease.
☐	☐	Permanent defect from illness, disease or injury.
☐	☐	Psychiatric disorder.
☐	☐	Any other nervous disorder.

If answer to any of the above is yes, explain:

———————————

———————————

———————————

PHYSICAL EXAMINATION

General appearance and development:
Good —— Fair —— Poor ——
Vision: For distance:
Right 20/ —— Left 20/ ——
☐ Without corrective lenses.
☐ With corrective lenses if worn.
Evidence of disease or injury:
Right —— Left ——
Color Test ———————— ————
Horizontal field of vision:
Right ——° Left ——°
Hearing:
Right ear —— Left ear ——
Disease or injury ———————— ————
Audiometric Test (complete only if audiometer is used to test hearing) decibel loss at 500 Hz ——, at 1,000 Hz ——, at 2,000 Hz ——
Throat ———————— ————
Thorax:
Heart ———————— ————
If organic disease is present, is it fully compensated? ————
Blood pressure:
Systolic —— Diastolic ——
Pulse: Before exercise ————
Immediately after exercise ————
Lungs ———————— ————
Abdomen:
Scars —— Abnormal masses ——
Tenderness ——
Hernia: Yes —— No ——
If so, where? ————
Is truss worn? ————
Gastrointestinal:
Ulceration or other disease:

Yes —— No ——
Genito-Urinary:
Scars ———————— ————
Urethral discharge ———————— ————
Reflexes:
Romberg ———————— ————
Pupillary —— Light R —— L ——
Accommodation Right —— Left ——
Knee Jerks:
Right:
Normal —— Increased —— Absent ——
Left:
Normal —— Increased —— Absent ——
Remarks ———————— ————
Extremities:
Upper ———————— ————
Lower ———————— ————
Spine ———————— ————
Laboratory and other Special Findings:
Urine: Spec. Gr. —— Alb. ——
Sugar ——
Other laboratory data (Serology, etc.)

———————————————

Radiological data ———————— ————
Electrocardiograph ———————— ————
General comments ———————— ————

———————————————
(Date of examination)

———————————————
(Address of examining doctor)

———————————————
(Name of examining doctor (Print))

———————————————
(Signature of examining doctor)

NOTE: This section to be completed only when visual test is conducted by a licensed ophthalmologist or optometrist.

———————————————
(Date of examination)

———————————————
(Address of ophthalmologist or optometrist)

———————————————
(Name of ophthalmologist or optometrist (Print))

———————————————
(Signature of ophthalmologist or optometrist)

(d) If the medical examiner finds that the person he examined is physically qualified to drive a motor vehicle in accordance with § 391.41(b), he shall complete a certificate in the form prescribed in paragraph (e) of this section and furnish one copy to the person who was examined and one copy to the motor carrier that employs him.

(e) The medical examiner's certificate shall be in accordance with the following form:

MEDICAL EXAMINER'S CERTIFICATE

I certify that I have examined ———————— (driver's name (print)) in accordance with the Federal Motor Carrier Safety Regulations (49 CFR 391.41-391.49) and with knowledge of his duties, I find him qualified under the regulations.

☐ Qualified only when wearing corrective lenses.

A completed examination form for this person is on file in my office at ———————— (Address)

———————————————
(Date of examination)

———————————————
(Name of examining doctor (Print))

———————————————
(Signature of examining doctor)

———————————————
(Signature of driver)

———————————————
(Address of driver)

If the driver is qualified only when wearing a hearing aid, the following statement must appear on the medical examiner's certificate: "Qualified only when wearing a hearing aid." If a medical examiner determines a waiver is necessary under § 391.49, the following statement shall appear on the medical examiner's certificate; "medically unqualified unless accompanied by a waiver.

[35 FR 6460, Apr. 23, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 36 FR 8452, May 8, 1971; 36 FR 12857, July 8, 1971; 43 FR 56900, Dec. 5, 1978; 46 FR 53418, Oct. 29, 1981]

§ 391.45 Persons who must be medically examined and certified.

Except as provided in § 391.67, the following persons must be medically examined and certified in accordance with § 391.43 as physically qualified to drive a motor vehicle:

(a) Any person who has not been medically examined and certified as physically qualified to drive a motor vehicle;

(b) Any driver who has not been medically examined and certified as qualified to drive a motor vehicle during the preceding 24 months; and

(c) Any driver whose ability to perform his normal duties has been impaired by a physical or mental injury or disease.

[35 FR 6460, Apr. 22, 1970, as amended at 36 FR 223, Jan. 7, 1971]

§ 391.47 Resolution of conflicts of medical evaluation.

(a) *Applications.* Applications for determination of a driver's medical qualifications under standards in this part will only be accepted if they conform to the requirements of this section.

(b) *Content.* Applications will be accepted for consideration only if the following conditions are met.

(1) The application must contain the name and address of the driver, motor carrier, and all physicians involved in the proceeding.

(2) The applicant must submit proof that there is a disagreement between the physician for the driver and the physician for the motor carrier concerning the driver's qualifications.

(3) The applicant must submit a copy of an opinion and report including results of all tests of an impartial medical specialist in the field in which the medical conflict arose. The specialist should be one agreed to by the motor carrier and the driver.

(i) In cases where the driver refuses to agree on a specialist and the applicant is the motor carrier, the applicant must submit a statement of his agreement to submit the matter to an impartial medical specialist in the field, proof that he has requested the driver to submit to the medical specialist, and the response, if any, of the driver to his request.

(ii) In cases where the motor carrier refuses to agree on a medical specialist, the driver must submit an opinion and test results of an impartial medical specialist, proof that he has requested the motor carrier to agree to submit the matter to the medical specialist and the response, if any, of the motor carrier to his request.

(4) The applicant must include a statement explaining in detail why the decision of the medical specialist identified in paragraph (b)(3) of this section, is unacceptable.

(5) The applicant must submit proof that the medical specialist mentioned in paragraph (b)(3) of this section was provided, prior to his determination, the medical history of the driver and an agreed-upon statement of the work the driver performs.

(6) The applicant must submit the medical history and statement of work provided to the medical specialist under paragraph (b)(5) of this section.

(7) The applicant must submit all medical records and statements of the physicians who have given opinions on the driver's qualifications.

(8) The applicant must submit a description and a copy of all written and documentary evidence upon which the party making application relies in the form set out in 49 CFR 386.37.

(9) The application must be accompanied by a statement of the driver that he intends to drive in interstate commerce not subject to the commercial zone exemption or a statement of the carrier that he has used or intends to use the driver for such work.

(10) The applicant must submit three copies of the application and all records.

(c) *Information.* The Director may request further information from the applicant if he determines that a decision cannot be made on the evidence submitted. If the applicant fails to submit the information requested, the Director may refuse to issue a determination.

(d) (1) *Action.* Upon receiving a satisfactory application the Director shall notify the parties (the driver, motor carrier, or any other interested party) that the application has been accepted and that a determination will be made. A copy of all evidence received shall be attached to the notice.

(2) *Reply.* Any party may submit a reply to the notification within 15 days after service. Such reply must be accompanied by all evidence the party wants the Director to consider in making his determination. Evidence submitted should include all medical records and test results upon which the party relies.

(3) *Parties.* A party for the purposes of this section includes the motor car-

rier and the driver, or anyone else submitting an application.

(e) *Petitions to review, burden of proof.* The driver or motor carrier may petition to review the Director's determination. Such petition must be submitted in accordance with § 386.13(a) of this chapter. The burden of proof in such a proceeding is on the petitioner.

(f) *Status of driver.* Once an application is submitted to the Director, the driver shall be deemed disqualified until such time as the Director makes a determination, or until the Director orders otherwise.

(49 U.S.C. 304, 322; 18 U.S.C. 831-35; Pub. L. 93-633, 88 Stat. 8156 (49 U.S.C. 1801, et seq.); 49 CFR 1.48, 301.60)

[42 FR 18081, Apr. 5, 1977, as amended at 42 FR 53966, Oct. 4, 1977]

§ 391.49 Waiver of certain physical defects.

(a) A person who is not physically qualified to drive under § 391.41(b) (1) or (2) and who is otherwise qualified to drive a motor vehicle, may drive a motor vehicle, if the Regional Federal Highway Administrator has granted a waiver to that person.

(b) A letter of application for a waiver may be submitted jointly by the person who seeks a waiver of the physical disqualification (driver applicant) and by the motor carrier that will employ the driver applicant if the application is granted. The application must be addressed to the Regional Federal Highway Administrator for the region in which the coapplicant motor carrier's principal place of business is located. The address for each regional office is listed in § 390.40 of this subchapter. *Exception.* A letter of application for a waiver may be submitted unilaterally by a driver applicant. The application must be addressed to the Regional Federal Highway Administrator for the region in which the driver has legal residence. The address of each regional office is listed in § 390.40 of this subchapter. The driver applicant must comply with all the requirements of paragraph (c) of this section except paragraphs (c)(1) (i) and (iii). The driver applicant shall respond to the requirements of paragraph (c)(2) (i) to (v) of this section, if the information is known.

(c) A letter of application for a waiver shall contain—

(1) Identification of the applicant(s):

(i) Name and complete address of the motor carrier coapplicant;

(ii) Name and complete address of the driver applicant;

(iii) The Federal Highway Administration Motor Carrier Identification Number, if known; and

(iv) A description of the driver applicant's limb impairment for which waiver is requested.

(2) Description of the type of operation the driver will be employed to perform:

(i) State(s) in which the driver will operate for the motor carrier coapplicant (if more than 10 States, designate general geographic area only);

(ii) Average period of time the driver will be driving and/or on duty, per day;

(iii) Type of commodities or cargo to be transported;

(iv) Type of driver operation (i.e. sleeper-team, relay, owner operator, etc.); and

(v) Number of years experience operating the type of vehicle(s) requested in the letter of application and total years of experience operating all types of motor vehicles.

(3) Description of the vehicle(s) the driver applicant intends to drive:

(i) Truck, truck-tractor, or bus make, model, and year (if known);

(ii) Drive train;

(A) Transmission type (automatic or manual—if manual, designate number of forward speeds);

(B) Auxiliary transmission (if any) and number of forward speeds; and

(C) Rear axle (designate single speed, 2 speed, or 3 speed).

(iii) Type of brake system;

(iv) Steering, manual or power assisted;

(v) Description of type of trailer(s) (i.e., van, flat bed, cargo tank, drop frame, lowboy, or pole);

(vi) Number of semitrailers or full trailers to be towed at one time;

(vii) For passenger-carrying vehicles, indicate seating capacity of vehicle; and

(viii) Description of any vehicle modification(s) made for the driver applicant; attach photograph(s) where applicable.

(4) Otherwise qualified:

(i) The coapplicant motor carrier must certify that the driver applicant is otherwise qualified under the regulations of this part;

(ii) In the case of a unilateral application, the driver applicant must certify that (s)he is otherwise qualified under the regulations of this part.

(5) Signature of applicant(s):

(i) Driver applicant's signature and date signed;

(ii) Motor carrier official's signature (if application has a coapplicant), title, and date signed. Dependent upon the motor carrier's organizational structure (corporation, partnership, or proprietorship), this signer of the application shall be an officer, partner, or the proprietor.

(d) The letter of application for a waiver shall be accompanied by:

(1) A copy of the results of the medical examination performed pursuant to § 391.43;

(2) A copy of the medical certificate completed pursuant to § 391.43(e);

(3) A medical evaluation summary completed by either a board qualified or board certified physiatrist (doctor of physical medicine) or orthopedic surgeon;

NOTE: The coapplicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job tasks the driver applicant will be required to perform;

(i) If the medical evaluation summary applies to a driver applicant disqualified under § 391.41(b)(1), the summary shall include an assessment of the driver's functional capabilities as they relate to the driver's ability to perform normal tasks associated with operating a motor vehicle; or

(ii) If the medical evaluation summary applies to a driver applicant disqualified under § 391.41(b)(2), the summary shall include an explanation as to how and why the impaired area interferes with the driver's ability to perform normal tasks associated with operating a motor vehicle. The summary shall also contain an assessment of whether the condition will likely remain medically stable over the driver applicant's lifetime.

(4) A description of the driver applicant's prosthetic or orthotic device worn, if any, by the driver applicant;

(5) Road test:

(i) A copy of the driver applicant's road test administered by the motor carrier coapplicant and the certificate issued pursuant to § 391.31 (b) through (g); or

(ii) A unilateral applicant shall be responsible for having a road test administered by a motor carrier or a person who is competent to administer the test and evaluate its results.

(6) Application for employment:

(i) A copy of the driver applicant's application for employment completed pursuant to § 391.21; or

(ii) A unilateral applicant shall be responsible for submitting a copy of the last commercial driving position's employment application s/he held. If not previously employed as a commercial driver, so state.

(7) A copy of the driver applicant's waiver of certain physical defects issued by the individual State(s), where applicable; and

(8) A copy of the driver applicant's State Motor Vehicle Driving Record for the past 3 years from each State in which a motor vehicle driver's license or permit has been obtained.

(e) *Agreement.* A motor carrier that employs a driver with a waiver agrees to:

(1) File promptly (within 30 days) with the Regional Federal Highway Administrator such documents and information as may be required about driving activities, accidents, arrests, license suspensions, revocations, or withdrawals, and convictions which involve the driver applicant. This applies whether the driver's waiver is a unilateral one or has a coapplicant motor carrier;

(i) A motor carrier who is a coapplicant must file the required documents with the Regional Federal Highway Administrator for the region in which the carrier's principal place of business is located; or

(ii) A motor carrier who employs a driver who has been issued a unilateral waiver must file the required documents with the Regional Federal

Highway Administrator for the region in which the driver has legal residence.

(2) Evaluate the driver with a road test using the trailer the motor carrier intends the driver to transport or, in lieu of, accept a certificate of a trailer road test from another motor carrier if the trailer type(s) is similar or accept the trailer road test done during the Skill Performance Evaluation if it is a similar trailer type(s) to that of the prospective motor carrier;

NOTE: Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated in the Skill Performance Evalulation.

(3) Evaluate the driver for those nondriving safety-related job tasks associated with whatever type of trailer(s) will be used and any other nondriving safety-related or job-related tasks unique to the operations of the employing motor carrier; and

(4) Use the driver to operate the type of motor vehicle defined in the waiver only when the driver is in compliance with the conditions and limitations of the waiver.

(f) The driver shall supply each employing motor carrier with a copy of the waiver.

(g) The Regional Federal Highway Administrator may require the driver applicant to demonstrate his or her ability to to safely operate the motor vehicle(s) the driver intends to drive to an agent of the Regional Federal Highway Administrator. The waiver form will identify the power unit (bus, truck, truck-tractor) for which the waiver has been granted. The waiver forms will also identify the trailer type used in the Skill Performance Evaluation; however, the waiver is not limited to that specific trailer type. A driver may use the waiver with other trailer types if a successful trailer road test is completed in accordance with paragraph (e)(2) of this section. Job tasks, as stated in paragraph (e)(3) of this section, are not evaluated during the Skill Performance Evaluation.

(h) The Regional Federal Highway Administrator may deny the application for waiver or may grant it totally or in part and issue the waiver subject to such terms, conditions, and limitations as deemed consistent with the public interest. A waiver is valid for a period not to exceed 2 years from date of issue, and may be renewed 30 days prior to the expiration date.

(i) The waiver renewal application shall be submitted to the Regional Federal Highway Administrator for the region in which the driver has legal residence, if the waiver was issued unilaterally. If the waiver has a coapplicant, then the renewal application is submitted to the Regional Federal Highway Administrator for the region in which the coapplicant motor carrier's principal place of business is located. The waiver renewal application shall contain the following:

(1) Name and complete address of motor carrier currently employing the applicant;

(2) Name and complete address of the driver;

(3) Effective date of the current waiver;

(4) Expiration date of the current waiver;

(5) Total miles driven under the current waiver;

(6) Number of accidents incurred while driving under the current waiver, including date of the accident(s), number of fatalities, number of injuries, and the estimated dollar amount of property damage;

(7) A current medical examination report;

(8) A medical evaluation summary pursuant to paragraph (d)(3) of this section if an unstable medical condition exists. All handicapped conditions classified under § 391.41(b)(1) are considered unstable.

NOTE: Refer to paragraph (d)(3)(ii) of this section for the condition under § 391.41(b)(2) which may be considered medically stable.

(9) A copy of driver's current State motor vehicle driving record for the period of time the current waiver has been in effect;

(10) Notification of any change in the type of tractor the driver will operate;

(11) Driver's signature and date signed; and

(12) Motor carrier coapplicant's signature and date signed.

(j) Upon granting a waiver, the Regional Federal Highway Administrator

will notify the driver applicant and coapplicant motor carrier (if applicable) by letter. The terms, conditions, and limitations of the waiver will be set forth. A motor carrier shall maintain a copy of the waiver in its driver qualification file. A copy of the waiver shall be retained in the motor carrier's file for a period of 3 years after the driver's employment is terminated. The driver applicant shall have the waiver (or a legible copy) in his/her possession whenever on duty.

(k) The Regional Federal Highway Administrator may revoke a waiver after the person to whom it was issued is given notice of the proposed revocation and has been allowed a reasonable opportunity to appeal.

(l) Falsifying information in the letter of application, the renewal application, or falsifying information required by this section by either the applicant or motor carrier is prohibited.

(Approved by the Office of Management and Budget under control number 2125-0080).

(49 U.S.C. 3102; 49 CFR 1.48 and 301.60)

[48 FR 38487, Aug. 24, 1983, as amended at 49 FR 38293, Sept. 28, 1984]

Subpart F—Files and Records

§ 391.51 Driver qualification files.

(a) Each motor carrier shall maintain a driver qualification file for each driver it employs. A driver's qualification file may be combined with his personnel file.

(b) The qualification file for a driver who has been a regularly employed driver of the motor carrier for a continuous period which began before January 1, 1971, must include:

(1) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(2) The Regional Federal Highway Administrator's letter granting a waiver of a physical disqualification, if a waiver was issued under § 391.49;

(3) The note relating to the annual review of his driving record required by § 391.25;

(4) The list or certificate relating to violations of motor vehicle laws and ordinances required by § 391.27; and

(5) Any other matter which relates to the driver's qualifications or ability to drive a motor vehicle safely.

(c) The qualification file for a regularly employed driver who has not been regularly employed by the motor carrier for a continuous period which began before January 1, 1971, must include:

(1) The documents specified in paragraph (b) of this section;

(2) The driver's application for employment completed in accordance with § 391.21;

(3) The responses of State agencies and past employers to the motor carrier's inquiries concerning the driver's driving record and employment pursuant to § 391.23;

(4) The certificate of driver's road test issued to the driver pursuant to § 391.31 (e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.33; and

(5) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to § 391.35, or a copy of a certificate which the motor carrier accepted as equivalent to a written examination pursuant to § 391.37.

(d) The qualification file for an intermittent, casual, or occasional driver employed under the rules in § 391.63 must include—

(1) The medical examiner's certificate of his physical qualification to drive a motor vehicle or a legible photographic copy of the certificate;

(2) The certificate of driver's road test issued to the driver pursuant to § 391.31(e), or a copy of the license or certificate which the motor carrier accepted as equivalent to the driver's road test pursuant to § 391.31;

(3) The questions asked, the answers the driver gave, and the certificate of written examination issued to him pursuant to § 391.35, or a copy of a certificate which the motor carrier accepted as equivalent to a written examination pursuant to § 391.37; and

(4) The driver's name, his social security number, and the identification number, type, and issuing State of his motor vehicle operator's license.

(e) A using carrier's qualification file for a driver who is regularly employed

by another motor carrier, and who is employed by the using carrier in accordance with § 391.65 of this part, shall include a copy of a certificate, as prescribed by § 391.65(a)(2) of this part, by the regularly employing carrier that the driver is fully qualified to drive a motor vehicle.

(f) Except as provided in paragraphs (g) and (h) of this section, each driver's qualification file shall be kept at the motor carrier's principal place of business for as long as a driver is employed by that motor carrier and for 3 years thereafter.

(g) Upon a written request to, and with the approval of, the Director, Regional Motor Carrier Safety Office, for the region in which a motor carrier has his principal place of business, the carrier may retain one or more of its drivers' qualification files at a regional or terminal office. The addresses and jurisdictions of the Directors of Regional Motor Carrier Safety Offices are shown in § 390.40 of this subchapter.

(h) The following records may be removed from a driver's qualification file after 3 years from date of execution:

(1) The medical examiner's certificate of his physical qualification to drive a motor vehicle or the photographic copy of the certificate as required by § 391.43(d).

(2) The note relating to the annual review of his driving record as required by § 391.25.

(3) The list or certificate relating to violations of motor vehicle laws and ordinance as required by § 391.27.

(4) The letter issued under § 391.49 granting a waiver of a physical disqualification.

(Sec. 204, Interstate Commerce Act, as amended, (49 U.S.C. 304); sec. 6, Department of Transportation Act (49 U.S.C. 1655), and the delegations of authority by the Secretary of Transportation and the Federal Highway Administrator at 49 CFR 1.48 and 301.60, respectively)

[35 FR 6460, Apr. 22, 1970, as amended at 35 FR 17420, Nov. 13, 1970; 41 FR 36656, Aug. 31, 1976; 42 FR 37370, July 21, 1977; 45 FR 46424, July 10, 1980]

Subpart G—Limited Exemptions

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations) do not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he fulfills the requirements of paragraphs (1) through (9) of § 391.11(b) (relating to qualifications of drivers).

§ 391.62 Drivers of lightweight vehicles.

(a) The following rules in this part do not apply to a person who drives only a lightweight vehicle:

(1) Subpart C (relating to disclosure of, investigation into, and inquiries about, the background, character, and driving record of drivers).

(2) Subpart D (relating to road tests and written examinations).

(3) So much of §§ 391.41, 391.43, and 391.45 as require a driver to be medically examined, to obtain a certificate of medical examination, and to carry a medical examiner's certificate on his person.

(4) Subpart F (relating to maintenance of files and records).

(b) A person who is 18 years of age or older and who is otherwise qualified to drive a motor vehicle under the rules in this part (including the modifications of those rules specified in paragraph (a) of this section) may drive a lightweight vehicle, and § 391.11(b)(1) (relating to minimum age of drivers) does not apply to that person.

[40 FR 1068, Mar. 7, 1975]

§ 391.63 Intermittent, casual, or occasional drivers.

(a) If a motor carrier employs a person who is not a regularly employed driver (as defined in § 395.2(f)

of this subchapter) to drive a motor vehicle for a single trip or on an intermittent, casual, or occasional basis, the motor carrier shall comply with all requirements of this part, except that the motor carrier need not—

(1) Require the person to furnish an application for employment in accordance with § 391.21;

(2) Make the investigations and inquiries specified in § 391.23 with respect to that person,

(3) Perform the annual review of the person's driving record required by § 391.25; or

(4) Require the person to furnish a record of violations or a certificate in accordance with § 391.27.

(b) Before a motor carrier permits a person described in paragraph (a) of this section to drive a motor vehicle, the motor carrier must obtain his name, his social security number, and the identification number, type and issuing State of his motor vehicle operator's license. The motor carrier must retain that information in its files for 3 years after the person's employment by the motor carrier ceases.

§ 391.65 Drivers furnished by other motor carriers.

(a) A motor carrier may employ a driver who is not a regularly employed driver of that motor carrier without complying with the generally applicable driver qualification file requirements in this part, if—

(1) The driver is regularly employed by another motor carrier; and

(2) The motor carrier which regularly employs the driver certifies that the driver is fully qualified to drive a motor vehicle in a written statement which—

(i) Is signed and dated by an officer or authorized employee of the regularly employing carrier;

(ii) Contains the driver's name and signature;

(iii) Certifies that the driver has been employed regularly to drive, as defined in § 391.3(c);

(iv) Certifies that the driver is fully qualified to drive a motor vehicle under the rules in Part 391 of the Federal Motor Carrier Safety Regulations;

(v) States the expiration date of the driver's medical examiner's certificate;

(vi) Specifies an expiration date for the certificate, which shall be not longer than 2 years or, if earlier, the expiration date of the driver's current medical examiner's certificate; and

(vii) After April 1, 1977, is substantially in accordance with the following form:

_____
(Name of driver)

_____
(SS No.)

_____
(Signature of driver)

I certify that the above named driver, as defined in § 391.3(c) is regularly driving a vehicle operated by the below named carrier and is fully qualified under Part 391, Federal Motor Carrier Safety Regulations. His current medical examiner's certificate expires on ——— (Date)
This certificate expires:

_____
(Date not later than expiration date of medical certificate)

Issued on ——— (date)

Issued by _____
(Name of carrier)

_____
(Address)

_____
(Signature)

_____
(Title)

(b) A motor carrier that obtains a certificate in accordance with paragraph (a) (2) of this section shall retain a copy of that certificate in its files for 3 years.

(c) A carrier which certifies a driver's qualifications under this section shall—

(1) Be responsible for the accuracy of the certificate; and

(2) Recall the unexpired certificate carried by a driver immediately upon learning that the driver is no longer qualified under the rules in this part.

[41 FR 36656, Aug. 31, 1976]

§ 391.67 Drivers of articulated (combination) farm vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 391.3(d)) who is 18 years of age or older and who drives an articulated motor vehicle:

(a) Paragraphs (1), (8), (10), (11), and (12) of § 391.11(b) (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests and written examinations).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his person before January 1, 1973.

(e) Subpart F (relating to maintenance of files and records).

[36 FR 24220, Dec. 22, 1971]

§ 391.69 Drivers operating in Hawaii.

(a) Drivers who will reach the age of 21 no later than April 1, 1976, may continue to drive within the State of Hawaii.

(b) The provisions of § 391.21 (relating to application for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road tests), and § 391.35 (relating to written examinations and the requirements of these sections) do not apply to a driver who has been a regularly employed driver (as defined in § 395.2(f) of this subchapter) of a motor carrier operating in the State of Hawaii for a continuous period which began before April 1, 1975, as long as he continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he fulfills the requirements of paragraphs (1) through (9) of § 391.11(b) (relating to qualifications of drivers).

[40 FR 32336, Aug. 1, 1975]

§ 391.71 Intrastate drivers of vehicles transporting combustible liquids.

(a) The provisions of § 391.11(b) (1) (relating to minimum age), § 391.21 (relating to application for employment), § 391.23 (relating to investigations and inquiries), § 391.31 (relating to road test), and § 391.35 (relating to written examination) do not apply to a driver who is otherwise qualified and was a regularly employed driver (as defined in § 395.2(f) of the subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a motor vehicle that:

(1) Is transporting combustible liquids (as defined in § 173.115 of this title), and

(2) Is being operated in intrastate commerce.

(b) In addition to the exemptions provided in paragraph (a) of this section, the provisions of § 391.41(b) (10) (relating to minimum visual requirements), do not apply to a driver who was a regularly employed driver (as defined in § 395.2(f) of this subchapter) as of July 1, 1975, and continues to be a regularly employed driver of that motor carrier and who drives a vehicle that:

(1) Is a truck (as defined in § 390.4 of this subchapter), and

(2) Is operated in retail delivery service, and

(3) Is transporting combustible liquids (as defined in § 173.115 of this title), and

(4) Is operated in intrastate commerce.

[40 FR 51796, Nov. 26, 1975; 40 FR 58858, Dec. 19, 1975]

PART 392—DRIVING OF MOTOR VEHICLES

Subpart A—General

Sec.
392.1 Scope of the rules in this part.
392.2 Applicable operating rules.
392.3 Ill or fatigued operator.
392.4 Narcotics, amphetamine, and other dangerous substances.
392.5 Intoxicating beverage.
392.6 Schedules to conform with speed limits.
392.7 Equipment, inspection and use.
392.8 Emergency equipment, inspection, and use.
392.9 Safe loading.
392.9a Corrective lenses to be worn.
392.9b Hearing aid to be worn.

APPENDIX B

MOTOR CARRIER SAFETY ACT OF 1984

98 STAT. 2832 PUBLIC LAW 98-554—OCT. 30, 1984

TITLE II

Motor Carrier Safety Act of 1984.

SHORT TITLE

49 USC app. 2501 note.

SEC. 201. This title may be cited as the "Motor Carrier Safety Act of 1984".

PURPOSES

49 USC app 2501

SEC. 202. The purposes of this title are to promote the safe operation of commercial motor vehicles, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

FINDINGS

49 USC app. 2502.

SEC. 203. The Congress finds that—

(1) it is in the public interest to enhance commercial motor vehicle safety and thereby to reduce highway fatalities, injuries, and property damage;

(2) improved, more uniform commercial motor vehicle safety measures and strengthened enforcement would reduce the number of fatalities and injuries and the level of property damage related to commercial motor vehicle operations;

(3) enhanced protection of the health of commercial motor vehicle operators is in the public interest; and

(4) interested State governments can provide valuable assistance to the Federal Government in assuring that commercial motor vehicle operations are conducted safely and healthfully.

DEFINITIONS

SEC. 204. For purposes of this title, the term— 49 USC app. 2503.

(1) "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in interstate commerce to transport passengers or property—

(A) if such vehicle has a gross vehicle weight rating of 10,001 or more pounds;

(B) if such vehicle is designed to transport more than 15 passengers, including the driver; or

(C) if such vehicle is used in the transportation of materials found by the Secretary to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812) and are transported in a quantity requiring placarding under regulations issued by the Secretary under such Act;

(2) "employee" means—

(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; and

(D) any individual other than an employer;

who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or any political subdivision of a State who is acting within the course of such employment;

(3) "employer" means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any State, or any political subdivision of a State;

(4) "interstate commerce" means trade, traffic, or transportation in the United States which is between a place in a State and a place outside of such State (including a place outside of the United States) or is between two places in a State through another State or a place outside of the United States;

(5) "intrastate commerce" means any trade, traffic, or transportation in any State which is not described in paragraph (4);

(6) "person" means any individual, partnership, association, corporation, business trust, and any other organized group of individuals;

(7) "regulation" includes any rule, standard, and order;

(8) "Safety Panel" means the Commercial Motor Vehicle Safety Regulatory Review Panel established under section 209 of this Act;

(9) "Secretary" means the Secretary of Transportation;

(10) "State" means a State of the United States and the District of Columbia and, for purposes of sections 206, 207, 208, 210, and 218, includes a political subdivision of a State;

(11) "State law" includes any law enacted or adopted by a political subdivision of a State;

(12) "State regulation" includes any regulation issued by a political subdivision of a State; and

(13) "United States" means the 50 States and the District of Columbia.

DUTIES

49 USC app. 2504.

SEC. 205. Each employer and employee shall comply with regulations pertaining to commercial motor vehicle safety issued by the Secretary under this title which are applicable to his or her own actions and conduct.

FEDERAL REGULATIONS

49 USC app. 2505.

SEC. 206. (a) Not later than 18 months after the date of the enactment of this Act, the Secretary shall issue regulations pertaining to commercial motor vehicle safety. Such regulation shall establish minimum Federal safety standards for commercial motor vehicles and shall, at a minimum, ensure that—

(1) commercial motor vehicles are safely maintained, equipped, loaded, and operated;

(2) the responsibilities imposed upon operators of commercial motor vehicles do not impair their ability to operate such vehicles safely;

(3) the physical condition of operators of commercial motor vehicles is adequate to enable them to operate such vehicles safely; and

(4) the operation of commercial motor vehicles does not have deleterious effects on the physical condition of such operators.

(b) The Secretary shall not eliminate or modify any existing motor carrier safety rule pertaining exclusively to the maintenance, equipment, loading or operation (including routing regulations) of vehicles carrying materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812) unless and until an equivalent or more stringent regulation has been promulgated under the Hazardous Materials Transportation Act.

(c)(1) All regulations under this section shall be issued in accordance with section 553 of title 5, United States Code (without regard to sections 556 and 557 of such title), except that the time periods specified in this subsection shall apply to the issuance of such regulations.

(2) Before issuing such regulations, the Secretary shall, to the extent practicable and consistent with the purposes of this Act, consider (A) costs and benefits, and (B) State laws and regulations pertaining to commercial motor vehicle safety in order to minimize unnecessary preemption of such State laws and regulations under this Act.

(d) If the Secretary determines that any proceeding initiated to issue any regulation under this section will not be completed within 18 months after the date of the enactment of this Act, the Secretary shall immediately notify the Congress and shall furnish the reasons for the delay, information regarding the resources assigned, and the projected completion date for any such proceeding. The Secretary shall transmit to the Congress current data regarding the information specified in the preceding sentence at the end of every 60-day period thereafter during which any such proceeding remains incomplete.

(e) If the Secretary does not issue regulations pertaining to commercial motor vehicle safety in accordance with this section, regulations pertaining to commercial motor vehicle safety which the Secretary issued before such date of enactment and in effect on such

date of enactment shall, for purposes of this title, be deemed to be regulations issued by the Secretary under this section.

(f) After notice and an opportunity for comment, the Secretary may waive, in whole or in part, application of any regulation issued under this section with respect to any person or class of persons if the Secretary determines that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. Under this subsection, the Secretary shall waive application of the regulations issued under this section with respect to schoolbuses, as defined in section 102(14) of the National Traffic and Motor Vehicle Safety Act of 1966 (15 U.S.C. 1391(14)), unless the Secretary determines that making such regulations applicable to such schoolbuses is necessary for public safety taking into account all Federal and State laws applicable to such schoolbuses. Any waiver authorized under this subsection shall be published in the Federal Register, together with the reasons for such waiver.

(g) Any final agency action taken under this section shall be subject to judicial review under chapter 7 of title 5, United States Code. 5 USC 701 *et seq.*

(h) Section 3102 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(d) Before prescribing or revising any requirement under this section, the Secretary shall consider the costs and benefits of such requirement.".

SUBMISSION OF STATE REGULATIONS FOR REVIEW

SEC. 207. (a) Any State which enacts, adopts, issues, or has in effect any law or regulation pertaining to commercial motor vehicle safety and is interested in having in effect and enforcing such law or regulation after the last day of the 60-month period beginning on the date of the enactment of this Act shall, before the last day of the 6-month period beginning on such date of enactment, submit to the Secretary and the Safety Panel a copy of such law or regulation. 49 USC app. 2506.

(b) Any State which enacts, adopts, or issues any law or regulation pertaining to commercial motor vehicle safety after the last day of the 6-month period beginning on the date of the enactment of this Act shall (immediately after such enactment, adoption, or issuance) submit to the Secretary and the Safety Panel a copy of such law or regulation.

(c) Not later than 60 days after the date of the enactment of this Act, the Secretary shall issue initial guidelines to assist the States in compiling and submitting State laws and regulations and other information under this section.

(d) As soon as practicable but not later than such time as the Safety Panel may establish, any State which submits a law or regulation under this section to the Safety Panel—

(1) shall indicate, in writing, to the Safety Panel if such law or regulation—

(A) has the same effect as;

(B) is less stringent than; or

(C) additional to or more stringent than;

any regulation issued by the Secretary under section 6; and

(2) shall submit to the Safety Panel such other information as the Safety Panel or the Secretary may require to carry out the objectives of this title.

(e) If any State fails to submit any State law or regulation pertaining to commercial motor vehicle safety in accordance with this section, the Safety Panel shall analyze the laws and regulations of such State and determine which of such State's laws and regulations pertain to commercial motor vehicle safety.

REVIEW AND PREEMPTION OF STATE REGULATIONS

49 USC app. 2507.

SEC. 208. (a) After the last day of the 60-month period beginning on the date of the enactment of this Act, no State may have in effect or enforce with respect to commercial motor vehicles any State law or regulation pertaining to commercial motor vehicle safety which the Secretary finds under this section may not be in effect and enforced.

(b)(1) Not later than 18 months after the date of the enactment of this Act and annually thereafter, the Safety Panel shall analyze the laws and regulations of each State and determine which of such laws and regulations pertain to commercial motor vehicle safety.

(2) Within 12 months after the date on which the Secretary issues any regulation under section 206 or within 12 months after the date on which a State law or regulation is determined under paragraph (1) to pertain to commercial motor vehicle safety, whichever is later, the Safety Panel—

(A) shall determine if such law or regulation—

(i) has the same effect as;

(ii) is less stringent than; or

(iii) is additional to or more stringent than;

the regulation issued by the Secretary under section 206; and

(B) shall determine with respect to any State law or regulation which is determined under subparagraph (A) to be additional to or more stringent than the regulation issued by the Secretary under section 206 if—

(i) there is no safety benefit associated with such State law or regulation;

(ii) such State law or regulation is incompatible with the regulation issued by the Secretary under section 206; or

(iii) enforcement of such State law or regulation would be an undue burden on interstate commerce; and

(C) shall notify the Secretary of the determinations made under this subsection with respect to such State law or regulation.

Regulations

(c)(1) The Secretary shall review each State law and regulation pertaining to commercial motor vehicle safety. Within 18 months after the date the Secretary is notified by the Safety Panel of a determination regarding a State law or regulation under subsection (b), the Secretary (A) shall conduct a rulemaking proceeding to determine in accordance with the provisions of this subsection whether or not such law or regulation may be in effect and enforced with respect to commercial motor vehicles, and (B) shall issue a final rule in such rulemaking proceeding

(2) If the Secretary finds that the State law or regulation has the same effect as a regulation issued by the Secretary under section 206, the State law or regulation may be in effect and enforced with respect to commercial motor vehicles after the last day of the 60-month period beginning on the date of the enactment of this Act.

(3) If the Secretary finds that the State law or regulation is less stringent than a regulation issued by the Secretary under section

206, the State law or regulation shall not have effect and be enforced with respect to commercial motor vehicles after the last day of the 60-month period beginning on the date of the enactment of this Act.

(4) If the Secretary finds that the State law or regulation is additional to or more stringent than a regulation issued by the Secretary under section 206, the State law or regulation may be in effect and enforced with respect to commercial motor vehicles after the last day of the 60-month period beginning on the date of the enactment of this Act; except that if the Secretary finds that—

(A) there is no safety benefit associated with such State law or regulation;

(B) such State law or regulation is incompatible with the regulation issued by the Secretary under section 6; or

(C) enforcement of such State law or regulation would be an undue burden on interstate commerce;

such State law or regulation shall not have effect and be enforced with respect to commercial motor vehicles after the last day of such 60-month period.

(5)(A) In making any determination with respect to any State law or regulation under this subsection, the Secretary shall give great weight to the corresponding determination made by the Safety Panel with respect to such State law or regulation under subsection (b).

(B) In determining under paragraph (4) whether or not a law or regulation of a State will unduly burden interstate commerce, the Secretary may consider the effect upon interstate commerce of implementation of such law or regulation along with implementation of all similar laws and regulations of other States.

(d)(1) Any person (including any State) may petition the Secretary for a waiver from a determination of the Secretary that a State law or regulation may not be in effect and enforced under this section. The Secretary shall grant such waiver, as expeditiously as possible, if such person demonstrates to the satisfaction of the Secretary that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles.

(2) The decision to grant or deny a petition for a waiver submitted under this subsection shall only be made after the Secretary has afforded the petitioner an opportunity for a hearing on the record.

(e) The Secretary may consolidate rulemaking proceedings under this section if the Secretary determines that such consolidation will not adversely affect any party to any of such proceedings.

(f) Not later than 10 days after making a determination under subsection (c) that a State law or regulation may not be in effect and enforced, the Secretary shall notify, in writing, such State of such determination.

(g)(1) Not later than 60 days after the Secretary makes a determination under subsection (c) with respect to a State law or regulation or grants or denies a petition for a waiver under subsection (d), any person (including any State) adversely affected by such determination or the grant or denial of such petition may file, with the United States court of appeals for the District of Columbia or for the circuit in which such person resides or has his principal place of business a petition for judicial review of such determination or the grant or denial of such petition. Courts, U.S.

(2) Upon the filing of a petition under paragraph (1) of this subsection, the court shall have jurisdiction to review in accordance with chapter 7 of title 5, United States Code, such determination or 5 USC 701 et seq.

the grant or denial of the petition for such waiver and to grant appropriate relief, including interim relief, as provided in such chapter.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such determination or the grant or denial of the petition for such waiver shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification, as provided in section 1254 of title 28, United States Code.

(4) The remedies provided for in this subsection shall be in addition to and not in lieu of any other remedies provided by law.

(h) The Secretary may extend, for an additional period not to exceed 12 months, the 60-month period referred to in section 207(a) and subsections (a) and (c) of this section.

(i) After the last day of the 48-month period beginning on the date of the enactment of this Act, the Secretary, on his or her own initiative or on petition of any interested person (including any State), may initiate a rulemaking proceeding to review under this section any State law or regulation pertaining to commercial motor vehicle safety.

COMMERCIAL MOTOR VEHICLE SAFETY REGULATORY REVIEW PANEL

49 USC app. 2508.

SEC. 209. (a) As soon as practicable after the date of enactment of this Act, the Secretary shall establish a panel to analyze and review State laws and regulations under sections 207 and 208 of this Act. The panel established under this section shall be known as the "Commercial Motor Vehicle Safety Regulatory Review Panel".

(b) The Safety Panel shall—

(1) carry out those duties designated to be carried out by the Safety Panel under sections 207 and 208 of this Act;

(2) conduct a study—

(A) to evaluate the need, if any, for any additional Federal assistance to the States to enable the States to enforce the regulations issued by the Secretary under section 206; and

(B) to determine other methods of furthering the objectives of this title; and

(3) make recommendations to the Secretary based on the results of such study.

(c) The Safety Panel shall be composed of 15 members as follows:

(1) The Secretary or his or her delegate.

(2) Seven individuals appointed by the Secretary from among persons who represent the interests of States and political subdivisions thereof and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

(3) Seven individuals appointed by the Secretary from among persons who represent the interests of business, consumer, labor, and safety groups and whose names have been submitted to the Secretary by the Committee on Commerce, Science, and Transportation of the Senate or the Committee on Public Works and Transportation of the House of Representatives.

The Secretary shall select the individuals to be appointed under this subsection on the basis of their knowledge, expertise, or experience regarding commercial motor vehicle safety. Half of such appointments shall be made from names submitted by the Committee on

Commerce, Science, and Transportation of the Senate, and the other half of such appointments, from names submitted by the Committee on Public Works and Transportation of the House of Representatives. Each of such committees shall submit to the Secretary the names of twenty individuals qualified to serve on the Safety Panel.

(d)(1) A vacancy in the Safety Panel shall not affect its powers but shall be filled in the manner in which the original appointment was made.

(2) Eight members of the Safety Panel shall constitute a quorum, but the Council may establish a lesser number as a quorum for the purpose of holding hearings, taking testimony, and receiving evidence.

(3) The Chairman of the Safety Panel shall be the Secretary.

(4) The Safety Panel shall meet at the call of the Chairman or a majority of its members.

(5) Members of the Safety Panel shall be appointed for a term of seven years.

(6) Members of the Safety Panel shall serve without pay, except that they shall receive per diem and travel expenses in accordance with section 5703 of title 5, United States Code.

(e) Upon request of the Safety Panel, the Secretary shall detail such of the personnel of the Department of Transportation to the Safety Panel as may be necessary to assist the Safety Panel in carrying out its duties under this title.

(f) Upon request of the Safety Panel, the Secretary shall provide such office space, supplies, equipment, and other support services to the Safety Panel and its staff as may be necessary for the Safety Panel to carry out its duties under this title.

(g) The Safety Panel or any member authorized by the Safety Panel may, for the purpose of carrying out the duties of the Safety Panel under this title, hold such hearings, sit and act at such time and places, take such testimony, and take such other actions as the Safety Panel or such member may deem advisable to carry out the duties of the Safety Panel under this title. Any member of the Safety Panel may administer oaths or affirmations to witnesses appearing before the Safety Panel or before such member.

(h) Subject to such rules as the Safety Panel may prescribe, the Chairman of the Safety Panel may procure temporary and intermittent services under section 3109(b) of title 5, United States Code.

INSPECTION

Sec. 210. (a) Upon the instruction of a duly authorized State or Federal enforcement official, each commercial motor vehicle shall be required to pass an inspection of all safety equipment required under part 393 of subchapter B of chapter III of title 49, Code of Federal Regulations. 49 USC app. 2509

(b) The Secretary shall, by rule, establish Federal standards for inspections of commercial motor vehicles and retention by employers of records of such inspections. Such standards shall provide for annual or more frequent inspections of commercial motor vehicles unless the Secretary finds that another inspection system is as effective as an annual or more frequent inspection system. For purposes of this title, such standards shall be deemed to be regulations issued by the Secretary under section 206. Regulations.

(c) Not later than 60 days after the date of the enactment of this Act, the Secretary shall initiate a rulemaking to afford interested

parties an opportunity to comment on such part 393 and the inspection and retention procedures established pursuant to subsection (b) of this section. Amendments to the regulations shall be issued and published in the Federal Register not later than one year after such rulemaking is initiated. The amended regulations shall become effective on the date on which they are published in the Federal Register.

Federal Register, publication. Effective date.

(d)(1) Except as provided in paragraph (2), nothing in section 402 of the Surface Transportation Assistance Act of 1982 or section 206 or any other provision of this title shall be construed as—

49 USC app. 2302.

(A) preventing any State or voluntary group of States from imposing more stringent standards for use in their own periodic roadside inspection programs of commercial motor vehicles;

(B) preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which the Secretary determines is as effective as the Federal standards established under subsection (b);

(C) preventing any State from having in effect and enforcing a program for inspection of commercial motor vehicles which meets the requirements for membership in the Commercial Vehicle Safety Alliance as such requirements were in effect on the date of the enactment of this Act; and

(D) requiring any State which has in effect and is enforcing a program described in subparagraph (B) or (C) to enforce any Federal standard established under subsection (b) or to adopt any provision pertaining to inspection of commercial motor vehicles in addition to such program in order to comply with such Federal standards.

(2) If, after notice and an opportunity for a hearing, the Secretary determines that any State which has in effect and is enforcing a program described in paragraph (1)(C) of this subsection is not enforcing such program in a manner which achieves the objectives of this section, and if, after making such determination, the Secretary provides such State with a six month period in which to improve the enforcement of such program to achieve the objectives of this section, the Federal standards established under subsection (b) shall preempt such program with respect to the inspection of commercial motor vehicles in such State and such program shall not be in effect and enforced with respect to such vehicles.

(e) A periodic inspection of a commercial motor vehicle in accordance with the Federal standards established under subsection (b) or in accordance with a program described in subparagraph (B) or (C) of subsection (d)(1) which is in effect and being enforced shall be recognized as adequate in every State for the period of such inspection. The provisions of this subsection shall not be deemed to prohibit a State from making random inspections of commercial motor vehicles.

(f) The Federal standards established under subsection (b) shall have no effect and shall not be enforced with respect to the inspection of commercial motor vehicles in any State which has in effect and is enforcing a program described in subparagraph (B) or (C) of subsection (d)(1) if the Secretary determines that such Federal standards not having effect and being enforced with respect to such inspection is in the public interest and consistent with public safety.

POWERS OF THE SECRETARY

SEC. 211. (a) The Secretary may conduct, directly or indirectly, such studies and such development, demonstration, and training activities as the Secretary considers appropriate to develop regulations authorized to be issued under section 206 of this title, to design and develop improved enforcement procedures and technologies, and to familiarize affected persons with such regulations. 49 USC app. 2510.

(b) In carrying out the Secretary's functions under this title, the Secretary is authorized to perform such acts (including conducting investigations and inspections; compiling statistics; making reports; issuing subpenas; requiring production of documents, records, and property; taking depositions; holding hearings; prescribing recordkeeping and reporting requirements; and carrying out and contracting for studies, development, testing, evaluation, and training) as the Secretary determines necessary to carry out the provisions of this title, or regulations issued pursuant to section 402 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2302). The Secretary may delegate to a State which is receiving a grant under such section such functions respecting the enforcement (including investigations) of the provisions of this title and regulations issued under this title as the Secretary determines appropriate to carry out such provisions and regulations.

(c) To carry out the Secretary's inspection and investigation functions under subsection (b) of this section, the Secretary or the Secretary's agent shall, as appropriate, consult with employers and employees and their duly authorized representatives, and shall offer them a right of accompaniment

DUTY TO INVESTIGATE COMPLAINTS; PROTECTION OF COMPLAINANTS

SEC. 212. (a) The Secretary shall timely investigate any nonfrivolous written complaint alleging that a substantial violation of any regulation issued under this title is occurring or has occurred within the preceding 60 days. The complainant shall be timely notified of findings resulting from such investigation. The Secretary shall not be required to conduct seperate investigations of duplicative complaints. 49 USC app. 2511.

(b) Notwithstanding the provisions of section 552 of title 5, United States Code, the Secretary shall not disclose the identity of complainants unless it is determined that such disclosure is necessary to prosecute a violation. If disclosure becomes necessary, the Secretary shall take every practical measure within the Secretary's authority to assure that the complainant is not subject to harassment, intimidation, disciplinary action, discrimination, or financial loss as a result of such disclosure. Confidentiality.

PENALTIES

SEC. 213. (a) Section 507 of title 49, United States Code, is amended—

(1) by redesignating subsections (c) and (d), and any references thereto, as subsections (d) and (e), respectively; and

(2) by inserting after subsection (b) the following new subsection:

"(c) The Attorney General, at the request of the Secretary, may bring an action in an appropriate district court of the United States for equitable relief to redress a violation by any person of a provi- Courts, U.S.

Ante, p. 2832.

sion of section 3102 of this title or the Motor Carrier Safety Act of 1984, or an order or regulation issued under such section or Act. Such district court shall have jurisdiction to determine any such action and may grant such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages.".

(b) Section 521(b) of title 49, United States Code, is amended to read as follows:

49 USC 3102.

"(b)(1) If the Secretary finds that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984, or a violation of a regulation issued under such section or Act, has occurred, the Secretary shall issue a written notice to the violator. Such notice shall describe with reasonable particularity the nature of the violation found and the provision which has been violated. The notice shall fix a reasonable time for abatement of the violation, specify the proposed civil penalty, if any, and suggest actions which might be taken in order to abate the violation. The notice shall indicate that the violator may, within 15 days of service, notify the Secretary of the violator's intention to contest the matter. In the event of a contested notice, the Secretary shall afford such violator an opportunity for a hearing, pursuant to section 554 of title 5, following which the Secretary shall issue an order affirming, modifying, or vacating the notice of violation.

"(2) Except as otherwise provided in this subsection, any person who is determined by the Secretary, after notice and opportunity for a hearing, to have committed an act which is a violation of a recordkeeping requirement issued by the Secretary pursuant to section 3102 of this title or the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense. Each day of a violation shall constitute a separate offense, except that the total of all civil penalties assessed against any violator for all offenses relating to any single violation shall not exceed $2,500. If the Secretary determines that a serious pattern of safety violations, other than recordkeeping requirements, exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000. If the Secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death, the Secretary may assess a civil penalty not to exceed $10,000 for each offense. Notwithstanding any other provision of this section, except for recordkeeping violations, no civil penalty shall be assessed under this section against an employee for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. The amount of any civil penalty, and a reasonable time for abatement of the violation, shall by written order be determined by the Secretary, taking into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance.

"(3) The Secretary may require any violator served with a notice of violation to post a copy of such notice or statement of such notice

in such place or places and for such duration as the Secretary may determine appropriate to aid in the enforcement of section 3102 of this title or the Motor Carrier Safety Act of 1984, as the case may be.

49 USC 3102.
Ante, p. 2832.
Courts, U.S.

"(4) Such civil penalty may be recovered in an action brought by the Attorney General on behalf of the United States in the appropriate district court of the United States or, before referral to the Attorney General, such civil penalty may be compromised by the Secretary.

"(5)(A) If, upon inspection or investigation, the Secretary determines that a violation of section 3102 of this title or the Motor Carrier Safety Act of 1984 or a regulation issued under such section or Act, or combination of such violations, poses an imminent hazard to safety, the Secretary shall order a vehicle or employee operating such vehicle out of service, or order an employer to cease all or part of the employer's commercial motor vehicle operations. In making any such order, the Secretary shall impose no restriction on any employee or employer beyond that required to abate the hazard. Subsequent to the issuance of the order, opportunity for review shall be provided in accordance with section 554 of title 5, except that such review shall occur not later than 10 days after issuance of such order.

"(B) In this paragraph, 'imminent hazard' means any condition of vehicle, employee, or commercial motor vehicle operations which is likely to result in serious injury or death if not discontinued immediately.

"(6) Any person who knowingly and willfully violates any provision of section 3102 of this title, the Motor Carrier Safety Act of 1984, or a regulation issued under such section or Act shall, upon conviction, be subject for each offense for a fine not to exceed $25,000 or imprisonment for a term not to exceed one year, or both, except that, if such violator is an employee, the violator shall only be subject to penalty if, while operating a commercial motor vehicle, the violator's activities have led or could have led to death or serious injury, in which case the violator shall be liable, upon conviction, for a fine not to exceed $2,500.

"(7) The Secretary shall issue regulations establishing penalty schedules designed to induce timely compliance for persons failing to comply promptly with the requirements set forth in any notices and orders under this subsection.

Regulations.

"(8) Any aggrieved person who, after a hearing, is adversely affected by a final order issued under this section may, within 30 days, petition for review of the order in the United States Court of Appeals in the circuit wherein the violation is alleged to have occurred or where the violator has his principal place of business or residence, or in the United States Court of Appeals for the District of Columbia Circuit. Review of the order shall be based on a determination of whether the Secretary's findings and conclusions were supported by substantial evidence, or were otherwise not in accordance with law. No objection that has not been urged before the Secretary shall be considered by the court, unless reasonable grounds existed for failure or neglect to do so. The commencement of proceedings under this subsection shall not, unless ordered by the court, operate as a stay of the order of the Secretary.

Courts, U.S.

"(9) All penalties and fines collected under this section shall be deposited into the Highway Trust Fund (other than the Mass Transit Account).

"(10) In any action brought under this section, process may be served without regard to the territorial limits of the district of the State in which the action is brought.

"(11) In any proceeding for criminal contempt for violation of an injunction or restraining order issued under this section, trial shall be by the court, or, upon demand of the accused, by a jury, conducted in accordance with the provisions of rule 42(b) of the Federal Rules of Criminal Procedure.

18 USC app.

"(12) The provisions of this subsection shall not affect any provision of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812) or any regulation promulgated by the Secretary under such Act.

"(13) As used in this subsection, the terms 'commercial motor vehicle', 'employee', 'employer', and 'State' have the meaning such terms have under section 4 of the Motor Carrier Safety Act of 1984.".

Ante, p. 2833.

(c) Section 526 of title 49, United States Code, is amended—

(1) by inserting after "chapter" the first place it appears the following: ", section 3102 of this title, or the Motor Carrier Safety Act of 1984"; and

(2) by inserting after "chapter" the second and third places it appears the following: "or such section or Act".

Study.
49 USC 521 note.

(d) The Secretary shall conduct a study of the effectiveness of the civil and criminal penalties established by the amendments made by this section in deterring violations of the commercial motor vehicle safety regulations issued under this title and in effectively prosecuting such violations when they occur. Such study shall examine the effectiveness of penalties in effect before the date of enactment of this Act in comparison to the penalties established by the amendments made by by this title. Such study shall also investigate the need for, and make recommendations concerning, increased fine levels for civil and criminal penalties, and the need for additional categories of civil and criminal penalties to deter further, and prosecute effectively, violations of such commercial motor vehicle safety regulations. The Secretary shall submit to Congress a report on the findings of this study, together with legislative recommendations, not later than 2 years after the date of enactment of this Act.

Report

LITIGATION AUTHORITY

SEC. 214. Section 413 of Surface Transportation Assistance Act of 1982 (49 U.S.C. 2313) is amended by striking "The Secretary, or, on" and inserting in lieu thereof "On".

CERTIFICATION OF SAFETY FITNESS

Regulations
49 USC app.
2512.

SEC. 215. (a) The Secretary, in cooperation with the Interstate Commerce Commission, shall by rule, after notice and opportunity for comment, establish a procedure to determine the safety fitness of owners and operators of commercial motor vehicles, including persons seeking new or additional operating authority as motor carriers under sections 10922 and 10923 of title 49, United States Code. Such procedure shall include—

(1) specific initial and continuing requirements to be met by such persons to prove safety fitness;

(2) a means of determining whether such persons meet the safety fitness requirements specified under paragraph (1); and

(3) specific time deadlines for action by the Department of Transportation and the Interstate Commerce Commission in making fitness determinations.

(b) Not later than one year after the date of the enactment of this Act, the Secretary shall submit to Congress a copy of the procedure established under subsection (a) of this section.

(c) The rules adopted under this section shall supersede all Federal rules regarding safety fitness and safety rating of motor carriers in effect on the date of enactment of this Act.

(d) Notwithstanding any other provision of law, the Interstate Commerce Commission (1) shall find any applicant for authority to operate as a motor carrier to be unfit if the applicant does not meet the safety fitness requirements established under subsection (a) of this section, and (2) shall deny such application.

HEAVY TRUCK STUDY

SEC. 216. (a) The Secretary shall undertake a comprehensive study of safety characteristics of heavy trucks, the unique problems related to heavy trucks, and the manner in which such trucks are driven. Such study shall include an examination of the handling, braking, stability, and crashworthiness of heavy trucks, and an examination of the programs and needs of enforcement agencies to assure compliance with traffic laws by commercial motor vehicle drivers. In carrying out such study, the Secretary shall consult with truck manufacturers, employee representatives, truck operators, and other interested parties. Not later than September 30, 1986, the Secretary shall submit to the Congress a report on the findings of such study. 49 USC app. 2513. Report.

(b) There are authorized to be appropriated for fiscal years 1986 and 1987 such sums as may be necessary to conduct the study required under subsection (a) of this section. Appropriation authorization.

TRUCK OCCUPANT PROTECTION

SEC. 217. (a) The Secretary shall make a full investigation and study of crash protection for truck occupants. Such study shall examine potential and known hazards to truck occupants and means of improving truck-occupant safety. Such study shall also include potential performance standards, if any, to be met by truck manufacturers. In carrying out such study, the Secretary shall consult with truck manufacturers, employee representatives, truck operators, and other interested parties. The Secretary shall submit to Congress a report on the findings of this investigation and study not later than two years after the date of the enactment of this Act. Study. 49 USC app. 2514. Report.

(b) There are authorized to be appropriated for fiscal years 1986 and 1987 such sums as may be necessary to undertake the study required by subsection (a) of this section. Appropriation authorization.

STUDY OF SAFETY PERFORMANCE OF COMMERCIAL MOTOR VEHICLES

SEC. 218. (a) The Secretary shall conduct a study of the safety performance of commercial motor vehicles. The study shall examine the effectiveness of individual State regulations governing the operations of such vehicles in promoting safety. Such study shall also investigate the need to subject such operations, in whole or in part, to the commercial motor vehicle safety regulations issued under this title. The Secretary shall submit to Congress a report on the find- 49 USC app. 2515. Report.

ings of the investigation and study conducted under this subsection not later than two years after the date of the enactment of this Act.

(b) For purposes of this subsection, the term "commercial motor vehicle" means any self-propelled or towed vehicle used on highways in intrastate commerce to transport passengers or property if such vehicle is described in subparagraph (A), (B), or (C) of section 204(1) of this Act.

STUDY OF SAFETY-RELATED DEVICES

49 USC app. 2516.

SEC. 219. (a) The Secretary shall conduct a study of the effectiveness of existing regulations regarding emergency warning devices required to be carried on buses, trucks, truck-tractors, and motor-driven vehicles which are involved in emergency situations. Such study shall also investigate the potential costs and benefits of requiring passenger automobile operators to carry emergency warning devices, and shall examine the relative benefits of various types of warning devices in enhancing highway safety. The Secretary shall submit to the Congress a report containing the findings of this study not later than 18 months after the date of the enactment of this Act.

Report.

Appropriation authorization.

(b) There are authorized to be appropriated for fiscal years 1986 and 1987 such sums as may be necessary to undertake the study required by this section.

SAFETY STUDY; FEDERAL COORDINATION

49 USC app. 2517.

SEC. 220. (a) The Secretary, in consultation with the Director of the National Institute for Occupational Safety and Health and the Secretary of Labor, shall undertake a study of significant health hazards to which employees engaged in the operation of commercial motor vehicles are exposed, and shall develop such materials and information as are necessary to enable such employees to carry out their employment in a place and manner free from recognized hazards that are causing or are likely to cause death or serious physical harm. The study shall include findings regarding the most appropriate method for regulating and protecting the health of operators of commercial motor vehicles. The findings of such study shall be submitted to the Congress within one year after the date of the enactment of this Act.

(b) The Secretary shall coordinate the activities of Federal agencies to ensure adequate protection of the safety and health of operators of commercial motor vehicles. The Secretary shall attempt to minimize paperwork burdens to assure maximum coordination and to avoid overlap and the imposition of undue burdens on persons subject to regulations under this title.

RELATIONSHIP TO OTHER LAW

49 USC app 2518

SEC. 221. Except as provided in section 206(b), the provisions of this title and the regulations issued under this title shall not affect any provision of the Hazardous Materials Transportation Act (49 U.S.C. App. 1801-1812) or any regulation issued by the Secretary under such Act.

AMENDMENT TO THE MOTOR CARRIER ACT OF 1980

SEC. 222. (a) Section 20(b)(3) of the Motor Carrier Act of 1980 (49 U.S.C. 10927 note) is amended—

(1) by striking out "and" at the end of clause (A); and

(2) by striking out the period at the end of such section and inserting in lieu thereof the following: ", and (C) in the case of any farm vehicle transporting any such material or substance in interstate commerce other than in bulk, the Secretary, by regulation, may reduce such amount if the Secretary finds that such reduction will not adversely affect public safety.".

(b) Section 30(g) of such Act is amended by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (3), and (4), respectively, and inserting before paragraph (2), as so redesignated, the following new paragraph: 49 USC 10927 note.

"(1) 'farm vehicle' means any vehicle which (A) is designed or adapted and used exclusively for agricultural purposes, (B) is operated by a motor private carrier (as such term is defined under section 10102 of title 49, United States Code), and (C) is only incidentally operated on highways;".

SPLASH AND SPRAY SUPPRESSANT DEVICES

SEC. 223. Section 414(b) of the Surface Transportation Assistance Act of 1982 (49 U.S.C. 2314(b)) is amended—

(1) in paragraph (2) by striking out "two years after the date of the enactment of this title," and inserting in lieu thereof "one year after the date on which the standards are established under paragraph (1) of this subsection,"; and

(2) in paragraph (3) by striking out "five years after the date of the enactment of this title," and inserting in lieu thereof "four years after the date on which the standards are established under paragraph (1) of this subsection,".

FOREIGN BUS CARRIER FINANCIAL RESPONSIBILITY REQUIREMENTS

SEC. 224. Section 18(d) of the Bus Regulatory Reform Act of 1982 (49 U.S.C. 10927 note) is amended—

(1) by striking out "(d) Financial" and inserting in lieu thereof "(d)(1) Subject to paragraph (2) of this subsection, financial"; and

(2) by adding at the end thereof the following new paragraph:

"(2)(A) Any person domiciled in any contiguous foreign country who provides transportation by motor vehicle to which any of the minimal levels of financial responsibility established under this section apply shall have evidence of such financial responsibility in such motor vehicle at any time such person is providing such transportation.

"(B) The Secretary of Transportation and the Secretary of the Treasury shall deny entry into the United States of any motor vehicle in which there is not evidence of financial responsibility required to be in such vehicle by subparagraph (A) of this paragraph.".

EXTENSION OF MORATORIUM ON CERTIFICATION OF FOREIGN MOTOR CARRIERS

SEC. 225. (a) Section 10922(l)(1) of title 49, United States Code, is amended by striking out "two-year" each place it appears and inserting in lieu thereof "four-year".

(b) The second sentence of such section is amended by inserting after "such moratorium" the following: "or impose such a moratorium".

Effective date. 49 USC 10922 note.

(c) The amendments made by this section shall take effect on September 19, 1984.

CERTIFICATES OF REGISTRATION FOR FOREIGN MOTOR CARRIERS

SEC. 226. (a)(1) Subchapter II of chapter 105 of title 49, United States Code, is amended by adding at the end thereof the following new section:

49 USC 10530.

"§ 10530. Certificates of registration for certain foreign carriers

"(a) In this section—

"(1) 'registrable year' means the six-month period beginning July 1, 1985, and ending December 31, 1985, calendar year 1986, and each calendar year thereafter.

"(2) 'foreign motor carrier' means a motor carrier of property—

"(A) which does not hold a certificate issued under section 10922 of this title or a permit issued under section 10923 of this title; and

49 USC 10922.
49 USC 10923.

"(B)(i) which is domiciled in any contiguous foreign country; or

"(ii) which is owned or controlled by persons of any contiguous foreign country and is not domiciled in the United States.

"(3) 'foreign motor private carrier' means a motor private carrier—

"(A) which is domiciled in any contiguous foreign country; or

"(B) which is owned or controlled by persons of any contiguous foreign country and is not domiciled in the United States.

"(4) 'exempt items' means items described in paragraphs (4), (6), (11), (12), (13), and (15) of section 10526(a) of this subchapter and items transported under paragraph (5) of such section.

49 USC 10526.

"(5) 'interstate transportation' means transportation described in section 10521(a) of this subchapter and transportation in the United States exempt from the jurisdiction of the Commission under section 10526(b)(1) of this subchapter.

49 USC 10521.

"(b)(1) Except as provided in this section, no foreign motor carrier may provide interstate transportation of exempt items in any registrable year unless the Commission has issued to the carrier a certificate of registration under this section authorizing the carrier to provide such transportation in such year.

"(2) Except as provided in this section, no foreign motor private carrier may provide interstate transportation of property (including exempt items) in any registrable year unless the Commission has issued to the carrier a certificate of registration under this section authorizing the carrier to provide such transportation in such year.

"(c) Without regard to subchapter II of chapter 103 of this title and subchapter II of chapter 5 of title 5, the Commission shall issue a certificate of registration to any foreign motor carrier authorizing the carrier to provide interstate transportation of exempt items in any registrable year, and to any foreign motor private carrier

49 USC 10321.
5 USC 551.

authorizing the carrier to provide interstate transportation of property (including exempt items) in any registrable year, if—

"(1) the Commission finds that the carrier is fit, willing, and able—

"(A) to provide the transportation to be authorized by the certificate; and

"(B) to comply with this subtitle and regulations of the Commission; and

"(2) the carrier demonstrates to the satisfaction of the Commission that the carrier has paid (or will pay in a timely manner) all taxes imposed by section 4481 of the Internal Revenue Code of 1954 on any motor vehicle which such carrier operated in the United States in the most recent taxable period (as such term is defined under section 4482(c) of such Code) ending before the first day of such registrable year. 26 USC 4481. 26 USC 4482.

"(d) A foreign motor carrier and a foreign motor private carrier must file an application with the Commission for a certificate of registration under this section to provide interstate transportation. The Commission may approve any part of the application or deny the application. The application must—

"(1) be under oath;

"(2) contain such information as the Commission may require by regulation; and

"(3) be filed with the Commission at such times as the Commission may require by regulation.

"(e) The requirement that foreign motor carriers and foreign motor private carriers issued certificates of registration under this section be fit, willing, and able means—

"(1) safety fitness; and

"(2) proof of minimum financial responsibility—

"(A) under section 30 of the Motor Carrier Act of 1980, in the case of a foreign motor carrier or foreign motor private carrier which provides transportation in the United States of an item referred to in subsection (b)(1) of such section; and *Ante*, p. 2846

"(B) under the laws of the State or States in which the carrier is operating, in the case of a foreign motor private carrier which provides interstate transportation in the United States of property (other than an item referred to in such subsection).

"(f) Each certificate of registration issued under this section shall specify the transportation to be provided under the certificate.

"(g)(1) Any motor vehicle which is used to provide transportation under a certificate of registration issued under this section shall have a copy of such certificate in such motor vehicle at any time such vehicle is being used to provide such transportation.

"(2) The Commission, the Secretary of Transportation, and the Secretary of the Treasury shall deny entry into the United States of any motor vehicle in which there is not a copy of the certificate of registration required to be in such vehicle by paragraph (1) of this subsection.

"(h) When a certificate of registration is issued under this section, the Commission may prescribe such conditions on the transportation to be provided under the certificate as may be necessary to carry out the objectives of this section.

"(i)(1) Subject to paragraph (3) of this subsection, this section shall not apply with respect to any contiguous foreign country with

respect to which a moratorium is not in effect under section 10922(l) of this title on the effective date of this section.

President of U.S.

"(2) The President of the United States may waive the requirements of this section with respect to any contiguous foreign country if the President determines that such waiver is in the national interest and notifies, in writing, the Congress of such waiver before the date on which such waiver is to take effect. In any case in which the requirements of this section apply with respect to a contiguous foreign country which substantially prohibits grants of authority to persons from the United States to provide transportation by motor vehicle for compensation in such foreign country, such waiver shall not take effect before the 60th day following the date on which the Congress is notifed of such waiver.

"(3) The President of the United States may, by order, make the requirements of this section applicable with respect to any contiguous foreign country if—

"(A) the President determines that making such requirements so applicable is in the national interest; and

"(B) the President—

"(i) notifies, in writing, the Congress of the issuance of such order; and

Federal Register, publication.

"(ii) has published a copy of such order in the Federal Register;

at least 30 days before such order takes effect.".

(2) The analysis for subchapter II of chapter 105 of title 49, United States Code, is amended by adding at the end thereof the following:

"10530. Certificates of registration for certain foreign carriers.".

(b)(1) The first sentence of section 10922(l)(1) of title 49, United States Code, is amended—

(A) by striking out "or any permit" and inserting in lieu thereof "any permit"; and

(B) by inserting after "contract carrier," the following. "or any certificate of registration under section 10530 of this title to any motor carrier of property or motor private carrier,".

49 USC 10922

(2) Section 10922(l)(2) of such title is amended by inserting "(A)" after "(2)" and by adding at the end thereof the following new subparagraph:

"(B)(i) Subject to the provisions of this subparagraph, during a moratorium imposed under paragraph (1) of this subsection with respect to any contiguous foreign country or political subdivision thereof, the Commission may issue certificates of registration under section 10530 of this subtitle to motor carriers of property and motor private carriers domiciled in such country or political subdivision and to motor carriers of property and motor private carriers owned or controlled by persons of such country or political subdivision.

Ante, p. 2848.

"(ii) Subject to clause (iv) of this subparagraph, if the person to be issued the certificate of registration during the moratorium is a motor carrier of property domiciled in the foreign country or political subdivision or is a motor carrier of property owned or controlled by persons of the foreign country or political subdivision, such certificate may only authorize such carrier to provide transportation of exempt items in a municipality in the United States which is adjacent to the foreign country or political subdivision, in contiguous municipalities in the United States any one of which is adjacent to the foreign country or political subdivision, or in a zone in the

United States that is adjacent to, and commercially a part of, the municipality or municipalities.

"(iii) Subject to clause (v) of this subsection, if the person to be issued the certificate of registration during the moratorium is a motor private carrier domiciled in the foreign country or political subdivision or is a motor private carrier owned or controlled by persons of the foreign country or political subdivision, such certificate may only authorize such carrier to provide transportation of property (including exempt items) in a municipality in the United States which is adjacent to the foreign country or political subdivision, in contiguous municipalities in the United States any one of which is adjacent to the foreign country or political subdivision, or in a zone in the United States that is adjacent to, and commercially a part of, the municipality or municipalities.

"(iv) If the person to be issued the certificate of registration during the moratorium is a motor carrier of property domiciled in the foreign country or political subdivision and owned or controlled by persons of the United States, such certificate may only authorize such carrier to provide interstate transportation of exempt items.

"(v) If the person to be issued the certificate of registration during the moratorium is a motor private carrier domiciled in the foreign country or political subdivision and owned or controlled by persons of the United States, such certificate may only authorize such carrier to provide interstate transportation of property (including exempt items).

"(vi) In this subparagraph, the terms 'exempt items' and 'interstate transportation' have the meanings such terms have under section 10530(a) of this title.". *Ante*, p. 2848.

(c)(1) Section 10322(a) of title 49, United States Code, is amended by inserting "10530," after "10525(c),".

(2) The first sentence of section 10927(a)(1) of such title is amended— 49 USC 10927.

(A) by inserting "and a certificate of registration to a motor carrier or motor private carrier under section 10530 of this title" after "10923 of this title";

(B) by striking out "or section 18" and inserting in lieu thereof "section 18"; and

(C) by inserting before the period at the end of such sentence ", or the laws of the State or States in which the carrier is operating, in the case of a motor private carrier".

(3) Section 10927(a)(2) of such title is amended by inserting "and a foreign motor private carrier (as such term is defined under section 10530(a)(3) of this title)" after "A motor carrier".

(4) Section 11701 of such title is amended— 49 USC 11701.

(A) in subsection (a) by inserting after the second sentence the following new sentence: "If the Commission finds that a motor private carrier is violating section 10530 of this subtitle, the Commission shall take appropriate action to compel compliance with such section."; and *Ante*, p. 2848.

(B) by striking out the period at the end of the first sentence in subsection (b) and inserting in lieu thereof "or a motor carrier or motor private carrier providing transportation under a certificate of registration issued under section 10530 of this title.".

(5) Section 11702(a)(4) of such title is amended by inserting before the semicolon at the end thereof the following: "or by a motor 49 USC 11702

carrier or motor private carrier providing transportation under a certificate of registration issued under section 10530 of this title".

49 USC 11901 (6) Section 11901(g) of such title is amended—

(A) by inserting "or transportation provided under a certificate of registration issued under section 10530 of this title" after "chapter 105 of this title";

(B) by striking out ", or (4)" and inserting in lieu thereof ", (4)"; and

(C) by inserting "or (5) does not comply with section 10530 of this title," before "is liable to".

49 USC 11914. (7) Section 11914(b) of such title is amended—

(A) by striking out "this title," and inserting in lieu thereof "this title"; and

(B) by inserting after "1966," the following: "or a condition of a certificate of registration issued under section 10530 of this title,".

Effective date. 49 USC 10530 note. (d) The amendments made by this section shall take effect May 1, 1985, except that the Interstate Commerce Commission may issue before such date such regulations as may be necessary to carry out the amendments made by this section beginning on such date.

TECHNICAL AMENDMENTS

SEC. 227. (a)(1) Section 11901 of title 49, United States Code, is amended—

(A) in subsection (g) by striking out "(h)" and inserting in lieu thereof "(i)";

(B) by redesignating the subsection beginning "(h)(1) Any person required" and subsections (i), (j), and (k), and any references thereto, as subsections (i), (j), (k), and (l), respectively;

(C) in subsection (j)(1), as redesignated by subparagraph (A), by inserting "of" after "paragraph (3)"; and

(D) in subsection (l)(2), as redesignated by subparagraph (A), by striking out "(i)(1), or (j)" and inserting in lieu thereof "(i), (j)(1), or (k)".

49 USC 10934. (2) Section 10934(c) of such title is amended by striking out "11901(j)" each place it appears and inserting in lieu thereof "11901(k)".

49 USC 11348. (3) Section 11348(a) of such title is amended by striking out "(k)(1)" and inserting in lieu thereof "(l)(1)".

(4) Section 2342(5) of title 28, United States Code, is amended by striking out "11901(i)(2)" and inserting in lieu thereof "11901(j)(2)".

(b)(1) Chapter 107 of title 49, United States Code, is amended by redesignating the second section 10734, and any references thereto, as section 10735.

(2) The analysis for such chapter is amended by striking out "10734. Household" and inserting in lieu thereof "10735. Household".

(c) Section 10526(a) of title 49, United States Code, is amended by redesignating the second paragraph (14), and any references thereto, as paragraph (15).

EMPLOYEE PROTECTION

49 USC app. 2301. SEC. 228. (a) Paragraph (2) of section 401 of the Surface Transportation Assistance Act of 1982 is amended by striking out ", nor does" and all that follows through the semicolon at the end of such paragraph and inserting in lieu thereof a semicolon.

(b) The amendment made by subsection (a) shall take effect on the last day of the two year period beginning on the date of the enactment of this Act.

Effective date. 49 USC app. 2301 note.

(c) The Secretary, in consultation with the Secretary of Labor, shall conduct a study to determine whether or not part A of title IV of the Surface Transportation Assistance Act of 1982 should be amended to provide protection to individuals employed by a commercial motor carrier engaged in the transportation of passengers. Not later than twelve months after the date of the enactment of this Act, the Secretary shall transmit to Congress a report on the results of such study.

Study. 49 USC app. 2301 note.

Report.

LIMITATION ON AUTHORITY

SEC. 229. (a) Nothing in this title confers authority on the Secretary to (1) establish Federal traffic safety regulations, or (2) preempt State traffic regulations; except that the Secretary may establish or maintain such Federal regulations to the extent that the subject matter of such regulations is, on the date of the enactment of this Act, regulated under parts 390 to 399 of title 49 of the Code of Federal Regulations.

49 USC app. 2519.

(b) Nothing in this title confers authority on the Secretary to regulate the manufacture of commercial motor vehicles for any purpose, including fuel economy, safety, or emission control.

OVERSIGHT

SEC. 230. The appropriate authorizing committees of the Congress shall conduct periodic oversight hearings on the effects of this title no less often than annually for the first five years following the date of enactment of this Act, to ensure that this Act is being implemented according to congressional intent and the purposes of this title.

49 USC app. 2520

Approved October 30, 1984.

LEGISLATIVE HISTORY—S. 2217:

SENATE REPORT No. 98-405 (Comm. on Commerce, Science, and Transportation).
CONGRESSIONAL RECORD, Vol. 130 (1984):
Oct. 2, considered and passed Senate.
Oct. 11, considered and passed House, amended; Senate concurred in House amendment.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 20, No. 44 (1984).
Oct. 30, Presidential statement.

APPENDIX C

PROPOSED MINIMUM STANDARDS FOR TRAINING TRACTOR-TRAILER DRIVERS

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APPENDIX D

OCTOBER 1, 1985 LETTER FROM
PROFESSIONAL TRUCK DRIVER INSTITUTE TRAINING TO
TRUCKING AND INDUSTRY MEMBERS

TRUCKING INDUSTRY ALLIANCE

1620 Eye Street, N.W., Suite 1000, Washington, D.C. 20006
(202) 862-1900 (913) 841-4507

T. A. Bert Nisbet, Jr., Executive Coordinator

October 1, 1985

Dear

I am writing on behalf of the Accreditation Committee of the Professional Truck Driver Institute of America which is in the process of developing training standards and programs for truck drivers.

The standards and programs will be for use by truck driver training schools operated by state educational institutions, commercial organizations and trucking companies. We anticipate that they will also be used by accreditation organizations and state licensing agencies to evaluate truck driver training schools.

We are planning to set standards in the following areas:

1. Curriculum
2. Training schedules
3. Instructor qualifications
4. Training equipment and materials
5. School facilities, and
6. Promotions, contracts and student qualifications.

A more detailed outline is attached. It is based on proposed minimum standards for training drivers developed by the U. S. Department of Transportation.

Our committee would like to know what standards you feel should be added to, or deleted from, our lists, and your reasons therefore.

We would also like to know what you believe are the strong and weak points of current truck driver training programs, and what is desirable or undesirable. Please give us examples and reasons for your views.

-more-

-2- October 1, 1985

If you want to obtain the complete standards publication developed by the Department of Transportation, write to

Mr. Peter Little
Bureau of Motor Carrier Safety
Federal Highway Administration
Washington, D. C. 20590.

Ask for "Proposed Minimum Standards for Training Tractor-Trailer Drivers."

Thank you for giving us the benefit of your experience and knowledge of truck driver training. We will appreciate receiving your comments by October 25, 1985. Please send your reply to the following address:

425 Boulder
Lawrence, KS 66044.

Sincerely,

Tom

Thomas A. Nisbet, Jr.
President
Professional Truck Driver
Institute of America, Inc.

TAN/mn

Attachment

cc: Board of Directors - PTDIA
Accreditation Committee - PTDIA

APPENDIX E

FHWA ANPRM, "QUALIFICATIONS OF DRIVERS," DOCKET NO. MC-104, and NTSB RESPONSE

Federal Register / Vol. 47, No. 187 / Monday, September 27, 1982 / Proposed Rules 42383

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 391

[BMCS Docket No. MC-104, Notice No. 82-8]

Qualifications of Drivers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Public comment is requested on certain modifications recommended

by the National Transportation Safety Board (NTSB) to the Federal Motor Carrier Safety Regulations (FMCSR) which are being evaluated by the FHWA. The modifications under consideration include the revision of the commercial driver disqualification provisions and the development of specific information that a motor carrier must request from a driver applicant's former employer(s). This notice presents a number of questions with respect to the modifications being considered. Public comments and any available data submitted in response to these questions will greatly assist the FHWA in determining the costs and benefits which are associated with the modifications, and whether further rulemaking action in these areas is warranted.

DATE: Comments must be submitted on or before January 27, 1983.

ADDRESS: All comments should refer to the docket number and notice number that appears at the top of this document and should be submitted, preferably in triplicate, to room 3404, Bureau of Motor Carrier Safety (BMCS), 400 Seventh Street, SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public comment is requested on modifications to the driver qualification requirements (49 CFR 391) of the Federal Motor Carrier Safety Regulations (FMCSR) which are being considered by the FHWA. The modifications under consideration include (1) the revision of the commercial driver disqualification provisions of the FMCSR to provide that certain specified driving offenses shall be disqualifying, without regard to the type of vehicle being driven at the time of the offense or whether the driver was on or off duty; (2) the development of a maximum allowable index or cumulation of traffic convictions, based on the total number and relative seriousness of the violations, above which a driver would be disqualified to operate a commercial motor vehicle; and (3) the development of specific information that a motor carrier must request from a driver applicant's former employer(s) when making the investigation and inquiries required by Part 391. This ANPRM presents a number of questions with respect to the modifications being considered. Public comments and any available data submitted in response to these questions will greatly assist the FHWA in determining the costs and benefits which are associated with the modifications, and whether further rulemaking action in these areas is warranted.

Background

In February 1980, the NTSB completed a report entitled "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations." During this evaluation, the the Board determined that many problem commercial drivers, in spite of their records of unsafe driving, continued to be licensed by the various States and employed by motor carriers to operate large commercial motor vehicles on the nation's highways.

The NTSB, in its evaluation, stated its belief that improvements in the FMCSR and in other elements of the system for detecting and controlling problem drivers, could enhance the level of safety on the nation's highways. The NTSB specifically recommended that the FHWA initiate rulemaking action in the three areas described above. This ANPRM discusses the three NTSB recommendations and requests substantive data and opinions from the public with respect to such recommendations.

History

Prior to 1971, Federal driver qualification requirements required motor carriers to review driver records and give due consideration to the violations and vehicle accident records of its drivers. Motor carriers were required to take into consideration any violation of law which demonstrated a driver's unfitness to be a driver of a motor vehicle operated in interstate or foreign commerce.

On June 7, 1968 (34 FR 8981) the Federal Highway Administrator announced in a Notice of Proposed Rulemaking (NPRM) that consideration was being given to a substantive revision of the driver qualification requirements contained in the FMCSR. With respect to the disqualification of drivers from commercial motor vehicle operations, the FHWA proposed to disqualify those drivers convicted of offenses that would ordinarily lead to a loss of driving privileges under State law, regardless of the type of vehicle being driven or whether the driver was on or off duty. In addition, it was proposed that drivers would be disqualified when they were convicted of three or more moving traffic violations within 3 years.

Based upon the data provided by the approximately 10,000 comments filed during the rulemaking action, the final rule which was published in the Federal Register on April 22, 1970, (35 FR 6458) reflected certain modifications to the NPRM driver disqualification proposals described above. The major modification was the deletion of the proposal that drivers be disqualified upon the conviction of, or the forfeiture of bond under the charge of, three or more moving traffic violations within 3 years. The rationale for this deletion was the uneven motor vehicle law enforcement practices from State to State, the lack of a uniform rule as to what constitutes a moving violation, and the hardships it would cause many drivers.

With respect to the issue of serious motor vehicle offenses committed in personal vehicles or while in an off duty status, however, it was concluded that the commission of a serious offense while operating a vehicle indicates that the perpetrator is unfit to drive a commercial motor vehicle, whether or not the offense was committed while on duty. For this reason, the grounds for disqualification in the final rule were not limited to offenses committed while driving a commercial motor vehicle in an on duty status.

The final rule also provided, among other things, that motor carriers subject to the regulations perform driving record and employment background investigations on newly hired drivers. Also required was an annual review of the driving record for each regularly employed driver in its employ, to determine whether the driver meets minimum requirements for safe driving, requires remedial driver training, or should be disqualified because of conviction of specific offenses or because of the loss of driving privileges. These provisions mandated that the motor carrier give serious consideration in its deliberations, to violations such as speeding, reckless driving, or operating a motor vehicle while under the influence of alcohol or drugs.

On November 23, 1971 (37 FR 25302) the FHWA issued a revision of §391.15 of the FMCSR, pertaining to the disqualification of persons to serve as drivers of commercial motor vehicles operated in interstate or foreign commerce. Based on new trends toward driver rehabilitation rather than punishment and the absence of data which would either prove or disprove a

statistical correlation between the conviction of a disqualifying offense while operating a non-commercial vehicle and bad driving performance in a commercial motor vehicle, the FHWA amended §391.15 to only provide for the disqualification of a driver when the driver was convicted of a disqualifying offense while operating a commercial motor vehicle in an on duty status.

(Current Regulations

Section 391.15, paragraph (b) of the FMCSR provides that a driver is disqualified from operating a commercial vehicle for the duration of a license revocation, suspension, withdrawal, or denial of a license, permit, or privilege, by a State driver licensing agency or other appropriate authority. The driver is disqualified until the driving privilege has been restored.

Paragraph (c) of § 391.15 provides that a driver is disqualified for 1 year (3 years for subsequent offenses) from driving a commercial motor vehicle in interstate or foreign commerce upon conviction, while driving in an on duty status, of certain disqualifying offenses. The disqualifying offenses are:

1. Operating a motor vehicle while under the influence of alcohol, an amphetamine, a narcotic drug, a formulation of an amphetamine, or a narcotic derivative;

2. Conviction of a crime involving the knowing transportation, possession, or unlawful use of amphetamines or narcotic derivatives;

3. Leaving the scene of an accident which resulted in a personal injury or death, or

4. A felony involving the use of a motor vehicle.

Motor carriers are required by § 391.23 to perform background investigations and inquiries on newly employed drivers. The background checks must be accomplished within 30 days from the date of the driver employment and must include: (1) obtaining a copy of the driver's driving record for the preceding 3 years from the appropriate State agency(ies); and (2) investigating, by means of letter, telephone, etc. a driver's employment record for the preceding 3 years.

Finally, according to §§ 391.25 and 391.27 of the FMCSR, the motor carrier must (1) obtain annually from every driver in its employ, a list of all traffic violation convictions (other than parking) during the preceding 12 months; and (2) review each 12 months the driver's driving record, with special attention being given to actions such as speeding, reckless driving, and other violations which indicate that the driver has exhibited a disregard for the safety of the public. The annual review of the driver's driving record permits the motor carrier to determine if the driver continues to meet minimum requirements for safe driving, requires remedial driver training, should be disqualified under the FMCSR provisions, or should be terminated.

(Current Data

During 1973-78, the BMCS conducted in-depth investigations of 425 selected heavy duty vehicle traffic accidents. According to a BMCS report [1] which analyzed the data resulting from the investigations, nearly 10 percent of the accidents involved drivers with poor driving records.[2]

In 1979, 6,666 persons died in crashes involving heavy duty trucks. This figure represents a 34 percent increase in fatalities involving heavy duty trucks since 1970 and 13.1 percent of all the Nation's highway deaths occurring during 1979.[3]

In 1978, heavy duty trucks were involved in 5,309 fatal traffic accidents that killed 5,350 persons—12.6 percent of all highway deaths.[4] The National Transportation Safety Board (NTSB) has stated that the driving background of many of the commercial drivers involved in accidents during 1978 included records of traffic convictions, driver license suspensions, and accidents, indicating a flagrant and repeated disregard for the safety of other highway users.

The NTSB investigated and evaluated 61 accidents in 1978 involving suspected problem commercial vehicle drivers and also reviewed the results of three previous major investigations of heavy truck accidents.[5] The driving histories of the 46 commercial drivers involved in the accidents investigated by the NTSB were compiled by making inquiries to the various States. The individual driving records obtained from the States for the 44 commercial drivers listed a total of 63 driver licenses held, 69 driver license suspensions, 104 traffic accidents, and 416 traffic convictions.

The NTSB has determined that, in spite of commercial driver screening provided by the National Driver Register, State driver licensing agencies, and the individual motor carriers, problem commercial drivers continue to be licensed by the States and employed by motor carriers to operate heavy trucks and other commercial vehicles.

Based on the foregoing information, the FHWA invites comments and any available research data in response to the questions set forth below.

On Duty and Off Duty Citations

There is concern that drivers convicted frequently of moving traffic violations while driving during off duty hours will carry over the same driving habits to the operation of a commercial motor vehicle while in an on duty status.

Question 1. (a) Is there a rational basis for believing that moving traffic offenses committed while performing off duty driving are likely to occur while a driver operates a commercial motor vehicle in an on duty status?

(b) If so, should the present disqualifying offenses in the FMCSR be expanded to cover off duty driving periods, regardless of the type of vehicle operated?

(c) Should the present list of disqualifying offenses be expanded to include other offenses?

(d) If so, what new offenses should be included?

(e) If the present list of disqualifying offenses for on duty driving is expanded to include other offenses, should the additional offenses also be applied to off duty driving activities?

Point System or Maximum Number of Citations

The NTSB, in its recommendations to the FHWA, suggested that the FMCSR be modified to establish specific, minimum driver disqualification criteria, such as those specified in State point systems.

A majority of the States have laws or regulations or both, regarding the establishment and administration of a point system. Under this system, demerits are normally assessed against drivers based on the seriousness of moving traffic violations. When a driver accumulates a specified point total, that individual's driving privilege may be suspended.

In addition to the point system just described, two other systems appear to merit some consideration through the

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[1] "Analysis and Summary of Accident Investigations 1973-78", 1977. Available for inspection at the Bureau of Motor Carrier Safety, 400 Seventh Street, SW., Washington, D.C. 20590 (copy available in docket.)

[2] For the purposes of these investigations, the term "poor driving record" means a record of multiple traffic violations occurring with regularity over a period of several years.

[3] Fatal Accident Reporting System (FARS), National Center for Statistics and Analysis, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

[4] "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers Through: The National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations" February 18, 2010. Available to the public through the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161, Accession No. PB 80183288, paper copy price, [illegible] (copy available in docket.)

rulemaking process. These systems are: (1) A disqualification system based on a maximum number of moving traffic violations, and (2) a disqualification system encompassing both a point system and a maximum number of moving traffic violations. The latter system would allow some flexibility based on the seriousness of moving traffic violations.

Whether the FHWA determines that disqualifying offenses are to continue to include only those offenses committed while a driver is on duty, or should also include off duty violations, the FHWA desires comments and information with respect to the following questions:

Question 1. Would it be feasible to strengthen driver disqualification requirements by integrating into these requirements a point system or a maximum citation system, or a combination or both?

Question 2. (a) If a point system is adopted, should convictions for all moving traffic violations be included?

(b) If no, for which violations should points be assessed?

(c) What would be the appropriate demerit value for each violation?

Question 3. (a) If a maximum citation system is adopted, should convictions for all moving traffic violations be included?

(b) If so, what should be the maximum number of citations allowed prior to disqualification?

Question 4. Should convictions from States other than the driver's State of residence be included in the driver disqualification process?

Question 5. (a) Some States have driver improvement programs, whereby demerits are subtracted (citations are not withdrawn, however) from a driver's record upon the driver's successful completion of an approved traffic safety course, alcohol rehabilitation course, or some other form of a driver improvement program. Should the FHWA consider a similar deletion process if additional disqualification requirements are adopted?

(b) If the disqualification programs were to include credit for attendance at a driver improvement program, how should this procedure be administered?

Question 6. (a) In instances where a driver's disqualification period has not elapsed and the driver successfully completes an approved driver training program, should the driver be reinstated?

(b) If the driver is reinstated, how should this part of the program be administered?

Work Permit Licenses

Provided that a driver meets certain conditions, many States issue some type of hardship (restricted) license in accordance with point system driver license suspensions.

Question 8. If additional disqualification requirements are adopted, should disqualification action be negated for those drivers who have been issued a work permit license by the State, or by the State at the direction of a court?

Question 9. A number of States have "professional" driver laws. A "professional" driver is usually designated as such by: mileage driven annually, type of employment, and type of vehicle driven. These drivers usually are entitled to retain their drivers license when the license would otherwise be subject to suspension under the point system. If additional disqualification requirements are adopted by the FHWA, would the difference in State laws and Federal regulations in this regard cause undue administrative burden with respect to driver license suspensions, for State law enforcement and State driver licensing agencies?

Driving While Disqualified

A concern of many highway safety officials is the number of drivers who continue to drive while their licenses are suspended or revoked.

Question 10. (a) If additional disqualification requirements are adopted by the FHWA, should the current penalties (i.e., up to $500.00 per offense) for continuing to drive during the disqualification period be applied to all of the new disqualification requirements?

(b) If no, to which additional disqualification requirements should the current penalties apply?

(c) Should additional penalties be developed and applied against drivers who continue to drive during their disqualification period?

(d) If so, what additional penalties should be developed and applied against drivers who continue to drive during their disqualification period?

Record of Violations and Annual Review of Driving Record

Question 11. Drivers are presently required by the FMCSR to provide the employing motor carrier with a list of all violations of motor vehicle laws (other than parking), once every 12 months (49 CFR 391.27).

(a) In order to ensure that motor carriers obtain the driver's true driving record, should the present procedure be amended to require the motor carrier or driver to obtain a copy of the driver's record from the appropriate State motor vehicle agency(ies), rather than permit the driver to prepare the list? Privacy restrictions in some States would have to be considered if motor carriers are to obtain the copy of the driving record.

(b) If the motor carrier is required to obtain a copy of the record of each driver from the appropriate State motor vehicle agency(ies), what financial impact would this have on the motor carrier?

(c) If drivers continue to provide the record, whether in the form of a list compiled by the driver or by obtaining a copy of their driving record(s) from the State(s), what safeguards should be included to ensure that the document the driver provides is true and accurate?

(d) If safeguards are added and if motor carriers obtain copies of driving records directly from State motor vehicle agencies, would this procedure create a workload problem for State motor vehicle agencies and thus delay the forwarding of reports to motor carriers within a reasonable time period?

Question 12. The present FMCSR require that a driver's record be checked every 12 months (49 CFR 391.25). If additional disqualification requirements are adopted, should more frequent record checks be made?

Question 13. At the present time, there is no requirement that BMCS and the appropriate State agency(ies) be notified when a driver is disqualified.

(a) If additional disqualification requirements are adopted, is there a need for the motor carrier to notify the BMCS and the appropriate State motor vehicle agency(ies) when a driver is disqualified?

(b) If so, what procedure should be followed?

Investigation of Driver's Employment Record

Question 14. The FMCSR do not specify the information a motor carrier is required to request from a driver applicant's former employer(s). The NTSB has expressed its belief that absent a full definition of the information which must be requested by the employing motor carrier, there is no way to determine if the motor carrier is in full compliance with the requirement.

The FMCSR presently requires the motor carrier to investigate a driver's employment record for the past 3 years, during the initial employment process. The FMCSR however, do not specifically set forth items of information which the motor carrier

must attempt to obtain during contacts with the driver's previous employers.

(a) Should the FMCSR be amended to specify the information an employing motor carrier must attempt to obtain from a driver's previous employer(s)?

(b) If so, what required information should a motor carrier request from an applicant driver's former employer(s)?

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. A draft regulatory evaluation will be prepared based upon the data received from this notice.

Based on the information available to the FHWA at this time, the action taken in this rulemaking would not have a significant economic impact on a substantial number of small entities.

(49 U.S.C. 504, 1655; 49 CFR 1.48 and 301.60)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

List of Subjects in 49 CFR 391

Motor carriers, Drivers, Qualifications.

Issued on: September 22, 1992.

Kenneth L. Heaton,

Director, Bureau of Motor Carrier Safety, Federal Highway Administration.

[FR Doc. 92-[illegible] Filed 9-[illegible]-92; 8:45 am]

BILLING CODE 4910-[illegible]

31 JAN 1983

Bureau of Motor Carrier Safety
Room 3404
400 Seventh Street, S.W.
Washington, D.C. 20590

Dear Sir:

The National Transportation Safety Board has reviewed your Advance Notice of Proposed Rulemaking, "Qualifications of Drivers," BMCS Docket No. MC-104, Notice No. 82-8. As stated in the Notice, this action is responsive to the recommendations issued in the Safety Board's report, "Safety Effectiveness Evaluation of Detection and Control of Unsafe Interstate Commercial Drivers through the National Driver Register, State Driver Licensing Policies, and the Federal Motor Carrier Safety Regulations," February 15, 1980, (NTSB-SEE-80-1). Our comments in response to a number of the questions posed in the Notice are provided below:

Question 1.(a) - Is there a rational basis for believing that moving traffic offenses committed while performing off-duty driving are likely to recur while a driver operates a commercial motor vehicle in an on-duty status?

Response: The point is often made that a driver's record of unsafe driving while operating a noncommercial vehicle (or a commercial vehicle during off-duty hours) is not likely to carry over to the on-duty operation of a commercial vehicle because of the driver's professional pride and motivation to maintain employment as a commercial driver. That is, the driver differentiates between his or her responsibility for compliance with traffic safety laws while driving professionally versus nonprofessionally, such as in a personal vehicle, either because the professional driving responsibility is taken more seriously, or because irresponsible and unsafe driving behavior is considered acceptable as long as it doesn't count toward disqualification as a commercial driver.

In fact, the Board is not aware of any data which support either argument, and both arguments are inconsistent with the principle underlying the one-license concept. That principle, which is universally accepted by driver licensing authorities, is that each driver has a single, nationwide driving privilege and not a separate and independent driving privilege for each state and for each class of motor vehicle. This principle is embodied in State licensing

systems, which do not distinguish between violations by class of motor vehicle. When drivers receive traffic violation points for unsafe operation of a private automobile, and this results in forfeiture of the driving privilege, that forfeiture normally applies to all classes of vehicles. The driver does not retain the privilege of operating a motorcycle or a heavy truck. As a practical matter, motor carriers have little or no ability to distinguish between violations while operating commercial or non-commercial vehicles or while operating a commercial vehicle on or off duty, because the driver record abstracts provided by the States typically do not report the type of vehicle operated or duty status.

Question 1.(b) If so, should the present disqualifying offenses in the FMCSR be expanded to cover off-duty driving periods, regardless of the type of vehicle operated?

Response: Yes.

Question 1.(c) Should the present list of disqualifying offenses be expanded to include other offenses?

Response: Yes. Consideration should be given to expansion of the disqualifying offenses to include offenses which could be particularly hazardous in the operation of heavy commercial vehicles and vehicles transporting hazardous materials.

Question 1.(d) If so, what new offenses should be included?

Response: Expansion of the disqualifying offenses should extend to serious offenses, such as reckless driving and excessive speed.

Question 1.(e) If the present list of disqualifying offenses for on-duty driving is expanded to include other offenses, should the additional offenses also be applied to off-duty driving activities?

Response: Yes, see response to Question 1.(a), above.

Question 2. Would it be feasible to strengthen driver disqualification requirements by integrating into these requirements a point system or a maximum citation system, or a combination or both?

Response: Yes.

Question 3.(a) If a point sytem is adopted, should convictions for all moving traffic violations be included?

Response: Yes.

Question 4.(a) If a maximum citation system is adopted, should convictions for all moving traffic violations be included?

- 3 -

Response: Yes, but the system must be able to distinguish between the relative seriousness of offenses.

Question 5. Should convictions from States other than the driver's State of residence be included in the driver disqualification process?

Response: Yes. Many commercial drivers operate in two or more States. Limiting applicable citations to the licensing State would defeat the purpose of the disqualification rules.

Question 6.(a) Some States have driver improvement programs, whereby demerits are subtracted (citations are not withdrawn, however) from a driver's record upon the driver's successful completion of an approved traffic safety course, alcohol rehabilitation course, or some other form of a driver improvement program. Should the FHWA consider a similar deletion process if additional disqualification requirements are adopted?

Response: No. Deletion should be based upon actual rehabilitation as evidenced by demonstrated improvement in the driver's record over a period of time. Merely attending a rehabilitation program does not necessarily mean that the desired results will be achieved.

Question 7.(a) In instances where a driver's disqualification period has not elapsed and the driver successfully completes an approved driver training program, should the driver be reinstated?

Response: No, for the reasons stated in Question 6(a.), above.

...

Question 11. Drivers are presently required by the FMCSR to provide the employing motor carrier with a list of all violations of motor vehicle laws (other than parking), once every 12 months (49 CFR 391.27).
(a) In order to ensure that motor carriers obtain the driver's true driving record, should the present procedure be amended to require the motor carrier or driver to obtain a copy of the driver's record from the appropriate State motor vehicle agency(ies), rather than permit the driver to prepare the list? Privacy restrictions in some States would have to be considered if motor carriers are to obtain the copy of the driving record.

Response: Yes. Re[illegible] on self-reporting by the driver is unrealistic. A driver who is at o[illegible] near the disqualification threshhold is not

likely to report information which could result in adverse action by the employer. Moreover, even the best intentioned driver might inadvertently forget to report some violations which occurred early in the 12 months preceding the review.

In 1972, the Safety Board recommended that motor carriers be permitted access to National Driver Register data for the purpose of screening the driving records of both applicant and employed drivers. In its Safety Effectiveness Evaluation report of February 15, 1980, the Safety Board recommended further improvements in the National Driver Register, and again urged that motor carriers be authorized access to Register data through State driver licensing authorities. The recommended legislation was recently enacted in the National Driver Register Act of 1982.

The Safety Board urges the above changes be fully implemented, and believes they will subtantially improve the ability of motor carriers to obtain accurate driver record data.

Respectfully yours,

ORIGINAL SIGNED BY
PATRICIA GOLDMAN

Jim Burnett
Chairman

APPENDIX F

FHWA ANPRM, "FEDERAL MOTOR CARRIER SAFETY REGULATIONS," DOCKET NO. MC-114

2998 Federal Register / Vol. 50, No. 15 / Wednesday, January 23, 1985 / Proposed Rules

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390, 391, 392, 393, 394, 395, 396, 397, 398, and 399

[BMCS Docket No. MC-114; Notice No. 85-1]

Federal Motor Carrier Safety Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking; closing dockets.

SUMMARY: Section 206 of the Motor Carrier Safety Act of 1984 directs the Department of Transportation to issue regulations, pertaining to commercial motor vehicle safety, within 18 months from October 30, 1984, the date of enactment. The purpose of this notice is to (1) advise the public what areas of the Federal Motor Carrier Safety Regulations (FMCSR) are being considered for revision, rescission, or additions, (2) request comments on those areas under consideration, and (3) to incorporate the above named dockets and the comments into this rulemaking action.

DATE: Comments must be received on or before March 11, 1985.

ADDRESS: All comments should refer to the docket number that appears at the top of this document and must be submitted (preferably in triplicate) to Room 3404, Bureau of Motor Carrier Safety, 400 Seventh Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Neill L. Thomas, Bureau of Motor Carrier Safety, (202) 426-9767; or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 426-0346, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. et, Monday through Friday.

SUPPLEMENTARY INFORMATION: The following open MC dockets are being incorporated into this rulemaking action, and therefore are being closed:

MC-84—Employee Safety and Health Standards
MC-93—Migratory Workers
MC-99—Exemptions—Operations Involving Retail Fertilizer Distribution to Farms
MC-99-1—Driver's Record of Duty Status
MC-100—Written Examination of Drivers
MC-104—Qualifications of Drivers
MC-109—Reporting of Accidents.

The purposes of the Motor Carrier Safety Act of 1984 (Act), Pub. L. 98-554, 98 Stat. 2829, as stated by the Congress, are to promote the safe operation of commercial motor vehicles, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act.

The Congress found that it is in the public interest to enhance commercial motor vehicle safety and to reduce highway fatalities, injuries, and property damage. By having more uniform commercial motor vehicle measures and strengthened enforcement, the number of fatalities and injuries would be reduced and the level of property damage related to commercial motor vehicle operations would also be reduced. Congress also found that it is in the public interest to enhance protection of the health of commercial motor vehicle operators.

Congressional Directive

Section 206 of the Act directs the Secretary to issue regulations, not later than 18 months from date of enactment, pertaining to commercial motor vehicle safety. Such regulation shall establish minimum Federal safety standards for commercial motor vehicles and shall at a minimum, ensure that (1) commercial motor vehicles are safely maintained, equipped, loaded, and operated; (2) the responsibilities imposed upon operators of commercial motor vehicles do not impair their ability to operate such vehicles safely; (3) the physical condition of operators of commercial motor vehicles is such that they are able to operate such vehicles safely; and (4) the operation of commercial motor vehicles does not have deleterious effects on the physical condition of such operators.

The directive includes a prohibition against elimination or modification of any existing motor carrier safety rule pertaining exclusively to the maintenance, equipment, loading or operation (including routing regulations) of vehicles carrying materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 U.S.C. 1801 et seq.) unless and until an equivalent or more stringent regulation has been promulgated under the Hazardous Materials Transportation Act. We are seeking information, however, concerning the adoption of new or additional rules which may enhance the safety of hazardous materials transportation, as found in Part 397 of the FMCSR.

The Act also provides that after notice and opportunity for comment the Secretary may waive, in whole or in part, application of any regulation with respect to any person or class of persons, if it is determined that such waiver is not contrary to the public interest and is consistent with the safe operation of commercial motor vehicles. Any waiver granted shall be published in the Federal Register together with the reasons for such waiver.

This Advance notice of proposed rulemaking (ANPRM) is intended as the first step in implementing section 206 of the Motor Carrier Safety Act of 1984. It is the intention of the Bureau of Motor Carrier Safety to reissue the FMCSR (49 CFR Parts 390-399) under the Motor Carrier Safety Act of 1984 and under section 3102 of title 49, United States Code, as amended. This ANPRM outlines certain subjects or provisions of the FMCSR which will be considered for amendment prior to reissuance. Comment, however, is solicited on other areas which may require amendment in order to fulfill the Congressional purposes of the Motor Carrier Safety Act of 1984 outlined above.

The States are particularly requested to review this notice and the FMCSR in light of their own needs and experiences. Section 206 of the Motor Carrier safety Act of 1984 calls for the preemption of certain State rules on October 30, 1989 (1990 if extended by the Secretary). Section 207 of the Act provides for submission of all State commercial motor vehicle safety rules to the Secretary within 6 months for review and analysis with a view toward such preemption. While the purpose of the preemption provision is to achieve uniformity along the lines of the Federal rules, some States may have identified problems or solutions to problems which warrant consideration for nationwide application. Thus, States may wish to recommend specific changes which they believe will serve to also fulfill the purpose of the Motor Carrier Safety Act of 1984.

Excluded from this rulemaking is Part 393, Parts and Accessories Necessary for Safe Operation. Section 210 of the Act requires the Secretary to establish Federal standards for inspections of commercial motor vehicles and retention by employers of records of such inspections. It also directs the Secretary to initiate a rulemaking to afford interested parties an opportunity to comment on Part 393 and the inspection and retention procedures. A

separate rulemaking has been established relative to Part 393.

Also excluded from this rulemaking is Part 397, Transportation of Hazardous Materials; Driving and Parking Rules.

Comments are requested on the following areas that are being considered for revision:

Applicability

The applicability section being considered in Part 390 would include commercial motor vehicles operated in interstate or foreign commerce and: (1) Having a gross vehicle weight rating in excess of 10,000 pounds; (2) designed to transport more than 15 passengers including driver; or (3) transporting hazardous materials in a quantity requiring the vehicle to be placarded.

Consideration is also being given to include in the applicability section those employees and employers as defined in section 204 of the Act, as being subject to certain provisions of the FMCSR:

An "employee" means—

(1) An operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(2) A mechanic;

(3) A freight handler (helper); and

(4) Any individual other than an employer, who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety, but such term does not include an employee of the United States, any State, or any political subdivision of a State who is acting within the course of such employment.

An "employer" means any person engaged in a business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or assigns employees to operate it, but such term does not include the United States, any State, or political subdivision of a State.

There would be no need for an applicability chart as now appears in § 390.33, should the intracity operation exemption be eliminated, as being proposed herein.

Exemptions

Comments concerning the elimination of certain current regulatory exemptions are requested. Petitions for waiver of the application of the regulations, in whole or in part, would subsequently be considered. Waivers, authorized after notice and opportunity to comment, would be published in the Federal Register detailing the reasons for such waiver.

1. *School buses.* The Act directs the Secretary to waive application of the regulations to school buses unless the Secretary determines that making the regulations applicable to school buses is necessary for public safety. In making that determination, the Secretary must take into account all Federal and State laws applicable to such school buses. Comments concerning such a school bus waiver is specifically requested.

2. *Exempt intracity operation.* Consideration is being given to eliminate the exemption provided for vehicles and/or drivers used wholly within a municipality or the commercial zone thereof. Commercial zone operations today are considerably different from those operations conducted at the time the exemption was implemented. With the advent of high speed expressways and beltways through and around major cities, commercial zone operations are exposed to considerably heavier density traffic than that between distant cities. Comments are needed to support justification to warrant continuation of the exemption.

3. *Retail store deliveries—December 10 to December 25.* Section 395.3(c) of the FMCSR exempts from the hours of service regulations those drivers engaged solely in making deliveries for retail stores during the period from December 10 through December 25 each year. These types of operations are quite different today from those operations conducted years ago. Comments are requested concerning the refining of the definition of retail store deliveries with the possibility of eliminating the exemption.

4. *Lightweight vehicle exemption.* The Act defines a "commercial motor vehicle" as one having a gross vehicle weight rating of 10,001 pounds or more; one designed to transport more than 15 passengers, including the driver; or vehicles transporting hazardous materials in quantities requiring the vehicle to be placarded. Therefore, such an exemption would be irrelevant under the applicability provision.

5. *Contract mail carriers exemption.* Exemption provided for drivers of lightweight mail trucks, with a gross vehicle weight rating of 10,000 pounds or less, used exclusively to transport mail under contract with the U.S. Postal Service, would be irrelevant under the applicability provisions.

Other Areas Under Consideration

1. Section 206(a) of the Act requires regulations that will protect the safety and health of operators of commercial motor vehicles. Therefore, comments are requested concerning additional, more stringent employee safety and health standards with respect to work activities by employees of commercial motor carriers. Activities include those that are ordinarily and customarily performed in, on, or about motor vehicles, including but not limited to the operation, maintenance, loading and unloading of motor vehicles (See Docket MC-64 incorporated herein).

2. The National Transportation Safety Board has recommended a study of the feasibility of requiring drivers to have an additional national or State license or endorsement prior to driving vehicles containing bulk hazardous materials. It further recommended that the study should establish criteria for prior driving record and training in handling hazardous materials and in emergency procedures. Pending initiation of such a study, what additional, if any, requirements should be considered for drivers who operate commercial motor vehicles transporting hazardous materials in such quantities that requires the vehicle to be placarded.

3. Clarify the on-duty rule as it relates to the 60-hour or 70-hour weekly limitation. The current rule prohibits on-duty time following 60 hours on-duty in any 7 day period or 70 hours in any 8 day period. However, under a present interpretation, drivers may be on duty beyond the 60 or 70 hour limitation but may not drive. Safety of operation, to which the regulations are directed, is not compromised when a driver works in a non-driving capacity beyond the 60 or 70 hour limitation.

4. For the first time, the Act made private motor carriers of passengers subject to the provisions of the FMCSR. Since these carriers were never regulated there is no information or data readily available on which to make a determination as to the extent these carriers should be regulated. Comments are requested on whether a phase-in period of adjustment should be provided during which time the regulations would be made applicable on a limited basis. Should private motor carriers of passengers operating occasionally be made subject all of the FMCSR the same as the regulated carrier? Should the transportation of passengers by a commercial business enterprise, in furtherance of a primary business, be subject to all of the provisions of the FMCSR? Should the vehicle (bus) be maintained in accordance with all of the provisions of Part 393 parts and accessories and Part 396 inspection, repair and maintenance? Should the drivers be required to comply with the driver qualification requirements immediately or establish a step by step

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approach over a period of several years? What paperwork requirements should the operators and drivers be required to comply with, or should they be exempt from the paperwork requirements except for accident reporting? To what extent should private carriage of passengers be regulated and what data is available to support that position?

Current Rulemaking Actions Incorporated Into This Docket

The following rulemaking actions are being closed and made a part of this docket. The comments submitted to those dockets listed below will be considered in conjunction with this rulemaking. Any person desiring to comment further to the following dockets may do so. Comments previously submitted need not be resubmitted.

• *MC-64—Employee Safety and Health Standards.*

The NPRM was published in the Federal Register March 2, 1978 (43 FR 8566), proposing safety and health standards to protect employees engaged in the operation, maintenance, loading and unloading of commercial motor vehicles and certain other employees. The standards were designed to eliminate uncertainty with regard to the jurisdictional authority of the Occupational Safety and Health Administration and the Federal Highway Administration.

• *MC-93—Migratory workers.*

An Advance Notice of Proposed Rulemaking (ANPRM) was published in the Federal Register August 4, 1980 (45 FR 51625). The notice solicited information concerning the transportation of migrant workers as to what regulations, if any, should be added, modified or revoked.

• *MC-99—Exemptions—Operations Involving Retail Fertilizer Distribution to Farms.*

An ANPRM was published in the Federal Register February 4, 1982 (47 FR 5273). Comments were requested on a petition filed by The Fertilizer Institute to provide an exemption from the requirements of the FMCSR for operations involving direct retail sale and delivery of fertilizer to the farmer.

• *MC-99-1—Drivers Record of Duty Status.*

Comments submitted to the docket, due on or before January 31, 1985, will be considered along with any others submitted to this docket. Consideration will be given to the possible elimination of certain items required on the driver's record of duty status and extending the 12 hour limitation in the 100 mile radius exemption to 15 hours or permitting a 50 mile radius rule as an option with the 15 hour rule.

• *MC-100—Written Examination of Drivers.*

An ANPRM was published in the Federal Register March 4, 1982 (47 FR 9258). Public comment was requested on the following options: (1) A pass/fail test requirement; (2) rescission of the requirement for the written examination; or (3) retention of the requirement as it is and update the questions.

• *MC-104—Qualifications of Drivers.*

An ANPRM was issued September 27, 1982 (47 FR 42383). Comments were requested on certain modifications recommended by the National Transportation Safety Board, including revison of the driver qualification provisions and development of specific information that a motor carrier must request from a driver applicant's former employer. A number of questions were presented with respect to modifications being considered.

• *MC-109—Reporting of Accidents.*

Comments submitted to this docket will be considered relative to the proposed accident form and the proposed increase from $2,000 to $4,000 as the minimum amount of property damage required for reporting of accidents.

Based upon the aforementioned discussion, the following rulemaking actions are hereby formally withdrawn: NPRM (3/2/78; 43 FR 8566; Docket MC-64), ANPRM (8/4/80; 45 FR 51625; Docket MC-93), ANPRM (2/4/82; 47 FR 5273), ANPRM (3/4/82; 47 FR 9258; Docket MC-100), ANPRM (9/27/82; 47 FR 42383; Docket MC-104), and NPRM (1/16/84; 49 FR 1912; Docket MC-109).

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. This rulemaking action was initiated by a Congressional directive contained in section 208 of the Motor Carrier Safety Act of 1984. This ANPRM covers a broad regulatory spectrum and does not lend itself to a regulatory evaluation. Upon receipt and analysis of the comments to this ANPRM, separate dockets addressing specific Parts of the FMCSR are anticipated. We expect to prepare a full regulatory evaluation for each new docket established.

Based on the information available at this time, it is believed that any action taken in this rulemaking will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 49 CFR Parts 390, 391, 392, 393, 394, 395, 396, 397, 398, 399

Motor carriers, Driver requirements, Driving motor vehicles, Parts and accessories, Accident reporting, Hours of service, Inspection, repair, and maintenance, Hazardous materials, Migrant workers, Employee safety and health.

(49 U.S.C. 3102; Pub. L. 98-554, 98 Stat. 2829, section 208; 49 CFR 1.48)

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety)

Issued on: January 16, 1985.

Kenneth L. Pierson,

Director, Bureau of Motor Carrier Safety.

[FR Doc. 85-1720 Filed 1-22-85; 8:45 am]

BILLING CODE 4910-22-M

APPENDIX G

SCHEMATIC OF MODEL STATE CLASSIFIED LICENSING PROGRAM

Schematic of AAMVA Classified Program	
A	Any vehicle or combination of vehicles, including all vehicles under Classes "B" and "C", except motorcycles.
B	Any single vehicle weighing over 24,000 pounds GVW*, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVW*, and any bus, and all vehicles under Class "C" except motorcycles.
C	Any single vehicle not in excess of 24,000 pounds GVW*, or any such vehicle towing a vehicle not in excess of 10,000 GVW*, except buses and motorcycles..
M	Motorcycles MOPEDS Motor-Driven Cycles
P	Instruction permit (learner's permit) for any of the above classes.

*Classifications developed by the American Association of Motor Vehicle Administrators and endorsed by the NHTSA

* Gross Vehicle Weight

*U.S. GOVERNMENT PRINTING OFFICE: 1986-491-098:40027

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