

Conference on Families for Persons with Disabilities
800 Information and Referral Number
Forum on Living Arrangements for Severely Disabled Children and Youth
Commission on Special Education
Presentation on Integrated Employment
Discussion of Unfinished and New Business

Records shall be kept of all Council proceedings and shall be available after the meeting for public inspection at the National Council on the Handicapped.

Signed at Washington, DC, on July 15, 1988.

Ethel D. Briggs,

Acting Executive Director.

[FR Doc. 88-16541 Filed 7-19-88; 2:02 pm]

BILLING CODE 6820-BS-M

NATIONAL MEDIATION BOARD

TIME AND DATE: 2:00 p.m., Wednesday, August 3, 1988.

PLACE: Board Hearing Room 8th Floor, 1425 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Ratification of the Board actions taken by notation voting during the month of July, 1988.

2. Other priority matters which may come before the Board for which notice will be given at the earliest practicable time.

SUPPLEMENTARY INFORMATION: Copies of the monthly report of the Board's notation voting actions will be available from the Executive Director's office following the meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Charles R. Barnes, Executive Director, Tel: (202) 523-5920.

DATE OF NOTICE: July 18, 1988.

Charles R. Barnes,

Executive Director, National Mediation Board.

[FR Doc. 88-16550 Filed 7-19-88; 2:03 pm]

BILLING CODE 7550-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of July 25, 1988.

A closed meeting will be held on Tuesday, July 26, 1988, at 2:30 p.m. An open meeting will be held on Thursday, July 28, 1988, at 9:30 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary of the Commission, and recording secretaries

will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Fleischman, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Tuesday, July 26, 1988, at 2:30 p.m., will be:

Formal order of investigation.
Settlement of administrative proceeding of an enforcement nature.
Institution of administrative proceeding of an enforcement nature.

The subject matter of the open meeting scheduled for Thursday, July 28, 1988, at 9:30 a.m., will be:

1. Consideration of whether to adopt amendments to Rule 204-2, the recordkeeping rule under the Investment Advisers Act of 1940. The amendments would require advisers to retain, for Commission inspection, all advertisements and supporting records for performance information in advertisements. Advertisements and supporting records would be required to be kept for five years from the end of the fiscal year in which the advertisement was last published. For further information, please contact Dorothy M. Donohue at (202) 272-2107.

2. Consideration of whether to propose for public comment forms N-17f-1 and N-17f-2 under the Investment Company Act of 1940 and form ADV-E under the Investment Advisers Act of 1940. The forms would serve as cover sheets for accountant examination certificates which are currently required to be filed with the Commission. The forms are designed to facilitate the proper filing of examination certificates and, thus, increase the accessibility of such information to both investors and the Commission's staff. For further information, please contact John McGuire at (202) 272-2107.

3. Consideration of whether to propose for public comment Rule 17 and amendments to Rule 2 and Form U-3A-2 under the Public Utility Holding Company Act of 1935. Rule 17 would specify the circumstances in which nonutility diversification by an intrastate public-utility holding company would not be deemed detrimental to the public interest or the interest of investors or consumers. Amended Rule 2 would provide that a claim of exemption under Rule 2 by an intrastate public-utility holding company, in order to be effective, would require the holding company to meet one of the safe harbor provisions of Rule 17, and amended Form U-3A-2 would require the company to furnish information

supporting its ability to rely on one of the safe harbor provisions of Rule 17. For more information, please contact Sidney L. Cimmet at (202) 272-7340.

4. Consideration of an application filed by Merrill Lynch California Municipal Series Trust *et al.* and all similar investment companies to be established, advised, or managed by Merrill Lynch Asset Management, Inc. ("MLAM") or Fund Asset Management, Inc. ("FAMI"), or distributed by Merrill Lynch Funds Distributor, Inc. ("MLFD") ("Funds"); MLAM; FAMI; and MLFD (collectively, "Applicants") for an order of the Commission under Section 6(c) of the Investment Company Act of 1940 ("Act") exempting the Applicants from Sections 18(f), 18(g), and 18(i) of the Act to the extent necessary to permit the Funds to sell separate classes of securities for the purpose of establishing a dual distribution system, and from the provisions of Sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and Rule 22c-1 thereunder to the extent necessary to permit assessment of a contingent deferred sales charge on certain redemptions of a class of their securities, and waiver of the contingent deferred sales charge in certain redemptions; and for an order under Section 11(a) approving certain offers of exchange for shareholders of the Funds. For further information, please contact Fran Pollack-Matz at (202) 272-3024.

5. Consideration of whether to repropose for public comment Rule 11a-3 and to seek additional public comment on proposed Rule 11c-1, both under the Investment Company Act of 1940. Revised proposed Rule 11a-3 would allow certain open-end investment companies and their principal underwriters to make certain exchange offers to their own shareholders or to shareholders of another fund in the same group of funds. Proposed Rule 11c-1 would allow unit investment trusts and their sponsors to make certain exchange offers to unitholders of the same trust or to unitholders of another trust having the same sponsor. Consideration will also be given to whether to seek comment on insurance considerations relevant to the question of whether the Commission should propose to amend Rule 11a-2, which permits certain insurance company separate accounts to make offers of exchange. For further information, contact Brian Kindelan at (202) 272-2048.

At times changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Martha Peterson at (202) 272-7502.

Jonathan G. Katz,

Secretary.

July 18, 1988.

[FR Doc. 88-16599 Filed 7-19-88; 4:03 pm]

BILLING CODE 8010-01-M

Corrections

Federal Register

Vol. 53, No. 140

Thursday, July 21, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 80P-0157 et al.]

Approved Variances for Laser Light Shows; Availability

Correction

In notice document 88-15191 beginning on page 25547 in the issue of Thursday, July 7, 1988, make the following correction:

On page 25547, in the table, under "Demonstration laser product", in the fourth line, "krypton" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0250]

Drug Export; Ornade-A.F.* Spansule® Capsules

Correction

In notice document 88-15334 appearing on page 25691 in the issue of Friday, July 8, 1988, make the following corrections:

1. In the first column, under **SUMMARY**, in the sixth line, "Ornade" and "Spansule" were misspelled.

2. In the second column, in the second complete paragraph, in the third line, "July 8" should read "July 18".

3. In the same column, in the last paragraph, in the next to last line, between "for" and "Evaluation" insert "Drug".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[T.D. 8211]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In rule document 88-14429 beginning on page 24060 in the issue of Monday, June 27, 1988, make the following corrections:

1. On page 24061, in the first column, in the fifth paragraph, the first line should read "Paragraph (a) of § 1.1441-8T sets forth the ". Also, in the third line, "§ 1.144-1" should read "§ 1.1441-1".

§ 1.892-1T [Corrected]

2. On page 24061, in the third column, in § 1.892-1T(a), in the ninth line, "1.982-3T" should read "1.892-3T".

§ 1.892-2T [Corrected]

3. On page 24061, in the third column, in § 1.892-2T(a)(3), in the third line, "separated" should read "separate".

§ 1.1441-8T [Corrected]

4. On page 24066, in the second column, in § 1.1441-8T(a), in the 10th line, "§ 1441.1" should read "§ 1.1441-1". Also, in § 1.1441-8T(b), in the fourth line from the bottom, "§ 1441-1" should read "§ 1.1441-1".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[INTL-285-88]

Income Taxes; Income of Foreign Governments and International Organizations

Correction

In proposed rule document 88-14428 beginning on page 24100 in the issue of Monday, June 27, 1988, make the following correction:

On page 24101, under **FOR FURTHER INFORMATION CONTACT**, in the seventh line, the telephone number should read "202-566-6384".

BILLING CODE 1505-01-D

The first part of the report deals with the general situation of the country. It is a very interesting and informative account of the country and its people. The author has done a great deal of research and has written a very thorough and accurate report. The second part of the report deals with the political situation. It is a very interesting and informative account of the political situation and the various parties and groups that are active in the country. The third part of the report deals with the economic situation. It is a very interesting and informative account of the economic situation and the various industries and businesses that are active in the country. The fourth part of the report deals with the social situation. It is a very interesting and informative account of the social situation and the various social problems and issues that are facing the country. The fifth part of the report deals with the cultural situation. It is a very interesting and informative account of the cultural situation and the various cultural activities and institutions that are active in the country. The sixth part of the report deals with the military situation. It is a very interesting and informative account of the military situation and the various military forces and units that are active in the country. The seventh part of the report deals with the foreign relations situation. It is a very interesting and informative account of the foreign relations situation and the various foreign countries and organizations that are active in the country. The eighth part of the report deals with the future of the country. It is a very interesting and informative account of the future of the country and the various plans and proposals that are being made for the country. The ninth part of the report deals with the conclusion. It is a very interesting and informative account of the conclusion of the report and the various findings and recommendations that have been made. The tenth part of the report deals with the appendix. It is a very interesting and informative account of the appendix of the report and the various tables and figures that are included in the report. The report is a very thorough and accurate account of the country and its people. It is a very interesting and informative account of the political, economic, social, cultural, military, and foreign relations situation of the country. It is a very interesting and informative account of the future of the country and the various plans and proposals that are being made for the country. The report is a very thorough and accurate account of the conclusion of the report and the various findings and recommendations that have been made. The report is a very thorough and accurate account of the appendix of the report and the various tables and figures that are included in the report.

49 CFR Part 24

Thursday
July 21, 1988

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 24

Uniform Relocation Assistance and Real
Property Acquisition Regulation for
Federal and Federally Assisted Programs;
Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 24

[FHWA Docket No. 87-22]

RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulation for Federal and Federally Assisted Programs

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation implements statutory amendments to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (the Uniform Act) made by the Uniform Relocation Act Amendments of 1987, Title IV of the Surface Transportation and Uniform Relocation Assistance Act of 1987, (1987 Amendments) Pub. L. 100-17, 101 Stat. 246-256. The Uniform Act applies to all Federal or federally assisted activities that involve the acquisition of real property or the displacement of persons, including displacements caused by rehabilitation and demolition activities. Consequently, it affects a wide variety of Federal and federally funded programs and projects. This NPRM is the latest in a series of actions that have been taken to ensure that the implementation of the Uniform Act by Federal agencies is, in fact, as uniform and consistent as possible. While encouraging State and local discretion in implementing the Uniform Act's provisions.

DATES: Comments must be received on or before September 19, 1988. Public meetings will be held on August 17, 22, and 24; see Supplementary Information for further details.

ADDRESS: Submit signed, written comments to FHWA Docket No. 87-22, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., e.t., Monday through Friday except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard. Public meetings will be held in Philadelphia, Pennsylvania; Chicago, Illinois; and Portland, Oregon; see Supplementary Information for further details.

FOR FURTHER INFORMATION CONTACT: Robert J. Moore, Chief, Policy Development, Office of Right-of-Way, HRW-11, (202) 366-0116; or Reid Alsop,

Office of the Chief Counsel, HCC-40, (202) 366-1371. The address is Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:**Background**

A few provisions of the 1987 Amendments upon which the law is explicit and allows for little, if any, administrative discretion or interpretation, and for which a period of public notice and comment would have been impractical, were implemented in an interim final rule in Part 24 issued by FHWA (52 FR 47994) and referenced by all but one of the affected Federal agencies (52 FR 48015) on December 17, 1987. That one agency subsequently referenced Part 24 (53 FR 4964) on February 19, 1988. These agencies are as follows:

Department of Agriculture
Department of Commerce
Department of Defense
Department of Education
Department of Energy
Environmental Protection Agency
Federal Emergency Management Agency
General Services Administration
Department of Health and Human Services
Department of Housing and Urban Development
Department of the Interior
Department of Justice
Department of Labor
National Aeronautics and Space Administration
Pennsylvania Avenue Development Corporation
Tennessee Valley Authority
Department of Transportation
Veterans Administration

In addition, the United States Postal Service issued a Final Rule in 39 CFR Part 777 on December 17, 1987 (52 FR 48029) to amend the Postal Service's regulations to make them consistent with the 1987 Amendments.

This proposed rule, if promulgated, would implement all of the remaining provisions of the 1987 Amendments by amending the existing interim final rule. Following consideration of comments received in response to this notice of proposed rulemaking (NPRM), as well as in response to the interim final rule, we anticipate promulgating a final rule in Part 24 that would replace the interim final rule. For the easy reference of the reader, Part 24 as proposed to be revised herein is printed in its entirety in order to present a complete full text regulation.

As originally enacted, the Uniform Act authorized "the head of each

Federal agency" to establish regulations and procedures for implementing the Uniform Act. Inevitably, this led to significant differences in agency implementing regulations. In a March 8, 1978, Report to Congress (GAO Report No. GGD-78-6, "Changes Needed in the Relocation Act to Achieve More Uniform Treatment of Persons Displaced by Federal Programs", B-148044 (1978)), the Comptroller General found that as a result of these differences the Federal government was not providing uniform treatment to people displaced from their homes and businesses by Federal or federally assisted programs. Those differences among Federal implementing regulations also imposed significant administrative burdens on State and local governments.

In 1981, for the Vice President's Presidential Task Force on Regulatory Relief, State and local governments identified the Uniform Act as a good candidate for State and local regulatory relief. Therefore, in May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to develop uniform regulations to be implemented by each agency covered by the Uniform Act. On February 27, 1985, a Presidential Memorandum was signed and published in the Federal Register on March 5, 1985 (50 FR 8953), naming the Department of Transportation (DOT) as the agency with lead responsibility for the Uniform Act. The Secretary of the Department of Transportation delegated this responsibility to the Federal Highway Administration. On March 5, 1985 (50 FR 8953), DOT published in the Federal Register a model Uniform Act rule, which, in accordance with the President's February 27, 1985 memorandum, served as the basis for a proposed common Uniform Act rule for the 16 other affected agencies (50 FR 8955). The proposed common rule was issued for comment by those 16 agencies on May 28, 1985 (50 FR 21712). After consideration of comments, the disparate regulations of all affected agencies were superseded by the common rule which was published as a final rule on February 27, 1986 (51 FR 7000). This common rulemaking effort, applicable to both direct Federal programs and projects and federally-assisted programs and projects undertaken by State or local agencies, achieved consistency in regulations among the separate Federal agencies.

To a significant extent, this common rulemaking effort presaged many of the statutory changes to the Uniform Act made by the 1987 Amendments. In the administrative area, for example, the

Amendments specifically designate the DOT as lead agency and require it, in coordination with other Federal agencies, to issue rules, establish procedures and make interpretations to implement provisions of the Uniform Act. In the substantive area, with the major exception of payment levels or criteria that were set by statute, the common rulemaking effort granted greater flexibility and discretion to State and local agencies, a theme reiterated in the 1987 Amendments.

Implementation of the 1987 Amendments

On Tuesday, May 19, 1987 (52 FR 18768) the FHWA issued a Notice describing significant changes in the law and general plans to implement those changes. On Tuesday, December 1, 1987 (52 FR 45667) the FHWA issued a Notice of Regulatory Intent giving further notice of the specific regulatory actions that it and the other affected Federal agencies would take to implement the 1987 Amendments.

On December 17, 1987 (52 FR 47994) the FHWA issued an interim final rule in Part 24 that revised the common rule to include those provisions of the 1987 Amendments (primarily increases in the dollar amounts of specific relocation benefits) that did not allow for discretion in their implementation. This was done to allow those Federal, State and local agencies that were willing and able to implement those provisions to do so expeditiously. On the same day (52 FR 48015) 17 Federal Departments and agencies that administer the Uniform Act published interim final rules rescinding the common rule from each of their regulations and adopting in its place a cross-reference to the single governmentwide regulation published by FHWA at 49 CFR Part 24. The effective date for these agency rescissions and cross references varied, however all such actions will take effect on or before April 2, 1989, the date the 1987 Amendments become mandatory.

An eighteenth Federal Department, the Department of Housing and Urban Development (HUD), was unable to join the other Federal agencies in publishing an interim final rescission and cross referencing action on December 17, 1987, because of its need to first satisfy certain Congressional review obligations. HUD subsequently published such an interim rule on February 19, 1988 (53 FR 4964).

While comments were sought on these interim rules, only eight comments were received, seven by FHWA and one by the Department of Housing and Urban Development (HUD). The seven comments received by FHWA did not

address either the establishment of a single governmentwide regulation at 49 CFR Part 24, the agency rescission and cross-referencing actions, or the changes made in the interim rule. Rather, they concerned matters that are addressed in this NPRM, and they will therefore be considered, along with the comments received in response to this NPRM, in the development of a final rule. The one comment received by HUD objected to any delay in the effective date of the rescission and cross-referencing action contained in HUD's interim rule. However, the comment did not otherwise object to the rescission and cross-referencing action itself.

Since no comments were received concerning the use of rescission and cross-referencing actions by the various agencies to establish a single governmentwide regulation, the individual agencies will finalize their interim final actions. HUD will consider the comment concerning its interim rule's effective date before its interim rule is finalized.

Accordingly, the changes proposed in this NPRM, if adopted, will govern the relocation and land acquisition programs of all those 18 Federal departments and agencies, as well as the United States Postal Service. Those departments and agencies, and the parts of the Code of Federal Regulations which will contain a cross reference to this part, are listed below:

Department of Agriculture
7 CFR Part 21
Department of Commerce
15 CFR Part 11
Department of Defense
32 CFR Part 259
Department of Education
34 CFR Part 15
Department of Energy
10 CFR Part 1039
Environmental Protection Agency
40 CFR Part 4
Federal Emergency Management Agency
44 CFR Part 25
General Services Administration
41 CFR Part 105-51
Department of Health and Human Services
45 CFR Part 15
Department of Housing and Urban Development
24 CFR Part 42
Department of the Interior
41 CFR Part 114-50
Department of Justice
41 CFR Part 128-18
Department of Labor
29 CFR Part 12
National Aeronautics and Space Administration

14 CFR Part 1208
Pennsylvania Avenue Development Corporation
36 CFR Part 904
Tennessee Valley Authority
18 CFR Part 1306
Veterans Administration
38 CFR Part 25

The United States Postal Service will incorporate changes in its full-text regulation at 39 CFR Part 777 and intends to publish its final rule simultaneously with the publication of the final governmentwide rule at 49 CFR Part 24.

All members of the public who are affected by relocation or land acquisition activities undertaken or funded by those departments and agencies are encouraged to comment on this NPRM. Comments from interested State and local governments are particularly requested.

A description of the regulatory changes proposed in this part are set forth below. The only major changes proposed are those required by enactment of the 1987 Amendments. Where no such changes are required, the provisions of the governmentwide rule are generally repeated in this proposed rule. That is, the proposed rule is basically the same as the governmentwide rule with the exception of those changes that are necessary to fully implement the 1987 Amendments. Comments are invited on both those non-discretionary changes that were adopted in the December 17, 1987, interim final rule and the remaining changes proposed in this NPRM.

Public Meetings

In furtherance of the statutory objective of securing the views of State and local governments and the public in the promulgation of these regulations, the Federal Highway Administration proposes to conduct three public meetings during the comment period following publication of this proposed rule. The purpose of these meetings will be to receive comments on the proposed rule from interested parties. These comments will be entered in FHWA Docket No. 87-22 and will be given full consideration prior to issuance of the final rule.

The meetings will be held during the comment period. Dates for the meetings are August 17, 1988 in Philadelphia, Pennsylvania, August 22 in Portland, Oregon and August 24 in Chicago, Illinois. Specific information relative to these meetings will be detailed in a notice soon to be published in the Federal Register.

Speakers are invited to make brief presentations of no more than 10 minutes and will be scheduled based on the order of pre-registration and registration at the door. Written comments may also be submitted. Persons wishing to reserve presentation time or seating should contact Ms. Barbara J. Satorius, Realty Specialist, Policy Development Branch, HRW-11, (202) 366-0116, Federal Highway Administration, Washington, DC at least 10 days in advance of the meeting they wish to attend.

The major changes made by the 1987 amendments include:

- Expansion of the Uniform Act coverage to include virtually all activities that receive Federal funds, including those undertaken by private entities.

- A moderate increase in benefit levels.

- The establishment of a lead agency to issue a single governmentwide implementing regulation.

- Providing that the computation of certain relocation benefits be done in accordance with the lead agency regulations, rather than prescribing the computation method in the statute.

- Granting State greater flexibility and discretion in implementing the provisions of the Uniform Act.

Explanation of the Changes in This NPRM

The changes proposed in this NPRM are described in detail below. (For a description of the nondiscretionary provisions of the 1987 Amendments adopted in the interim final rule the reader is directed to the preamble to that rule at 52 FR 47994, December 17, 1987).

Subpart A—General

Section 24.1 Purpose.

A new paragraph (c) is proposed to replace the current paragraph which refers to changes made by the interim rule. The new paragraph would establish efficient and cost effective implementation as one of the primary purposes of this part. We are particularly concerned that State and local implementing agencies not be burdened with unnecessary regulatory requirements. In this regard such agencies should be fully aware of the waiver provision in § 24.7 and should utilize it when its use could avoid unnecessary delay or administrative burdens.

Section 24.2 Definitions.

Section 24.2(a) contains proposed definitions based on the generic term

"agency" which are found in the amended Uniform Act. These proposed definitions relate to particular functions agencies may be performing at a given time in program or project development. These definitions are not mutually exclusive and a single "agency" may be an acquiring agency, a displacing agency and/or a State agency, or all three, at various times during the performance of its Uniform Act activities.

Most significant is the fact that the 1987 Amendments broadened Uniform Act coverage to provide that a "person" who receives Federal financial assistance is now considered to be included within the definitions of acquiring agency, displacing agency, State agency or agency, depending upon the circumstances. It should be noted that, as a result of the 1987 Amendments, the relocation provisions in Title II of the Uniform Act now apply to all "displacing agencies". That term, as it is defined in the 1987 Amendments, includes all private entities that carry out projects with Federal financial assistance that cause people to be displaced whether or not such entities have the power of eminent domain. The real property acquisition policies and procedures in Title III of the Uniform Act, however, now apply to Federal agencies and to "acquiring agencies" that receive Federal financial assistance. Acquiring agencies are all State and private entities that have the power of eminent domain and such State or private entities without the power of eminent domain, to the extent provided in the lead agency regulations. While the term "Agency" is generally used throughout this proposed part, the proposed part reflects these changes in Uniform Act coverage.

In § 24.2(b) the definition of the term "appraisal" would be shifted from Subpart B to this subpart, without change.

Section 24.2(d) contains a new definition of a "comparable replacement dwelling". The proposed definition is based on the new statutory definition of a comparable replacement dwelling and proposes additional information on the meaning of the terms "functionally equivalent" and "financial means" as used in the definition.

Section 24.2(d)(8)(ii) defines the term "financial means" for a person renting a replacement dwelling. (See Subpart E of this preamble).

Section 24.2(d)(8)(iii) proposes financial means criteria for displaced persons not eligible for payments under §§ 24.401 or 24.402 of Subpart E of this part. It is proposed that such persons, because of their short tenure at the

displacement dwelling, be required to contribute, to the extent they are able, to any increased costs for affordable comparable replacement housing.

Proposed § 24.2(g) expands and modifies the definition of "displaced person" eligible for the benefits of the Uniform Act. The most significant additions to the definition, which derive from the 1987 amendments, bring persons displaced as a direct result of the rehabilitation or demolition of their dwellings within the coverage of the law.

Section 24.2(g)(2)(iv) would apply primarily to certain residential tenants affected by rehabilitation activities undertaken with financial assistance provided by the Department of Housing and Urban Development (HUD). This section indicates that residential tenants who are not required to move permanently from the building or from a nearby building on the real property as a result of such activities are not to be considered displaced persons within the meaning of the Uniform Act if they are provided with specific protections. These include an offer of a lease for a suitable, decent, safe and sanitary dwelling in the same building (or in a nearby building on the real property) under reasonable terms and conditions of continued occupancy, and reimbursement for out-of-pocket costs associated with any temporary relocation (including moving expenses incurred, and any increased rental and/or utility charges which a tenant is required to pay during the period of the temporary relocation to a decent, safe and sanitary dwelling).

This proposed regulation does not directly address an important issue relating to rehabilitation activities. The expanded definition of "displaced person" added by the 1987 Amendments includes residential tenants displaced as a direct result of assisted rehabilitation activities. Considerable controversy has arisen over the question of whether this definition covers a tenant who need not relocate permanently as a result of the physical alteration of his dwelling or a change in its legal ownership, but whose rent is increased significantly following the completion of rehabilitation activities, resulting in the tenant moving elsewhere.

Relocation assistance is now offered such tenants in some programs administered by HUD, but this is done on the basis of administrative requirements not emanating from the Uniform Act. HUD takes the position that a rental increase which prompts relocation is not a direct result of rehabilitation, as is required for

coverage of the Uniform Act, but is an indirect or secondary result of the assisted rehabilitation. While HUD generally agrees that its program regulations should provide for assistance to tenants moving as a result of these rental increases, HUD does not believe that such tenants are covered by the 1987 Amendments. Proposed § 24.2(g)(2)(iv) would not include such tenants within the definition of "displaced person" so long as the other conditions set forth in the section were satisfied.

From 1971 to 1975 HUD regulations implementing the Uniform Act, appearing at 24 CFR Part 42, did contain a provision permitting relocation assistance for those whose rent increased ten percent or more following activities designated "voluntary rehabilitation" under the urban renewal and model cities programs. Such activities under these specified programs were deemed "acquisition" for purposes of establishing eligibility for benefits under the Uniform Act by section 217 of the legislation, which has now been repealed. Nothing in section 217 or elsewhere in the statute addressed this question of rental increases, however. The regulatory provision was included to preserve a policy of the urban renewal program which had been followed since 1965. HUD did not believe that this policy had any basis in the law, and therefore eliminated it from its revised Uniform Act regulations which were published in February, 1975. HUD points out that this policy was not challenged by Congress or in the courts and has remained operative for the last thirteen years. HUD generally supports program regulations which provide relocation assistance to residential tenants that move because of substantial rent increases following rehabilitation, but believes that these regulations must be tailored to each such HUD program, and are not based upon the provisions of the Uniform Act. One effect of this approach would be to limit the uniformity among Federal and federally assisted programs that provide relocation assistance. Such uniformity is a primary goal of the Uniform Relocation Act.

To summarize, the 1987 Amendments alter section 101(6) of the Uniform Act to include as eligible for benefits residential tenants who move as a direct result of rehabilitation. HUD takes the position that Congress did not intend the 1987 Amendments to cover displacement resulting from rent increases that follow rehabilitation since they are the secondary consequence of assisted activities, and

that Congress fully understood and recognized the distinction between the "direct" and the "indirect" results of assisted rehabilitation.

A contrary opinion holds that these rental increases are such an integral and foreseeable consequence of assisted rehabilitation activities that displacement resulting from such increases must be considered to be a direct result of rehabilitation.

It also has been suggested that a further condition be added to proposed § 24.2(g)(2)(iv) to provide that so long as the tenant is offered an opportunity to rent an adequate decent, safe, and sanitary dwelling at a rent that is the same as that paid by the tenant before the project, or 30% of the household's gross income, whichever is greater, such tenant would not be considered a displaced person. If the rent for the dwelling offered to the tenant exceeded the greater of those figures, the tenant would then be considered a displaced person.

We invite public comment on this extremely important issue. Also, comment is solicited on any other federally funded activity which may cause a person to be displaced.

Section 24.2(j) proposes to except any interest reduction payment to an individual for the purchase and occupancy of a residence from the definition of Federal financial assistance. This exception is contained in the 1987 Amendments.

Section 24.2(k)(2) proposes to define the action which is the "initiation of negotiations" for displacements caused by rehabilitation, demolition or certain privately undertaken acquisitions, where there is no related acquisition by a Federal or State agency.

Section 24.2(l) is a proposed addition to this section which simply adopts the statutory definition of the term "mortgage".

Section 24.2(m) proposes a definition of the term "nonprofit organization" that would make it clear that this term refers to those organizations that are exempt from income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

Section 24.2(n) proposes to revise the definition of "owner of a replacement dwelling" to include the owner of any dwelling.

Section 24.2(p) includes a new definition of the term "project". The effect of this proposed definition would be to exclude from coverage under this part those actions or activities that result from Federal or federally assisted payments that are made to individuals or families and which are intended

primarily to assist or benefit such individual or family.

Section 24.2(r) contains a proposed definition of the term "small business". It is a simple definition chosen for easy application to the eligibility requirements for the business reestablishment payment which was added by the 1987 Amendments. The proposed use of the number of employees (500) at the affected site as the sole criterion for defining a small business precludes an agency from having to delve into the financial affairs of a displaced business in order to qualify it for payments. This definition includes a business which may be considered a chain operation under the fixed payment criteria of § 24.304(a)(3), regardless of the total number of persons employed throughout the entire business enterprise, provided no more than 500 persons are employed at the affected site. Specific comment on the 500 employee threshold for the definition of a "small business" is solicited.

Section 24.2(u) defines the term "uneconomic remnant" and is shifted unchanged from Subpart B to this subpart.

Section 24.2(v) contains a proposed definition of the term "unlawful occupancy". The proposed definition evinces considerable Agency discretion in determining a person's lawful or unlawful occupancy. It discourages the use of trivial technical violations of codes or leases to deny eligibility for Uniform Act benefits due to unlawful occupancy.

Section 24.2(x) is a proposed definition of "utility costs" as they pertain to residential or commercial consumers.

Section 24.2(y) and (z) are proposed definitions of "utility facility" and "utility relocation" for use in the implementation of § 24.307, Subpart D of this part.

Section 24.4 Assurances, monitoring and corrective action.

Section 24.4(a)(2) is a proposed alternative to the requirement that all agencies seeking Federal financial assistance must submit assurances to funding Federal agencies that they will comply with the Uniform Act and this part. The details of the alternative procedure are found at Subpart G of this part.

Section 24.6 Administration of jointly-funded projects.

This section proposes to implement the new statutory mandate requiring the lead agency to designate one Federal

agency as the cognizant agency when two or more Federal agencies fund activities in geographic or functionally related areas and when such agencies cannot agree upon which agency's procedures should be followed by the Agency or Agencies carrying out such activities.

Section 24.9 Recordkeeping and reports.

Section 24.9(c) requires that real property acquisition and displacement activities be reported in the format contained in Appendix B of this part. Appendix B proposes the use of a revised report form which has been reformatted, but does not require additional statistical data except for one added entry concerning the new business reestablishment payment. Special consideration and comment on the format and timing of this report is requested.

Section 24.10 Appeals.

Section 24.10(b) contains a proposed modification to accommodate the statutory expansion which allows any issue relating to an aggrieved person's application to be appealed. Because the statute is silent as to what issues should be appealable, it is proposed that any issue affecting a person's eligibility for, or the amount of a payment, including an Agency's failure to grant appropriate waivers in hardship cases could be appealed. This could also include issues involving benefit levels which are subject to Agency discretion.

Subpart B—Real Property Acquisition

Section 24.101(a)(1) would be clarified by including language addressing voluntary transactions. The current language would be removed from Appendix A and changed to eliminate the provisions relating to the location of the property to be acquired; since the essence of a voluntary transaction concerns only the fact that an agency will not acquire the property if an amicable agreement is not reached.

The 1987 Amendments broadened the scope of the real property provisions of the Uniform Act implemented in this subpart to include Federal agencies and acquiring agencies. "Acquiring agency" is defined in the 1987 Amendments to include both State agencies and persons with authority to acquire property by eminent domain; and State agencies or persons without such authority, to the extent provided in the lead agency regulations. (See proposed § 24.2(a)(4)). These regulations propose, in § 24.101(a)(3), to generally exclude a State agency or person without the

power of eminent domain from the requirements of this subpart, but to require that such agency or person (1) clearly advise any property owner, prior to making an offer, that it is unable to acquire the property except through amicable negotiations, and (2) advise the owner of what it believes to be the fair market value of the property, based on an appraisal. Comments are specifically requested on this aspect of the proposed requirements pertaining to an "acquiring agency," particularly with respect to whether these two conditions are adequate to protect persons whose property is purchased by such State agencies or persons acting without eminent domain authority.

Accordingly, it is proposed that this subpart apply to all programs or projects receiving Federal financial assistance, except where (1) the acquisition can be classified as a voluntary transaction, (2) the property to be acquired is in government ownership and cannot be taken by eminent domain, or (3) an Agency or person is acquiring real property with Federal financial assistance, but without the power of eminent domain. However, such agency or person would be required to ensure that an owner is advised of the value of the property, except as provided in § 24.102(c)(2).

Section 24.102(c) proposes to implement the 1987 Amendments which permits waiver of appraisals. An appraisal would not be required by this subpart where the owner is donating the property and releases the acquiring agency from the appraisal obligation. Also it is proposed to permit an acquiring agency to determine that an appraisal is not necessary because the valuation problem is uncomplicated and the estimated fair market value is \$2,500 or less. Such determination could be made where the property is being donated or where the owner is to receive compensation. This proposal is not intended to preclude any acquiring agency from preparing an appraisal whenever it is deemed prudent to do so. The \$2,500 amount is being proposed because it is consistent with § 24.103(e). Specific comment on the \$2,500 amount is requested.

Section 24.102(k) proposes to shift the definition of "uneconomic remnant" to § 24.2(u), Subpart A. The definition is proposed to be revised slightly to conform to the statutory definition, but no difference in meaning is intended.

Section 24.103 proposes to shift the definition of "appraisal" to § 24.2(b), Subpart A, without change. In addition, the term "detailed" would be added before "appraisal" in § 24.103(a). This is

considered to be an editorial change only. These changes would also require some paragraph relettering in this section.

Section 24.108 proposes revised language to conform to the new statutory language. This revision is considered to be editorial and no change in meaning is intended.

Subpart C—General Relocation Requirements

Section 24.204(c)(2) proposes to add payment of utility costs to increased rental costs incurred by persons required to temporarily relocate. This change is consistent with the overall revised policy regarding inclusion of utility costs as part of the monthly housing costs for displaced tenants.

Section 24.205(a) proposes to implement the new statutory requirement for relocation planning in the early stages of program or project development. Included in this proposed section is a suggested outline of the information considered to be essential to meaningful relocation planning. The Congress views effective relocation planning as essential for successful completion of any program or project which displaces persons and this proposed section is designed to reflect that view. Most displacing agencies are well aware of the program or project benefits which can be derived through early and sound relocation planning and many agencies currently use comprehensive planning techniques in project development. We do not, however, view relocation planning as a complicated, time consuming activity. Relocation planning is seen as a process which provides meaningful information to program or project decision makers and it need not result in a detailed document which contains unnecessary data and needless problem solving. Instead, it should be a process which is scoped to the complexity and nature of anticipated program or project relocation activity and should not require a burdensome commitment of Agency resources.

Proposed § 24.205(b) addresses the issue of loans for planning and preliminary expenses under section 215 of the Uniform Act. While the provision in section 215 for certain seed money loans remains a part of the Federal statute, it is not known to have ever been used, despite the existence of detailed implementing regulations in 24 CFR Part 43. Those regulations will be removed and rescinded on April 2, 1989 (53 FR 4964). The reason for the non-use of section 215 is that it provides project

funding for purposes for which project funding is already available under other sections of the Act. For this reason it is not considered appropriate to propose further regulations to implement this provision until such time as there is a demonstrated need to do so.

Section 24.205(c)(2)(vi) proposes to add to the list of persons eligible for advisory services those persons who occupy an acquired property on a short term rental basis by agreement with the Agency. This class of eligible persons was created by the 1987 Amendments.

Section 24.208 proposes to implement the new statutory change which will enable an Agency to take relocation assistance payments into account when determining a low-income person's eligibility for housing assistance.

For editorial purposes, several references in this subpart to other sections in this part have been changed and minor language clarifications have been made.

Subpart D—Payments for Moving and Related Expenses

Section 24.302 proposes a \$50 limitation for fixed residential moving payments to persons who are eligible for payment under the moving expense and dislocation allowance schedule, but who would incur little or no expense in moving their personal property. Special consideration and comment on this limitation is solicited.

Sections 24.304 (a), (c) and (d) propose to add the business reestablishment expense as an expense item which a business must forego when it elects a fixed payment in lieu of the payments for moving and related expenses. This payment, not to exceed \$10,000, was added by the 1987 Amendments and is further described in proposed § 24.306. The amended statute also provides that criteria for the fixed payment be established in this part.

Sections 24.304(a) (1), (3) and (4) contain new proposed criteria for eligibility for the nonresidential fixed payment. Under these proposals a business must (1) own or rent personal property which must be moved and the business itself must vacate the displacement site, (2) the business cannot be part of an enterprise having more than three other entities not being displaced. (This is to correct inequities and hardship frequently suffered by small "chains" where the displaced entity may be its owner's primary source of income), and (3) the business may not be operated solely for the purpose of renting a dwelling to others. (This implements the new statutory exclusion of such business from

eligibility for the fixed payment). Sections 24.304(a) (2) and (5) propose to retain two of the eligibility criteria previously contained in the Uniform Act relating to loss of patronage and material contribution to a person's income.

Section 24.304(d) proposes to establish a standard \$2,500 fixed payment for eligible nonprofit organizations. This recognizes that, while a nonprofit organization may not have taxable income, it can suffer substantial reductions in revenue due to displacement. For this same reason it is proposed that the condition currently in § 24.304(a)(3) that the organization not be part of an enterprise having more than one establishment be eliminated.

Section 24.306 contains the proposed provisions for implementation of the new business reestablishment expenses benefit authorized by the 1987 Amendments. This is a payment intended to assist a small business, farm or nonprofit organization to continue its operation at a new location, under conditions not less favorable than those prevailing prior to displacement. This proposed section contains non-exclusive listings of eligible and ineligible expenses for which reestablishment payments may be made. Although the statute imposes a \$10,000 maximum total amount for this payment, regulatory maximums are proposed for three eligible items. These are for (1) exterior signing to advertise the business, (2) advertisement of replacement location, and most importantly, (3) increased costs of operation at the replacement site. In order to minimize the effect of this payment on the replacement site selection process, particularly in influencing the selection of a far superior replacement site, the amount of the business reestablishment payment which may be applied to expenses for increased costs of operation is limited to \$5,000 over a two year period. It is not considered appropriate that substantial up-grading of business locations or facilities be made solely because public funds may be available for such up-grading. Any enhancements must be reasonable and necessary. The alternative to a monetary cap on costs for up-grading would be to impose a requirement that displacing agencies use a formal comparability process to set limits on expenditures for obviously superior replacement sites. This would, in turn, create additional administrative responsibilities for the displacing agency. Section 24.306(a)(13) proposes that a waiver of the regulatory maximum for this eligible item may be permitted in cases where up-grading cannot be avoided.

Section 24.307 contains proposed implementation requirements for the discretionary reimbursement of expenses incurred by owners of utility facilities which are displaced from publicly owned property by federally funded programs or projects. The authority for such reimbursement is embodied in the 1987 Amendments. This proposed section defines and provides for payment of "extraordinary expenses" incurred by displaced utility facilities. It also proposes eligibility criteria and guidance, in Appendix A, as to how agreement may be reached between the Agency and the utility facility owner on such items as scope of work, betterments, manner of disbursement and amounts of payment.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

In § 24.401(a)(2) a new provision is proposed which would permit a displacing Agency to extend, for good cause, the one-year period during which a displaced homeowner occupant has to purchase and occupy a decent, safe, and sanitary dwelling. This authority is contained in the 1987 Amendments.

In § 24.401(b)(2) a slight change in the wording is proposed to complement the major language changes that would be made in § 24.401(d).

In § 24.401(d) the use of the "annuity" formula for determining the amount to be paid to a displaced homeowner-occupant for increased mortgage interest costs would be eliminated. This method, formerly required by statute, has been a source of numerous windfall and unwarranted payments during past periods of inflation and high mortgage interest rates. For this reason it is proposed that the "annuity" method no longer be used. Instead, a more reasonable and equitable "buydown" approach to payment computation for increased mortgage interest costs is proposed. This method, which previously could only be used for last resort housing cases, was offered as an optional procedure in the interim final rule published by DOT on December 17, 1987. We now propose making the exclusive use of this payment computation method mandatory.

As a special note, the lead agency is giving serious consideration to an alternative approach to compensation for increased mortgage interest costs. This alternative would be a new simplified procedure for the computation and disbursement of this payment. The

simplified procedure is based on a recognition that favorable financing is considered to be a valuable attribute, the loss of which should require a relocation payment to its owner. For this reason, it would be proposed that the displacing agency not impose restrictions upon the disposition of the proceeds that provide compensation for such loss. Therefore, the displacing agency would no longer be required to examine the financial arrangements which the displaced homeowner makes for the purchase of a replacement dwelling in order to determine the amount of the increased mortgage interest payment. The payment determination would be made using a method designed to make it possible for the displaced homeowner to replicate the repayment terms of the existing mortgage(s) on the displacement dwelling, as to both the remaining term of the mortgage(s) and the amount of the monthly payments for principal and interest.

Further, the simplified procedure would permit the payments to be made at a time in the relocation process when it could readily be applied to the downpayment on the replacement dwelling, thereby reducing the balance to be financed and lowering the required monthly payments for such financing. If the displaced homeowner wishes to buy his future mortgage down to an even lower amount with his own funds, even to zero, that is certainly the owner's prerogative and the displacing agency need not follow up to ascertain the terms for the purchase of the replacement dwelling, except in those cases where incidental costs will be claimed by the displaced homeowner.

It is believed that the simplified procedure would accomplish two desirable objectives. First, it would provide a payment to the displaced homeowner at a time when such payment could actually be used for its intended purpose, i.e., applied toward the purchase price of the replacement dwelling, thereby offsetting the impact of any higher new interest rate on the monthly mortgage payment. Too often in the past, the mortgage interest differential payment was not computed until a replacement mortgage had been secured because the computation was based on the amount of the new mortgage. Therefore, when the payment was finally made to the displaced homeowner it was too late to apply the payment amount to the new mortgage in any way that would reduce the monthly mortgage payment amount. Secondly, the use of the simplified "buydown" procedure would significantly reduce

the displacing agency's administrative burden of having to follow through and examine the financial term for every displaced homeowner's replacement dwelling. It would also reduce paperwork burdens imposed on displaced homeowners. Careful consideration and comment on this possible alternative to the "buydown" procedure contained in § 24.401(d) of this subpart is requested.

Section 24.402 Replacement housing payment for 90-day occupants.

It is proposed that § 24.402(b) be substantially revised to meet the new statutory requirement that a low income person's income be taken into consideration when calculating rental assistance payments for comparable replacement housing. To reflect the requirement that income be taken into consideration in the fairest, yet simplest manner, it is proposed that this section depart entirely from the current "make-whole" approach for 90-day occupants and return to a former commonly used base monthly housing cost/monthly income formula for payment determination. It is proposed that an amount representing 30% of average monthly gross household income be used to compute a displaced person's replacement housing payment if the 30% figure is less than the rent actually paid at the displacement dwelling. The 30% figure is proposed as a reasonable percentage of income to be applied to rental housing costs under current market and economic conditions, and is consistent with the percentage of income figures currently being used in other subsidized housing and related programs. Further, the 30% of income test would be applied equally to all 90-day occupants regardless of income. This would assure consideration of income for all low income persons; and, at the same time, eliminate inequities for tenants with marginal incomes which might barely exceed criteria established under other methods for defining low income persons. Finally, because utility expenses are considered to be an integral part of monthly housing costs, it is proposed that these expenses be included in the monthly base housing cost computation.

It is proposed that § 24.402(c) be slightly revised to clarify the new statutory limitations on the amount of downpayment assistance a 90-day occupant may receive and the new agency discretion for modifying those amounts. Specific comment is requested on the issue of special criteria for use in the exercise of Agency discretion under this section. Suggestions are solicited for

methods of promoting uniformity and equity in this process.

Section 24.403 Additional rules governing replacement housing payments.

Because it is proposed that Subpart G, Last Resort Housing, be reformatted and redesignated as § 24.404, § 24.403(b) has been deleted and the balance of § 24.403 has been re-numbered accordingly.

Section 24.404 Replacement housing of last resort.

It is proposed that Subpart G, Last Resort Housing be reformatted and redesignated as § 24.404 in order to emphasize that housing of last resort is not an independent program, but is merely an extension of the replacement housing function. This simply means that, with few exceptions, the same basic eligibility criteria, payment computation methods, and displaced person protections apply equally to all persons eligible for replacement housing. Therefore, it was felt that the proposed melding of the two functions into one subpart might help dispel a common misconception that persons receiving payments under Section 206 of the Uniform Act are separate and distinct from those receiving payments under sections 203 and 204 of the Act, each having rights and entitlements that are different and exclusive.

In addition to the proposed shift to the new subpart, the last resort housing procedures would be revised to reflect a change in section 206(a) of the Uniform Act, as required by the 1987 Amendments. As amended, section 206(a) now specifically authorizes payments in excess of the maximum amounts payable under sections 203 and 204, on a case-by-case basis for good cause. Sections 24.404(a)(1) of this subpart proposes the elements which must be considered in determining "case-by-case for good cause." These elements would all be subject to a fundamental analysis and correlation of the housing needs of persons to be displaced, with the availability of appropriate housing resources to meet those needs, both within the monetary limits for owners and tenants under this subpart and within acceptable time constraints as dictated by project or program need. Failure of any or all of these elements to properly correlate would constitute "case-by-case for good cause" justification for authorizing replacement housing payments in excess of the normal prescribed limits.

Other minor revisions are proposed in the last resort housing section of this subpart. One deals with possible

variations from precise comparability, under limited circumstances; another would permit consideration of financial means, in special cases; but most are technical or editorial language changes for purposes of clarification.

Subpart F—Mobile Homes

Section 24.502 is proposed to be modified and simplified to apply only to the moving of the mobile home dwelling itself. It is considered that other moving expenses incurred by the occupant of the mobile home are adequately covered by § 24.501.

This subpart also contains some minor editorial alterations.

Subpart G—Certification

This subpart proposes implementation of the new process created by the 1987 Amendments whereby the head of a Federal agency may discharge his/her responsibilities under the Uniform Act by accepting a certification by a State agency that it shall accept such responsibility and that it shall conduct its Uniform Act activities in accordance with a State law and regulations which serves the same purpose and effect as the Uniform Act. The subpart proposes a multi-step procedure for the certification process. As part of that process, a major role would be played by the State governor or such person or agency as the governor designates. The certification process is proposed to proceed in the following manner:

1. If a State agency determines that it desires to operate under certified State law and regulations, it may submit a request for certification approval to the governor or State contact designated by the governor.
 2. The designated contact shall review the request and determine the adequacy of the applicable State law and regulations and of the State agency's staffing. If the designated State contact approves the request, it shall forward the request to the Federal funding agency.
 3. The Federal funding agency shall forward all complete requests to the Federal lead agency, along with its assessment of the State agency's capabilities.
 4. The Federal lead agency shall review the material received, solicit comments from the public and local governments, and then make a determination concerning the State agency's ability to satisfy Uniform Act responsibilities under the State law.
- Certification is a new concept for Uniform Act activities. For this reason, special attention and consideration of the proposed process is invited. We are

particularly interested in ideas and suggestions as to how this concept might best be implemented at the State and Federal levels, as well as alternative proposals for the sequencing of the certification process.

Appendix A—Additional Information

Proposed modification of the appendix includes the shifting of several portions of the appendix to the subparts to which they pertain. Discussions relative to these changes are found in the preambles for the appropriate subparts.

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

Explanatory information has been added to this section of the appendix relative to the adjustments required for the "buydown" increased mortgage interest cost payment when a person secures a mortgage on the replacement dwelling which is of a lesser amount than the remaining balance of the mortgages on the displacement dwelling.

Appendix B—Statistical Report Form

The instructions for completing the form propose to include a line item for reporting payments for the new statutory business reestablishment expense entitlement and the report form has been reformatted.

Regulatory Impact

The FHWA has determined that this action does not constitute a major proposed rule under Executive Order 12291 or a significant proposal under the regulatory policies and procedures of the Department of Transportation. Executive Order 12291 requires that a regulatory impact analysis be prepared for "major" rules which are defined in the Order as any rule that has an annual effect on the national economy of \$100 million or more, or has certain other specified effects.

The economic impacts of this proposed rulemaking are primarily mandated by the provisions of the 1987 Amendments. Therefore, a full regulatory evaluation has not been prepared. However, since some of the statutory changes are administrative or procedural, savings to Federal, State, and local agencies should result in the administration of the Uniform Act. Other statutory changes, which alter benefit levels, and expand the Act's application to include certain private persons who receive Federal financial assistance, and persons displaced by certain nonacquisition activities, should result in a modest increase in amounts paid under the Uniform Act.

However, we do not believe that the proposed regulations will have an annual economic effect of \$100 million or more, or the other effects listed in the Executive Order. For this reason, we have determined that these proposed regulations are not a major rule within the meaning of the Order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) requires that for each rule with a "significant economic impact on a substantial number of small entities" an analysis be prepared describing the rules impact on small entities, and identifying any significant alternatives to the rule that would minimize the economic impacts on small entities.

The provisions of the Uniform Act that are implemented in this proposed rule have not changed substantially. The primary impact of the 1987 Amendments is expected to be an increase in benefits provided to small businesses, the elimination of unnecessary administrative requirements imposed on State and local agencies, and the consequent reduction of burden on those affected entities, and the expansion of the Act's application to those private entities that seek and receive Federal financial assistance.

Based on information available to FHWA at this time and under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act Requirements

Today's proposed rule would make one change to the Uniform Act Report form, which is contained in Appendix B of Part 24. A new item, 7A, would be added to obtain information relating to the new business reestablishment payment added by the 1987 Amendments. Several minor editorial changes would also be made in this form. If these proposed changes are adopted, the revised form will be submitted to the Office of Management and Budget for review under 44 U.S.C. 3504(h), the Paperwork Reduction Act, Pub. L. 96-511.

Federalism Assessment

As discussed in the Supplementary Information sections of this preamble, this proposed rule builds upon the positive Federalism accomplishments achieved in the promulgation of the governmentwide common rule on February 27, 1986 (51 FR 7000) which significantly reduced administrative burdens on States and local recipients of

Federal financial assistance. The FHWA has determined that the Federalism accomplishments of the common rule are retained in today's rule and any proposed changes are fully consistent with the principles and criteria contained in Executive Order 12612 and do not have sufficient further Federalism implications to warrant the preparation of a complete Federalism Assessment.

This proposed rule implements a provision of the 1987 Amendments that gives substantial additional discretion to the States. This is the certification procedure which provides an alternative whereby State agencies, with adequate authority under State law, can comply with the Uniform Act with a minimum amount of Federal supervision or oversight. As proposed, this certification procedure would give maximum authority and control to the State governor, or his or her designee, in managing and coordinating the certification procedure in each State.

List of Subjects in 49 CFR Part 24

Real property acquisition, Relocation assistance, Reporting and recordkeeping requirements, Transportation.

Issued on: July 15, 1988.

Robert E. Farris,

Federal Highway Administrator.

It is proposed to amend Title 24 of the Code of Federal Regulations by revising Part 24 to read as follows:

PART 24—UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION FOR FEDERAL AND FEDERALLY ASSISTED PROGRAMS

Subpart A—General

- Sec.
- 24.1 Purpose.
- 24.2 Definitions.
- 24.3 No duplication of payments.
- 24.4 Assurances, monitoring and corrective action.
- 24.5 Manner of notices.
- 24.6 Administration of jointly-funded projects.
- 24.7 Federal agency waiver of regulations.
- 24.8 Compliance with other laws and regulations.
- 24.9 Recordkeeping and reports.
- 24.10 Appeals.

Subpart B—Real Property Acquisition

- 24.101 Applicability of acquisition requirements.
- 24.102 Basic acquisition policies.
- 24.103 Criteria for appraisals.
- 24.104 Review of appraisals.
- 24.105 Acquisition of tenant-owned improvements.
- 24.106 Expenses incidental to transfer of title to the Agency.
- 24.107 Certain litigation expenses.
- 24.108 Donations.

Subpart C—General Relocation Requirements

- 24.201 Purpose.
- 24.202 Applicability.
- 24.203 Relocation notices.
- 24.204 Availability of comparable replacement dwelling before displacement.
- 24.205 Relocation planning, advisory services, and coordination.
- 24.206 Eviction for cause.
- 24.207 General requirements—claims for relocation payments.
- 24.208 Relocation payments not considered as income.

Subpart D—Payments for Moving and Related Expenses

- 24.301 Payment for actual reasonable moving and related expenses—residential moves.
- 24.302 Fixed payment for moving expenses—residential moves.
- 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.
- 24.304 Fixed payment for moving expenses—nonresidential moves.
- 24.305 Ineligible moving and related expenses.
- 24.306 Reestablishment Expenses—nonresidential moves.
- 24.307 Discretionary utility relocation payments.

Subpart E—Replacement Housing Payments

- 24.401 Replacement housing payment for 180-day homeowner-occupants.
- 24.402 Replacement housing payment for 90-day occupants.
- 24.403 Additional rules governing replacement housing payments.
- 24.404 Replacement housing of last resort.

Subpart F—Mobile Homes

- 24.501 Applicability.
- 24.502 Moving and related expenses—mobile homes.
- 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.
- 24.504 Replacement housing payment for 90-day mobile home occupants.
- 24.505 Additional rules governing relocation payments to mobile home occupants.

Subpart G—Certification

- 24.601 Purpose.
- 24.602 Certification application.
- 24.603 Monitoring and corrective action.

Appendix A to Part 24—Additional Information.

Appendix B to Part 24—Statistical Report Form.

Authority: Section 213, Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91-646, 84 Stat. 1894 (42 U.S.C. 4601) as amended by the Surface Transportation and Uniform Relocation Assistance Act of 1987, Title IV of Pub. L. 100-17, 101 Stat. 246-256 (42 U.S.C. 4601 note); and 49 CFR 1.48 (dd).

Subpart A—General

§ 24.1 Purpose.

The purpose of this part is to promulgate rules to implement the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. 4601 *et seq.*), in accordance with the following objectives:

(a) To ensure that owners of real property to be acquired for Federal and federally-assisted projects are treated fairly and consistently, to encourage and expedite acquisition by agreements with such owners, to minimize litigation and relieve congestion in the courts, and to promote public confidence in Federal and federally-assisted land acquisition programs; and

(b) To ensure that persons displaced as a direct result of Federal or federally-assisted projects are treated fairly, consistently, and equitably so that such persons will not suffer disproportionate injuries as a result of projects designed for the benefit of the public as a whole; and

(c) To ensure that Agencies implement these regulations in a manner that is efficient and cost effective.

§ 24.2 Definitions.

(a) *Agency.* The term "Agency" means the Federal agency, State, State agency, or person that acquires the real property or displaces a person.

(1) *Federal agency.* The term "Federal agency" means any department, Agency, or instrumentality in the executive branch of the Government, any wholly owned Government corporation, the Architect of the Capitol, the Federal Reserve Banks and branches thereof, and any person who has the authority to acquire property by eminent domain under Federal law.

(2) *State agency.* The term "State agency" means any department, Agency or instrumentality of a State or of a political subdivision of a State, any department, Agency, or instrumentality of two or more States or of two or more political subdivisions of a State or States, and any person who has the authority to acquire property by eminent domain under State law.

(3) *Lead agency.* The term "lead agency" means the Department of Transportation acting through the Federal Highway Administration.

(4) *Acquiring agency.* The term "acquiring agency" means a State agency, as defined in paragraph (a)(2) of this section, which has the authority to acquire property by eminent domain under State law, and a State agency or person which does not have such

authority, unless any such Agency or person is acquiring property pursuant to the provisions of § 24.101(a)(1), (2) or (3).

(5) *Displacing agency.* The term "displacing agency" means any Federal agency carrying out a program or project, and any State, State agency, or person carrying out a program or project with Federal financial assistance, which causes a person to be a displaced person.

(b) *Appraisal.* The term "appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

(c) *Business.* The term "business" means any lawful activity, except a farm operation, that is conducted:

(1) Primarily for the purchase, sale, lease and/or rental of personal and/or real property, and/or for the manufacture, processing, and/or marketing of products, commodities, and/or any other personal property; or

(2) Primarily for the sale of services to the public; or

(3) Primarily for outdoor advertising display purposes, when the display must be moved as a result of the project; or

(4) By a nonprofit organization that has established its nonprofit status under applicable Federal or State law.

(d) *Comparable replacement dwelling.* The term "comparable replacement dwelling" means a dwelling which is:

(1) Decent, safe and sanitary as described in paragraph (f) of this section;

(2) Functionally equivalent to the displacement dwelling. The term "functionally equivalent" means that it performs the same function, provides the same utility, and is capable of contributing to a comparable style of living. While a comparable replacement dwelling need not possess every feature of the displacement dwelling, the principal features must be present. Generally, functional equivalency is an objective standard, reflecting the range of purposes for which the various physical features of a dwelling may be used. However, in determining whether a replacement dwelling is functionally equivalent to the displacement dwelling, the Agency may consider reasonable trade-offs for specific features when the replacement unit is "equal to or better than" the displacement dwelling. (See Appendix A of this part);

(3) Adequate in size to accommodate the occupants;

(4) In an area not subject to unreasonable adverse environmental conditions;

(5) In a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities and commercial and public facilities, and reasonably accessible to the person's place of employment;

(6) On a site that is typical in size for residential development with normal site improvements, including customary landscaping. The site need not include special improvements such as outbuildings, swimming pools, or greenhouses. (See also § 24.403(a)(2).);

(7) Currently available to the displaced person on the private market. However, a comparable replacement dwelling for a person receiving government housing assistance before displacement may reflect similar government housing assistance. (See Appendix A of this part.); and

(8) Within the financial means of the displaced person.

(i) A replacement dwelling purchased by a homeowner in occupancy for at least 180 days prior to initiation of negotiations (180-day homeowner) is considered to be within the homeowner's financial means if the homeowner is paid the full price differential as described in § 24.401(c), all increased mortgage interest costs as described at § 24.401(d) and all incidental expenses as described at § 24.401(e), plus any additional amount required to be paid under Subpart E of this part, last resort housing.

(ii) A replacement dwelling rented by a displaced person is considered to be within his or her financial means if, after receiving rental assistance under this part, the person's monthly rent and utility costs for the replacement dwelling do not exceed the person's base monthly rental for the displacement dwelling as described at § 24.402(b)(2).

(iii) For a displaced person who is not eligible to receive a replacement housing payment because of the person's failure to meet length-of-occupancy requirements, comparable replacement rental housing is considered to be within the person's financial means if the Agency pays that portion of the monthly housing costs of a replacement dwelling which exceeds 30 percent of such person's gross monthly household income. Such rental assistance must be paid under last resort housing provisions in Subpart E of this Part for a period of 42 months.

(e) *Contribute materially.* The term "contribute materially" means that during the 2 taxable years prior to the

taxable year in which displacement occurs, or during such other period as the Agency determines to be more equitable, a business or farm operation:

(1) Had average annual gross receipts of at least \$5000; or

(2) Had average annual net earnings of at least \$1000; or

(3) Contributed at least 33 1/3 percent of the owner's or operator's average annual gross income from all sources.

(4) If the application of the above criteria creates an inequity or hardship in any given case, the Agency may approve the use of other criteria as determined appropriate.

(f) *Decent, safe and sanitary dwelling.* The term "decent, safe and sanitary dwelling" means a dwelling which meets applicable housing and occupancy codes. However, any of the following standards which are not met by an applicable code shall apply unless waived for good cause by the Federal agency funding the project. The dwelling shall:

(1) Be structurally sound, weathertight, and in good repair.

(2) Contain a safe electrical wiring system adequate for lighting and other devices.

(3) Contain a heating system capable of sustaining a healthful temperature (of approximately 70 degrees) for a displaced person, except in those areas where local climate conditions do not require such a system.

(4) Be adequate in size with respect to the number of rooms and living space needed to accommodate the displaced person. There shall be a separate, well lighted and ventilated bathroom that provides privacy to the user and contains a sink, bathtub or shower stall, and a toilet, all in good working order and properly connected to appropriate sources of water and to a sewage drainage system. In the case of a housekeeping dwelling, there shall be a kitchen area that contains a fully usable sink, properly connected to potable hot and cold water and to a sewage drainage system, and adequate space and utility service connections for a stove and refrigerator.

(5) Contains unobstructed egress to safe, open space at ground level. If the replacement dwelling unit is on the second story or above, with access directly from or through a common corridor, the common corridor must have at least two means of egress.

(6) For a displaced person who is handicapped, be free of any barriers which would preclude reasonable ingress, egress, or use of the dwelling by such displaced person.

(g) *Displaced person.* (1) *General.* The term "displaced person" means any person who moves from the real property or moves his or her personal property from the real property:

(i) As a direct result of a written notice of intent to acquire, the initiation of negotiations for, or the acquisition of, such real property in whole or in part for a project. This includes a person who does not meet the length of occupancy requirements of section 203 or 204 of the Uniform Act.

(ii) As a direct result of rehabilitation or demolition for a project; or

(iii) As a direct result of a written notice of intent to acquire, or the acquisition, rehabilitation or demolition of, in whole or in part, other real property on which the person conducts a business or farm operation, for a project. However, eligibility for such person under this paragraph applies only for purposes of obtaining relocation assistance advisory services under § 24.205(c), and moving expenses under § 24.301, § 24.302 or § 24.303.

(2) *Persons not displaced.* The following is a nonexclusive listing of persons who do not qualify as displaced persons under this part:

(i) A person who moves before the initiation of negotiations (see also § 24.403(e)), unless the Agency determines that the person was displaced as a direct result of the program or the project;

(ii) A person who initially enters into occupancy of the property after the date of its acquisition for the project;

(iii) A person who has occupied the property for the purpose of obtaining assistance under the Uniform Act;

(iv) A tenant-occupant of a dwelling who has been notified on a timely basis that he or she will not be displaced by the project, provided that:

(A) The tenant is offered a reasonable opportunity to lease and occupy a suitable, decent, safe and sanitary dwelling in the same building or nearby building on the real property;

(B) The terms and conditions of continued occupancy are reasonable and set forth in a lease which is offered to the tenant; and

(C) If the tenant is required to relocate temporarily, the conditions of the temporary relocation shall be reasonable; the tenant shall be reimbursed for the actual out-of-pocket expenses incurred in connection with the temporary relocation, including moving costs and any increased rent/utility costs; and the temporarily occupied dwelling shall be decent, safe and sanitary.

(v) An owner-occupant who moves as a result of an acquisition that is not

subject to the requirements of Subpart B of this part or as a result of the rehabilitation or demolition of the real property. (However, the displacement of a tenant as a direct result of any acquisition, rehabilitation or demolition for a Federal or federally-assisted project is subject to this part.);

(vi) A person who the Agency determines is not displaced as a direct result of a partial acquisition;

(vii) A person who, after receiving a notice of relocation eligibility (described at § 24.203(b)), is notified in writing that he or she will not be displaced for a project. Such notice shall not be issued unless the person has not moved and the Agency agrees to reimburse the person for any expenses incurred to satisfy any binding contractual relocation obligations entered into after the effective date of the notice of relocation eligibility;

(viii) An owner-occupant who voluntarily sells his or her property, as described at § 24.101(a) (1) or (3), after being informed in writing that if a mutually satisfactory agreement of sale cannot be reached, the Agency will not acquire the property. In such cases, however, any resulting displacement of a tenant is subject to the regulations in this part;

(ix) A person who retains the right of use and occupancy of the real property for life following its acquisition by the Agency;

(x) A person who retains the right of use and occupancy of the real property for a fixed term after its acquisition by the Department of Interior under Pub. L. 93-477 or Pub. L. 93-303; or

(xi) A person who is determined to be in unlawful occupancy (see paragraph (v) of this section) or a person who has been evicted for cause, under applicable law, prior to the initiation of negotiations for the property.

(h) *Dwelling.* The term "dwelling" means the place of permanent or customary and usual residence of a person, according to local custom or law, including a single family house; a single family unit in a two-family, multi-family, or multi-purpose property; a unit of a condominium or cooperative housing project; a non-housekeeping unit; a mobile home; or any other residential unit.

(i) *Farm operation.* The term "farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.

(j) *Federal financial assistance.* The term "Federal financial assistance" means a grant, loan, or contribution provided by the United States, except any Federal guarantee or insurance and any interest reduction payment to an individual in connection with the purchase and occupancy of a residence by that individual.

(k) *Initiation of negotiations.* Unless a different action is specified in applicable Federal program regulations, the term "initiation of negotiations" means the following:

(1) Whenever the displacement results from acquisition of the real property by a Federal agency or State agency, the "initiation of negotiations" means the delivery of the initial written offer of just compensation by the Agency to the owner or the owner's representative to purchase the real property for the project. However, if the Federal agency or State agency issues a notice of its intent to acquire the real property, and a person moves after that notice, but before delivery of the initial written purchase offer, the "initiation of negotiations" means the actual move of the person from the property.

(2) Whenever the displacement is caused by rehabilitation, demolition or privately undertaken acquisition of the real property (and there is no related acquisition by a Federal agency or a State agency), the "initiation of negotiations" means the notice to the person that he or she will be displaced by the project or, if there is no notice, the actual move of the person from the property.

(3) In the case of a permanent relocation to protect the public health and welfare, under the Comprehensive Environmental Response Compensation and Liability Act of 1980 (Pub. L. 96-510, or "Superfund") the "initiation of negotiations" means the formal announcement of such relocation or the Federal or federally-coordinated health advisory where the Federal Government later decides to conduct a permanent relocation.

(l) *Mortgage.* The term "mortgage" means such classes of liens as are commonly given to secure advances on, or the unpaid purchase price of, real property, under the laws of the State in which the real property is located, together with the credit instruments, if any, secured thereby.

(m) *Nonprofit organization.* The term "nonprofit organization" means an organization that is exempt from paying Federal income taxes under section 501 of the Internal Revenue Code (26 U.S.C. 501).

(n) *Owner of a dwelling.* A person is considered to have met the requirement to own a dwelling if the person purchases or holds any of the following interests in real property:

- (1) Fee title, a life estate, a 99-year lease, or a lease including any options for extension with at least 50 years to run from the date of acquisition; or
- (2) An interest in a cooperative housing project which includes the right to occupy a dwelling; or
- (3) A contract to purchase any of the interests or estates described in paragraphs (n) (1) or (2) of this section, or

(4) Any other interest, including a partial interest, which in the judgment of the Agency warrants consideration as ownership.

(o) *Person.* The term "person" means any individual, family, partnership, corporation, or association.

(p) *Project.* The term "project" means any action or series of actions undertaken by a Federal agency or with Federal financial assistance that are designed primarily to further or complete an activity or program that will benefit the public as a whole. It does not include an action or series of actions undertaken by an individual or family with Federal financial assistance if such assistance is intended primarily to assist or benefit such individual or family.

(q) *Salvage value.* The term "salvage value" means the probable sale price of an item, if offered for sale on the condition that it will be removed from the property at the buyer's expense, allowing a reasonable period of time to find a person buying with knowledge of the uses and purposes for which it is adaptable and capable of being used, including separate use of serviceable components and scrap when there is no reasonable prospect of sale except on that basis.

(r) *Small business.* A business having not more than 500 employees working at the site being acquired or permanently displaced by a program or project.

(s) *State.* Any of the several States of the United States or the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, the Trust Territories of the Pacific Islands or a political subdivision of any of these jurisdictions.

(t) *Tenant.* The term "tenant" means a person who has the temporary use and occupancy of real property owned by another.

(u) *Uneconomic remnant.* The term "uneconomic remnant" means a parcel of real property in which the owner is left with an interest after the partial acquisition of the owner's property, and

which the acquiring agency has determined has little or no value or utility to the owner.

(v) *Unlawful occupancy.* A person is considered to be in unlawful occupancy when such person has been ordered to move by a court of competent jurisdiction prior to the initiation of negotiations for the acquisition of the occupied property. At the discretion of the displacing agency, squatters who occupy real property without the permission of the owner may be considered to be in unlawful occupancy. Technical violations of law and unlitigated violations of the terms of a lease, such as having an unauthorized pet or withholding rent because of improper building maintenance, do not render a person's occupancy unlawful for purposes of this section.

(w) *Uniform Act.* The term "Uniform Act" means the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970 (84 Stat. 1894; 42 U.S.C. 4601 *et seq.*; Pub. L. 91-646), and amendments thereto.

(x) *Utility costs.* The term "utility costs" means expenses for heat, lights, water and sewer.

(y) *Utility facility.* The term "utility facility" means any electric, gas, water, steam power, or materials transmission or distribution system; any transportation system; any communications system, including cable television; and any fixtures, equipment, or other property associated with the operation, maintenance, or repair of any such system. A utility facility may be publicly, privately, or cooperatively owned.

(z) *Utility relocation.* The term "utility relocation" means the adjustment of a utility facility required by the program or project undertaken by the displacing agency. It includes removing and reinstalling the facility, including necessary temporary facilities; acquiring necessary right-of-way on new location; moving, rearranging or changing the type of existing facilities; and taking any necessary safety and protective measures. It shall also mean constructing a replacement facility that has the functional equivalency of the existing facility and is necessary for the continued operation of the utility service, the project economy, or sequency of project construction.

§ 24.3 No duplication of payments.

No person shall receive any payment under this part if that person receives a payment under Federal, State, or local law which is determined by the Agency to have the same purpose and effect as such payment under this part. (See Appendix A of this part, § 24.3.)

§ 24.4 Assurances, monitoring and corrective action.

(a) *Assurances.* (1) Before a Federal agency may approve any grant to, or contract or agreement with, a State agency under which Federal financial assistance will be made available for a project which results in real property acquisition or displacement that is subject to the Uniform Act, the State agency must provide appropriate assurances that it will comply with the Uniform Act and this part. A displacing agency's assurances shall be in accordance with Section 210 of the Uniform Act. An acquiring agency's assurances shall be in accordance with section 305 of the Uniform Act and must contain specific reference to any State law which the Agency believes provides an exception to Sections 301 or 302 of the Uniform Act. If, in the judgment of the Federal agency, Uniform Act compliance will be served, a State agency may provide these assurances at one time to cover all subsequent federally-assisted programs or projects. An Agency which both acquires real property and displaces persons may combine its section 210 and section 305 assurances in one document.

(2) If a Federal agency or State agency provides Federal financial assistance to a "person" causing displacement, such Federal or State agency is responsible for ensuring compliance with the requirements of this part, notwithstanding the person's contractual obligation to the grantee to comply.

(3) As an alternative to the assurance requirement described in paragraph (a)(1) of this section, a Federal agency may provide Federal financial assistance to a State agency after it has accepted a certification by such State agency in accordance with the requirements in Subpart G of this part.

(b) *Monitoring and corrective action.* The Federal agency will monitor compliance with this part, and the State agency shall take whatever corrective action is necessary to comply with the Uniform Act and this part. The Federal agency may also apply sanctions in accordance with applicable program regulations. (Also see § 24.603, Subpart G.)

(c) *Prevention of fraud, waste, and mismanagement.* The Agency shall take appropriate measures to carry out this part in a manner that minimizes fraud, waste, and mismanagement.

§ 24.5 Manner of notices.

Each notice which the Agency is required to provide to a property owner or occupant under this part, except the

notice described at § 24.102(b), shall be personally served or sent by certified or registered first-class mail, return receipt requested, and documented in Agency files. Each notice shall be written in plain, understandable language. Persons who are unable to read and understand the notice must be provided with appropriate translation and counseling. Each notice shall indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

§ 24.6 Administration of jointly-funded projects.

Whenever two or more Federal agencies provide financial assistance to an Agency or Agencies, other than a Federal agency, to carry out functionally or geographically related activities which will result in the acquisition of property or the displacement of a person, the Federal agencies may by agreement designate one such agency as the cognizant Federal agency. In the unlikely event that agreement among the Agencies cannot be reached as to which agency shall be the cognizant Federal agency, then the lead agency shall designate one of such agencies to assume the cognizant role. At a minimum, the agreement shall set forth the federally assisted activities which are subject to its terms and cite any policies and procedures, in addition to this part, that are applicable to the activities under the agreement. Under the agreement, the cognizant Federal agency shall assure that the project is in compliance with the provisions of the Uniform Act and this part. All federally assisted activities under the agreement shall be deemed a project for the purposes of this part.

§ 24.7 Federal agency waiver of regulations.

The Federal agency funding the project may waive any requirement in this part not required by law if it determines that the waiver does not reduce any assistance or protection provided to an owner or displaced person under this part. Any request for a waiver shall be justified on a case-by-case basis.

§ 24.8 Compliance with other laws and regulations.

The implementation of this part shall be in compliance with all applicable laws and implementing regulations, including the following:

(a) Section I of the Civil Rights Act of 1866 (42 U.S.C. 1982 *et seq.*).

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*).

(c) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), as amended.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*).

(e) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 790 *et seq.*).

(f) Executive Order 12250—Leadership and Coordination of Non-Discrimination Laws.

(g) Executive Order 11063—Equal Opportunity and Housing, as amended by Executive Order 12259.

(h) Executive Order 11246—Equal Employment Opportunity.

(i) Executive Order 11625—Minority Business Enterprise.

(j) Executive Order 12259—Leadership and Coordination of Fair Housing in Federal Programs.

(k) The Flood Disaster Protection Act of 1973 (Pub. L. 93-234);

(l) Executive Orders 11988, Floodplain Management, and 11990, Protection of Wetlands.

(m) The Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*).

§ 24.9 Recordkeeping and reports.

(a) *Records.* The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part. These records shall be retained for at least 3 years after each owner of a property and each person displaced from the property receives the final payment to which he or she is entitled under this part.

(b) *Confidentiality of records.* Records maintained by an Agency in accordance with this part are confidential regarding their use as public information, unless applicable law provides otherwise.

(c) *Reports.* The Agency shall submit a report of its real property acquisition and displacement activities under this part if required by the Federal agency funding the project. A report will not be required more frequently than every 3 years, or as the Uniform Act provides, unless the Federal funding agency shows good cause. The report shall be prepared and submitted in the format contained in Appendix B of this part.

§ 24.10 Appeals.

(a) *General.* The Agency shall promptly review appeals in accordance with the requirements of applicable law and this part.

(b) *Actions which may be appealed.* Any aggrieved person may file a written appeal with the Agency in any case in which the person believes that the Agency has failed to properly consider the person's application for assistance under this part. Such assistance may include, but is not limited to, the

person's eligibility for, or the amount of, a payment required under § 24.106 or § 24.107, or a relocation payment required under this part. The Agency shall consider a written appeal regardless of form.

(c) *Time limit for initiating appeal.* The Agency may set a reasonable time limit for a person to file an appeal. The time limit shall not be less than 60 days after the person receives written notification of the Agency's determination on the person's claim.

(d) *Right to representation.* A person has a right to be represented by legal counsel or other representative in connection with his or her appeal, but solely at the person's own expense.

(e) *Review of files by person making appeal.* The Agency shall permit a person to inspect and copy all materials pertinent to his or her appeal, except materials which are classified as confidential by the Agency. The Agency may, however, impose reasonable conditions on the person's right to inspect, consistent with applicable laws.

(f) *Scope of review of appeal.* In deciding an appeal, the Agency shall consider all pertinent justification and other material submitted by the person, and all other available information that is needed to ensure a fair and full review of the appeal.

(g) *Determination and notification after appeal.* Promptly after receipt of all information submitted by a person in support of an appeal, the Agency shall make a written determination on the appeal, including an explanation of the basis on which the decision was made, and furnish the person a copy. If the full relief requested is not granted, the Agency shall advise the person of his or her right to seek judicial review.

(h) *Agency official to review appeal.* The Agency official conducting the review of the appeal shall be either the head of the Agency or his or her authorized designee. However, the official shall not have been directly involved in the action appealed.

Subpart B—Real Property Acquisition

§ 24.101 Applicability of acquisition requirements.

(a) *General.* The requirements of this subpart apply to any acquisition of real property for a Federal project, and to projects where there is Federal financial assistance in any part of project costs except for:

(1) Voluntary transactions when the acquiring agency has the power of eminent domain, but it will not acquire the property in the event negotiations

fail to result in an amicable agreement, and the owner is so informed in writing.

(2) The acquisition of real property from a Federal agency, State, or State agency, if the acquiring agency does not have the authority to acquire the property through condemnation.

(3) Projects or programs undertaken by an acquiring agency or person that receives Federal financial assistance but does not have authority to acquire property by eminent domain, provided that such Agency or person shall:

(i) Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and

(ii) Inform the owner of what it believes to be fair market value of the property, based on an appraisal.

(b) *Less-than-full-fee interest in real property.* In addition to fee simple title, the requirements of this subpart apply to the acquisition of fee title, subject to a life estate or a life use, to acquisition by leasing where the lease term, including option(s) for extension, is 50 years or more, and to the acquisition of permanent easements. (See Appendix A of this part, § 24.101(b).)

(c) *Federally-assisted projects.* For projects receiving Federal financial assistance the provisions of §§ 24.102, 24.103, 24.104, and 24.105 apply to the extent practicable under State law. (See § 24.4(a).)

§ 24.102 Basic acquisition policies.

(a) *Expedition acquisition.* The Agency shall make every reasonable effort to acquire the real property expeditiously by negotiation.

(b) *Notice to owner.* As soon as feasible, the owner shall be notified of the Agency's interest in acquiring the real property and the basic protections, including the Agency's obligation to secure an appraisal, provided to the owner by law and this part. (See also § 24.203.)

(c) *Appraisal, waiver thereof, and invitation to owner.*

(1) Before the initiation of negotiations the real property to be acquired shall be appraised, except as provided in § 24.101(c)(2), and the owner, or the owner's designated representative, shall be given an opportunity to accompany the appraiser during the appraiser's inspection of the property.

(2) An appraisal is not required if the owner is donating the property and releases the Agency from this obligation, or the Agency determines that an appraisal is unnecessary because the valuation problem is uncomplicated and the fair market value is estimated at

\$2,500 or less, based on a review of available data.

(d) *Establishment and offer of just compensation.* Before the initiation of negotiations, the Agency shall establish an amount which it believes is just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property. (See also § 24.104.) Promptly thereafter, the Agency shall make a written offer to the owner to acquire the property for the full amount believed to be just compensation.

(e) *Summary statement.* Along with the initial written purchase offer, the owner shall be given a written statement of the basis for the offer of just compensation, which shall include:

(1) A statement of the amount offered as just compensation. In the case of a partial acquisition, the compensation for the real property to be acquired and the compensation for damages, if any, to the remaining real property shall be separately stated.

(2) A description and location identification of the real property and the interest in the real property to be acquired.

(3) An identification of the buildings, structures, and other improvements (including removable building equipment and trade fixtures) which are considered to be part of the real property for which the offer of just compensation is made. Where appropriate, the statement shall identify any separately held ownership interest in the property, e.g., a tenant-owned improvement, and indicate that such interest is not covered by the offer.

(f) *Basic negotiation procedures.* The Agency shall make reasonable efforts to contact the owner or the owner's representative and discuss its offer to purchase the property, including the basis for the offer of just compensation; and, explain its acquisition policies and procedures, including its payment of incidental expenses in accordance with § 24.106. The owner shall be given reasonable opportunity to consider the offer and present material which the owner believes is relevant to determining the value of the property and to suggest modification in the proposed terms and conditions of the purchase. The Agency shall consider the owner's presentation.

(g) *Updating offer of just compensation.* If the information presented by the owner, or a material change in the character or condition of the property, indicates the need for new appraisal information, or if a significant

delay has occurred since the time of the appraisal(s) of the property, the Agency shall have the appraisal(s) updated or obtain a new appraisal(s). If the latest appraisal information indicates that a change in the purchase offer is warranted, the Agency shall promptly reestablish just compensation and offer that amount to the owner in writing.

(h) *Coercive action.* The Agency shall not advance the time of condemnation, or defer negotiations or condemnation or the deposit of funds with the court, or take any other coercive action in order to induce an agreement on the price to be paid for the property.

(i) *Administrative settlement.* The purchase price for the property may exceed the amount offered as just compensation when reasonable efforts to negotiate an agreement at that amount have failed and an authorized Agency official approves such administrative settlement as being reasonable, prudent, and in the public interest. When Federal funds pay for or participate in acquisition costs, a written justification shall be prepared which indicates that available information (e.g., appraisals, recent court awards, estimated trial costs, or valuation problems) supports such a settlement.

(j) *Payment before taking possession.* Before requiring the owner to surrender possession of the real property, the Agency shall pay the agreed purchase price to the owner, or in the case of a condemnation, deposit with the court, for the benefit of the owner, an amount not less than the Agency's approved appraisal of the fair market value of such property, or the court award of compensation in the condemnation proceeding for the property. In exceptional circumstances, with the prior approval of the owner, the Agency may obtain a right-of-entry for construction purposes before making payment available to an owner.

(k) *Uneconomic remnant.* If the acquisition of only a portion of a property would leave the owner with an uneconomic remnant, the Agency shall offer to acquire the uneconomic remnant along with the portion of the property needed for the project. (See § 24.2(u).)

(l) *Inverse condemnation.* If the Agency intends to acquire any interest in real property by exercise of the power of eminent domain, it shall institute formal condemnation proceedings and not intentionally make it necessary for the owner to institute legal proceedings to prove the fact of the taking of the real property.

(m) *Fair rental.* If the Agency permits a former owner or tenant to occupy the

real property after acquisition for a short term or a period subject to termination by the Agency on short notice, the rent shall not exceed the fair market rent for such occupancy.

§ 24.103 Criteria for appraisals.

(a) *Standards of appraisal.* The format and level of documentation for an appraisal depend on the complexity of the appraisal problem. The Agency shall develop minimum standards for appraisals consistent with established and commonly accepted appraisal practice for those acquisitions which, by virtue of their low value or simplicity, do not require the in-depth analysis and presentation necessary in a detailed appraisal. A detailed appraisal shall be prepared for all other acquisitions. A detailed appraisal shall reflect nationally recognized appraisal standards, including, to the extent appropriate, the Uniform Appraisal Standards for Federal Land Acquisition. An appraisal must contain sufficient documentation, including valuation data and the appraiser's analysis of that data, to support his or her opinion of value. At a minimum, a detailed appraisal shall contain the following items:

(1) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal.

(2) An adequate description of the physical characteristics of the property being appraised (and, in the case of a partial acquisition, an adequate description of the remaining property), a statement of the known and observed encumbrances, if any, title information, location, zoning, present use, an analysis of highest and best use, and at least a 5-year sales history of the property.

(3) All relevant and reliable approaches to value consistent with commonly accepted professional appraisal practices. When sufficient market sales data are available to reliably support the fair market value for the specific appraisal problem encountered, the Agency, at its discretion, may require only the market approach. If more than one approach is utilized, there shall be an analysis and reconciliation of approaches to value that are sufficient to support the appraiser's opinion of value.

(4) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, and verification by a party involved in the transaction.

(5) A statement of the value of the real property to be acquired and, for a partial acquisition, a statement of the value of the damages and benefits, if any, to the remaining real property.

(6) The effective date of valuation, date of appraisal, signature, and certification of the appraiser.

(b) *Influence of the project on just compensation.* To the extent permitted under applicable law, the appraiser shall disregard any decrease or increase in the fair market value of the real property caused by the project for which the property is to be acquired, or by the likelihood that the property would be acquired for the project, other than that due to physical deterioration within the reasonable control of the owner.

(c) *Owner retention of improvements.* If the owner of a real property improvement is permitted to retain it for removal from the project site, the amount to be offered for the interest in the real property to be acquired shall be not less than the difference between the amount determined to be just compensation for the owner's entire interest in the real property and the salvage value (defined at § 24.2(q)) of the retained improvement.

(d) *Qualifications of appraisers.* The Agency shall establish criteria for determining the minimum qualifications of appraisers. Appraiser qualifications shall be consistent with the level of difficulty of the appraisal assignment. The Agency shall review the experience, education, training, and other qualifications of appraisers, including review appraisers, and utilize only those determined to be qualified.

(e) *Conflict of interest.* No appraiser or review appraiser shall have any interest, direct or indirect, in the real property being appraised for the Agency that would in any way conflict with the preparation or review of the appraisal. Compensation for making an appraisal shall not be based on the amount of the valuation. No appraiser shall act as a negotiator for real property which that person has appraised, except that the Agency may permit the same person to both appraise and negotiate an acquisition where the value of the acquisition is \$2,500, or less.

§ 24.104 Review of appraisals.

The Agency shall have an appraisal review process and, at a minimum:

(a) A qualified reviewing appraiser shall examine all appraisals to assure that they meet applicable appraisal requirements and shall, prior to acceptance, seek necessary corrections or revisions.

(b) If the reviewing appraiser is unable to approve or recommend

approval of an appraisal as an adequate basis for the establishment of just compensation, and it is determined that it is not practical to obtain an additional appraisal, the reviewing appraiser may develop appraisal documentation in accordance with § 24.103 to support an approved or recommended value.

(c) The review appraiser's certification of the recommended or approved value of the property shall be set forth in a signed statement which identifies the appraisal reports reviewed and explains the basis for such recommendation or approval. Any damages or benefits to any remaining property shall also be identified in the statement.

§ 24.105 Acquisition of tenant-owned improvements.

(a) *Acquisition of improvements.* When acquiring any interest in real property, the Agency shall offer to acquire at least an equal interest in all buildings, structures, or other improvements located upon the real property to be acquired, which it requires to be removed or which it determines will be adversely affected by the use to which such real property will be put. This shall include any improvement of a tenant-owner who has the right or obligation to remove the improvement at the expiration of the lease term.

(b) *Improvements considered to be real property.* Any building, structure, or other improvement, which would be considered to be real property if owned by the owner of the real property on which it is located, shall be considered to be real property for purposes of this Subpart.

(c) *Appraisal and establishment of just compensation for tenant-owned improvements.* Just compensation for a tenant-owned improvement is the amount which the improvement contributes to the fair market value of the whole property or its salvage value, whichever is greater. (Salvage value is defined at § 24.2(q).)

(d) *Special conditions.* No payment shall be made to a tenant-owner for any real property improvement unless:

(1) The tenant-owner, in consideration for the payment, assigns, transfers, and releases to the Agency all of the tenant-owner's right, title, and interest in the improvement; and

(2) The owner of the real property on which the improvement is located disclaims all interest in the improvement; and

(3) The payment does not result in the duplication of any compensation otherwise authorized by law.

(e) *Alternative compensation.* Nothing in this Subpart shall be construed to deprive the tenant-owner of any right to reject payment under this Subpart and to obtain payment for such property interests in accordance with other applicable law.

§ 24.106 Expenses incidental to transfer of title to the Agency.

(a) The owner of the real property shall be reimbursed for all reasonable expenses the owner necessarily incurred for:

(1) Recording fees, transfer taxes, documentary stamps, evidence of title, boundary surveys, legal descriptions of the real property, and similar expenses incidental to conveying the real property to the Agency. However, the Agency is not required to pay costs solely required to perfect the owner's title to the real property; and

(2) Penalty costs and other charges for prepayment of any preexisting recorded mortgage entered into in good faith encumbering the real property; and

(3) The pro rata portion of any prepaid real property taxes which are allocable to the period after the Agency obtains title to the property or effective possession of it, whichever is earlier.

(b) Whenever feasible, the Agency shall pay these costs directly so that the owner will not have to pay such costs and then seek reimbursement from the Agency.

§ 24.107 Certain litigation expenses.

The owner of the real property shall be reimbursed for any reasonable expenses, including reasonable attorney, appraisal, and engineering fees, which the owner actually incurred because of a condemnation proceeding, if:

(a) The final judgment of the court is that the Agency cannot acquire the real property by condemnation; or

(b) The condemnation proceeding is abandoned by the Agency other than under an agreed-upon settlement; or

(c) The court having jurisdiction renders a judgment in favor of the owner in an inverse condemnation proceeding or the Agency effects a settlement of such proceeding.

§ 24.108 Donations.

An owner whose real property is being acquired may, after being fully informed by the Agency of the right to receive just compensation for such property, donate such property or any part thereof, any interest therein, or any compensation paid therefor, to the Agency as such owner shall determine. The Agency is responsible for assuring that an appraisal of the real property is obtained unless the owner releases the

Agency from such obligation, except as provided in § 24.102(c)(2).

Subpart C—General Relocation Requirements

§ 24.201 Purpose.

This Subpart prescribes general requirements governing the provision of relocation payments and other relocation assistance in this part.

§ 24.202 Applicability.

These requirements apply to the relocation of any displaced person as defined at § 24.2(g).

§ 24.203 Relocation notices.

(a) *General information notice.* As soon as feasible, a person scheduled to be displaced shall be furnished with a general written description of the displacing agency's relocation program which does at least the following:

(1) Informs the person that he or she may be displaced for the project and generally describes the relocation payment(s) for which the person may be eligible, the basic conditions of eligibility, and the procedures for obtaining the payment(s).

(2) Informs the person that he or she will be given reasonable relocation advisory services, including referrals to replacement properties, help in filing payment claims, and other necessary assistance to help the person successfully relocate.

(3) Informs the person that he or she will not be required to move without at least 90 days' advance written notice (see paragraph (c) of this section), and informs any person to be displaced from a dwelling that he or she cannot be required to move permanently unless at least one comparable replacement dwelling has been made available.

(4) Describes the person's right to appeal the Agency's determination as to a person's application for assistance for which a person may be eligible under this part.

(b) *Notice of relocation eligibility.* Eligibility for relocation assistance shall begin on the date of initiation of negotiations (defined in § 24.2(k)) for the occupied property. When this occurs, the Agency shall promptly notify all occupants in writing of their eligibility for applicable relocation assistance.

(c) *Ninety-day notice.*

(1) *General.* No lawful occupant shall be required to move unless he or she has received at least 90 days advance written notice of the earliest date by which he or she may be required to move.

(2) *Timing of notice.* The displacing agency may issue the notice 90 days

before it expects the person to be displaced or earlier.

(3) *Content of notice.* The 90-day notice shall either state a specific date as the earliest date by which the occupant may be required to move, or state that the occupant will receive a further notice indicating, at least 30 days in advance, the specific date by which he or she must move. If the 90-day notice is issued before a comparable replacement dwelling is made available, the notice must state clearly that the occupant will not have to move earlier than 90 days after such a dwelling is made available. (See § 24.204(a).)

(4) *Urgent need.* In unusual circumstances, an occupant may be required to vacate the property on less than 90 days advance written notice if the displacing agency determines that a 90-day notice is impracticable, such as when the person's continued occupancy of the property would constitute a substantial danger to health or safety. A copy of the Agency's determination shall be included in the applicable case file.

§ 24.204 Availability of comparable replacement dwelling before displacement.

(a) *General.* No person to be displaced shall be required to move from his or her dwelling unless at least one comparable replacement dwelling (defined at § 24.2(d)) has been made available to the person. Where possible, three or more comparable replacement dwellings shall be made available. A comparable replacement dwelling will be considered to have been made available to a person, if:

(1) The person is informed of its location; and

(2) The person has sufficient time to negotiate and enter into a purchase agreement or lease for the property; and

(3) Subject to reasonable safeguards, the person is assured of receiving the relocation assistance and acquisition payment to which the person is entitled in sufficient time to complete the purchase or lease of the property.

(b) *Circumstances permitting waiver.* The Federal agency funding the project may grant a waiver of the policy in paragraph (a) of this section in any case where it is demonstrated that a person must move because of:

(1) A major disaster as defined in section 102(c) of the Disaster Relief Act of 1974 (42 U.S.C. 5121); or

(2) A presidentially declared national emergency; or

(3) Another emergency which requires immediate vacation of the real property, such as when continued occupancy of the displacement dwelling constitutes a

substantial danger to the health or safety of the occupants or the public.

(c) *Basic conditions of emergency move.* Whenever a person is required to relocate for a temporary period because of an emergency as described in paragraph (b) of this section, the Agency shall:

(1) Take whatever steps are necessary to assure that the person is temporarily relocated to a decent, safe, and sanitary dwelling; and

(2) Pay the actual reasonable out-of-pocket moving expenses and any reasonable increase in rent and utility costs incurred in connection with the temporary relocation; and

(3) Make available to the displaced person as soon as feasible, at least one comparable replacement dwelling. (For purposes of filing a claim and meeting the eligibility requirements for a relocation payment, the date of displacement is the date the person moves from the temporarily-occupied dwelling.)

§ 24.205 Relocation planning, advisory services, and coordination.

(a) *Relocation planning.* During the early stages of development, Federal and Federal-aid programs or projects shall be planned in such a manner that the problems associated with the displacement of individuals, families, businesses, farms, and nonprofit organizations are recognized and solutions are developed to minimize the adverse impacts of displacement. Such planning, where appropriate, shall precede any action by an Agency which will cause displacement, and should include an evaluation of program resources available to carry out timely and orderly relocations. Planning may involve a relocation survey or study which may include the following:

(1) An estimate of the number of households to be displaced including information such as owner/tenant status, estimated value and rental rates of properties to be acquired, family characteristics, and special consideration of the impacts on minorities, the elderly, large families, and the handicapped when applicable.

(2) An estimate of the number of comparable replacement dwellings in the area (including price ranges and rental rates) that may be available to fulfill the needs of those households displaced. When an adequate supply of comparable housing is not expected to be available, consideration of last resort housing actions should be instituted.

(3) An estimate of the number, type and size of the businesses, farms, and nonprofit organizations to be displaced

and the approximate number of employees that may be affected.

(4) Consideration of any special relocation advisory services that may be necessary from the displacing agency and other cooperating agencies.

(b) *Loans for planning and preliminary expenses.* In the event that an Agency elects to consider using the duplicative provision in section 215 of the Uniform Act which permits the use of project funds for loans to cover planning and other preliminary expenses for the development of additional housing, the lead agency will establish criteria and procedures for such use upon the request of the Federal agency funding the program or project.

(c) *Relocation assistance advisory services.* (1) *General.* The Agency shall carry out a relocation assistance advisory program which satisfies the requirements of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*), and Executive Order 11063 (27 FR 11527, November 24, 1962), and offers the services described in paragraph (c)(2) of this section. If the Agency determines that a person occupying property adjacent to the real property acquired for the project is caused substantial economic injury because of such acquisition, it may offer advisory services to such person.

(2) *Services to be provided.* The advisory program shall include such measures, facilities, and services as may be necessary or appropriate in order to:

(i) Determine the relocation needs and preferences of each person to be displaced and explain the relocation payments and other assistance for which the person may be eligible, the related eligibility requirements, and the procedures for obtaining such assistance. This shall include a personal interview with each person.

(ii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable replacement dwellings, and explain that the person cannot be required to move unless at least one comparable replacement dwelling is made available as set forth in § 24.204(a).

(A) As soon as feasible, the Agency shall inform the person in writing of the specific comparable replacement dwelling and the price or rent used for establishing the upper limit of the replacement housing payment (see § 24.403 (a) and (b)) and the basis for the determination, so that the person is aware of the maximum replacement housing payment for which he or she may qualify.

(B) Where feasible, housing shall be inspected prior to being made available to assure that it meets applicable standards. (See § 24.2 (d) and (f).) If such an inspection is not made, the person to be displaced shall be notified that a replacement housing payment may not be made unless the replacement dwelling is subsequently inspected and determined to be decent, safe, and sanitary.

(C) Whenever possible, minority persons shall be given reasonable opportunities to relocate to decent, safe, and sanitary replacement dwellings, not located in an area of minority concentration, that are within their financial means. This policy, however, does not require an Agency to provide a person a larger payment than is necessary to enable a person to relocate to a comparable replacement dwelling.

(D) All persons, especially the elderly and handicapped, shall be offered transportation to inspect housing to which they are referred.

(iii) Provide current and continuing information on the availability, purchase prices, and rental costs of comparable and suitable commercial and farm properties and locations. Assist any person displaced from a business or farm operation to obtain and become established in a suitable replacement location.

(iv) Minimize hardships to persons in adjusting to relocation by providing counseling, advice as to other sources of assistance that may be available, and such other help as may be appropriate.

(v) Supply persons to be displaced with appropriate information concerning Federal and State housing programs, disaster loan and other programs administered by the Small Business Administration, and other Federal and State programs offering assistance to displaced persons, and technical help to persons applying for such assistance.

(vi) Any person who occupies property acquired by an Agency, when such occupancy began subsequent to the acquisition of the property, and the occupancy is permitted by a short term rental agreement or an agreement subject to termination when the property is needed for a program or project, shall be eligible for advisory services, as determined by the Agency.

(d) *Coordination of relocation activities.* Relocation activities shall be coordinated with project work and other displacement-causing activities to ensure that, to the extent feasible, persons displaced receive consistent treatment and the duplication of functions is minimized. (Also see § 24.6, Subpart A.)

§ 24.206 Eviction for cause.

Eviction for cause must conform to applicable State and local law. Any person who has lawfully occupied the real property, but who is later evicted for cause on or after the date of the initiation of negotiations, retains the right to the relocation payments and other assistance set forth in this part. For purposes of determining eligibility for relocation payments, the date of displacement is the date the person moves or the date a comparable replacement dwelling is made available, whichever is later. This section applies only if the Agency had intended to displace the person.

§ 24.207 General requirements—claims for relocation payments.

(a) *Documentation.* Any claim for a relocation payment shall be supported by such documentation as may be reasonably required to support expenses incurred, such as bills, certified prices, appraisals, or other evidence of such expenses. A displaced person must be provided reasonable assistance necessary to complete and file any required claim for payment.

(b) *Expedient payments.* The Agency shall review claims in an expeditious manner. The claimant shall be promptly notified as to any additional documentation that is required to support the claim. Payment for a claim shall be made as soon as feasible following receipt of sufficient documentation to support the claim.

(c) *Advance payments.* If a person demonstrates the need for an advance relocation payment in order to avoid or reduce a hardship, the Agency shall issue the payment, subject to such safeguards as are appropriate to ensure that the objective of the payment is accomplished.

(d) *Time for filing.* (1) All claims for a relocation payment shall be filed with the Agency within 18 months after:

(i) For tenants, the date of displacement;

(ii) For owners, the date of displacement or the date of the final payment for the acquisition of the real property, whichever is later.

(2) This time period shall be waived by the Agency for good cause.

(e) *Multiple occupants of one displacement dwelling.* If two or more occupants of the displacement dwelling move to separate replacement dwellings, each occupant is entitled to a reasonable prorated share, as determined by the Agency, of any relocation payments that would have been made if the occupants moved together to a comparable replacement dwelling. However, if the Agency

determines that two or more occupants maintained separate households within the same dwelling, such occupants have separate entitlements to relocation payments.

(f) *Deductions from relocation payments.* An Agency shall deduct the amount of any advance relocation payment from the relocation payment(s) to which a displaced person is otherwise entitled. Similarly, a Federal agency shall, and a State agency may, deduct from relocation payments any rent that the displaced person owes the Agency; provided that no deduction shall be made if it would prevent the displaced person from obtaining a comparable replacement dwelling as required by § 24.204. The Agency shall not withhold any part of a relocation payment to a displaced person to satisfy an obligation to any other creditor.

(g) *Notice of denial of claim.* If the Agency disapproves all or part of a payment claimed or refuses to consider the claim on its merits because of untimely filing or other grounds, it shall promptly notify the claimant in writing of its determination, the basis for its determination, and the procedures for appealing that determination.

§ 24.208 Relocation payments not considered as income.

No relocation payment received by a displaced person under this part shall be considered as income for the purpose of the Internal Revenue Code of 1954, or for the purpose of determining the eligibility or the extent of eligibility of any person for assistance under the Social Security Act or any other Federal law, except for any Federal law providing low-income housing assistance.

Subpart D—Payments for Moving and Related Expenses**§ 24.301 Payment for actual reasonable moving and related expenses—residential moves.**

Any displaced owner-occupant or tenant of a dwelling who qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment of his or her actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(a) Transportation of the displaced person and personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(b) Packing, crating, unpacking, and uncrating of the personal property.

(c) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated household appliances, and other personal property.

(d) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(e) Insurance for the replacement value of the property in connection with the move and necessary storage.

(f) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(g) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

§ 24.302 Fixed payment for moving expenses—residential moves.

Any person displaced from a dwelling or a seasonal residence is entitled to receive an expense and dislocation allowance as an alternative to a payment for actual moving and related expenses under § 24.301. This allowance shall be determined according to the applicable schedule approved by the Federal Highway Administration, except that the expense and dislocation allowance to a person occupying a furnished one-room unit shared by more than one other person, or a person whose residential move is performed by an Agency at no cost to the person, shall be limited to \$50.

§ 24.303 Payment for actual reasonable moving and related expenses—nonresidential moves.

(a) *Eligible costs.* Any business or farm operation which qualifies as a displaced person (defined at § 24.2(g)) is entitled to payment for such actual moving and related expenses, as the Agency determines to be reasonable and necessary, including expenses for:

(1) Transportation of personal property. Transportation costs for a distance beyond 50 miles are not eligible, unless the Agency determines that relocation beyond 50 miles is justified.

(2) Packing, crating, unpacking, and uncrating of the personal property.

(3) Disconnecting, dismantling, removing, reassembling, and reinstalling relocated machinery, equipment, and other personal property, including substitute personal property described at § 24.303(a)(12). This includes connection to utilities available nearby. It also includes modifications to the personal property necessary to adapt it to the replacement structure, the replacement site, or the utilities at the replacement site, and modifications necessary to

adapt the utilities at the replacement site to the personal property. (Expenses for providing utilities from the right-of-way to the building or improvement are excluded.)

(4) Storage of the personal property for a period not to exceed 12 months, unless the Agency determines that a longer period is necessary.

(5) Insurance for the replacement value of the personal property in connection with the move and necessary storage.

(6) Any license, permit, or certification required of the displaced person at the replacement location. However, the payment may be based on the remaining useful life of the existing license, permit, or certification.

(7) The replacement value of property lost, stolen, or damaged in the process of moving (not through the fault or negligence of the displaced person, his or her agent, or employee) where insurance covering such loss, theft, or damage is not reasonably available.

(8) Professional services necessary for:

(i) Planning the move of the personal property.

(ii) Moving the personal property, and

(iii) Installing the relocated personal property at the replacement location.

(9) Relettering signs and replacing stationery on hand at the time of displacement that are made obsolete as a result of the move.

(10) Actual direct loss of tangible personal property incurred as a result of moving or discontinuing the business or farm operation. The payment shall consist of the lesser of:

(i) The fair market value of the item for continued use at the displacement site, less the proceeds from its sale. (To be eligible for payment, the claimant must make a good faith effort to sell the personal property, unless the Agency determines that such effort is not necessary. When payment for property loss is claimed for goods held for sale, the fair market value shall be based on the cost of the goods to the business, not the potential selling price.); or

(ii) The estimated cost of moving the item, but with no allowance for storage. (If the business or farm operation is discontinued, the estimated costs shall be based on a moving distance of 50 miles.)

(11) The reasonable cost incurred in attempting to sell an item that is not to be relocated.

(12) Purchase of substitute personal property. If an item of personal property which is used as part of a business or farm operation is not moved but is promptly replaced with a substitute item that performs a comparable function at

the replacement site, the displaced person is entitled to payment of the lesser of:

(i) The cost of the substitute item, including installation costs at the replacement site, minus any proceeds from the sale or trade-in of the replaced item; or

(ii) The estimated cost of moving and reinstalling the replaced item but with no allowance for storage. At the Agency's discretion, the estimated cost for a low cost or uncomplicated move may be based on a single bid or estimate.

(13) Searching for a replacement location. A displaced business or farm operation is entitled to reimbursement for actual expenses, not to exceed \$1,000, as the Agency determines to be reasonable, which are incurred in searching for a replacement location, including:

(i) Transportation.

(ii) Meals and lodging away from home.

(iii) Time spent searching, based on reasonable salary or earnings.

(iv) Fees paid to a real estate agent or broker to locate a replacement site, exclusive of any fees or commissions related to the purchase of such site.

(14) Other moving-related expenses that are not listed as ineligible under § 24.305, as the Agency determines to be reasonable and necessary.

(b) *Notification and inspection.* The following requirements apply to payments under this section:

(1) The Agency shall inform the displaced person, in writing, of the requirements of paragraphs (b) (2) and (3) of this section as soon as possible after the initiation of negotiations. This information may be included in the relocation information provided to the displaced person as set forth in § 24.203.

(2) The displaced person must provide the Agency reasonable advance written notice of the approximate date of the start of the move or disposition of the personal property and a list of the items to be moved. However, the Agency may waive this notice requirement after documenting its file accordingly.

(3) The displaced person must permit the Agency to make reasonable and timely inspections of the personal property at both the displacement and replacement sites and to monitor the move.

(c) *Self-moves.* If the displaced person elects to take full responsibility for the move of the business or farm operation, the Agency may make a payment for the person's moving expenses in an amount not to exceed the lower of two acceptable bids or estimates obtained by the Agency or prepared by qualified

staff. At the Agency's discretion, a payment for a low cost or uncomplicated move may be based on a single bid or estimate.

(d) *Transfer of ownership.* Upon request and in accordance with applicable law, the claimant shall transfer to the Agency ownership of any personal property that has not been moved, sold, or traded in.

(e) *Advertising signs.* The amount of a payment for direct loss of an advertising sign which is personal property shall be the lesser of:

(1) The depreciated reproduction cost of the sign, as determined by the Agency, less the proceeds from its sale; or

(2) The estimated cost of moving the sign, but with no allowance for storage.

§ 24.304 Fixed payment for moving expenses—nonresidential moves.

(a) *Business.* A displaced business may be eligible to choose a fixed payment in lieu of the payments for actual moving and related expenses, and actual reasonable reestablishment expenses provided by §§ 24.303 and 24.306. Such fixed payment, except for payment to a nonprofit organization, shall equal the average annual net earnings of the business, as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. The displaced business is eligible for the payment if the Agency determines that:

(1) The business owns or rents personal property which must be moved in connection with such displacement and for which an expense would be incurred in such move; and, the business vacates or relocates from its displacement site.

(2) The business cannot be relocated without a substantial loss of its existing patronage (clientele or net earnings). A business is assumed to meet this test unless the Agency determines that it will not suffer a substantial loss of its existing patronage; and

(3) The business is not part of a commercial enterprise having more than three other entities which are not being acquired by the Agency, and which are under the same ownership and engaged in the same or similar business activities.

(4) The business is not operated at a displacement dwelling solely for the purpose of renting such dwelling to others.

(5) The business contributed materially to the income of the displaced person during the 2 taxable years prior to displacement (see § 24.2(e)).

(b) *Determining the number of businesses.* In determining whether two or more displaced legal entities constitute a single business which is entitled to only one fixed payment, all pertinent factors shall be considered, including the extent to which:

(1) The same premises and equipment are shared;

(2) Substantially identical or interrelated business functions are carried out and business and financial affairs are commingled;

(3) The entities are held out to the public, and to those customarily dealing with them, as one business; and

(4) The same person or closely related persons own, control, or manage the affairs of the entities.

(c) *Farm operation.* A displaced farm operation (defined at § 24.2(i)) may choose a fixed payment, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, in an amount equal to its average annual net earnings as computed in accordance with paragraph (e) of this section, but not less than \$1,000 nor more than \$20,000. In the case of a partial acquisition of land which was a farm operation before the acquisition, the fixed payment shall be made only if the Agency determines that:

(1) The acquisition of part of the land caused the operator to be displaced from the farm operation on the remaining land; or

(2) The partial acquisition caused a substantial change in the nature of the farm operation.

(d) *Nonprofit organization.* A displaced nonprofit organization may choose a fixed payment of \$2,500, in lieu of the payments for actual moving and related expenses and actual reasonable reestablishment expenses, if the Agency determines that it cannot be relocated without a substantial loss of existing patronage (membership or clientele). A nonprofit organization is assumed to meet this test, unless the Agency demonstrates otherwise.

(e) *Average annual net earnings of a business or farm operation.* The average annual net earnings of a business or farm operation are one-half of its net earnings before Federal, State, and local income taxes during the 2 taxable years immediately prior to the taxable year in which it was displaced. If the business or farm was not in operation for the full 2 taxable years prior to displacement, net earnings shall be based on the actual period of operation at the displacement site during the 2 taxable years prior to displacement, projected to an annual rate. Average annual net earnings may be based upon a different

period of time when the Agency determines it to be more equitable. Net earnings include any compensation obtained from the business or farm operation by its owner, the owner's spouse, and dependents. The displaced person shall furnish the Agency proof of net earnings through income tax returns, certified financial statements, or other reasonable evidence which the Agency determines is satisfactory.

§ 24.305 Ineligible moving and related expenses.

A displaced person is not entitled to payment for:

(a) The cost of moving any structure or other real property improvement in which the displaced person reserved ownership. However, this part does not preclude the computation under § 24.401(c)(4)(iii); or

(b) Interest on a loan to cover moving expenses; or

(c) Loss of goodwill; or

(d) Loss of profits; or

(e) Loss of trained employees; or

(f) Any additional operating expenses of a business or farm operation incurred because of operating in a new location except as provided in § 24.306(a)(10); or

(g) Personal injury; or

(h) Any legal fee or other cost for preparing a claim for a relocation payment or for representing the claimant before the Agency; or

(i) Expenses for searching for a replacement dwelling; or

(j) Physical changes to the real property at the replacement location of a business or farm operation except as provided in § 24.303(a)(3) and § 24.306(a); or

(k) Costs for storage of personal property on real property already owned or leased by the displaced person.

§ 24.306 Reestablishment expenses—nonresidential moves.

In addition to the payments available under § 24.303 of this subpart, a small business, as defined in § 24.2(r), farm or nonprofit organization may be eligible to receive a payment, not to exceed \$10,000, for expenses actually incurred in relocating and reestablishing such small business, farm or nonprofit organization at a replacement site.

(a) *Eligible expenses.* Reestablishment expenses must be reasonable and necessary, as determined by the Agency. They may include, but are not limited to, the following:

(1) Repairs or improvements to the replacement real property as required by Federal, State or local law, code or ordinance.

(2) Modifications to the replacement property to accommodate the business

operation or make replacement structures suitable for conducting the business.

(3) Construction and installation costs, not to exceed \$1,500 for exterior signing to advertise the business.

(4) Provision of utilities from right-of-way to improvements on the replacement site.

(5) Redecoration or replacement of soiled or worn surfaces at the replacement site, such as paint, panelling, or carpeting.

(6) Licenses, fees and permits when not paid as part of moving expenses.

(7) Feasibility surveys, soil testing and marketing studies.

(8) Advertisement of replacement location, not to exceed \$1,500.

(9) Professional services in connection with the purchase or lease of a replacement site.

(10) Increased costs of operation during the first two years at the replacement site, not to exceed \$5,000, for such items as:

(i) Lease or rental charges,
(ii) Personal or real property taxes,
(iii) Insurance premiums, and
(iv) Utility charges, excluding impact fees.

(11) Impact fees or one-time assessments for anticipated heavy utility usage.

(12) Other items that the Agency considers essential to the reestablishment of the business.

(13) Expenses in excess of the regulatory maximums set forth in paragraphs (a)(3), (8) and (10) of this section may be considered eligible if large and legitimate disparities exist between costs of operation at the displacement site and costs of operation at an otherwise similar replacement site. In such cases the regulatory limitation for reimbursement of such costs may, at the request of the Agency, be waived by the Federal agency funding the program or project, but in no event shall total costs payable under this section exceed the \$10,000 statutory maximum.

(b) *Ineligible expenses.* The following is a nonexclusive listing of reestablishment expenditures not considered to be reasonable, necessary, or otherwise eligible:

(1) Purchase of capital assets, such as, office furniture, filing cabinets, machinery or trade fixtures.

(2) Purchase of manufacturing materials, production supplies, product inventory or other items used in the normal course of the business operation.

(3) Interior or exterior refurbishments at the replacement site which are for aesthetic purposes, except as provided in paragraph (a)(5) of this section.

(4) Interest on money borrowed to make the move or purchase the replacement property.

(5) Payment to a part-time business in the home which does not contribute materially to the household income.

(6) Payment to a person whose sole business at a displacement dwelling is the rental of such dwelling to others.

§ 24.307 Discretionary utility relocation payments.

(a) Whenever a program or project undertaken by a displacing agency causes the relocation of a utility facility (see §§ 24.2(y) and (z)) and the relocation of the facility creates extraordinary expenses for its owner, the displacing agency may, at its option, make a relocation payment to the owner for all or part of such expenses, if the following criteria are met:

(1) The utility facility legally occupies State or local government property, or property over which the State or local government has an easement or right-of-way; and

(2) The utility facility's right of occupancy thereon is pursuant to State law or local ordinance specifically authorizing such use, or where such use and occupancy has been granted through a franchise, use and occupancy permit, or other similar agreement; and

(3) Relocation of the utility facility is required by and is incidental to the primary purpose of the project or program undertaken by the displacing agency; and

(4) There is no Federal law, other than the Uniform Act, which clearly establishes a policy for the payment of utility moving costs that is applicable to the displacing agency's program or project; and

(5) State or local government reimbursement for utility moving costs or payment of such costs by the displacing agency is permitted by State statute.

(b) For the purposes of this section the term "extraordinary expenses" means those expenses which, in the opinion of the displacing agency, are not routine or predictable expenses relating to the utility's occupancy of rights-of-way, and are not ordinarily budgeted as operating expenses, unless the owner of the utility facility has explicitly and knowingly agreed to bear such expenses as a condition for use of the property, or has voluntarily agreed to be responsible for such expenses.

(c) A relocation payment to a utility facility owner for moving costs under this section may not exceed the cost to functionally restore the service disrupted by the federally assisted program or project, less any increase in

value of the new facility and salvage value of the old facility. The displacing agency and the utility facility owner shall reach prior agreement on the nature of the utility relocation work to be accomplished, the eligibility of the work for reimbursement, the responsibilities for financing and accomplishing the work, and the method of accumulating costs and making payment. (See Appendix A, § 24.307.)

Subpart E—Replacement Housing Payments

§ 24.401 Replacement housing payment for 180-day homeowner-occupants.

(a) *Eligibility.* A displaced person is eligible for the replacement housing payment for a 180-day homeowner-occupant if the person:

(1) Has actually owned and occupied the displacement dwelling for not less than 180 days immediately prior to the initiation of negotiations; and

(2) Purchases and occupies a decent, safe, and sanitary replacement dwelling within one year after the later of the following dates (except that the Agency may extend such one year period for good cause):

(i) The date the person receives final payment for the displacement dwelling or, in the case of condemnation, the date the required amount is deposited in the court; or

(ii) The date the person moves from the displacement dwelling.

(b) *Amount of payment.* The replacement housing payment for an eligible 180-day homeowner-occupant may not exceed \$22,500. (See also § 24.404.) The payment under this subpart is limited to the amount necessary to relocate to a comparable replacement dwelling within one year from the date the displaced homeowner-occupant is paid for the displacement dwelling, or the date such person is initially offered a comparable replacement dwelling, whichever is later. The payment shall be the sum of:

(1) The amount by which the cost of a replacement dwelling exceeds the acquisition cost of the displacement dwelling, as determined in accordance with paragraph (c) of this section; and

(2) The increased interest costs and other debt service costs which are incurred in connection with the mortgage(s) on the replacement dwelling, as determined in accordance with paragraph (d) of this section; and

(3) The reasonable expenses incidental to the purchase of the replacement dwelling, as determined in accordance with paragraph (e) of this section.

(c) *Price differential.*—(1) *Basic computation.* The price differential to be paid under paragraph (b)(1) of this section is the amount which must be added to the acquisition cost of the displacement dwelling to provide a total amount equal to the lesser of:

(i) The reasonable cost of a comparable replacement dwelling as determined in accordance with § 24.403(a); or

(ii) The purchase price of the decent, safe, and sanitary replacement dwelling actually purchased and occupied by the displaced person.

(2) *Mixed-use and multifamily properties.* If the displacement dwelling was part of a property that contained another dwelling unit and/or space used for nonresidential purposes, and/or is located on a lot larger than typical for residential purposes, only that portion of the acquisition payment which is actually attributable to the displacement dwelling shall be considered its acquisition cost when computing the price differential.

(3) *Insurance proceeds.* To the extent necessary to avoid duplicate compensation, the amount of any insurance proceeds received by a person in connection with a loss to the displacement dwelling due to a catastrophic occurrence (fire, flood, etc.) shall be included in the acquisition cost of the displacement dwelling when computing the price differential. (Also see § 24.3.)

(4) *Owner retention of displacement dwelling.* If the owner retains ownership of his or her dwelling, moves it from the displacement site, and reoccupies it on a replacement site, the purchase price of the replacement dwelling, shall be the sum of:

(i) The cost of moving and restoring the dwelling to a condition comparable to that prior to the move; and

(ii) The cost of making the unit a decent, safe, and sanitary replacement dwelling (defined at § 24.2(f)); and

(iii) The current fair market value for residential use of the replacement site (see Appendix A of this part, § 24.401(c)(4)(iii)), unless the claimant rented the displacement site and there is a reasonable opportunity for the claimant to rent a suitable replacement site; and

(iv) The retention value of the dwelling, if such retention value is reflected in the "acquisition cost" used when computing the replacement housing payment.

(d) *Increased mortgage interest costs.* The displacing agency shall determine the factors to be used in computing the amount to be paid to a displaced person under paragraph (b)(2) of this section.

The payment shall be an amount which will reduce the mortgage balance on the replacement dwelling to an amount which could be amortized with the same monthly payment for principal and interest as that for the mortgage(s) on the displacement dwelling. In addition, payments shall include other debt service costs, if not paid as incidental costs, and shall be based only on bona fide mortgages that were valid liens on the displacement dwelling for at least 180 days prior to the initiation of negotiations. Paragraphs (d) (1)-(5) of this section shall apply to the computation of the increased mortgage interest costs payment, which payment shall be contingent upon a mortgage being placed on the replacement dwelling.

(1) The payment shall be based on the unpaid mortgage balances on the displacement dwelling; however, in the event the person obtains a smaller mortgage than the mortgage balance computed in the buydown determination, the payment will be prorated and reduced accordingly. (See Appendix A.)

In the case of a home equity loan the unpaid balance shall be that balance which existed 180 days prior to the initiation of negotiations or the balance on the date of acquisition, whichever is less.

(2) The payment shall be based on the remaining term of the mortgage(s) on the displacement dwelling regardless of the term of the new mortgage.

(3) The interest rate on the new mortgage used in determining the amount of the payment shall not exceed the prevailing fixed interest rate for conventional mortgages currently charged by mortgage lending institutions in the area in which the replacement dwelling is located.

(4) Purchaser's points and loan origination or assumption fees, but not seller's points, shall be paid to the extent:

(i) They are not paid as incidental expenses;

(ii) They do not exceed rates normal to similar real estate transactions in the area;

(iii) The Agency determines them to be necessary; and

(iv) The computation of such points and fees shall be based on the unpaid mortgage balance on the displacement dwelling, less the amount determined for the reduction of such mortgage balance under this section.

(5) The displaced person shall be advised of the approximate amount of this payment as soon as the facts relative to the person's current mortgages are known and the payment

shall be made available at the time of closing on the replacement dwelling.

(e) *Incidental expenses.* The incidental expenses to be paid under paragraph (b)(3) of this section or § 24.402(c)(1) are those necessary and reasonable costs actually incurred by the displaced person incident to the purchase of a replacement dwelling, and customarily paid by the buyer, including:

(1) Legal, closing, and related costs, including those for title search, preparing conveyance instruments, notary fees, preparing surveys and plats, and recording fees.

(2) Lender, FHA, or VA application and appraisal fees.

(3) Loan origination or assumption fees that do not represent prepaid interest.

(4) Certification of structural soundness and termite inspection when required.

(5) Credit report.

(6) Owner's and mortgagee's evidence of title, e.g., title insurance, not to exceed the costs for a comparable replacement dwelling.

(7) Escrow agent's fee.

(8) State revenue or documentary stamps, sales or transfer taxes (not to exceed the costs for a comparable replacement dwelling).

(9) Such other costs as the Agency determines to be incidental to the purchase.

(f) *Rental assistance payment for 180-day homeowner.* A 180-day homeowner-occupant, who could be eligible for a replacement housing payment under paragraph (a) of this section but elects to rent a replacement dwelling, is eligible for a rental assistance payment not to exceed \$5,250, computed and disbursed in accordance with § 24.402(b).

§ 24.402 Replacement housing payment for 90-day occupants.

(a) *Eligibility.* A tenant or owner-occupant displaced from a dwelling is entitled to a payment not to exceed \$5,250 for rental assistance, as computed in accordance with paragraph (b) of this section, or downpayment assistance, as computed in accordance with paragraph (c) of this section, if such displaced person:

(1) Has actually and lawfully occupied the displacement dwelling for at least 90 days immediately prior to the initiation of negotiations; and

(2) Has rented, or purchased, and occupied a decent, safe, and sanitary replacement dwelling within 1 year (unless the Agency extends this period for good cause) after:

(i) For a tenant, the date he or she moves from the displacement dwelling, or

(ii) For an owner-occupant, the later of:

(A) The date he or she receives final payment for the displacement dwelling, or in the case of condemnation, the date the required amount is deposited with the court; or

(B) The date he or she moves from the displacement dwelling.

(b) *Rental assistance payment.—(1) Amount of payment.* An eligible displaced person who rents a replacement dwelling is entitled to a payment not to exceed \$5,250 for rental assistance. (See also § 24.404.) Such payment shall be 42 times the amount obtained by subtracting the base monthly rental for the displacement dwelling from the lesser of:

(i) The monthly rent and estimated average monthly cost of utilities for a comparable replacement dwelling; or

(ii) The monthly rent and estimated average monthly cost of utilities for the decent, safe, and sanitary replacement dwelling actually occupied by the displaced person.

(2) *Base monthly rental for displacement dwelling.* The base monthly rental for the displacement dwelling is the lesser of:

(i) The average monthly cost for rent and utilities at the displacement dwelling for a reasonable period prior to displacement, as determined by the Agency. (For an owner-occupant, use the fair market rent for the displacement dwelling. For a tenant who paid little or no rent for the displacement dwelling, use the fair market rent, unless its use would result in a hardship because of the person's income or other circumstances; or

(ii) Thirty (30) percent of the person's average gross household income. (If the person refuses to provide appropriate evidence of income or is a dependent, the base monthly rental shall be established solely on the criteria in paragraph (b)(2)(i) of this section. A full time student or resident of an institution may be assumed to be a dependent, unless the person demonstrates otherwise.)

(3) *Manner of disbursement.* A rental assistance payment may, at the Agency's discretion, be disbursed in either a lump sum or in installments. However, except as limited by § 24.403(g), the full amount vests immediately, whether or not there is any later change in the person's income or rent, or in the condition or location of the person's housing.

(c) Downpayment assistance

payment.—(1) *Amount of payment.* An eligible displaced person who purchases a replacement dwelling is entitled to a downpayment assistance payment in the amount the person would receive under paragraph (b) of this section if the person rented a comparable replacement dwelling. At the discretion of the Agency, a downpayment assistance payment may be increased to any amount not to exceed \$5,250. However, the payment to a displaced homeowner shall not exceed the amount the owner would receive under § 24.401(b) if he or she met the 180-day occupancy requirement. An Agency's discretion to provide the maximum payment shall be exercised in a uniform and consistent manner, so that eligible displaced persons in like circumstances are treated equally. A displaced person eligible to receive a payment as a 180-day owner-occupant under § 24.401(a) is not eligible for this payment. (See also Appendix A of this part, § 24.402(c).)

(2) *Application of payment.* The full amount of the replacement housing payment for downpayment assistance must be applied to the purchase price of the replacement dwelling and related incidental expenses.

§ 24.403 Additional rules governing replacement housing payments.

(a) *Determining cost of comparable replacement dwelling.* The upper limit of a replacement housing payment shall be based on the cost of a comparable replacement dwelling (defined at § 24.2(d)).

(1) If available, at least three comparable replacement dwellings shall be examined and the payment computed on the basis of the dwelling most nearly representative of, and equal to, or better than, the displacement dwelling. An adjustment shall be made to the asking price of any dwelling, to the extent justified by local market data (see also § 24.205(a)(2)). An obviously overpriced dwelling may be ignored.

(2) If the site of the comparable replacement dwelling lacks a major exterior attribute of the displacement dwelling site, (e.g., the site is significantly smaller or does not contain a swimming pool), the value of such attribute shall be subtracted from the acquisition cost of the displacement dwelling for purposes of computing the payment. If the acquisition of a portion of a typical residential property causes the displacement of the owner from the dwelling and the remainder is a buildable residential lot, the Agency may offer to purchase the entire property. If the owner refuses to sell the remainder to the Agency, the fair market

value of the remainder may be added to the acquisition cost of the displacement dwelling for purposes of computing the replacement housing payment.

(3) To the extent feasible, comparable replacement dwellings shall be selected from the neighborhood in which the displacement dwelling was located or, if that is not possible, in nearby or similar neighborhoods where housing costs are generally the same or higher.

(b) *Inspection of replacement dwelling.* Before making a replacement housing payment or releasing a payment from escrow, the Agency or its designated representative shall inspect the replacement dwelling and determine whether it is a decent, safe, and sanitary dwelling as defined at § 24.2(f).

(c) *Purchase of replacement dwelling.* A displaced person is considered to have met the requirement to purchase a replacement dwelling, if the person:

- (1) Purchases a dwelling; or
 - (2) Purchases and rehabilitates a substandard dwelling; or
 - (3) Relocates a dwelling which he or she owns or purchases; or
 - (4) Constructs a dwelling on a site he or she owns or purchases; or
 - (5) Contracts for the purchase or construction of a dwelling on a site provided by a builder or on a site the person owns or purchases.
- (6) Currently owns a previously purchased dwelling and site, valuation of which shall be on the basis of current fair market value.

(d) *Occupancy requirements for displacement or replacement dwelling.* No person shall be denied eligibility for a replacement housing payment solely because the person is unable to meet the occupancy requirements set forth in these regulations for a reason beyond his or her control, including:

- (1) A disaster, an emergency, or an imminent threat to the public health or welfare, as determined by the President, the Federal agency funding the project, or the displacing agency; or
- (2) Another reason, such as a delay in the construction of the replacement dwelling, military reserve duty, or hospital stay, as determined by the Agency.

(e) *Conversion of payment.* A displaced person who initially rents a replacement dwelling and receives a rental assistance payment under § 24.402(b) is eligible to receive a payment under § 24.401 or § 24.402(c) if he or she meets the eligibility criteria for such payments, including purchase and occupancy within the prescribed 1-year period. Any portion of the rental assistance payment that has been disbursed shall be deducted from the

payment computed under § 24.401 or § 24.402(c).

(f) *Payment after death.* A replacement housing payment is personal to the displaced person and upon his or her death the undisbursed portion of any such payment shall not be paid to the heirs or assigns, except that:

(1) The amount attributable to the displaced persons period of actual occupancy of the replacement housing shall be paid.

(2) The full payment shall be disbursed in any case in which a member of a displaced family dies and the other family member(s) continue to occupy a decent, safe, and sanitary replacement dwelling.

(3) Any portion of a replacement housing payment necessary to satisfy the legal obligation of an estate in connection with the selection of a replacement dwelling by or on behalf of a deceased person shall be disbursed to the estate.

§ 24.404 Replacement housing of last resort.

(a) Whenever a program or project cannot proceed on a timely basis because comparable replacement dwellings are not available within the monetary limits for owners or tenants, as specified in § 24.401 or § 24.402, as appropriate, the Agency shall provide additional or alternate assistance under the provisions of this subpart. Any decision to provide last resort housing assistance must be adequately justified either:

(1) On a case-by-case basis, for good cause, which means that appropriate consideration has been given to:

(i) The availability of comparable housing in the project or program area; and

(ii) The resources available to provide comparable housing; and

(iii) The individual circumstances of the displaced person; or

(2) By a determination that:

(i) There is little, if any, comparable replacement housing available to displaced persons within an entire project or program area; and, therefore a case-by-case justification for last resort housing assistance is not necessary; and

(ii) A project or program cannot be advanced to completion in a timely manner without last resort housing assistance; and

(iii) The method selected for providing last resort housing assistance is cost effective, considering all elements which contribute to total project or program costs. (Will project delay justify waiting

for less expensive replacement housing to become available?)

(b) *Basic rights of persons to be displaced.* Notwithstanding any provision of this subpart, no person shall be required to move from a displacement dwelling unless comparable replacement housing is available to such person. No person may be deprived of any rights the person may have under the Uniform Act or this part. The Agency shall not require any displaced person to accept a dwelling provided by the Agency under these procedures (unless the Agency and the displaced person have entered into a contract to do so) in lieu of any acquisition payment or any relocation payment for which the person may otherwise be eligible.

(c) *Methods of providing replacement housing.* Agencies shall have broad latitude in implementing this subpart, but implementation shall be for reasonable cost, on a case-by-case basis unless an exception to case-by-case analysis is justified for an entire project.

(1) The methods of providing housing of last resort include, but are not limited to:

(i) A replacement housing payment in excess of the limits set forth in § 24.401 or 24.402. A rental assistance subsidy under this section may be provided in installments or in a lump sum at the Agency's discretion.

(ii) Rehabilitation of and/or additions to an existing replacement dwelling.

(iii) The construction of a new replacement dwelling.

(iv) The provision of a direct loan, which requires regular amortization or deferred repayment. The loan may be unsecured or secured by the real property. The loan may bear interest or be interest-free.

(v) The relocation, and, if necessary rehabilitation of a dwelling.

(vi) The purchase of land and/or a replacement dwelling by the displacing agency and subsequent sale or lease to, or exchange with a displaced person.

(vii) The removal of barriers to the handicapped.

(viii) The change in status of the displaced person from tenant to homeowner when it is more cost effective to do so, as in cases where a downpayment may be less expensive than a last resort rental assistance payment.

(2) Under special circumstances, modified methods of providing housing of last resort permit consideration of:

(i) Replacement housing based on space and physical characteristics different from those in the displacement dwelling. (See Appendix A, § 24.404.)

(ii) Upgraded, but smaller replacement housing that is decent, safe and sanitary and adequate to accommodate individuals or families displaced from marginal or substandard housing with probable functional obsolescence.

(iii) The financial means of a displaced person who is not eligible to receive a replacement housing payment because of failure to meet length-of-occupancy requirements when comparable replacement rental housing is not available at rental rates within 30% of the person's gross monthly household income.

Subpart F—Mobile Homes

§ 24.501 Applicability.

This Subpart describes the requirements governing the provision of relocation payments to a person displaced from a mobile home and/or mobile home site who meets the basic eligibility requirements of this part. Except as modified by this Subpart, such a displaced person is entitled to a moving expense payment in accordance with Subpart D and a replacement housing payment in accordance with Subpart E to the same extent and subject to the same requirements as persons displaced from conventional dwellings.

§ 24.502 Moving and related expenses—mobile homes.

(a) A homeowner-occupant displaced from a mobile home or mobile homesite is entitled to a payment for the cost of moving his or her mobile home on an actual cost basis in accordance with § 24.301. A non-occupant owner of a rented mobile home is eligible for actual cost reimbursement under § 24.303.

However, if the mobile home is not acquired, but the homeowner-occupant obtains a replacement housing payment under one of the circumstances described at § 24.503(a)(3), the owner is not eligible for payment for moving the mobile home.

(b) The following rules apply to payments for actual moving expenses under § 24.301:

(1) A displaced mobile homeowner, who moves the mobile home to a replacement site, is eligible for the reasonable cost of disassembling, moving, and reassembling any attached appurtenances, such as porches, decks, skirting, and awnings, which were not acquired, anchoring of the unit, and utility "hook-up" charges.

(2) If a mobile home requires repairs and/or modifications so that it can be moved and/or made decent, safe and sanitary, and the Agency determines that it would be economically feasible to

incur the additional expense, the reasonable cost of such repairs and/or modifications is reimbursable.

(3) A nonreturnable mobile home park entrance fee is reimbursable to the extent it does not exceed the fee at a comparable mobile home park, if the person is displaced from a mobile home park or the Agency determines that payment of the fee is necessary to effect relocation.

§ 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

(a) A displaced owner-occupant of a mobile home is entitled to a replacement housing payment, not to exceed \$22,500, under § 24.401 if:

(1) The person both owned the displacement mobile home and occupied it on the displacement site for at least 180 days immediately prior to the initiation of negotiations;

(2) The person meets the other basic eligibility requirements at § 24.401(a); and

(3) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner is displaced from the mobile home because the Agency determines that the mobile home:

(i) Is not and cannot economically be made decent, safe, and sanitary; or

(ii) Cannot be relocated without substantial damage or unreasonable cost; or

(iii) Cannot be relocated because there is no available comparable replacement site; or

(iv) Cannot be relocated because it does not meet mobile home park entrance requirements.

(b) If the mobile home is not acquired, and the Agency determines that it is not practical to relocate it, the acquisition cost of the displacement dwelling used when computing the price differential amount, described at § 24.401(c), shall include the salvage value or trade-in value of the mobile home, whichever is higher.

§ 24.504 Replacement housing payment for 90-day mobile home occupants.

A displaced tenant or owner-occupant of a mobile home is eligible for a replacement housing payment, not to exceed \$5,250, under § 24.402 if:

(a) The person actually occupied the displacement mobile home on the displacement site for at least 90 days immediately prior to the initiation of negotiations;

(b) The person meets the other basic eligibility requirements at § 24.402(a); and

(c) The Agency acquires the mobile home and/or mobile home site, or the mobile home is not acquired by the Agency but the owner or tenant is displaced from the mobile home because of one of the circumstances described at § 24.503(a)(3).

§ 24.505 Additional rules governing relocation payments to mobile home occupants.

(a) *Replacement housing payment based on dwelling and site.* Both the mobile home and mobile home site must be considered when computing a replacement housing payment. For example, a displaced mobile home occupant may have owned the displacement mobile home and rented the site or may have rented the displacement mobile home and owned the site. Also, a person may elect to purchase a replacement mobile home and rent a replacement site, or rent a replacement mobile home and purchase a replacement site. In such cases, the total replacement housing payment shall consist of a payment for a dwelling and a payment for a site, each computed under the applicable section in Subpart E. However, the total replacement housing payment under Subpart E shall not exceed the maximum payment (either \$22,500 or \$5,250) permitted under the section that governs the computation for the dwelling. (See also § 24.403(b).)

(b) *Cost of comparable replacement dwelling.* (1) If a comparable replacement mobile home is not available, the replacement housing payment shall be computed on the basis of the reasonable cost of a conventional comparable replacement dwelling.

(2) If the Agency determines that it would be practical to relocate the mobile home, but the owner-occupant elects not to do so, the Agency may determine that, for purposes of computing the price differential under § 24.401(c), the cost of a comparable replacement dwelling is the sum of:

(i) The value of the mobile home,
(ii) The cost of any necessary repairs or modifications, and

(iii) The estimated cost of moving the mobile home to a replacement site.

(c) *Initiation of negotiations.* If the mobile home is not actually acquired, but the occupant is considered displaced under the part, the "initiation of negotiations" is the initiation of negotiations to acquire the land, or, if the land is not acquired, the written notification that he or she is a displaced person under this part.

(d) *Person moves mobile home.* If the owner is reimbursed for the cost of moving the mobile home under this part,

he or she is not eligible to receive a replacement housing payment to assist in purchasing or renting a replacement mobile home. The person may, however, be eligible for assistance in purchasing or renting a replacement site.

(e) *Partial acquisition of mobile home park.* The acquisition of a portion of a mobile home park property may leave a remaining part of the property that is not adequate to continue the operation of the park. If the Agency determines that a mobile home located in the remaining part of the property must be moved as a direct result of the project, the owner and any tenant shall be considered a displaced person who is entitled to relocation payments and other assistance under this part.

Subpart G—Certification

§ 24.601 Purpose.

This subpart permits a State Agency to fulfill its responsibilities under the Uniform Act by certifying that it shall operate in accordance with State laws and regulations which shall accomplish the purpose and effect of the Uniform Act, in lieu of providing the assurances required by § 24.4 of this part.

§ 24.602 Certification application.

(a) *General.* (1) The State governor, or his or her designee, on behalf of any State agency or agencies may apply for certification in accordance with this section.

(2) The governor may designate a lead agency to administer certification in accordance with this section.

(b) *Responsibilities of State agency.*

(1) The State agency's application shall be submitted to the governor, or his or her designee, for approval or disapproval.

(2) The State agency application shall contain a statement that the State agency shall carry out the responsibilities imposed by the Uniform Act. The State agency application shall include a copy of the State laws and regulations which shall accomplish the purpose and effect of the Uniform Act.

(c) *Responsibilities of governor or his or her designee.* (1) The governor, or his or her designee, shall approve or disapprove the State agency's application.

(2) The governor, or his or her designee, shall have discretion to disapprove any State agency application.

(3) The governor, or his or her designee, shall analyze State law and regulations and shall certify that they accomplish the purpose and effect of the Uniform Act.

(4) The governor, or his or her designee, shall determine in writing whether the State agency's professional staffing is adequate to fully implement the State law and regulations.

(5) If the State agency's application is approved by the governor, or his or her designee, it shall be transmitted to the Federal agency providing financial assistance to the State agency, with an information copy to the Federal lead agency.

(6) When a determination is received from the Federal funding agency, the governor, or his or her designee, shall notify the State agency.

(d) *Responsibilities of Federal funding agency.* (1) The Federal funding agency shall accept the approved application for certification provided by the governor or his or her designee and shall not conduct an independent review unless or until future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(2) The Federal funding agency shall transmit all complete, approved applications, for certification to the Federal lead agency.

(3) At the same time as transmission to the Federal lead agency or during the public comment period, the Federal funding agency shall provide its written assessment of the State agency's capabilities to operate under certification.

(4) The Federal funding agency shall promptly notify the governor, or his or her designee, of the Federal lead agency's determination described in paragraph (e)(2) of this section.

(5) The Federal funding agency shall recognize the State agency's certification within 30 days of the Federal lead agency's finding.

(e) *Responsibilities of Federal lead agency.* (1) The lead agency shall:

(i) Accept the approval provided by the governor, or his or her designee, and shall not conduct an independent review, except as provided for in (ii), (iii) and (iv), unless future monitoring or other appropriate indicators reveal program deficiencies originating therefrom.

(ii) Analyze the extent to which the provisions of the applicable State laws and regulations accomplish the purpose and effect of the Uniform Act, with particular emphasis on the definition of a displaced person, the categories of assistance required, and the levels of assistance provided to persons in such categories;

(iii) Provide a 60-day period of public review and comment, and solicit and consider the views of interested general purpose local governments within the

State, as well as the views of interested Federal and State agencies; and consider all comments received as a result;

(iv) Consider any extraordinary information it believes to be relevant.

(2) After considering all the information provided, the lead agency shall either make a finding that the State agency will carry out the Federal agency's Uniform Act responsibility in accordance with State laws and regulations which shall accomplish the same purpose and effect as the Uniform Act, or shall make a determination that a finding cannot be made; and shall so inform the Federal funding agency.

§ 24.603 Monitoring and corrective action.

(a) The Federal lead agency shall, in coordination with other Federal agencies, monitor from time to time State agency implementation of programs or projects conducted under the certification process and the State agency shall make available any information required for this purpose.

(b) A Federal agency that has accepted a State Agency's certification pursuant to this subpart may withhold its approval of any Federal financial assistance to or contract or cooperative agreement with such State agency if it is found by the Federal agency to have failed to comply with the applicable State law and regulations.

(c) A Federal agency may, after consultation with the lead agency, and notice and consultation with the governor, or his or her designee, rescind any previous approval provided under this subpart if the certifying State agency fails to comply with its certification or with applicable State law and regulations.

(d) Section 103(b)(2) of the Uniform Act, as amended, requires that the head of the lead agency report biennially to the Congress on State agency implementation of section 103. To enable adequate preparation of the prescribed biennial report, the lead agency may require periodic information or data from affected Federal or State agencies.

Appendix A To Part 24—Additional Information

This appendix provides additional information to explain the intent of certain provisions of this part.

Subpart A—General

Section 24.2(j) Definition of comparable replacement dwelling.

The requirement in § 24.2(d)(2) that a comparable replacement dwelling be "functionally equivalent" to the displacement dwelling means that it must perform the same function, provide the same utility, and be

capable of contributing to a comparable style of living as the displacement dwelling. While it need not possess every feature of the displacement dwelling, the principal features must be present.

For example, if the displacement dwelling contains a pantry and a similar dwelling is not available, a replacement dwelling with ample kitchen cupboards may be acceptable. Insulated and heated space in a garage might prove an adequate substitute for basement workshop space. A dining area may substitute for a separate dining room. Under some circumstances, attic space could substitute for basement space for storage purposes, and vice versa. Only in unusual circumstances may a comparable replacement dwelling contain fewer rooms or consequently less living space than the displacement dwelling. Such may be the case when a decent, safe, and sanitary replacement dwelling (which by definition is "adequate to accommodate" the displaced person) may be found to be "functionally equivalent" to a larger but very run-down substandard displacement dwelling.

Section 24.2(d)(7) requires that a comparable replacement dwelling for a person who is not receiving assistance under any government housing program before displacement must be currently available on the private market without any subsidy under a government housing program.

A public housing unit may qualify as a comparable replacement dwelling only for a person displaced from a public housing unit; a privately-owned dwelling with a housing program subsidy tied to the unit may qualify as a comparable replacement dwelling only for a person displaced from a similarly subsidized unit or public housing; a housing program subsidy to a person (not tied to the building), such as a HUD Section 8 Existing Housing Program Certificate or a Housing Voucher, may be reflected in an offer of a comparable replacement dwelling to a person receiving a similar subsidy or occupying a privately-owned subsidized unit or public housing unit before displacement.

However, nothing in this part prohibits an Agency from offering, or precludes a person from accepting, assistance under a government housing program, even if the person did not receive similar assistance before displacement. However, the Agency is obligated to inform the person of his or her options under this part. (If a person accepts assistance under a government housing program, the rental assistance payment under § 24.402 would be computed on the basis of the person's actual out-of-pocket cost for the replacement housing.)

Section 24.2(g)(2) Persons not displaced.

Section 24.2(g)(2)(iv) recognizes that there are circumstances where the acquisition of real property takes place without the intent or necessary that an occupant of the property be displaced. Because such occupants are not considered "displaced persons" under this part, great care must be exercised to ensure that they are treated fairly and equitably. For example, if the tenant-occupant of a dwelling will not be displaced, but is required to relocate temporarily in connection with the project, the temporarily-occupied housing

must be decent, safe and sanitary and the tenant must be reimbursed for all reasonable out-of-pocket expenses incurred in connection with the temporary relocation, including moving expenses and increased housing costs during the temporary relocation.

It is also noted that any person who disagrees with the Agency's determination that he or she is not a displaced person under this part may file an appeal in accordance with § 24.10.

Section 24.2(k) Initiation of negotiations.

This section of the part provides a special definition for acquisitions and displacements under Pub. L. 96-510 or Superfund. These activities differ under Superfund in that relocation may precede acquisition, the reverse of the normal sequence. Superfund is a program designed to clean up hazardous waste sites. When such a site is discovered, it may be necessary, in certain limited circumstances, to alert the public to the danger and to the advisability of moving immediately. If a decision is made later to permanently relocate such persons, those who had moved earlier would no longer be on site when a formal, written offer to acquire the property was made and thus would lose their eligibility for a replacement housing payment. In order to prevent this unfair outcome, we have provided a definition which is based on the public health advisory or announcement of permanent relocation.

Section 24.3 No duplication of payments.

This section prohibits an Agency from making a payment to a person under these regulations that would duplicate another payment the person receives under Federal, State, or local law. The Agency is not required to conduct an exhaustive search for such other payments; it is only required to avoid creating a duplication based on the Agency's knowledge at the time a payment under these regulations is computed.

Section 24.9(c) Reports.

This paragraph allows Federal agencies to require the submission of a report on activities under the Uniform Act no more frequently than once every three years. The report, if required, will cover activities during the Federal fiscal year immediately prior to the submission date. In order to minimize the administrative burden on Agencies implementing this part, a basic report form (see Appendix B of this part) has been developed which, with only minor modifications, would be used in all Federal and federally-assisted programs or projects.

Subpart B—Real Property Acquisition

Section 24.101(b) Less-than-full-fee interest in real property.

This provision provides a benchmark beyond which the requirements of the subpart clearly apply to leases. However, the Agency may apply the regulations to any less-than-full-fee acquisition which is short of 50 years but which in its judgment should be covered.

Section 24.102(d) Establishment of offer of just compensation.

The initial offer to the property owner may not be less than the amount of the Agency's approved appraisal, but may exceed that amount if the Agency determines that a greater amount reflects just compensation for the property.

Section 24.102(f) Basic negotiation procedures.

It is intended that an offer to an owner be adequately presented, and that the owner be properly informed. Personal, face-to-face contact should take place, if feasible, but this section is not intended to require such contact in all cases.

Section 24.102(i) Administrative settlement.

This section provides guidance on administrative settlement as an alternative to judicial resolution of a difference of opinion on the value of a property, in order to avoid unnecessary litigation and congestion in the courts.

All relevant facts and circumstances should be considered by an Agency official delegated this authority. Appraisers, including reviewing appraisers, must not be pressured to adjust their estimate of value for the purpose of justifying such settlements. Such action would invalidate the appraisal process.

Section 24.102(j) Payment before taking possession.

It is intended that a right-of-entry for construction purposes be obtained only in the exceptional case, such as an emergency project, when there is no time to make an appraisal and purchase offer and the property owner is agreeable to the process.

Section 24.102(m) Fair rental.

Section 301(6) of the Uniform Act limits what an Agency may charge when a former owner or previous occupant of a property is permitted to rent the property for a short term or when occupancy is subject to termination by the Agency on short notice. Such rent may not exceed "the fair rental value . . . to a short-term occupier." The Agency's right to terminate occupancy on short notice (whether or not the renter also has that right) supports the establishment of a lesser rental than might be found in a longer, fixed-term situation.

Section 24.103(a) Standards of appraisal.

In paragraph (a)(3) of this section, it is intended that all relevant and reliable approaches to value be utilized. However, where an Agency determines that the market approach will be adequate by itself because of the type of property being appraised and the availability of sales data, it may limit the appraisal assignment to the market approach.

Section 24.103(b) Influence of the project on just compensation.

As used in this section, the term "project" is intended to mean an undertaking which is planned, designed, and intended to operate as a unit.

Because of the public knowledge of the proposed project, property values may be affected. A property owner should not be

penalized because of a decrease in value caused by the proposed project nor reap a windfall at public expense because of increased value created by the proposed project.

Section 24.103(e) Conflict of interest.

The overall objective is to minimize the risk of fraud and mismanagement and to promote public confidence in Federal and federally-assisted land acquisition practices. Recognizing that the costs may outweigh the benefits in some circumstances, § 23.103(e) provides that the same person may both appraise and negotiate an acquisition, if the value is \$2,500 or less. However, it should be noted that all appraisals must be reviewed in accordance with § 24.104. This includes appraisals of real property valued at \$2,500, or less.

Section 24.104 Review of appraisals.

This section recognizes that Agencies differ in the authority delegated to the review appraiser. In some cases the reviewer establishes the amount of the offer to the owner and in other cases the reviewer makes a recommendation which is acted on at a higher level. It is also within Agency discretion to decide whether a second review is needed if the first review appraiser establishes a value different from that in the appraisal report or reports on a property.

Before acceptance of an appraisal, the review appraiser must determine that the appraiser's documentation, including valuation data and the analyses of that data, demonstrates the soundness of the appraiser's opinion of value. The qualifications of the review appraiser and the level of explanation of the basis for the reviewer's recommended or approved value depend on the complexity of the appraisal problem. For a low value property requiring an uncomplicated valuation process, the reviewer's approval, endorsing the appraiser's report, may satisfy the requirement for the reviewer's statement.

Section 24.106 Expenses incidental to transfer of title to the Agency.

Generally, the Agency is able to pay such incidental costs directly and, where feasible, is required to do so. In order to prevent the property owner from making unnecessary out-of-pocket expenditures and to avoid duplication of expenses, the property owner should be informed early in the acquisition process of the Agency's intent to make such arrangements. In addition, it is emphasized that such expenses must be reasonable and necessary.

Subpart C—General Relocation Requirements

Section 24.204(a) Availability of comparable replacement dwelling before displacement.

This provision requires that no one may be required to move from a dwelling without one comparable replacement dwelling having been made available. In addition, § 24.204(a) requires that, "Where possible, three or more comparable replacement dwellings shall be made available." Thus the basic standard for the number of referrals required under this

section is three. Only in situations where three comparable replacement dwellings are not available (e.g., when the local housing market does not contain three comparable dwellings) may the Agency make fewer than three referrals.

Section 24.205 Relocation assistance advisory services.

Section 24.205(c)(2)(ii)(C) is intended to emphasize that if the comparable replacement dwellings are located in areas of minority concentration, minority persons should, if possible, also be given opportunities to relocate to replacement dwellings not located in such areas.

Section 24.206 Eviction for cause.

Basic eligibility for assistance is established on the basis of facts existing as of the date of the initiation of negotiations. Once the Agency has determined that a person has satisfied such requirements there is no basis for changing that determination.

Section 24.207 General requirements—claims for relocation payments.

Section 24.207(a) allows an Agency to make a payment for low cost or uncomplicated moves without additional documentation, as long as the payment is limited to the amount of the lowest acceptable bid or estimate.

Subpart D—Payment for Moving and Related Expenses

Section 24.307 Discretionary utility relocation payments.

Section 24.307(c) describes the issues which must be agreed to between the displacing agency and the utility facility owner in determining the amount of the relocation payment. To facilitate and aid in reaching such agreement, the practices in the Federal Highway Administration regulation, 23 CFR, Part 645, Subpart A, Utility Relocations, Adjustments and Reimbursement, should be followed.

Subpart E—Replacement Housing Payments

Section 24.401 Replacement housing payment for 180-day homeowner-occupants.

The provision in § 24.401(c)(4)(iii) to use the current fair market value for residential use does not mean the Agency must have an appraisal made. Any reasonable method at arriving at the fair market value may be used.

The provision in § 24.401(d) set forth the factors to be used in computing the payment that will be required to reduce a person's replacement mortgage (added to the downpayment) to an amount which can be amortized at the same monthly payment for principal and interest over the same period of time as the remaining term on the displacement mortgages.

In any case where the person elects to obtain a replacement mortgage of a lesser amount than the one computed in the buydown determination, then the amount computed as the "buydown" payment must be adjusted to reflect the change in mortgage amount. This can be done through proration by dividing the amount of the actual

replacement mortgage by the computed eligible replacement mortgage amount. This calculation provides a percentage factor which can then be applied to the computed "buydown" amount resulting in an adjusted increased mortgage interest payment.

Section 24.402 Replacement housing payment for 90-day occupants.

The downpayment assistance provisions in § 24.402(c) are intended to limit such assistance to the amount of the computed rental assistance payment for a tenant or an eligible homeowner. It does, however, provide the latitude for Agency discretion in offering downpayment assistance which exceeds the computed rental assistance payment, up to the \$5,250 statutory maximum. This does not mean, however, that such Agency discretion may be exercised in a selective or indiscriminate fashion. The displacing agency should develop a policy which affords equal treatment for persons in like circumstances and this policy should be applied uniformly throughout the Agency's programs or projects.

For purposes of this section, the term downpayment means the downpayment ordinarily required to obtain conventional loan financing for the decent, safe, and sanitary dwelling actually purchased and occupied. However, if the downpayment actually required of a displaced person for the purchase of the replacement dwelling exceeds the amount ordinarily required, the amount of the downpayment may be the amount which the Agency determines is necessary.

Section 24.404 Replacement housing of last resort.

Section 24.404(c)(2) permits the use of last resort housing, in special cases, which may vary from the usual standards of comparability. However, it should be specially noted that such variation should never result in a lowering of housing standards nor should it ever result in a lower quality of living style for the displaced person. The physical characteristics of the replacement dwelling may be dissimilar to those of the displacement dwelling but they may never be inferior.

One example might be the use of a new mobile home to replace a very substandard conventional dwelling in an area where comparable conventional dwellings are not available.

Another example could be the use of a superior, but smaller decent, safe and sanitary dwelling to replace a large, old substandard dwelling, only a portion of which is being used as living quarters by the occupants and no other large comparable dwellings are available in the area.

Section 24.404(b) Basic rights of persons to be displaced.

This paragraph affirms the right of a 180-day homeowner-occupant, who is eligible for a replacement.

Appendix B to Part 24—Statistical Report Form

This appendix sets forth the statistical information collected from Agencies in accordance with § 24.9(c).

General

1. *Report coverage.* This report covers all relocation and real property acquisition activities under a Federal or a federally assisted project or program subject to the provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended by Pub. L. 100-17, 101 Stat. 132.

2. *Report period.* Activities shall be reported on a Federal Fiscal Year basis, i.e., October 1–September 30.

3. *Where and when to submit report.* Submit an original and two copies of this report to (Name and Address of Federal Agency) as soon as possible after September 30, but NOT LATER THAN NOVEMBER 15.

4. *How to report relocation payments.* The full amount of a relocation payment shall be reported as if disbursed in the year during which the claim was approved, regardless of whether the payment is to be paid in installments.

5. *How to report dollar amounts.* Round off all money entries in Parts B and C to the nearest dollar.

6. *Statutory references.* The references in Part B indicate the Section of the Uniform Act that authorizes the cost housing payment under § 24.401, to a reasonable opportunity to purchase a comparable replacement dwelling. However, it should be read in conjunction with the definition of "owner of a dwelling" at § 24.2(n). The Agency is not required to provide persons owning only a fractional interest in the displacement dwelling a greater level of assistance to purchase a replacement dwelling than the Agency would be required to provide such persons if they owned fee simple title to the displacement dwelling. If such assistance is not sufficient to buy a replacement dwelling, the Agency may provide additional purchase assistance or rental assistance.

Section 24.404(c) Methods of providing replacement housing.

The use of cost effective means of providing replacement housing is implied throughout the subpart. The term "reasonable cost" is used here to underline the fact that while innovative means to provide housing are encouraged, they should be cost-effective.

Subpart F—Mobile Homes

Section 24.503 Replacement housing payment for 180-day mobile homeowner-occupants.

A 180-day owner-occupant who is displaced from a mobile home on a rented site may be eligible for a replacement housing payment for a dwelling computed under § 24.401 and a replacement housing payment for a site computed under § 24.402. A 180-day owner-occupant of both the mobile home and the site, who relocates the mobile home, may be eligible for a replacement housing payment under § 24.401 to assist in the purchase of a replacement site or, under § 24.402, to assist in renting a replacement site.

Part A. Persons Displaced

Report in Part A the number of persons ("households," "businesses, including nonprofit organizations," and "farms") who

were permanently displaced during the fiscal year by project or program activities and moved to their replacement dwelling or location. This includes businesses, nonprofit organizations and farms which, upon displacement, discontinued operations. The category "households" includes all families and individuals. A family shall be reported as "one" household, not by the number of people in the family unit. Persons shall be reported according to their status as "owners" or "tenants" of the property from which displaced.

Part B. Relocation Payments and Expenses

Columns (A) and (B). Report in Column (A) the number of claims approved during the report year. Report in Column (B) the total amount represented by the claims reported in Column (A).

Lines 7A and 9, Column (B). Report in Column (B) the amount of costs that were included in the total amount approved on Lines 6 and 8, Column (B).

Lines 12A and B. Report in Column (A) the number of households displaced by project or program activities which were provided assistance in accordance with Section 206(a) of the Uniform Act. Report in Column (B) the total financial assistance under Section 206(a) allocable to the households reported in Column (A). (If a household received financial assistance under Section 203 or Section 204 as well as under Section 206(a) of the Uniform Act, report the household as a claim in Column (A), but in Column (B) report only the amount of financial assistance allocable to Section 206(a). For example, if a tenant-household receives a payment of \$7,000 to rent a replacement dwelling, the sum of \$5,250 shall be included on Line 10, Column (B), and \$1,750 shall be included on Line 12B, Column (B).)

Line 13. Report on Line 13 all administrative costs incurred during the report year in connection with providing relocation advisory assistance and services under Section 205 of the Uniform Act.

Line 15. Report on Line 15 the total number of relocation appeals filed during the fiscal year by aggrieved persons.

Part C—Real Property Acquisition Subject to Uniform Act

Line 16, Columns (A) and (B). Report in Column (A) all parcels acquired during the report year where title or possession was vested in the acquiring agency during the reporting period. (Include parcels acquired without Federal financial assistance, if there was or will be Federal financial assistance in other phases of the project or program.) Report in Column (B) the total of the amounts paid, deposited in court, or otherwise made available to a property owner pursuant to applicable law in order to vest title or possession in the acquiring agency.

Line 17. Report on Line 17 the number of parcels reported on Line 16 that were acquired by condemnation where price disagreement was involved.

BILLING CODE 4910-22-M

UNIFORM RELOCATION ASSISTANCE
AND REAL PROPERTY ACQUISITION
STATISTICAL REPORT FORM

FEDERAL FISCAL YEAR ENDING SEPT. 30, 19 ____

REPORTING AGENCY _____

CITY/COUNTY/STATE _____

FEDERAL FUNDING AGENCY _____

PART A. PERSONS DISPLAYED BY ACTIVITIES SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	TOTAL (A)	OWNERS (B)	TENANTS (C)
1. HOUSEHOLDS (FAMILIES & INDIVIDUALS)			
2. BUSINESSES & NONPROFIT ORGANIZATIONS			
3. FARMS			

PART B. RELOCATION PAYMENTS & EXPENSES UNDER THE UNIFORM ACT DURING THE FISCAL YEAR

ITEM	NO. OF CLAIMS (A)	AMOUNT (B)
4. PAYMENTS FOR MOVING HOUSEHOLDS		
5. PAYMENTS FOR MOVING HOUSEHOLDS		
6. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO		
7. PAYMENTS FOR MOVING BUSINESSES/FARMS/NPO		
7A. NO. OF CLAIMS AND AMOUNT ON LINE 6 ATTRIBUTABLE TO REESTABLISHMENT EXPENSES		
8. REPLACEMENT HOUSING PAYMENTS FOR 180 DAY HOMEOWNERS-SEC. 203(A)		
9. NO. OF CLAIMS AND AMOUNT ON LINE 8 ATTRIBUTABLE TO INCREASED MORTGAGE INTEREST COSTS		
10. RENTAL ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(1)		
11. DOWNPAYMENT ASSISTANCE PAYMENTS (TENANTS & CERTAIN OTHERS)-SEC. 204(2)		
12A. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A) OWNERS		
12B. HOUSING ASSISTANCE AS LAST RESORT-SEC. 206(A) TENANTS		
13. RELOCATION ADVISORY SERVICES COSTS-SEC. 205		
14. TOTAL (SUM OF LINES 4(B) THROUGH 13(B)), EXCLUDING LINES 7A AND 9		
15. RELOCATION GRIEVANCES FILED DURING THE FISCAL YEAR IN CONNECTION WITH PROJECT/PROGRAM		
PART C. REAL PROPERTY ACQUISITION SUBJECT TO THE UNIFORM ACT DURING THE FISCAL YEAR		
ITEM	NO. PARCELS (A)	COMPENSATION (B)
16. TOTAL PARCELS ACQUIRED		
17. TOTAL PARCELS ACQUIRED BY CONDEMNATION INCLUDED ON LINE 16 WHERE PRICE DISAGREEMENT WAS INVOLVED		

[FR Doc. 88-16304 Filed 7-20-88; 8:45 am]

BILLING CODE 4910-22-C

Test Report

Thursday
July 21, 1988

Part III

Department of Transportation

Federal Highway Administration

49 CFR Part 383

Commercial Driver Testing and Licensing
Standards; Final Rule

DEPARTMENT OF TRANSPORTATION**Federal Highway Administration****49 CFR Part 383**

[FHWA Docket No. MC-87-18]

RIN 2125-AB68

Commercial Driver Testing and Licensing Standards**AGENCY:** Federal Highway Administration (FHWA), DOT.**ACTION:** Final rule.

SUMMARY: The FHWA is amending Part 383 of the Federal Motor Carrier Safety Regulations (FMCSRs) to establish minimum standards for State testing and licensing of commercial motor vehicle (CMV) drivers, in keeping with the Commercial Motor Vehicle Safety Act of 1986 (the Act). The FHWA, with this rulemaking, is establishing standards which include commercial driver licensing and testing procedures to be used by the States; knowledge, skills, and abilities which drivers of different types of CMVs must possess; and the information to be contained on the commercial driver's license (CDL) issued by the States. The standards also require that CMV drivers take and pass the appropriate knowledge and skills tests by April 1, 1992, in order to be qualified and licensed to operate a CMV. These actions are being taken to improve the safe operation of CMVs, and to help reduce truck and bus accidents and injuries by effecting minimum Federal standards for the qualification of CMV operators, as called for in the Act.

In addition, the FHWA published a request for comments on several petitions for waivers from various requirements of the Act for certain groups of drivers on April 14, 1988 (53 FR 12504; FHWA Docket No. MC-88-8). These groups included farmers, firefighters, transit workers, active duty military personnel, certain railroad employees and employees of public utilities. Specifically, the FHWA requested public comment on whether, if granted, the waivers would serve the public interest or diminish public safety as required by the waiver provisions included in the Act. The comment period closed on May 14, 1988, and the FHWA received over 2000 comments. These comments are being analyzed and a separate action will address them in detail.

EFFECTIVE DATE: August 22, 1988, except for § 383.23, which will be effective April 1, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards

Review Division, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Thomas P. Holian, Office of the Chief Counsel, (202) 366-1350, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION:**Background**

Currently, only 32 States issue some form of a classified driver's license (i.e., a license which makes a distinction between types of vehicles the holder may operate). Of these, only 12 require State-conducted, behind-the-wheel testing of all applicants in a vehicle which represents the type which the driver operates or expects to operate. The other 20 States waive testing if the applicants meet certain conditions, such as certification of training and testing by their employer, and two States recognize training schools. The remaining 18 States and the District of Columbia do not require applicants to demonstrate their driving skills in the types of vehicles they drive or intend to drive, nor do they require certification of training and testing by the employer or a recognized training school. Drivers in these States who may be qualified to drive only a passenger car may also drive an 18-wheeler or a three-axle intercity bus.

The Congress enacted the Commercial Motor Vehicle Safety Act of 1986 (Title XII of Pub. L. 99-570) to address these problems. Section 12005 of the Act directs the issuance of minimum testing standards to ensure the fitness of drivers of CMVs. In general, the standards must include written and driving tests. The written tests must cover the driver's knowledge of Federal regulations related to the safe operation of CMVs contained in Title 49 of the FMCSRs (49 CFR Chapter III) and knowledge of the vehicle's safety systems. The skills tests must be taken in a vehicle representative of the type of vehicle that each person operates or expects to operate. Also, the standards must ensure that persons are qualified to operate a CMV according to regulations published in the FMCSRs, to the extent that these regulations are applicable to such persons. In addition, the standards must ensure that drivers of CMVs which contain hazardous materials are qualified to operate such vehicles and have a working knowledge of the hazardous materials regulations. Finally, minimum scores for passing the tests must be established.

Section 12006 requires establishment of minimum uniform standards for issuance of CDLs by States. At a

minimum, each person to whom a CDL is issued must pass written and driving tests that meet the established standards. Also, CDL documents must contain certain information and be tamperproof.

Section 12009 delineates requirements with which States must comply in order to avoid having Federal-aid highway funds withheld. Some of these requirements are related to issuance of a CDL and must be addressed in the driver licensing procedures. Generally, these requirements define the conditions which must be met for a State to issue a CDL, the information a State must provide to the Commercial Driver's License Information System (CDLIS) about its CDL holders, and the checks a State must make of each applicant's driving record before issuing the CDL.

Section 12011 of the Act provides for the withholding of funds from States which fail to substantially comply with any of the requirements listed in section 12009(a). This final rule addresses a portion of those requirements. Thus, a State that is not in substantial compliance (throughout Fiscal Year 1993 and subsequent years) with this and other regulations issued pursuant to the Act could lose 5 percent of its Federal-aid highway funds in Fiscal Year 1994, and 10 percent in later years. At a later date, the FHWA will propose in the **Federal Register**, for State and public comment, a definition of "substantial compliance" and the means of assuring it for the purposes of the withholding provisions of the Act.

Throughout implementation of the Act, the FHWA has solicited comment from the States, industry, and the general public. These cooperative efforts have helped to ensure the commercial driver's licensing program is effective and practical. The notice of proposed rulemaking (NPRM) requested comment to Docket MC-87-18 on three alternative approaches to establishing testing and licensing programs in consonance with the Act. In addition, the NPRM identified and sought comment on numerous issues associated with program implementation. To stimulate public comment and discussion, the FHWA organized four public forums—in Washington, DC, Atlanta, St. Louis, and Los Angeles—at which 60 persons testified on behalf of a full range of public agencies and private associations and enterprises. In addition, over 1,200 parties submitted comments to Docket MC-87-18.

Following is a listing of the comments submitted to Docket MC-87-18 by major categories:

NTSB.....	1
State agencies.....	39
State-related groups.....	3
Trucking industry and related parties.....	21
Bus industry and related parties.....	29
General trade associations.....	12
Insurance industry.....	3
Public interest associations.....	2
Farmers protesting rule or seeking waiver.....	1,019
Others protesting rule or seeking waiver.....	28
Other individuals.....	43
Total.....	1,200

The FHWA expects to assess whether and what types of duplication or overlap may exist between testing requirements of the CDL program and the requirements in Part 391 of the FMCSRs. This will be part of the FHWA's continuing efforts to ensure that the CDL program is practical and effective. Any reduction or elimination of burdens on drivers, States, or motor carriers that may be realized as part of this assessment would be incorporated into future rulemaking actions.

The rest of this supplementary information section summarizes the major differences between the NPRM and this final rule, discusses the FHWA's selection among the alternative approaches proposed in the NPRM, and presents a section-by-section analysis of the rule.

Major Differences Between NPRM and Final Rule

In response to the many public comments on the NPRM, and FHWA has incorporated numerous changes and refinements in this final rule, all of which are discussed in detail further below. With respect to certain issues prominently raised in the NPRM or by the respondents to the docket, the FHWA has:

- (1) Selected Alternative 2 as the basis for the final rule;
- (2) Eliminated the Commercial Driver's Certificate (CDC), and replaced it—for foreign drivers only—with a "Nonresident CDL";
- (3) Eliminated the requirement that a State check an applicant's record with all other States;
- (4) Clarified which applicants may, at the discretion of the State, substitute driving record and other qualifications for their CDL skills tests;
- (5) Adopted a three-tiered vehicle classification system, based on weight and configuration, and added a passenger endorsement available in all three vehicle groups;

- (6) Eliminated the air brake endorsement and substituted a restriction;
- (7) Eliminated the skills test in a tank vehicle;
- (8) Enhanced the flexibility accorded to the States with regard to knowledge and skills requirements;
- (9) Allowed the States the leeway to establish their own knowledge and skills test performance standards;
- (10) Omitted any specification for CDL document format.

The changes listed above only partially reflect the differences between the NPRM and the final rule; the section-by-section analysis presents the specifics and rationale of all such changes.

Selection Among Alternative Approaches

Development of Alternatives

The Congress passed the Act because of public concern for improving safety on the Nation's highways. To remedy this concern and to assure the public that all CMV operators possess at least the minimum knowledge and skills necessary to safely operate their vehicles, the Act directed the Secretary to develop minimum testing and licensing standards which all States must meet. In response to this mandate, the FHWA, in its NPRM of December 11, 1987, considered whether to propose specific standards or more general standards that would give the States greater discretion in implementing the testing and licensing programs mandated by the Act. The FHWA decided to propose two principal alternatives for consideration by the States and other interested parties; and a third alternative that would allow States to use either of the two main alternatives.

Under NPRM Alternative 1, the States would have to develop and implement a CMV driver licensing program meeting the requirements of the Act without specific directions on program content. A State would be required to submit its testing and licensing plan to the FHWA explaining how its licensing program meets the requirements in the Act. The FHWA would then review each plan to determine whether it is likely to be effective in determining whether a person is qualified to operate a CMV.

Under NPRM Alternative 2, the FHWA would issue specific minimum standards, especially with regard to application procedures, the content of basic tests, and methods of testing. States would have to meet those specific

testing and licensing standards in order to satisfy the requirements of the Act. Under Alternative 2, the States also would have flexibility to exceed the prescribed Federal standards in all areas, and would benefit from considerable leeway in implementing many of the prescribed minimum standards.

Under NPRM Alternative 3, each State would elect either to participate in the iterative process described in Alternative 1, or to adhere to the requirements of Alternative 2.

In several areas, the FHWA proposed identical provisions for each of the three alternatives. These areas included the vehicle classifications, license endorsements, conditions States must meet to "grandfather" certain drivers, and information to be contained on the license document. Thus, while Alternatives 1 or 3 would have provided greater flexibility to the States, these alternatives required uniform minimum standards in the above areas.

Public Response to the Alternatives

In the NPRM, the FHWA solicited comments on the desirability of each of the three alternatives. As indicated in Exhibit 1, Alternative 2 garnered strong support from the overwhelming majority of respondents in virtually all categories, including: The NTSB; four-fifths of the States and the District of Columbia; the American Association of Motor Vehicle Administrators (AAMVA); trucking industry associations, carriers, and the International Brotherhood of Teamsters (IBT); general trade associations; the insurance industry; and public interest groups. Only transit and school bus interests endorsed Alternative 1 to any appreciable degree.

Of the States and the District of Columbia, 40 preferred Alternative 2; five argued for Alternative 1; and five supported Alternative 3. Dual opinions emerged from the docket responses of two transportation-related agencies in one State. In compiling these State totals, the FHWA first used the direct State responses to the NPRM docket. When a State did not submit a docket response, or did not address the alternatives issue in its response, the FHWA made use of a survey conducted and submitted to the docket by AAMVA. Thus, the FHWA gleaned 29 State responses on this issue directly from the docket, and 22 State and District of Columbia responses by means of the AAMVA submittal.

Exhibit 1.—Stratified Tally of Preferences for Alternatives 1, 2, and 3

Respondent category	Total re-sponses	Preferences by alternative			
		Alt. 1	Alt. 2	Alt. 3	No opinion
NTSB.....	1		1		
States and D.C.:					
Direct responses to FHWA.....	29	5	19	4	1
Responses thru AAMVA.....	22	0	21	1	0
State/D.C. totals.....	51	5	40	5	1
State-related:					
AAMVA.....	1		1		
Natl. Conf. of State Legislatures.....	1				1
Essex Corp.....	1		1		
Trucking industry and related parties:					
Trucking Associations.....	9		9		
Motor Carriers.....	8		7		1
Unions.....	1		1		
Driver Education Industry.....	3		3		
Bus industry and associations:					
Public Transit Industry:					
Carriers.....	6	4	1		1
APTA.....	1		1		
Private Bus Industry: Am. Bus Assoc.....	1		1		
School Bus Industry:					
Wisconsin.....	18	18			
All others.....	3	1	1		1
Trade associations:					
General Industry.....	9		8		1
Agriculture.....	2	1			1
Assoc. of Am. Railroads.....	1		1		
Insurance industry.....	3		3		
Public interest associations:					
AAA.....	1		1		
HUFSA.....	1		1		
Individuals.....	6	1	3	1	1

Selected Alternative

Based on the substance and volume of the arguments in the docket, which emphasized Alternative 2 as best meeting the Congressional mandate for minimum uniform Federal standards for the CDL program, the FHWA has selected Alternative 2 as its conceptual framework for the final rule. Thus, the final rule consists of NPRM Alternative 2, as modified in light of the comments to the docket. These modifications are described in the section-by-section analysis, which appears later in this preamble.

Issues and Arguments Underlying the Selected Alternative

In reviewing the docket, the FHWA identified several major issues bearing on the selection among alternatives. This part of the supplementary information section analyzes those issues, and shows how the Alternative 2 approach—as incorporated in the final rule—responds to them in comparison with Alternative 1.

The comments in favor of Alternative 3 were essentially the same as those supporting alternative 1 because Alternatives 3 and 2 differed largely in the former's inclusion of Alternative 1 as an option open to the States. Three respondents—the NTSB, the American Trucking Associations, Inc. (ATA), and

the Commonwealth of Pennsylvania—asserted that Alternative 3 was inferior to Alternative 1 because it would establish two completely different administrative paths for the States and the FHWA. As the NTSB stated, "Alternative 3 raises questions and problems that do not exist if either of the primary alternatives is chosen. There would be additional administrative burdens as FHWA attempts both to establish national standards and review and approve State plans." The ATA likewise opposed Alternative 3 "because it would exacerbate the problem (of lack of uniformity of licensing standards) by allowing two entirely different approaches to the establishment of licensing standards." For all of these reasons, the following discussion confines itself to the primary choices, Alternatives 1 and 2.

Federalism

This regulation has obvious Federalism implications because it will have a substantial direct effect on the States. This direct effect will result from the introduction of statutorily mandated minimum Federal standards for the testing and licensing of CMV operators. However, the FHWA has adhered strictly to the criteria of Executive Order 12612, "Federalism," in writing this rule. Specifically:

(a) The FHWA has closely examined the statutory authority supporting this action, and has carefully assessed its necessity. The rule derives its authority from the Commercial Motor Vehicle Safety Act of 1986, which requires the Secretary to "issue regulations to establish minimum Federal standards for testing and ensuring the fitness of persons who operate commercial motor vehicles," and to establish "minimum uniform standards for the issuance of commercial drivers' licenses by the States and for information to be contained on such licenses." (Pub. L. 99-570, sections 12005 and 12006.) The necessity for this action resides in the need for improved highway safety with respect to CMVs. For example, in 1985, medium and heavy trucks were involved in 12.3 percent of all fatal highway accidents, but accounted for only 4.9 percent of vehicle-miles traveled and approximately 2 percent of registered vehicles. Owing to this disproportionate involvement of CMVs in highway fatalities, the Congress found that minimum Federal standards for State testing and licensing of CMV operators were necessary to help assure that such drivers have the knowledge and skills necessary to operate their vehicles safely. Thus, this action is both authorized and necessary.

Moreover, the FHWA has consulted the States and relied heavily on their collective experience before implementing this action. The NPRM yielded comments on the proposed minimum uniform Federal standards from 29 States, and the other States expressed their opinions through the AAMVA. As Exhibit 1 indicates, the States and the District of Columbia overwhelmingly endorsed Alternative 2. With the changes introduced in this final rule to augment the flexibility available to the States, the FHWA believes that an even higher proportion of States will favor the conceptual basis of this rulemaking. Furthermore, the FHWA has constructively addressed many of the comments to the docket from those States supporting Alternative 1 or Alternative 3.

(b) Because the CMV safety problem is national in scope, it is necessary to have the reciprocity among the States that is mandated by the provisions of the Act. While this action establishes minimum standards for the issuance of CDLs, it does not in any way alter the basic role of the States in issuing driver's licenses.

(c) While specifying minimum uniform Federal standards for CMV operator testing and licensing, Alternative 2 grants to the States the maximum administrative discretion possible. Not only may each State choose to impose its own higher standards in every facet of the program, but the States will also benefit from significant flexibilities in applying the minimum standards. Indeed, the "flexibility" section below identifies (in Exhibit 2) 19 sample areas in which the States will exercise considerable latitude within the minimum standards.

(d) The language of the enabling legislation requires the establishment of uniform national standards for this program. However, the FHWA has carefully considered the comments of the States and their organizations in formulating these standards. In addition, the FHWA has worked closely with State officials in their independent efforts to develop materials and procedures with which to implement the CDL Program. Federal/State cooperation has also characterized the development of the CDLIS, an integral part of the total program.

This final rule, based on Alternative 2 in the NPRM, therefore, conforms fully to the letter and spirit of the Federalism Policymaking Criteria issued by the President.

Federal Involvement as Viewed by Respondents

The docket responses substantiated the FHWA's assessment of the Federalism implications of Alternative 2. Only a few responding organizations equated Alternative 2 with undue Federal interference in internal State prerogatives. On the other hand, at least one respondent argued that the Federal review and approval process embodied in Alternative 1 could lead to a more intrusive Federal presence than would be the case in Alternative 2. Thus, Pennsylvania observed:

While on the surface, Alternative 1 seems to provide greater flexibility for the States, in reality, there will be minimum standards that FHWA will utilize to judge whether a State's program is acceptable or not. However, these standards will not be openly discussed or developed. . . . Although [Alternative 1] provides the guise of State flexibility, it actually allows FHWA more latitude in interpreting without State comment what constitutes an acceptable program. A State could make an enormous investment in the development of a test only to have it rejected . . . because it is deemed "ineffective" by FHWA. However, "effectiveness" is not defined within the proposed rules [for Alternative 1]. Therefore, we feel that Alternative 2 provides States with more latitude in developing their testing programs by providing [them] with clear minimum guidelines for the program.

The Alternative 1 process would require each State to submit a planning document for FHWA review by July 15, 1989. The FHWA, in turn, would have 90 days to review each plan and issue a determination. The NPRM analysis states that the FHWA would judge whether each plan is "likely to result in an effective program that insures that only qualified driver applicants are licensed."

Given the short-time frame to evaluate 51 State and District of Columbia plans, however, the FHWA would have had to develop a set of "checklist" criteria against which discrete elements of each State plan would be judged.

Consonance With Goals of the Act

In issuing the NPRM, the FHWA determined that all three Alternatives would accord with the goals of the enabling legislation. However, the CDL program, far from being a unilateral Federal effort, will succeed or fail due to the degree of cooperation of a host of parties including the State motor vehicle administrations, carriers, drivers, and trade associations. The FHWA thus requested public comment on the desirability of each of the alternatives. Most respondents—including the groups critical to program implementation—

have asserted that only Alternative 2 provides the minimum uniform Federal standards called for in the Act. Exemplifying these responses, the State of Illinois writes: "Alternative 2 is the only alternative that professionally addresses the problems which generated (the Act) in the first place." By contrast, the respondent organizations overwhelmingly perceive Alternatives 1 and 3 as antithetical to the purpose of the Act.

A minority of respondents, on the other hand, argued that the latitude afforded by Alternative 1 would lead to greater compliance on the part of the States. These arguments imply that greater compliance would result in improved highway safety and would thus be consistent with the goals of the Act. On the basis of the tally of State opinions, the FHWA believes that compliance will also result if the rule encompasses the clear preference of most State respondents. In addition, the practical concerns discussed further below would support the FHWA's view that Alternative 2 could better permit the States to focus their resources so as to meet the statutory deadline for full implementation of the CDL testing and licensing program—April 1, 1992.

In sum, the FHWA agrees with the majority of respondents that Alternative 2 is the better means of meeting the provisions of the Act.

Testing Materials and Procedures

Simultaneously with this proceeding, a Committee of States (with FHWA funding and technical support) has been developing a comprehensive set of commercial driver testing materials and procedures through a contractor, the Essex Corporation. These Essex outputs had been circulated, in draft form, prior to the NPRM comment deadline. Several respondents misidentified NPRM Alternative 2 with the draft Essex outputs; that is, they mistakenly inferred that FHWA adoption of Alternative 2 would automatically include promulgation of the Essex testing materials and procedures as binding on all States. For example, since the draft Essex materials included a mandatory off-street driving skills test, certain respondents incorrectly concluded that off-street testing—including the provision of potentially costly sites and personnel—would be required of the States under Alternative 2.

Such an inference continues to be incorrect, both for the specific off-street testing example and for the Essex outputs as a whole. The FHWA regards the Essex materials as important, but optional, aids for the States to consider

in developing their own testing and licensing programs. States may incorporate all, some, or none of the Essex outputs in their testing programs, as long as those programs meet or exceed the minimum standards set forth in this rule. In the example cited above, this rule requires only that some or all of the skills test be given in actual traffic conditions. In other words, off-street testing remains an option available to, but not forced upon, each State. The same principle applies to all other elements of the Essex program, which may be of maximal utility to States that currently have no classified testing program in place and that do not wish to develop their own skills and knowledge tests.

Flexibility

The supporters of Alternatives 1 and 3 adduced as their prime argument the additional "flexibility" promised by those Alternatives. Comments by California and Pennsylvania, however, suggest that Alternative 1—with its early FHWA review requirement—would not be as flexible as it might appear, and Alternative 2 (as modified by the comments by AAMVA and the States) would offer a high degree of latitude to the States.

Exhibit 2 lists 19 examples of flexibility available to the States within the minimum standards of the final rule. As requested by AAMVA and several States, the FHWA has also revised the knowledge and skills listings of NPRM Alternative 2 to enhance State flexibility. Knowledge and skills requirements have been made more general so as to allow the States greater discretion in selecting specific topics for emphasis.

In arguing for the flexibility afforded by Alternative 3, the State of Alaska cited its own unique situation: The existence of many localities that, although physically detached from the State highway network and from driver testing facilities, still have CMVs and operators subject to this final rule. The FHWA believes that the waiver process as prescribed in the Act and in § 383.7 would be the most appropriate forum in which to address this specific local problem.

Exhibit 2.—Examples of Flexibilities Offered by Final Rule

Each State may * * *

- (1) Set the price level for the CDL.
- (2) Set age limits for CDL holders not covered by Part 391 of the Federal Motor Carrier Safety Regulations.
- (3) Establish the duration of its penalties against driver applicants

providing false information. (Section 383.73)

(4) Impose or omit knowledge and skills tests on applicants for renewal or for license transfer from other States. (Section 383.73)

(5) Develop alternative methods for the driver certifications to ensure compliance with verification of driver qualifications (Section 383.73)

(6) Contract with third parties to administer skills tests, or preserve skills testing as an exclusive State prerogative. (Section 383.75)

(7) Waive, or insist upon, driving skills tests for certain categories of initial CDL applicants who are already CMV operators. (Section 383.77)

(8) Incorporate, or omit off-street testing as part of the skills test. (Section 383.113)

(9) Use simulator technology in the skills testing program, although not as a substitute for the required test in traffic. (Section 383.113)

(10) Develop its own driver and examiner manuals incorporating test content and procedures. (Section 383.131)

(11) Administer knowledge tests in written, oral, or machine formats, or any combination thereof. (Section 383.133)

(12) Prepare its own knowledge test question and procedures in keeping with the required knowledge areas. (Section 383.133)

(13) Develop its own methods for skills testing and scoring. (Section 383.133)

(14) Set the qualification requirements for driver examiners. (Section 383.133)

(15) Accept in whole or in part, or ignore, the Essex Corporation materials and procedures now under development for the Committee of States.

(16) Determine the waiting period for an applicant to retake a test which he/she fails, and the maximum number of times a person may take and fail any test. (Section 383.135)

(17) Design the form its CDL document. (Section 383.153)

(18) Show or omit the applicant's Social Security Number, weight, eye color, or hair color on the CDL. (Section 383.153)

(19) Incorporate improved positive identification methods on the CDL. (Section 383.153)

In addition to the foregoing flexibilities, each State may add more stringent requirements to the minimum standards contained in all individual sections of the rule.

Cost

Most of the States supporting Alternatives 1 and 3 pointed to the allegedly higher costs of Alternative 2.

In reality, each State will be free to set the price of the CDL at any level, regardless of the selected Alternative. Furthermore, the "grandfathering" and "third-party testing" provisions of the final rule will allow the States to mitigate the impact of initial startup costs on State budgets. Inferring that Alternative 2 incorporated the Essex tests as requirements, certain respondents incorrectly ascribed to Alternative 2 the major capital investment associated with producing off-street testing sites Statewide. In fact, Alternative 2 did not include any such requirement, nor does the final rule. Conversely, Alternative 1 carried a significant administrative cost burden—preparation, submission, and iteration of the State Plan at an early date. Under the final rule, States will need to plan carefully for program implementation, but the clarity of the standards could lead to more efficient planning than would have been the case under Alternative 1. For all these reasons, cost considerations do not argue against Alternative 2 as incorporated in the final rule.

Reciprocity

The Act mandates reciprocity among all States. Many respondents argued that, given the history of the development of State licensing procedures, one State could hardly be expected to have full confidence in all the other State programs unless a perceived minimum uniform national standard prevailed. Reciprocity, in turn, will influence State decisions on such issues as transfer retesting. As the approach perceived by most respondents as uniform, Alternative 2 would encourage true nationwide reciprocity including the minimization of the retesting burden.

Practical Concerns

In arguing in favor of Alternative 2, most responding jurisdictions and organizations cited the practical problems inherent in the Alternative 1 process. Although time is of the essence in the CDL program, respondents pointed out, the requirement under Alternative 1 for a State plan, FHWA review, and possible further iterations would detract from the States' ability to comply with the April 1, 1992, deadline. The paperwork and likely time delays would create high cost burdens at both the State and Federal levels. By contrast, at least one respondent pointed out that adoption of Alternative 2 in mid-1988 would give all involved parties—including CMV operators and their employers—an early warning of

the April 1, 1992, requirements, hence a head start on responding to them. One State respondent claimed that Alternative 2, by advancing specific Federal requirements, could ease the task of pushing enabling legislation through the respective legislatures.

Mechanisms To Assure State Compliance

To assure proper implementation of the CDL testing and licensing standards, State compliance must take two forms. First, a State must design an organizational framework and set of procedures and materials that will allow the standards to be met. Second, the State must administer the program so that the organization, procedures, and materials actually function according to the program design. In the NPRM, Alternative 1 would have addressed the first form of compliance by producing an FHWA-approved State plan for CDL testing and licensing. By contrast, Alternative 2 would have included neither a requirement for State plans, nor a process for their review by FHWA. The NPRM did not address the second form of compliance in any way under either Alternative, except to raise the following question for comment:

*** Is it appropriate for the Governor to certify that the State is in compliance? Should the FHWA monitor the licensing procedures and, if so, on what basis? What is the most practical and cost-effective method that can be used to certify that the States are in compliance? Should the FHWA approve each of the States' programs? If so, how often should the FHWA review these determinations?

In the NPRM docket, 19 States and the AAMVA responded to this question. No consensus emerged from their responses. The largest group of respondents (five States and AAMVA) asserted that State self-certification would suffice, without any subsequent FHWA audit programs. The 14 other commenters embraced ten different compliance certification schemes, most of which combined an initial State certification with some form of FHWA review on an initial, random, annual, or longer-term basis. One respondent suggested initial State certification with a periodic "peer review" to be conducted annually by AAMVA on behalf of FHWA.

Owing to this current lack of a consensus among the States on the important issue of compliance, the FHWA has elected to defer the establishment of a compliance certification and/or audit mechanism. In any event, the Act does not require full implementation by the States of the CDL program until October 1, 1993, when

statutory sanctions would take effect. Thus, ample time remains to resolve this important issue. The FHWA plans to seek additional State and public comments on the issue of a compliance certification and/or audit mechanism by issuance of a future Federal Register notice. The States, meanwhile, should proceed without delay to implement the testing and licensing standards contained in this final rule because CMV drivers must be relicensed under the program by April 1, 1992.

The rest of this supplementary section contains a section-by-section analysis of the final rule.

Section-by-Section Analysis

Section 383.5 Definitions.

Commercial motor vehicle (CMV). The Act (section 12019) defined a CMV, in part, as having "a gross vehicle weight rating of 26,001 or more pounds, or such lesser gross vehicle weight rating as the Secretary determines appropriate by regulation * * *." This regulation has expanded that definition to include all vehicles having a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds. The definition change reflects comments received from the AAMVA with respect to vehicle groups. The FHWA agrees with AAMVA that combination vehicles, when hauling 5-ton and greater trailers, merit inclusion in the definition of a CMV because of their handling characteristics, even though the gross vehicle weight rating of the main vehicle, if operated without a trailer, may be well below 26,001 pounds. The operator of such a power unit would not have to possess a CDL if the unit is operated without a trailer, or with a trailer having a gross vehicle weight rating of less than 10,000 pounds.

Tank vehicle. In commenting on the NPRM, the National Tank Truck Carriers, Inc., asserted that the use of the term "cargo tank" would unduly constrain the types of vehicles for which the special dynamics of bulk cargoes would mandate an endorsement. The FHWA recognizes that "cargo tank" is a term of art in the hazardous materials regulations; to expand the definition of this term for the special purposes of Part 383 would create unnecessary inconsistencies among regulations issued by the Department of Transportation. Therefore, the final rule has eliminated the term "cargo tank" and substituted the term "tank vehicle."

A tank vehicle must meet the definition of a CMV as provided in this rule. Thus, a tank vehicle must either

satisfy the 26,001 pound vehicle weight floor as specified in § 383.5, or be of any size and be used in the transportation of materials requiring the motor vehicle to be placarded under the Hazardous Materials Regulations. Moreover, the tank vehicle must be designed to transport any liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Examples of such vehicles would be cargo tanks and portable tanks.

Drivers of vehicles that transport nonhazardous materials (such as milk) in bulk, and that have a weight rating below the 26,001 pound floor, would not require a CDL at all, since the vehicles they operate are not CMVs as defined in the final rule.

A tank vehicle required to be placarded by virtue of its hazardous gaseous or liquid cargo would generally be considered a tank vehicle regardless of its size or weight, and its operator would require the tank vehicle endorsement as well as the hazardous materials endorsement on a license appropriate to the vehicle group involved. However, the definition of "tank vehicle" specifically excludes portable tanks having a rated capacity under 1,000 gallons because their dynamic properties do not present so great a challenge to driver capabilities as to mandate a tank vehicle endorsement. This exclusion of portable tanks under 1,000 gallons relates to the tank vehicle endorsement only; the hazardous materials endorsement would still be applicable in keeping with the placarding requirements of the Hazardous Materials Regulations.

Subpart B—License Requirements

Section 383.23 Commercial Driver's License.

According to the requirements which became effective on July 1, 1987, drivers of CMVs can have only a single license. This section effects additional requirements for persons who operate CMVs. As of April 1, 1992, all operators of CMVs shall take and pass knowledge and driving tests that meet the minimum standards promulgated by FHWA. An operator of a CMV with special handling characteristics such as a double trailer combination, or a vehicle required to be placarded for hazardous materials, shall also take and pass additional tests to obtain an endorsement to the CDL authorizing him/her to operate such a vehicle. This regulation also requires CMV drivers to possess a CDL while operating a CMV. The CDL shall be

issued by States in accordance with these standards.

The Act clearly states that, as of April 1, 1992, at the latest, "no person" shall operate a CMV unless such person has qualified under the standards contained in the subject rule. Nevertheless, 10 States in their responses to the NPRM sought relief from the April 1, 1992, deadline for the qualification of all drivers. They maintained that this final rule would not be issued until July 15, 1988; that additional time would be required for States to implement the program through legislative and administrative action; and that States with 4- and 5-year renewal cycles would therefore find it impossible to handle the new CDL program in the normal course of renewal activity. Moreover, their argument ran, for the States to circumvent the normal renewal process would entail high overhead costs and would lead to confusion due to the existence of two classification systems. Thus, the concerned States argued, the FHWA should interpret the April 1, 1992, date as a deadline for implementation rather than completion of the CDL program.

The FHWA fully understands these States' concerns lest the CDL program deadline lead to temporary higher cost levels and disturb the normal scheduling of license renewals. However, the FHWA believes that the timeframes established in the Act are important to maintain as an acceptable goal for compliance. Many States are already moving to adopt and implement the CDL program based on the dates included in the Act as their goals. Also, the FHWA believes that changes in the April 1, 1992, deadline, either through legislation or rulemaking, would confuse the drivers and other groups, such as motor carriers and enforcement entities, who are necessarily concerned about when and what they need to do as a result of the CDL program. Thus, the final rule continues to incorporate this mandated date, and contains several provisions that will allow the States—with proper planning and programming—to comply more easily. First, the FHWA's adoption of Alternative 2 as the basis for the final rule will permit the States to proceed directly to implement the CDL program without an iterative Federal review and approval process in 1989. Second, the third-party testing provisions (§ 383.75) will assist the States in setting up their skills testing apparatus with minimal expansion of State personnel rosters and facilities. Third, the ability to "grandfather" certain highly qualified drivers from the skills tests can ease the burden on State resources. Finally, the

final rule allows the States full discretion to price the CDL. Should a State encounter unusual costs in accelerating its license renewal cycle to meet the April 1, 1992, deadline, it will be free to recover these incremental costs through the pricing mechanism. All these features will assist the States in complying with the April 1, 1992, deadline.

Section 12005(a)(8) of the Act allows the Secretary to consider a requirement that States issue certificates of fitness to operate a CMV to each person who passes the required tests. The NPRM of December 11, 1987, envisioned the creation of a CDC document to be issued by States that are in compliance with this part, so as to fulfill two separate needs. First, a CMV operator domiciled in a noncomplying State would have been eligible to apply for a CDC from a State which does conform to the testing standards. Second, a CMV operator who is domiciled in a foreign country, and whose home jurisdiction does not substantially comply with the testing and licensing standards contained in this part, would have applied for a CDC from a conforming State.

The CDC for domestic drivers elicited nearly unanimous disapproval from the respondents to the NPRM, who considered it premature, likely to undermine full compliance, and contrary to the single-license, single-record concept of the Act. In light of the exemplary cooperation already displayed by the States in the CDL program, the FHWA agrees that a domestic CDC may not be necessary, and has deleted it from the regulation. However, in order to assure that drivers and their employers are not adversely affected by this regulation due to factors that are solely within the purview of the States, the FHWA will monitor the extent of State compliance with this Part, and will deal with this issue, if necessary, in a future rulemaking.

Since Canada is working toward a strong testing/licensing program for CMV operators through its consensus National Safety Code, the CDC for foreign operators would have probably applied in large measure to drivers domiciled in Mexico (depending on an ongoing analysis of Mexican standards). The two States containing the most heavily trafficked Mexican border crossings, Texas and California, already require Mexican CMV operators to secure State licenses. To impose an additional or alternative requirement for a CDC would needlessly multiply the number and type of documents issued by those States. Moreover, in their

responses to the NPRM, both California and Texas opposed the issuance of CDCs and suggested that drivers residing in noncomplying jurisdictions receive CDLs instead. For these reasons, the FHWA has eliminated the CDC for foreign drivers and has substituted a "Nonresident CDL" to be issued by complying States as described and analyzed under Subpart E, "Testing and Licensing Procedures."

To allow novice drivers to obtain the necessary training in a CMV, the final rule allows States, if they so choose, to issue limited learner's permits. The issuance of a learner's permit will not be a required precondition to issuing a CDL. However, States may choose to make learner's permits available for limited time periods to first-time applicants for use in behind-the-wheel training on public roads or highways.

The NPRM proposed that States which issue learner's permits for CMV drivers would do so as a continuation of their existing learner's permit programs and might also require applicants to pass test(s) prior to issuance of the learner's permit for the specific vehicle group or endorsement desired. Conditions for issuance of a learner's permit and circumstances under which such permits may be used would have been solely determined by the State of issuance.

Of the 51 respondents addressing the question of learner's permits, about half recommended that Federal standards be set for State learner's permit programs directed toward CDL issuance. For example, the AAMVA urged the FHWA to require that applicants for learner's permits "satisfy CDL requirements including * * * written and medical exams, and that the record be added to the CDL Information System."

Responding to such safety-related concerns as AAMVA's, while preserving maximum flexibility for the States and meeting the behind-the-wheel training needs of prospective CDL applicants, this final rule specifies that a learner's permit holder must always be accompanied by the holder of a valid CDL during on-road training. (This provision was suggested by eight respondents in the trucking and public transit industries and State agencies.) Also, to be issued a learner's permit in a State for training in a CMV, an applicant must already possess a valid automobile driver's license, or pass the State's ordinary battery of vision, sign/symbol, and knowledge tests for automobile licensing purposes.

These learner's permit requirements are minimum standards, which the States can accommodate within their

existing programs. As elsewhere in this regulation, the States will be free to impose more stringent requirements (for instance, making successful completion of the CDL knowledge test a prerequisite for learner's permit issuance), should they elect to do so.

On the other hand, if a State does not issue learner's permits, the requirements stated in § 383.23(c) will not apply. In such a case, applicants would have to acquire their behind-the-wheel driving experience on other than public highways because of the prohibitions contained in § 383.23(a). However, a State not issuing learner's permits may conduct driving skills tests in traffic. Also, the final rule gives States the additional flexibility of allowing a person who does not already hold a valid driver's license to obtain a learner's permit. A typical situation in which this option may be helpful would be that of an individual who immigrates to the United States from another country and does not have a valid license. Therefore, this final rule does not require States to issue learner's permits, or to issue learner's permits only to valid automobile license holders, in order to implement the CDL program.

Subpart E—Testing and Licensing Procedures

This subpart contains the testing and licensing procedures for CDLs. The tests would be required for each vehicle group in which the applicant operates or wishes to operate, and would at least cover the general knowledge areas and skills described in Subpart G. Knowledge tests could be given in written, oral, and/or automated format. Skills tests would have to be given in a vehicle that is representative of the vehicle group within which the applicant operates or expects to operate.

Verification of Driver Qualification. Section 12005(a)(7) of the Act states that regulations for testing of CMV operators shall ensure that each person taking such tests is qualified to operate CMVs under regulations issued by the Secretary and contained in Title 49 of the CFR, "to the extent such regulations are applicable to such person." The driver qualification requirements found in Part 391 of the FMCSRs apply only to drivers of motor vehicles engaged in interstate commerce unless adopted by the State for intrastate movements. In response to section 12005(a)(7), the final rule will require that States include in the CDL application process, a means for an applicant to certify that he/she meets Federal driver qualification requirements if he/she operates or expects to operate in interstate

commerce. States would continue to have the responsibility to establish intrastate driver qualification standards and to determine the applicant's compliance with these standards. At this time, this regulation does not impose the physical and medical requirements of section 391 of this part on intrastate drivers as a minimum standard.

Enforcement of driver compliance with the driver qualifications requirements would continue under the current practice of roadside inspections, carrier audits, and other State and Federal enforcement avenues. The driver license agencies would also play a related enforcement role by obtaining required certifications, maintaining commercial driver records, completing required checks of these records, and making appropriate notifications to the CDLIS. States would also have the option to have their driver license agencies assume greater review of driver medical and other qualifications during the licensing process.

Section 383.71 Driver application procedures.

A CMV operator will obtain his/her license in the State in which he/she is domiciled, except in the case of foreign drivers as explained further below.

Every CDL applicant will, at a minimum, complete the following process to obtain his/her CDL for the first time (other than renewals or transfers):

- (a) An applicant subject to 49 CFR Part 391 will certify that he/she meets the driver qualification requirements of Part 391 as a condition of taking the tests;
- (b) Pass a knowledge test (as specified in Subpart G) to demonstrate that he/she is familiar with the regulations designed to ensure the public safety and with the skills needed to safely operate the type of vehicle that he/she operates or expects to operate;
- (c) Certify that the vehicle in which he/she will take the driving skills tests is representative of the type of vehicle he/she operates or expects to operate;
- (d) Pass the necessary driving skills tests as described in Subpart G; and
- (e) Provide all information required by the regulation.

If he/she satisfies all of the requirements described above, surrenders his/her existing license, and is not disqualified according to Subpart D, then the State may issue the applicant a CDL.

Any driver who applies for a renewal of his/her CDL will make the certification of driver qualification, and provide an update of required

information. In addition, holders of the hazardous materials endorsement (§ 383.123) must pass the hazardous materials test to retain that endorsement. The hazardous materials endorsement retest will help keep drivers of such vehicles current on changes in the hazardous materials regulations and safety related procedures. As a minimum standard, this rule implicitly permits the State to impose additional testing requirements—for example, the full battery of knowledge and skills tests specified in § 383.71(a)—on CDL renewal applicants.

A commercial driver who wishes to drive a vehicle in a different vehicle group must make the certification of driver qualification, certify that the vehicle in which he/she takes the driving skills tests is representative of the type of vehicle he/she operates or expects to operate, and pass the tests related to the upgraded vehicle group or endorsement.

Any driver who moves (i.e., changes his/her domicile) from another State or jurisdiction will be required to apply for a new CDL within no more than 30 days of moving and to surrender his/her current CDL as a condition of receiving a new CDL. Such a driver would make the certification of driver qualification and provide any new or updated information required by the regulation. As in the case of CDL renewals, the new State may choose to impose additional knowledge and skills testing as a prerequisite to the transfer of a CDL, but is not required to do so. However, if the current CDL contains the hazardous materials endorsement, and the transfer applicant wishes to retain that endorsement, the new State of domicile must ensure that the applicant takes a new test or has, within the 2 years preceding the transfer, either passed a hazardous materials knowledge test given by the old State of domicile in accordance with § 383.121, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

The preceding paragraph will apply to all CMV operators after April 1, 1992, and to all CDL holders who change domicile from one CDL-issuing State to another CDL-issuing State before April 1, 1992. If, before April 1, 1992, a CDL holder moves to a State that does not yet issue CDLs, he/she must adhere both to the licensing requirements of the new State of domicile and to the single license provisions of § 383.21, which require a driver to surrender his/her old license when he/she receives a license from a new State of domicile.

As explained in the analysis of § 383.23, the FHWA has eliminated the proposed commercial driver's certificate (CDC) for domestic drivers, and has replaced the CDC for foreign drivers with the Nonresident CDL. A foreign driver applying for a Nonresident CDL must complete all the State requirements for a CDL. In addition, holders of a Nonresident CDL must notify the State of issuance of any disqualifications or license suspensions/revocations, whether in the United States or in the foreign driver's country of domicile.

Section 383.73 has been modified in the final rule to add a provision to allow the State to use alternative methods to achieve the objectives of the certifications in § 383.71(a). This section specifies that States may substitute these alternative methods, where applicable, as part of the driver application procedure.

Section 383.73 State procedures.

This section outlines the procedures which a State will follow, as a minimum, for the issuance of a CDL which meets the requirements of the Act.

While the procedures below may appear prescriptive, they are in fact the types of transactions and procedures which the States currently utilize. In addition, the AAMVA's Committee on the CDLIS is developing that system based on these transactions. The use of driver certifications is a common method which States now use to ensure compliance with many rules. The certification process places the burden on the driver applicant to know and comply with the rule. If the applicant has falsified the certification, the State would then be in a position to take action against the driver. The FHWA believes that the certification method is the minimum that a State should do to ensure compliance with the requirements of the Act. As discussed in this Section, however, the State would be permitted to use alternative methods to the certification process.

Initial CDL. Prior to the first-time issuance of a CDL to a person, a State will:

(a) Adopt a program for testing and ensuring the fitness of persons to operate CMVs in accordance with the standards;

(b) Ensure that persons choosing to operate in interstate commerce make the appropriate certifications regarding their qualifications under Part 391 of the FMCSRs prior to being issued a CDL;

(c) Issue CDLs only to persons who pass knowledge and skills tests for the operation of a CMV which comply with these standards;

(d) Issue CDLs which contain information and other specifications included in the standard;

(e) For persons moving from another State or jurisdiction, request and consider the applicant's driving record from the prior State of issuance before issuing an initial CDL and require the applicant to surrender his/her existing license;

(f) Not issue a CDL to a person who is disqualified from operating a CMV, or whose driver's license is suspended, revoked, or canceled;

(g) Issue CDLs only to persons domiciled in the State except persons domiciled in a jurisdiction of a foreign country that does not test and issue licenses meeting the standards may be issued a Nonresident CDL;

(h) Notify the CDLIS of the issuance of a CDL and provide the CDLIS with information on that driver. (The required information will be discussed in a separate rulemaking or other action on the CDLIS.)

Multiple License and Driver's Record Check. Section 383.21 already requires that persons who operate CMVs shall have only one driver's license. Also, section 12009 of the Act requires that a State not issue a CDL to an individual whose license is suspended, revoked, or canceled or who is disqualified from operating a CMV. To ensure these requirements are met by a driver applying for a CDL, States will check and consider information in the applicant's current driving record, in the CDLIS and in the National Driver Register (NDR) before issuing a CDL. Prior to April 1, 1992, a check only of the CDLIS and the NDR may not yield complete information about the driver because he/she does not yet have a CDL and would not be reflected in the CDLIS. To eliminate this problem, the FHWA proposed in the NPRM that States check with all other States to determine if the driver is licensed elsewhere. Citing unacceptable administrative difficulties and high costs in terms of personnel,

paperwork, and postage, respondents to the NPRM voiced unanimous disapproval of the 50-State check.

In its enforcement activities relative to the single license requirement, the FHWA has also discovered that some current State driver license records are not accurate. Many drivers who had moved between States and surrendered their former State driver's license were still shown as holding a license from the former State. The FHWA realizes that the proposal for the 50-State check in the NPRM could generate much inaccurate information about a driver's former license.

In light of these facts, the FHWA has determined that the 50-State check is impractical, and has incorporated two safeguards in its stead.

First, the applicant must certify that he/she holds only one license and is not subject to any adverse actions against his/her driving privilege. If a falsehood is discovered either before or after issuance of the CDL, this certification is subject to license suspension, revocation, or cancellation as specified in § 383.73, as well as any additional penalties imposed by applicable State statutes regarding falsification of information on drivers' licenses. The FHWA believes that these penalties, combined with possible disqualification and existing State sanctions for falsifying information, will result in an effective deterrent.

Second, the State must check the applicant's record prior to issuing a CDL. Although the CDLIS component of this check will not insure that the applicant possesses only one license and a satisfactory record prior to April 1, 1992, it will guarantee that the applicant holds only one "commercial driver's license" and that his/her record as a CDL holder meets minimum standards.

Although the States would not be required by this rule to check the NDR until it is determined to be operational by the National Highway Traffic Safety Administrator, it is recognized that the States are exploring the development of systems which would enable them to access both CDLIS and the NDR prior to that time. Efforts in this regard are strongly encouraged.

Transfers. The final rule includes requirements for a person who has a CDL and then changes his/her State of domicile and applies for a CDL from his/her new State. For these cases, the State will have the option to accept the credentials of that driver or to require that the driver be further tested according to its own testing and licensing procedures. At a minimum, the

new State of domicile will be required to obtain the certifications and identifying information updates, and complete the driver record checks that would be required for issuance of an initial CDL.

The State will also be required to ensure that those drivers who wish to retain the hazardous materials endorsement have either successfully passed a hazardous materials knowledge test within the preceding 2 years, or successfully completed hazardous materials testing or training that is given by an employer or some other third party. Such third party testing or training must be deemed by the State to substantially cover the knowledge areas listed in § 383.121. Without such a requirement, the potential would exist for CMV operators who frequently change domicile to avoid retaking the hazardous materials knowledge test for long periods of time. This eventuality cannot be permitted, in FHWA's view, because a CMV operator's hazardous materials knowledge is of critical importance to the public safety. Most States commenting on the retesting of transfer applicants for hazardous materials knowledge, however, felt that such retesting should be at the option of the States. Because the FHWA believes that the States can best determine the knowledge levels of applicants transferring from another State, the final rule allows States the option to either retest or accept certification of successful hazardous materials testing or training within the preceding 2 years by another State or third party, including the employer. This provision reflects the FHWA's belief that an individual who passes a hazardous materials endorsement test or an equivalent third party testing or training program within the 2 years preceding the transfer will be sufficiently knowledgeable of the hazardous material regulations and of any changes in them which may impact safety.

Renewals. Minimum State procedures for renewing a CDL will include the certification of driver qualification, updates of information that would be required to be included on the CDL and completion of a check of the driver's record. A driver who desires to retain his/her hazardous materials endorsement will be required to successfully complete the test being given by the State for the hazardous materials endorsement to ensure he/she continues to be knowledgeable about hazardous materials regulations and safety procedures. This provision for hazardous materials knowledge retesting at license renewal (as opposed

to transfer) received the support of a majority of States commenting on the related question in the NPRM.

Upgrades. A State will follow a combination of procedures whenever a driver changes the vehicle group in which he/she is currently licensed to operate. The driver applicant will have to provide the certifications and information specified under the renewal section, and will be tested for the different portion(s) of the CDL as if he/she were making an initial application.

Nonresident CDL. As explained in the commentary to § 383.23, the FHWA has eliminated the CDC for domestic operators, and substituted the Nonresident CDL for the "foreign" CDC. The Nonresident CDL will be a CDL in every sense of the term. It will differ from all other CDLs only in that it will carry the word "Nonresident" on its face, and will show an address outside the United States.

To be empowered to issue a Nonresident CDL, a State must be fully capable of disqualifying its holder and of withdrawing, suspending, canceling, or revoking his/her Nonresident CDL. This provision is necessary because certain States legally require that notifications of certain adverse actions against the driving privilege be delivered by Certified Mail. If a foreign country does not participate in the Certified Mail Service the State could conceivably issue a Nonresident CDL that cannot be suspended, canceled, or revoked. To avoid this eventuality, States wishing to issue Nonresident CDLs may need to modify their statutes and/or regulations to ensure the enforceability of the penalties and sanctions that are integral to the CDL program.

License Issuance and Notification. This paragraph in the rule specifies that if the driver applicant has successfully met the requirements for a CDL, he/she can be issued a CDL. Once the document is issued, the State will inform the CDLIS and provide it with the appropriate information within 10 days beginning on the date of issuance. The NPRM proposed allowing the States 30 days to notify the CDLIS of such issuance. The reduction to 10 days reflects an analysis of comments from respondents to the related question in the docket, most of whom argued that the proposed notification period should be shortened. The 10-day notification period would be long enough to allow the States leeway in processing the required paperwork. The FHWA expects, however, that notification to the CDLIS will be simultaneous with issuance of the license, to prevent CMV

operators from applying for multiple licenses in contravention of law and regulation. The FHWA will address this issue further as the CDLIS develops.

Penalties for False Information. This paragraph contains minimum suspension, cancellation, or revocation requirements for persons who falsify the information or certifications required to be provided by CDL applicants. If a State determines at any time that a person falsified the information, the State would at a minimum suspend, revoke, or cancel the CDL no later than 30 days after discovering the falsification. The final rule leaves to the discretion of the States the duration of such a suspension, revocation, or cancellation, and allows the States the option of applying additional civil or criminal penalties in keeping with existing State statutes. Further, § 383.53 provides that individuals who violate the requirements in Subparts B and C are subject to civil or criminal penalties as specified in the Act. Any individual who falsifies license information to obtain more than one CDL would be in violation of Subparts B and C and would thus be subject to civil and criminal penalties under the Act. In responding to the NPRM, the NTSB recommended that the final rule prescribe specific penalties for drivers who falsely certify compliance with CDL requirements. The FHWA will address this issue in a separate NPRM.

To provide an added deterrent, the final rule now explicitly states that the penalties can also come into effect if the factual discrepancies are discovered subsequent to the issuance of the license. These changes from the wording in the NPRM reflect the elimination of the 50-State check and the substitution of a certification; the greater reliance on applicant-provided information requires a corresponding clarification of State procedures in the event of falsification.

Reciprocity. Section 12009(a)(14) of the Act requires that States allow any person who has a valid CDL and who is not disqualified from operating a CMV, to operate a CMV in the State. The FHWA has included this requirement in § 383.73 as a condition for States to issue a CDL which meets the standards.

Alternative procedures. States may implement alternative procedures to the certification requirements described in § 383.71(a), as long as such alternative procedures ensure that the substantive purposes of the requirements are met. For example, if a State undertakes the medical qualification review for the driver, a certification would not be required. This is an area where greater flexibility would be provided to the

State in the final rule than was the case in Alternative 2 of the NPRM.

Section 383.75 Third party testing.

In keeping with section 12005(c)(3) of the Act, this final rule permits States to use a third party to administer driving skills tests. According to the Act, a third party may be a person or a department, agency, or instrumentality of a local government. The FHWA has decided to allow a broad interpretation of this provision to include another State or any public or private organizations with which the State has an agreement. Examples of potential third-party testers would include employers, public transit authorities, school boards, and driver training schools.

Approximately 60 respondents to the NPRM (primarily States, members of the trucking industry, and public interest groups) addressed this issue. One-fourth of this number either opposed third-party testing outright or suggested more stringent FHWA-imposed requirements than those originally proposed. These respondents fear abuses from conflict of interest—for instance, driving schools seeking to upgrade their advertised pass rate, or trucking companies attempting to combat the driver shortage by lowering test standards. While recognizing the potential for such abuses, the FHWA also understands the benefits of a functioning third-party testing apparatus to assist the States in implementing the CDL program.

As minimum standards subject to State enhancement, the FHWA believes that the control mechanisms in the final rule will allow the States to provide adequate checks against abuses. Specifically, in order to ensure that people who pass the tests given by third parties would have passed tests had they taken them from the State, third parties will be able to give driving tests only if all the following conditions are met:

(a) The tests given by the third party are the same as those which would otherwise be given by the State;

(b) The State's agreement with the testing party allows the FHWA or its representative and the State to conduct random examinations, inspections, and audits without prior notice;

(c) The State agrees to conduct on-site inspections at least annually;

(d) All third party examiners meet such qualification and training standards as are imposed on State examiners and are relevant to proper administration of the driving tests (civil service examinations, for example, would not be required);

(e) At least annually, State employees "check-ride" with examiners on actual

tests, or States test a sample of drivers who were examined by third parties to compare pass/fail results; and

(f) The State expressly reserves the right to take appropriate action if the third party fails to meet the CDL program standards.

The FHWA has added this last condition to the requirements enunciated in the NPRM to further strengthen internal controls in the third-party testing program, in response to the concerns voiced by the respondents.

Section 383.77 Substitute for driving skills test.

The FHWA recognizes the CMV drivers are professionals who are, as a group, highly experienced in the skills needed to operate such vehicles. In response to the fact, the final rule follows the NPRM in providing States with an option to allow certain drivers to substitute a good driving record and experience for the driving skills tests. The overwhelming majority of comments to the docket from the States and the motor carrier industry support this provision. The provision would not be used for the knowledge tests. The option would apply to a driver of CMVs who was currently licensed at the time of his/her application for a CDL, and who either (1) has a good driving record and has previously passed a State skills test in a CMV, or (2) has a good driving record in combination with certain driving experience. The FHWA believes that for many current drivers, experience is an appropriate indication that the individual has the minimum driving skills to operate a CMV. Accordingly, the FHWA believes that this provision will not diminish public safety or overall safe operation of commercial vehicles.

A State which chooses to exercise this option will have to adopt criteria to eliminate certain applicants from consideration under this provision. As a minimum, an applicant must be a CMV operator who is currently licensed at the time of his/her application for a CDL, and must:

(1) Certify that he/she has not committed certain offenses; and

(2) Certify and show that he/she has previously passed an acceptable skills test or has certain experience driving a CMV.

In the process of developing the NPRM, the FHWA evaluated the practices used by several States to determine whether applicants who are transferring their licenses from another State need to take driving tests. Based on these current analogous practices and the statutory requirements, the FHWA concluded that an applicant for

"grandfathering" would first have to certify that he/she has violated neither the single license provisions nor the disqualification provisions in Part 383 for the 2 years prior to applying for the CDL. In addition, an applicant could have neither a violation of State of local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, nor a record of an accident where he/she was at fault, during the 2 years immediately preceding application for a CDL. The applicant would have had to pass a State driving skills test given by a State with a classified licensing and testing system, and which was taken by the driver behind-the-wheel in a vehicle representative of the type of classification which the applicant operates or expects to operate. The State test, in conjunction with a driver's demonstrated safe driving record, is an acceptable substitute for a new driving skills test even if the previous test did not include each of the specific skill items which new drivers will need to demonstrate under the standard.

In lieu of a driving skills test, the applicant may qualify for an exception to the CDL skills test because of his or her prior experience. In this case, an applicant would be required to have 2 years of recent experience driving a vehicle that is representative of the group of vehicles for which he/she wishes to obtain a CDL. A State would need to ensure that the applicant has this experience through mechanisms such as requiring the employer to provide certification.

The NPRM restricted the pool of applicants eligible to substitute a good record and other qualifications for the driving skills test to those holding driver's licenses as of July 15, 1988. Many respondents contended that since the deadline for full CDL program implementation is not until April 1, 1992, the NPRM would arbitrarily exclude persons with up to 4 years' experience from the skills test substitution provisions. The final rule eliminates the July 15, 1988, cutoff date, and instead requires that an applicant hold a driver's license at the time he/she applies for the CDL, and that he/she be regularly employed as a CMV operator.

Similarly, the NPRM required that applicants eligible for substitution of the skills test have a driving record free of license suspensions, revocations, or cancellations, and free of disqualifying offenses, since July 1, 1987. For drivers applying for their CDLs in 1992, this provision would have required them to have a good record for almost 5 years.

The respondents on this issue generally favored less stringent standards and more discretion on the part of the States. As a result, the final rule has eliminated the July 1, 1987, date for all record-related prerequisites to substitution and has instead specified the 2-year period prior to application for the CDL. Each State would be free to impose more stringent requirements.

Several respondents requested that the final rule allow States to allow a substitution for the knowledge test in order not to penalize the safe, but functionally illiterate driver. The FHWA understands this concern; however, the FHWA believes that the purposes of the Act would be best met by retaining the knowledge test requirement for all current drivers. The rule is directed to "knowledge" tests, not "written" tests, so as to afford the States alternative ways to provide the drivers with the necessary information and to test them. Illiterate drivers have a handicap in regard to reading, but they can and should be expected to possess the required knowledge of safe vehicle operation. The State will have full discretion to adopt a testing format (or

formats) for the knowledge test, as long as the reliability and content standards are met. (See Subpart H.)

Subpart F—Vehicle Groups, Representative Vehicles, and Endorsements

In accordance with section 12005 of the Act, any applicant for a CDL must demonstrate driving skills in a vehicle which is representative of the type of vehicle such person operates or expects to operate. Three broad vehicle groups are established by FHWA to help define the types of vehicles which would be considered acceptable representative vehicles. These groups reflect different vehicle handling characteristics under different traffic conditions and situations. Thus, separate skills and, in some cases, knowledge tests are required for each group. These tests are described in Subpart G.

Section 383.91 Vehicle groups.

Responses received by FHWA to Docket MC-125 supported classification of vehicles according to weight and number of articulations points. The

AAMVA, the American Automobile Association (AAA), the American Trucking Association (ATA), the Highway Users Federation for Safety and Mobility (HUFSA), and the National Motor Carrier Advisory Committee (NMCAC) suggested specific vehicle classifications to FHWA. The vehicle groups included in the final rule generally follow the recommendations by AAMVA, ATA, and HUFSA. The three vehicle groups delineated by FHWA are depicted in Figure 1.

The NPRM had included a "Bus" group. However, several comments to the docket emphasized the significant differences in handling characteristics among buses of various sizes and weights. In order to reflect these differences without unduly multiplying the number vehicle groups and increasing the potential administrative burdens on the States' licensing agencies, the FHWA has eliminated the separate "bus" vehicle group and replaced it with a "passenger endorsement" that can be superimposed on the remaining Groups A, B, and C.

BILLING CODE 4910-22-M

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

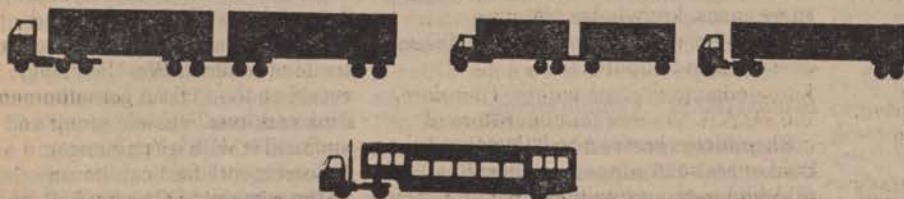
[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:

*Description:

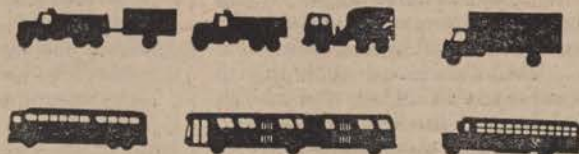
- A** Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.)

Examples include but are not limited to:



- B** Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.)

Examples include but are not limited to:



- C** Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator.

Examples include but are not limited to:



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

Representative Vehicles. Section 12005(a)(2) of the Act requires that the skills test be taken in a vehicle representative of the type which the person operates or expects to operate. Generally, the commenters to Docket MC-125 leaned toward testing in the type of vehicle the driver intends to drive. The NTSB recommended that applicants be tested in the largest vehicle allowable in a given class. Such a requirement would place an unreasonable burden on a driver applicant to obtain, for test purposes only, a vehicle other than one he/she typically operates or expects to operate. Alternatively, it would place a burden on States to acquire or to have available such vehicles for applicants to use for the tests.

Thus, the final rule requires an applicant to take his/her skills test in a representative vehicle, defined as *any* vehicle within the vehicle group in which he/she drives or intends to drive. The FHWA believes that the driving tests will adequately determine the ability of the driver to operate any CMV within that group. The applicant will certify to the licensing authority at the time of the test that the vehicle that he/she uses for the skills tests is a representative vehicle. This approach will give the States flexibility to allow drivers to undergo the skills test in vehicles other than the exact vehicle or the exact type of vehicle which the driver operates or expects to operate. By the same token, this broad definition of "representative vehicle" will allow drivers to switch jobs without retaking the skills test in a new, more narrowly defined "representative vehicle," except where endorsements or restrictions are involved. States would also have the option of providing the representative vehicle for any vehicle group. This flexibility could resolve problems associated with bringing unique vehicles, such as fire trucks and specialized auto transporters, to the skills test location while allowing States to require testing with such vehicles if deemed appropriate. As specified in § 383.75, States also have the option of allowing other persons or employers to administer the skills tests.

Section 383.93 Endorsements.

The endorsements to the CDL included in the final rule are designed to ensure that the operators of CMVs with specialized handling characteristics possess specialized knowledge and skills related to those vehicles. Drivers of such equipment must demonstrate this knowledge and skills, in addition to the knowledge and skills required for the basic vehicle group. Endorsements

are required for (1) double/triple trailers, (2) passenger vehicles, (3) tank vehicles, and (4) vehicles that carry hazardous materials in quantities sufficient to be placarded. For the passenger endorsement, the driver must pass knowledge and skills tests. For the other endorsements, the driver will be required to pass a knowledge test only.

Accident analyses indicate that the driver's actions and reactions are causal factors in the majority of preventable accidents involving motor carriers. The operation of certain heavy trucks and buses also requires specific skills and knowledge unique to their configuration, and loading and handling characteristics. Of particular concern are vehicles that have increased articulation points, vehicles which carry cargoes that change the handling and operating characteristics of the vehicle, or vehicles which require unique knowledge to operate safely. Therefore, the FHWA requires that operators of such vehicles have knowledge about the safe operation of these vehicles in addition to the knowledge related to the vehicle groups.

Double/Triple Trailers. The relative incidence of accidents involving operation of doubles or triples compared to tractor-semitrailer operation continues to be subject to much debate and study. The results of these debates and research efforts yield no conclusive results; except that it is clear that there are differences in the operation of double or triple trailers compared to the operation of tractor-semitrailer. For example, off-tracking of "twins" at low speeds has been shown to be significantly less than that which occurs at low speeds for a tractor semitrailer. On the other hand, a vehicle with shorter wheelbases, such as those typically used with twins, may be more difficult to control when turns are entered at high speed.

Therefore, the final rule requires drivers who operate or expect to operate doubles or triples to have an endorsement to their CDL in order to operate those vehicles.

The double/triple endorsement will require a knowledge test only. Skills testing was not proposed in the NPRM although comment was specifically sought on whether such tests should be required. Those who commented suggested that skills testing for doubles and triples would not be so different in content from that applicable to the combination vehicle group as a whole as to justify a separate behind-the-wheel examination. It should also be noted that § 391.31 of the FMCSRs already requires an employer to assure that a

driver demonstrates skills related to operating the vehicle that the carrier intends to assign him/her. Since most double/triple operations are interstate and since nearly all the States have adopted the FMCSRs for intrastate use or are in the process of adopting them, skills testing for double/triple operators is largely already being done by employers. If additional skills testing methods, specific to doubles and triples, should be developed by the Essex Corporation under the CDL grant to the State of Nebraska, or by other research, the FHWA would consider whether the tests required under § 391.31 and/or this part should be changed.

Passenger vehicles. Because the requirements for carrying passengers are different from those of other operations, and because the safety systems of buses are different from those of other CMVs, the FHWA has established a passenger endorsement. This endorsement will require a specialized knowledge test and a skills test taken in a vehicle that is representative of the applicant's actual or intended vehicle group. Tractor-trailer-type buses will fall into Group A, while flexible buses will be considered "straight vehicles" in Group B, as shown in Figure 1.

The operator of a passenger vehicle will be required to take the skills test in a "passenger" vehicle representative of the vehicle group (A, B, or C) for which he/she is applying. The holder of the passenger endorsement would be allowed to operate the nonpassenger vehicles in his/her vehicle group. However, the holder of a CDL *without* the passenger endorsement could not operate a passenger vehicle without taking the appropriate knowledge and skills tests.

The shifting of the passenger vehicle from a vehicle group, as contained in the NPRM, to an endorsement has a number of advantages. First, it allows the basic vehicle grouping to follow the A, B, C grouping recommended by the AAMVA and a majority of States. Second, it retains the distinction between passenger and nonpassenger vehicle operations. Furthermore, the use of passenger endorsements to a three-vehicle-group basic license requires the driver of a large passenger vehicle to be tested in a large vehicle, and allows a small passenger vehicle driver to be tested in a small passenger vehicle. Such a distinction was made in the material submitted to the docket by the Essex Corporation and is similar to the Canadian classification system which separates large and small passenger vehicles. The distinction among

passenger vehicle sizes should also benefit drivers who may have access only to certain types of vehicles. The FHWA believes that the endorsement is an improvement over the one "bus" class proposed in the NPRM for these reasons.

Tank vehicles. The FHWA recognizes that tank vehicle operations present special concerns. For example, in 1986, there were 818 accidents reported to the FHWA involving tank vehicles transporting hazardous materials resulting in 136 fatalities (from all causes), 761 injuries, and over \$17 million in property damage. In the same year there were 1,276 accidents reported by tank vehicle carriers or nonhazardous materials, resulting in 142 fatalities, 1,177 injuries and over \$17 million property damage. The most important operating difference between driving a tank vehicle and a standard dry freight truck is liquid product surge which may be the most significant condition that a tank vehicle driver must be able to mitigate. Other factors that may threaten vehicle stability, therefore presenting a safety risk, include: sloshing liquids in various tank vehicle designs; various loading conditions; and the impact of liquids on driving maneuvers such as braking, backing, turning, and combined braking/steering maneuvers. It is important that the drivers of these vehicles be given special emphasis during the licensing process, and FHWA's standard includes a requirement that drivers of tank vehicles have an endorsement.

As a requirement for the tank vehicle endorsement, the NPRM proposed a knowledge test and a skills test in a half-filled vehicle. The majority of the respondents to this topic opposed the skills test because it would not simulate typical tank vehicle operations, because test conditions would vary significantly among vehicle and loading types, and because such a test could depend on the deliberate creation and successful mitigation of an inherently unsafe situation. Typical of these comments was that of the National Tank Truck Carriers, Inc.:

* * * For an applicant to meet the objective of the proposal (i.e., recognize the dynamics of shifting cargo and their relationship to vehicle stability), he/she would have to operate the test vehicle in such a manner as to approach the threshold of an overturn or jackknife. It is reasonable to assume that some applicants will cross that threshold, thus the potential for compromising the safety of both the applicant and the examiner is evident * * * [furthermore] the vehicle dynamics of different types of trailers may vary considerably and never replicate the actual

type of tank operated by a (potential) employer.

Furthermore, according to the National Private Trucking Association,

The load conditions which FHWA proposes to simulate would not be typical of what drivers experience. Indeed, in the vast majority of situations, tank trucks are operated either full or empty, and companies seek to avoid as much as possible having to operate less-than-full, if for no other reason than it simply is not economical * * *

The FHWA has embodied all these concerns in the final rule, which eliminates the tank vehicle skills test from the minimum standards. The tank vehicle knowledge examination would, however, test applicants' understanding of the causes, prevention, and effects of cargo surge, and related topics.

Just as in the case of double/triple trailers, employers of tank vehicle drivers are required (in § 391.31 of the FMCRs for interstate commerce, and by many States to assure that drivers demonstrate skills related to operating the vehicle that the carrier intends to assign him/her. As in the case of the doubles/triples endorsement, the FHWA intends to monitor the skills qualifications for tank vehicle operators. If additional appropriate testing methods are developed by the Essex Corporation or other research, the FHWA will consider whether the tests required under § 391.31 should be changed.

Hazardous Materials. Section 12005(a)(5) of the Act requires that drivers of vehicles that carry hazardous materials demonstrate a knowledge of hazardous materials regulations and emergency procedures. The FHWA has implemented this provision of the Act by including a special hazardous materials endorsement based on a knowledge test, in the standard. Also drivers of tank vehicles transporting hazardous materials would obtain an endorsement both for tank vehicles and hazardous materials.

Section 383.95 Air brake restriction.

The FHWA's data on equipment-caused accidents consistently show brake defects as the most frequently reported reason for such accidents. The NPRM treated air brake knowledge as an integral part of Group A "Combination Vehicles" (hence, requiring no endorsement), and as an endorsement to all other groups. However, many respondents suggested that the endorsement be eliminated and replaced with a restriction.

Information was also presented to the docket indicating that the vast majority of straight vehicles above 26,001 pounds

are manufactured with air brakes. While most of the vehicles below 26,001 pounds do not have air brakes, the only such vehicles specifically covered by this rule are placarded hazardous material laden vehicles and small buses.

In conformance with the comments to the docket, the final rule includes knowledge and skills related to air brakes as part of the basic requirements for all vehicle groups since the majority of CMVs subject to this rule are so equipped. An applicant who either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, will only (if found otherwise fully qualified by the State) be eligible to receive a CDL that must contain an air brake restriction prohibiting him/her from operating any CMV equipped with air brakes. The restriction is the approach now used by virtually all States to limit drivers to specific vehicle or operating conditions. A State may also impose more stringent standards, such as requiring all its CDL applicants to demonstrate knowledge and/or skills in the use of air brakes.

To avoid the restriction, the skills test must be performed in a vehicle equipped with an air brake system, or with a hybrid system containing air brake components. By the same token, the restriction shall apply to all vehicles equipped with air brakes, or with hybrid systems.

This approach will promote administrative uniformity across all vehicle groups, because the States have mechanisms in place to deal with restrictions. There will also be fewer restrictions under the final rule provisions than there would have been endorsements since the majority of CMVs are air brake equipped.

Subpart G—Required Driver Knowledge and Skills

This section describes the knowledge and skills which CMV operators would be required to have and demonstrate for each vehicle group and endorsement. Information about these skills and knowledge areas would be included in drivers' manuals available to driver applicants. The FHWA does not expect that each knowledge test given to each CDL applicant would cover every specific item of required knowledge. Rather, the tests would be a representative sampling designed to ensure that the applicant has sufficient breadth and depth of knowledge to operate his/her vehicle safely. States may also require knowledge of and include questions related to any unique

or special traffic laws and regulations within their jurisdictions. A sample of the more specific items on which a State may test to ensure the applicant's knowledge and skills in each general area is included in the appendix to Subpart G.

Section 383.111 Required knowledge.

A primary cause of accidents is improper vehicle control in adverse environmental conditions and/or emergency traffic situations. More than 20 percent of the preventable accidents involving CMVs are attributable to this cause. Other primary causes of accidents include: Following too closely; failure to maintain control, improper/erratic lane change; improper turning; starting and braking improperly; and failure to yield right-of-way. To ensure that all CMV drivers are at least aware of these dangers and the correct driving responses, an appropriate number of these areas must be covered in questions on the knowledge examinations. Several respondents to the docket, including the AAMVA and the States of California and New York, argued that the knowledge areas included in the NPRM were too rigidly prescribed. Instead, these respondents argued, the FHWA should list general knowledge areas, and the States should have the flexibility to determine specific subtopics for emphasis. In an effort to preserve maximum leeway for the States while assuring minimum uniform Federal standards in keeping with the Act, the FHWA has revised the listing of required knowledge areas to incorporate AAMVA's suggested approach. Thus, the final rule includes general areas which must be included on the tests.

Safe Operations Regulations. Section 12005(a)(4)(A) of the Act requires that tests ensure that drivers have working knowledge of regulations pertaining to safe operation of commercial vehicles issued under Title 49, CFR. To meet this requirement, the final rule specifies that applicants shall be provided with information about the regulations contained in Parts 391 through 397 and shall be tested on this information. This information is limited to that which a driver must have for safe operation of a CMV. The driver is not expected to have knowledge of subjects, such as vehicle mechanics, which go beyond the scope of the information necessary for safe operation of his/her CMV.

Commercial Motor Vehicle Safety Systems. Section 12005(a)(4)(B) requires that drivers have a working knowledge of the proper use of the safety systems of commercial vehicles. As promulgated in the final rule, drivers must have a "working knowledge" of such items as

proper use of lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, vehicle operation characteristics, diagnosing malfunctions, and proper use of these safety systems during emergencies.

Safe Vehicle Control. Section 12005(a)(1) requires that each CMV operator take written knowledge tests pertaining to safe vehicle control. The FHWA has determined that a CMV operator should have knowledge of the procedures used to safely operate the vehicles under various traffic and road conditions, and under various weather and lighting conditions.

Relationship of Cargo to Vehicle Control. The FHWA is also requiring that drivers have general knowledge about cargo placement, balance, securement and its relationship to safe vehicle operations for the particular vehicle group.

Vehicle Inspections. Pre-trip inspections as well as periodic inspection and repair are important actions which help prevent breakdowns and improve safety. Therefore, the final rule includes a requirement that CMV drivers must know and understand the various inspection procedures.

Hazardous Materials Knowledge. This category of knowledge will involve basic information regarding hazardous materials, in order to assure that every CMV operator can at least identify a hazardous cargo and the implications thereof. For drivers actually transporting placarded hazardous materials loads, the essential facts on the basic knowledge test must be supplemented by a special knowledge test for the hazardous materials endorsement.

Air Brake Knowledge. As discussed in the analysis of § 383.93 (Endorsements), knowledge of air brake systems now forms and integral part of the knowledge test for all vehicle groups.

Combination Vehicle Knowledge. The FHWA requires that an operator of a motor vehicle which falls into the Combination Vehicle classification (i.e., Group A) be tested on additional information as part of the basic knowledge requirements. As delineated in § 383.111, this information address coupling and uncoupling, as well as vehicle inspection procedures that are unique to Group A.

Section 383.113 Required driving skills tests.

Section 12005(a) of the Act requires that each driver applicant demonstrate his/her ability to safely operate a vehicle that is representative of the class or type of vehicle he/she operates

or expects to operate. Each driver applicant will be required to demonstrate the basic skills included in this final rule; the State may also test any other skills it deems appropriate and necessary. The skills tests will be conducted entirely in actual road conditions or in a combination of road and off-street conditions. Thus, the FHWA is *not* requiring States to include off-street testing as part of the CDL program. The decision as to where the skills test will be conducted will remain at the discretion of the States, as long as an in-traffic component is included. Wherever the skills test is conducted, an applicant for a CDL will have to demonstrate that he/she is capable of operating the CMV safely.

Applicants for each vehicle group would be required to successfully demonstrate the basic vehicle control skills, safe driving skills, and air brake skills (except for CDLs which restrict air brake use). The specific skills which would be required are contained in § 383.113 (a), (b), and (c).

With respect to safe driving skills, most of the respondents supported the proposal with some minor wording revisions to allow easier examiner interpretation. The FHWA incorporated these suggestions into the final rule. In one case, however, the AAMVA suggested a requirement that applicants "must communicate presence by properly using horns or lights." Since the test is to be taken primarily or exclusively in traffic, and since such required "communications" may be unnecessary and distracting to motorists, the FHWA has omitted this suggested addition.

In the NPRM, the FHWA elicited opinions on simulator technology in connection with the skills tests. The consensus of responses was that, as regards CMV operations, simulator technology has not yet advanced to a satisfactory stage of development. So as not to preclude further advances in this field, the final rule allows States to use simulator technology as part of the skills testing program, but *not* as a substitute for the required test in traffic.

Section 383.115-121 Endorsement tests.

The FHWA has determined that an operator of special types of CMVs shall obtain an endorsement to his/her CDL because of the specialized knowledge and skills needed, in addition to the knowledge and skills contained in §§ 383.111 and 383.113. Endorsements to the CDL will be prerequisite to the operation of vehicles equipped with double/triple trailers; passenger vehicles; tank vehicles; or vehicles involved in transportation of hazardous

materials. Each of the endorsements will require additional knowledge tests. The passenger endorsement will also require each driver to take and pass a skills test in a representative passenger vehicle. Information on these knowledge areas and skills will be included in the driver's manuals. The FHWA's specific minimum standards for each endorsement are contained in Subpart G and are summarized below:

Section 383.115 Double/triple trailers endorsement.

Increased length, larger freight capacity and greater number of articulation points lead to differences in handling and performance characteristics of double/triple trailers. Each applicant will undergo a knowledge test covering unit assembly and hookup, trailer placement, handling and stability characteristics, and potential problems of such vehicles in traffic. Skills test(s) are not proposed for this endorsement because of the administrative difficulties cited in the commentary on § 383.93, because the majority of double/triple trailer drivers already undergo road tests administered by employers under § 391.31, and because of a lack of evidence as to the specific skills on which a driver can be tested which would be different from the skills required in the basic test(s).

Section 383.117 Passenger endorsement.

To obtain the passenger endorsement, an applicant must satisfy both knowledge and skills test requirements. In addition to the basic knowledge test for the appropriate vehicle group, passenger operators must undergo a knowledge test pertaining to the operation of passenger transport vehicles and proper emergency and braking procedures. Applicants for the passenger endorsement need take only one skills test. The vehicle used in that test must be a bus or other passenger vehicle satisfying the requirements of the specific vehicle group that the applicant operates or expects to operate.

Section 383.119 Tank vehicle endorsement.

Each applicant for a tank vehicle endorsement must demonstrate his/her knowledge in areas such as vehicle operations under different loadings, product density, tank vehicle type and construction. The driver must also have knowledge of and be tested on the causes and prevention of cargo surge, and the likelihood of rollover due to improper control of cargo surge.

The NPRM proposed that each driver who wishes to obtain a tank vehicle

endorsement to his/her CDL would also demonstrate his/her skills by taking a skills test in a partially loaded tank vehicle (between 30 and 60 percent full in each compartment). For reasons addressed in the commentary to § 383.93, the FHWA has eliminated this requirement in the final rule; nevertheless, for employees subject to the FMCSRs and analogous State regulations, a test in a tank vehicle remains an employer responsibility.

Section 383.121 Hazardous materials endorsement.

Section 12005(a)(5) of the Act requires that an individual who will operate vehicles carrying hazardous materials shall be qualified to operate CMV in accordance with all regulations pertaining to the transportation of hazardous materials issued under the Hazardous Materials Transportation Act. The FHWA does not believe that an applicant needs to know all parts of these regulations. For drivers of vehicles which transport non-placarded quantities of hazardous materials, the FHWA believes the questions included in the basic knowledge test are sufficient. Drivers of vehicles carrying hazardous materials in placarded quantities require additional knowledge. In either case, only those sections of the hazardous materials regulations that are essential to a driver's safe operation of his/her vehicle are required to be included in the knowledge tests.

The applicant will demonstrate his/her knowledge of these areas to obtain an endorsement to his/her CDL as follows:

(a) *Hazardous material regulations*—will include the Hazardous Material Table, shipping paper requirements, hazardous material packaging, marking, labeling, and placarding requirements;

(b) *Hazardous material handling*—will include the different procedures to be utilized for different kinds of hazardous materials, general loading and unloading of materials requirements, cargo segregation, and regulations regarding the routing of materials (in tunnels, on highways etc.), attendance of vehicles, parking, fueling, and vehicle repair;

(c) *Operation of emergency equipment*—will include knowledge of when and how such equipment is to be used and any other precautions that the vehicle operator must implement to protect the public; and

(d) *Emergency response procedures*—will include general knowledge of appropriate and necessary actions for all types of hazardous materials. The preamble to the NPRM had suggested that this area of the hazardous materials

endorsement test should include specific knowledge for any type of freight (the applicant) expects to transport. However, such an implied standard would have required a customized test for each applicant, and would have implied frequent retesting as operators changed jobs or cargo types. The FHWA has, therefore, removed any mention of driver-specific commodity knowledge as part of this endorsement.

Subpart H—Tests

To ensure that all drivers have the knowledge and skills to safely operate a CMV on the public roadways, every CDL applicant must pass tests which demonstrate the person's knowledge or skills described in Subpart G. The FHWA intends that the tests shall have similar substantive content, and that test administration and scoring procedures shall meet similar performance standards, so as to establish valid and nondiscriminatory testing of CMV operators that is reasonably uniform in substantive results. This section contains the test administration methods and standards for minimum passing scores which the FHWA has adopted for the knowledge and skills tests.

Section 383.131 Procedures.

Because licensing examinations within a State are given to different applicants, at different times, in different locations, and by different examiners, it is critical to minimize any impact of these differences. Therefore, a State's standard test procedures and methods should be similarly applied throughout the State. The CDL program will include procedural information and directions for the test applicant and for the test examiner. For the knowledge and skills tests, the directions given to the driver applicant will cover the purpose of the test, how to choose a response, how to make a response, any time limits, and any other special procedures determined by the State. A State will be free to select a testing format or formats (e.g., paper, oral or automated equipment for knowledge tests) to meet the State's particular needs. Directions for taking knowledge tests will differ depending on the particular testing format(s) used by the States (e.g., written, oral, or automated). All information provided to the applicant will need to be at or below the six-grade reading level. The FHWA understands that this level of reading competency will be sufficient to fully test a driver's knowledge without discriminating based on literacy and

believes that the problems, expressed by some commenters, regarding "illiterate drivers" can be resolved by means of State adoption of several knowledge testing formats. To that end, the FHWA is working with the AAMVA to develop information and testing procedures which are geared to drivers with lower than sixth-grade reading levels.

The information manual(s) furnished by the States to applicants will include the substance of the knowledge and skills for which outlines are provided in Subpart G of the final rule.

Directions for the examiner will include such items as the information the examiner must give to the applicant, information about how to conduct the tests, and how to score the tests. Most respondents to the NPRM agreed with this section of the proposal or made no comment. One respondent did object to the requirement for manuals, evidently as a reaction to the length of the draft Essex Corporation materials. The FHWA believes that the requirements of this section preserve a high degree of flexibility for the States in terms of the contents, structure, and length of the manuals; furthermore, the final rule does not mandate State acceptance of the Essex materials. Because of this flexibility, and because the vast majority of respondents raised no objection to this section, the FHWA has preserved it essentially intact as proposed.

Section 383.133 Test methods.

The States will construct and offer tests corresponding to the vehicle groups and endorsements in Subpart F, and covering general areas described in Subpart G.

The States will be required to establish specific testing and scoring procedures and the associated administrative procedures that meet the standards. The knowledge and skills tests will uniformly assess the performance of applicants regardless of the location of the test.

To assure that the knowledge and skill tests can accurately determine the proficiency of CDL license applicants, the tests should be reliable. In its response to the NPRM, the Essex Corporation (Essex) provided the following useful definition of reliability:

The reliability of a test * * * is simply an index of the extent to which a person with a given level of knowledge or skill would make essentially the same score in taking the same test a second time, without any intervening study or forgetting. Or, it sometimes takes the form of a correlation of scores made by the same person on two alternative forms of a test, each of which purports to measure the same knowledge or skills. In the case of skills tests, reliability can [also] refer to the degree

of agreement between 2 independent examiners concerning the level of skill demonstrated by an examinee on a test of performance.

The mathematical index of reliability (correlation coefficient) can range from .00 which means total lack of reliability to 1.00 which means perfect reliability. In practice, no test is perfectly reliable * * * it is commonly accepted that written examinations should have reliabilities of about .80 or better * * *. [for skills tests] reliabilities as low as .70 may have to be accepted in their everyday practical application * * *. Generally speaking, the reliability of a test increases as the length of a test is increased.

The NPRM proposed that knowledge tests would have a minimum reliability coefficient of 0.90, and that skills tests would have a minimum interexaminer reliability of 0.80. The above comments by Essex, and comments by the States of Illinois and Montana, questioned the practicability of such high coefficients. "These requirements," Montana stated, "may exceed the abilities of many States at the outset of this program * * *." In addition, these specific reliability factors run directly counter to the wishes of the 10 respondent States which, in supporting Alternatives 1 or 3, placed a high priority on flexibility. Furthermore, the FHWA recognizes that several States already have in place testing programs that could serve as a strong basis for compliance with this final rule, but for which sophisticated statistical analyses and studies may not be available. Finally, the final rule does not require the States to adopt the Essex materials, which would in fact be the only source readily available to the States for scientifically determined reliability coefficients for CMV skills and knowledge tests. These Essex materials themselves are still in the developmental stage as of the writing of this final rule, so that their ultimate reliability results are not yet known.

To accord maximum flexibility to the States to modify their current examinations, to adopt the Essex materials, or to develop new tests as they see fit, the FHWA has omitted specific numerical reliability standards from the final rule. The rule still places heavy emphasis on the concept of reliability on both the knowledge and skills tests; for that reason, the minimum number of questions for each basic knowledge test has been retained. For the same reason, this section-by-section analysis presents desirable goals for reliability.

Each basic knowledge test must contain a minimum, exclusive of the air brake component, of 30 items covering all of the knowledge areas described in Subpart G for a given vehicle group. The

final rule, in response to numerous public comments, does not require a minimum number of questions on each endorsement knowledge test. However, each such test must be of a size sufficient to test a driver's grasp of the related knowledge in the manual. Each basic and endorsement knowledge test must, moreover, be reliable, to the extent required to assure that each applicant possesses the knowledge that the test is intended to cover. A desirable reliability coefficient would be the 0.80 mentioned by Essex.

A State would have flexibility to choose a specific method for giving the knowledge test as long as the tests meet the performance standards. For example, the knowledge tests could be administered by paper and pencil, orally, or given on automated equipment. States may also arrange for tests to be given with an oral interpreter as appropriate. (This would not relieve the interstate driver of the language requirements contained in § 391.11.)

Skill tests will have to have sufficient interexaminer reliability to ensure similarity of pass/fail rates on tests given by different examiners. As Essex points out, a practicable coefficient of interexaminer reliability of a State's examiners would be 0.70. Of course, a far more desirable goal would be the coefficient of 0.80 that has been established as a minimum in the *Torque* Tests developed by the National Highway Traffic Safety Administration (NHTSA), and the States are urged to strive to achieve that goal.

Specific methods for skill testing and scoring would be determined by each State. For example, the States may use a single score for a right hand turn starting with the initiation of the right turn signal and ending following the turn and cancellation of the turn signal, or they may use several scores for the turn comprised of the different performances involved in a right hand turn (initiates the turn signal, uses appropriate lanes, uses the right side mirror(s), blocks inside traffic, stays in roadway, cancels turn signal) or they may use some combination of the two approaches. The latter approach is a "disaggregate" or "elements" test approach which is used in the *Torque* tests.

The FHWA requires that the CDL examiners shall be qualified to administer the knowledge and skills tests. The FHWA expects that States will continue to ensure that their examiners have a high degree of ability, for example, by conducting rigorous training programs, by closely evaluating examiners' performance, and/or by requiring that they hold valid CDLs for

the classes of vehicles for which they give exams. States may also require examiners to pass endorsement tests identical to those given to CDL applicants. Although specific qualifications for examiners will remain a State prerogative, the final rule will influence State standards for examiners because achievement of the reliable examinations called for in this section will require not only good test design but also a high degree of examiner training and ability.

Section 383.135 Minimum passing scores.

For the knowledge tests, the driver applicant must correctly answer at least 80 percent of the questions to pass. For the skills tests, the applicant must successfully perform the skills identified in § 383.113 as being required for the standard tests. The State will define "successful performance" in the course of constructing its tests in keeping with §§ 383.131 and 383.133. To assure the required interexaminer reliability, the State's definition will have to be precise.

Section 383.135(d) specifies the procedure to be employed by the State in scoring the air brake components of the knowledge and skills tests (§ 383.133(i)) and issuing the air brake restriction (§ 383.95). If the applicant performs the skills test in a vehicle without air brakes, the air brake restriction will be indicated on his/her CDL, if it is issued. If the applicant fails the air brake component of the knowledge test, the air brake component would be removed from the test for scoring purposes, and the air brake restriction would be imposed. For example, if a State offers a 40-question basic knowledge test including 10 air brake questions, and the applicant scores less than 80 percent on the 10 air brake questions, then he/she can still obtain a CDL. He/she will, however, receive the air brake restriction. Implementing the wishes of most docket respondents, the changes discussed in this paragraph are necessary in order to convert the air brake endorsement in the NPRM into a restriction, while preserving the reliability of the basic knowledge and skills tests when taken by applicants who are not qualified in air brakes.

The State will automatically fail any driver applicant who does not obey traffic laws or causes an accident during the test. The State will determine the appropriate amount of time an applicant must wait in order to retake any test which he/she fails. The State would also determine the maximum number of times a person may take and fail any

test before he/she may be prohibited by the State from obtaining a CDL.

Subpart J—Commercial Driver's License Document

This section includes standards for CDLs that are required by section 12006 of the Act. Generally, these State-issued documents will be, to the maximum extent practicable, tamperproof, and will include information as described further below.

The FHWA included in Alternative 2 of the NPRM a sample set of uniform CDL document specifications which might be used by States. This sample set of specifications engendered misunderstandings on the part of the States and other commenters, many of whom interpreted it as a mandatory component of Alternative 2. A clear majority of the States responding to this issue wished to retain the freedom to determine the form of the CDL, with only minimum requirements in the final rule. Some nongovernmental parties expressed a preference for a uniform, Federally-mandated standard form. Because the States would be faced with the costs of creating a new form exclusively for CDL holders, the sample specification for the form of the CDL has been omitted from the final rule. Remaining in the final rule is a list of specific data items which the States must include on the CDL. These items are based on section 12006 of the Act.

Section 383.153 Information on the document and application.

Section 12006 of the Act delineates the information required to be included on all CDLs. Exhibit 3 compares the CDL contents as specified in the NPRM, and those contained in this final rule. In response to numerous comments, the FHWA has deleted the requirement for weight, eye color, and hair color, all of which can be changed by the applicant. However, States will be free to collect this information and submit it to the CDLIS.

EXHIBIT 3.—COMMERCIAL DRIVER'S LICENSE DOCUMENT

	Proposed in NPRM	Treatment in Final rule:	
		Required	Optional ¹
"Commercial Drivers License"	X		
"Commercial Drivers License" or "CDL"		X	
Full name	X	X	
Signature	X	X	
Mailing address	X	X	

EXHIBIT 3.—COMMERCIAL DRIVER'S LICENSE DOCUMENT—Continued

	Proposed in NPRM	Treatment in Final rule:	
		Required	Optional ¹
Information to identify:			
Date of birth	X	X	
Sex	X	X	
Weight	X		X
Height	X		X
Eye color	X	X	
Hair color	X		X
Color photograph	X	X	
Social security number	X	X	
State license number (if different from Social Security ²)		X	
Name of State	X	X	
Date of issuance	X	X	
Date of expiration	X	X	
Vehicle groups	X	X	
Endorsements	X	X	

¹ These items are ones that were proposed in the NPRM. However, in response to public comment the final rule will not list them as requirements. States will have the freedom to include other items not listed in the final rule.

² States will be required to collect the social security number and submit it to the CDLIS. However, they may choose not to show it on the license. In this case they will substitute a State produced license number on the license.

States will be required to collect the Social Security Number (SSN) and submit it to the CDLIS. They will also have to show the applicant's State license number on the CDL. If the State uses the SSN as the applicant's license number, the SSN must appear on the CDL. If, however, the State does not use the SSN as a license number, the State may choose to omit the SSN from the license document, but not the CDLIS. In addition to the identifiers listed in Exhibit 3, the final rule includes standard codes to be used for the vehicle groups and endorsements. The standard codes are intended to provide uniformity for enforcement purposes. While the FHWA proposal included some codes with double letters, many commenters suggested the use of single letter codes which would be more easily accommodated on the license document. The FHWA has therefore provided single letter codes which would eventually make the CMV driver documentation easily recognizable to enforcement officials. For example, a CDL with A-H would be recognized by enforcement officials across the country to mean the driver is authorized to drive a combination vehicle and has a hazardous materials endorsement.

A nonresident CDL must be clearly labeled as such, although the rule allows the States much latitude in the placement of the word "nonresident." Also, the rule provides for the air brake restriction, at the States' option.

Combined Endorsement Codes. The final rule provides an endorsement code, "X," for those drivers qualifying for both the hazardous materials and tank vehicle endorsements. This change is made in response to a number of States which expressed concern regarding the space limitations of the CDL and computer system needed to record endorsements. In addition, the rule allows States to develop additional combined endorsement codes provided that the codes are explained in the CDL itself.

Improved Identification Techniques. The FHWA and the docket respondents believe that there is room for improvement in assuring positive identification of CDL holders, but that present technologies are not yet cost-effective. For example, commenters believe that fingerprints, or more likely the thumbprint, cannot be placed on the license document because of space and readability after copying. While there was some interest in retaining prints on the application but not placing them on the license, many commenters believed that without digitizing or other special equipment prints are of little practical value.

Although the FHWA is aware of "state-of-the-art" technologies that may be available to help identify the driver, such as retinal imaging and digital dental records, their use is not required at this time as part of the standard because of concerns about their costs, benefits, and practicability. The FHWA and the States will explore these advanced technologies, as well as modern methods of encoding data such as magnetic strips. As technology evolves and better, more cost-effective identification means become available, States would be free to impose such methods. The FHWA believes that it would be premature to include them in this rulemaking.

Section 383.155 Tamperproofing requirements.

Section 12006 of the Act requires that the CDL document be tamperproof to the maximum extent practicable. A tamperproof license is one which is designed, manufactured and/or processed to protect against counterfeiting, forgery, and alteration, i.e., it would be beyond the capabilities of the general public to reproduce or change the document. All State licensing authorities will be required to use license materials and procedures to reasonably assure that their licenses are tamperproof. At a minimum, each State will continue to use the same tamperproof method it currently uses for noncommercial licenses. The FHWA has

provided the States flexibility to use current or future technologies to make the CDL tamperproof. As the technology is improved and new methods become cost-effective, the States will be free to improve tamperproof methods.

Regulatory Impact

The FHWA has determined that this action does not constitute a major rule under Executive Order 12291. The final rule is not expected to result in an annual effect on the economy of \$100 million, or more, or lead to a major increase in costs or prices, or have significant adverse effects on the United States economy. However, because of the public interest in the issue of commercial motor vehicle safety and the expected benefit in transportation, this rule is considered significant under the regulatory policies and procedures of the DOT. For this reason and pursuant to Executive Order 12498, this rulemaking action has been included on the Regulatory Program for significant rulemaking actions.

The economic impacts of this rulemaking that will occur are primarily mandated by the statutory provisions themselves. Since an analysis of impacts, including economic factors, involves consideration of related motor vehicle safety rulemaking proposals, an overall regulatory evaluation has been prepared for the various rulemaking actions that will be issued to implement the Act. This evaluation, which addresses some of the provisions contained in the final rule issued on June 1, 1987, and this final rule, has been placed in the public docket and is available for inspection in the Headquarters office of the FHWA, 400 Seventh Street SW., Washington, DC 20590. A regulatory evaluation addressing the specific impacts associated with this final rule has also been prepared and placed in the docket.

A significant part of the motor carrier industry and other employers covered by the Act consists of small firms, from one-person, one-truck operations of some owner-operators, to the thousands of small fleet operators throughout the country. For this reason, the benefit and cost considerations described in the preliminary regulatory evaluation/initial regulatory flexibility analysis as applicable to employers and the motor carrier industry in general, are equally applicable to the small entity component of the industry. Small entities have been represented at public meetings held to discuss the Act and small entities have had the opportunity to submit comments to the public docket established in conjunction with the NPRM.

Moreover, the requirement that current drivers obtain a CDL will have only a slight effect on small entities. As the section-by-section analysis explains, the drivers will be given all needed materials to study for the tests. Current drivers may be able to substitute specific qualifications (a good driving record, plus experience or successful completion of an acceptable prior skills examination) for the required CDL driving test. The April 1, 1992, deadline provides ample opportunity for employees of small entities to comply with this regulation. In terms of efficiency and safety of operations, and the potential reduction of accidents and attendant liabilities, small business will materially benefit from the standards and controls imposed by the CDL program on holders of CDLs. For example, small entities cannot afford checks of driver's licenses; the CDLIS, and the accumulation of each CMV operator's violations on a single record, will produce better drivers for small business.

As the preceding facts demonstrate, the FHWA is fully committed to doing all that it can to ensure that no undue burdens are placed on small entities as a result of this proposal. Conversely, the CDL program will have distinct advantages to small entities.

Paperwork

While developing the testing and licensing standards, the FHWA recognized that they could impose a major paperwork burden on States and drivers. The FHWA attempted, to the extent practical, to design the final rule to be compatible with testing and licensing procedures now used by the States and to minimize the burden increase. The FHWA, however, believes that an increase in these burdens will be necessary to accomplish the goals and objectives of the Act. In the NPRM, the FHWA invited comments and creative approaches for reducing the burden without compromising safety. Based on these comments, the final rule contains several improvements—foremost among them, the elimination of the CDC, and of the 50-State pre-licensing record check—that will reduce the paperwork burden on the States from the levels implied by the NPRM. While the flexibilities inherent in the final rule will enable the States further to explore options for simplifying the procedures, minimizing the potential expense of licensing CMV drivers, and developing innovative testing techniques, there will remain an irreducible volume of paperwork associated with the CDL program.

Federalism Impact

The FHWA has carefully reviewed the proposed testing and licensing standards in light of the purposes of the Act and the President's Executive Order on Federalism (Executive Order 12612, October 26, 1987). In enacting the Commercial Motor Vehicle Safety Act of 1986, the Congress found that it is in the public interest to enhance commercial motor vehicle safety and that minimum standards for States to use to test and license CMV operators would help ensure that such drivers have the knowledge and skills needed to safely operate their vehicles. Congress thus identified commercial motor vehicle safety as a matter of national importance and included reciprocity requirements as part of the mandates in the Act.

In his Executive Order on Federalism, the President ordered Executive Departments and agencies to be guided by certain fundamental federalism principles in formulating and implementing policies that have federalism implications. These policies have been taken fully into account in the development of this regulation, as the following paragraphs indicate.

The Act provides the Secretary with clear statutory authority to regulate CMV operators as defined in the Act. This means the operation of CMVs in interstate commerce as well as intrastate commerce. Thus, the FHWA recognizes that its minimum testing and licensing standards for CMV operators have Federalism implications.

The Act mandates minimum testing and licensing standards. This means that States may continue to adopt and enforce additional testing and licensing requirements for CMV operators within their State bounds. Also, States will continue to have sole discretion as to whether or not to license any CMV operator and what specific procedures, tests and fees are applicable.

The Federal testing and licensing standards establish minimum safety regulations which must be followed by the States and which may be supplemented by the States. The statutory basis for Federal regulations of CMV operators has been outlined above. Several issues addressed in this final rule, however, involve policies that have federalism implications. These issues have been addressed separately above. (See specifically the discussion of alternatives, substitute for skills tests and third party testing.) This final rule limits the policymaking discretion of the States only in narrow ways, and does so only to achieve the national purposes of the Act. Accordingly, it is certified that

the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and accord fully with the letter and spirit of the President's Federalism initiative.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 383

Commercial driver's license documents, Commercial motor vehicles, Highways and roads, Motor carriers licensing and testing procedures, Motor vehicle safety.

(Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.)

Issued on: July 15, 1988.

Robert E. Farris,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA hereby amends Title 49, Code of Federal Regulations, Chapter III, Subchapter B, as set forth below.

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

1. The authority citation for 49 CFR Part 383 continues to read as follows:

Authority: Title XII of Pub. L. 99-570, 100 Stat. 3207-170; 49 U.S.C. 3102; 49 U.S.C. App. 2505; 49 CFR 1.48.

2. The table of sections to Part 383 is amended by adding § 383.23 and Subparts E through J to read as follows:

Subpart B—License Requirements

Sec.

* * * * *

383.23 Commercial driver's license.

* * * * *

Subpart E—Testing and Licensing Procedures

383.71 Driver application procedures.

383.73 State procedures.

383.75 Third party testing.

383.77 Substitute for driving skills tests.

Subpart F—Vehicle Groups and Endorsements

383.91 Commercial motor vehicle groups.

383.93 Endorsements.

383.95 Air brake restriction.

Subpart G—Required Knowledge and Skills

383.110 General requirement.

383.111 Required knowledge.

Sec.

383.113 Required skills.

383.115 Requirements for double/triple trailer endorsement.

383.117 Requirements for passenger endorsement.

383.119 Requirements for tank vehicle endorsement.

383.121 Requirements for hazardous materials endorsement.

Appendix to Subpart G—Required Knowledge and Skills: Sample Guidelines

Subpart H—Tests

383.131 Test procedures.

383.133 Testing methods.

383.135 Minimum passing scores.

Subpart I—[Reserved]

Subpart J—Commercial Driver's License Document

383.151 General.

383.153 Information on the document and application.

383.155 Tamperproofing requirements.

3. Section 383.1 is amended by removing the word "and" from the end of paragraph (b)(4), substituting a semicolon for the period at the end of paragraph (b)(5) and adding paragraphs (b)(6) through (b)(11) to read as follows:

§ 383.1 Purpose and scope.

(b) * * * * *

(6) Establishes testing and licensing requirements for commercial motor vehicle operators;

(7) Requires States to give knowledge and skills tests to all qualified applicants for commercial drivers' licenses which meet the Federal standard;

(8) Sets forth commercial motor vehicle groups and endorsements;

(9) Sets forth the knowledge and skills test requirements for the motor vehicle groups and endorsements.

(10) Sets forth the Federal standards for procedures, methods, and minimum passing scores for States and others to use in testing and licensing commercial motor vehicle operators; and

(11) Establishes requirements for the State issued commercial license documentation.

4. Section 383.5 is amended by adding ten definitions and revising two definitions entitled "Commercial driver's license" and "Commercial motor vehicle," placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

"Commercial driver's license (CDL)" means a license issued by a State or other jurisdiction, in accordance with the standards contained in 49 CFR Part 383, to an individual which authorizes

the individual to operate a class of a commercial motor vehicle.

"Commercial driver's license information system (CDLIS)" means the CDLIS established by FHWA pursuant to section 12007 of the Commercial Motor Vehicle Safety Act of 1986.

"Commercial motor vehicle (CMV)" means a motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle—

(a) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

(b) Has a gross vehicle weight rating of 26,001 or more pounds; or

(c) Is designed to transport 16 or more passengers, including the driver; or

(d) Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

"Driver applicant" means an individual who applies to a State to obtain, transfer, upgrade, or renew a CDL.

"Endorsement" means an authorization to an individual's CDL required to permit the individual to operate certain types of commercial motor vehicles.

"Foreign" means outside the fifty United States and the District of Columbia.

"Nonresident CDL" means a CDL issued by a State to an individual domiciled in a foreign country.

"Representative vehicle" means a motor vehicle which represents the type of motor vehicle that a driver applicant operates or expects to operate.

"State of domicile" means that State where a person has his/her true, fixed, and permanent home and principal residence and to which he/she has the intention of returning whenever he/she is absent.

"Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or the chassis. Such vehicles include, but are not

limited to, cargo tanks and portable tanks, as defined in Part 171 of this title. However, this definition does not include portable tanks having a rated capacity under 1,000 gallons.

"Vehicle" means a motor vehicle unless otherwise specified.

"Vehicle group" means a class or type of vehicle with certain operating characteristics.

5. Part 383, Subpart B is revised by adding a new § 383.23 to read as follows:

Subpart B—License Requirements

§ 383.23 Commercial driver's license.

(a) *General rule.* (1) Effective April 1, 1992, no person shall operate a commercial motor vehicle unless such person has taken and passed written and driving tests which meet the Federal standards contained in Subparts F, G, and H of this part for the commercial motor vehicle that person operates or expects to operate.

(2) Effective April 1, 1992, except as provided in paragraph (b) of this section, no person shall operate a commercial motor vehicle unless such person possesses a CDL which meets the standards contained in Subpart J of this part, issued by his/her State or jurisdiction of domicile.

(b) *Exception.* If a commercial motor vehicle operator is domiciled in a foreign jurisdiction which, as determined by the Administrator, does not test drivers and issue a CDL in accordance with, or similar to, the standards contained in Subparts F, G, and H of this part, the person shall obtain a Nonresident CDL from a State which does comply with the testing and licensing standards contained in such Subparts F, G, and H.

(c) *Learner's permit.* State learner's permits, issued for limited time periods according to State requirements, shall be considered valid commercial drivers' licenses for purposes of behind-the-wheel training on public roads or highways, if the following minimum conditions are met:

(1) The learner's permit holder is at all time accompanied by the holder of a valid CDL; and

(2) He/she either holds a valid automobile driver's license, or has passed such vision, sign/symbol, and knowledge tests as the State issuing the learner's permit ordinarily administers to applicants for automobile drivers' licenses.

6. Part 383 is amended by adding Subparts E, F, G, H, I, and J to read as follows:

Subpart E—Testing and Licensing Procedures

§ 383.71 Driver application procedures.

(a) *Initial Commercial Driver's License.*—Prior to obtaining a CDL, a person must meet the following requirements:

(1) A person who operates or expects to operate in interstate or foreign commerce, or is otherwise subject to Part 391 of this title, shall certify that he/she meets the qualification requirements contained in Part 391 of this title. A person who operates or expects to operate entirely in intrastate commerce and is not subject to Part 391, is subject to State driver qualification requirements and must certify that he/she is not subject to Part 391;

(2) Pass a knowledge test in accordance with the standards contained in Subparts G and H of this part for the type of motor vehicle the person operates or expects to operate;

(3) Pass a driving or skills test in accordance with the standards contained in Subparts G and H of this part taken in a motor vehicle which is representative of the type of motor vehicle the person operates or expects to operate; or provide evidence that he/she has successfully passed a driving test administered by an authorized third party;

(4) Certify that the motor vehicle in which the person takes the driving skills test is representative of the type of motor vehicle that person operates or expects to operate;

(5) Provide to the State of issuance the information required to be included on the CDL as specified in Subpart J of this part;

(6) Certify that he/she is not subject to any disqualification, suspension, revocation, or cancellation as contained in § 383.51 and that he/she does not have a driver's license from more than one State or jurisdiction.

(7) The applicant shall surrender his/her non-CDL driver's licenses to the State.

(b) *License transfer.* When applying to transfer a CDL from one State of domicile to a new State domicile, an applicant shall apply for a CDL from the new State of domicile within no more than 30 days after establishing his/her new domicile. The applicant shall:

(1) Provide to the new State of domicile the certifications contained in § 383.71(a) (1) and (6);

(2) Provide to the new State of domicile updated information as specified in Subpart J of this part;

(3) If the applicant wishes to retain a hazardous materials endorsement, comply with State requirements as specified in § 383.73(b)(4); and

(4) Surrender the CDL from the old State of domicile to the new State of domicile.

(c) *License renewal.* When applying for a renewal of a CDL, all applicants shall:

(1) Provide certification contained in § 383.71(a)(1);

(2) Provide update information as specified in Subpart J of this part; and

(3) If a person wishes to retain a hazardous materials endorsement, pass the test for such endorsement as specified in § 383.121.

(d) *License upgrades.* When applying to operate a commercial motor vehicle in a different group or endorsement from the group or endorsement in which the applicant already has a CDL, all persons shall:

(1) Provide the necessary certifications as specified in § 383.71(a)(1) and (4); and

(2) Pass all tests specified in § 383.71(a)(2) and (3) for the new vehicle group and/or different endorsements.

(e) *Nonresident CDL.* When an applicant is domiciled in a foreign jurisdiction, as defined in § 383.5, where the commercial motor vehicle operator testing and licensing standards do not meet the standards contained in Subparts G and H of this part, as determined by the Administrator, such applicant shall obtain a Nonresident CDL from a State which meets such standards. Such applicant shall:

(1) Complete the requirements to obtain a CDL contained in § 383.71(a); and

(2) After receipt of the CDL, and for as long as it is valid, notify the State which issued the CDL of any adverse action taken by any jurisdiction or governmental agency, foreign or domestic, against his/her driving privileges. Such adverse actions would include but not be limited to license suspension or revocation, or disqualification from operating a commercial motor vehicle for the convictions described in § 383.51. Notifications shall be made within the time periods specified in § 383.33.

(f) If a State uses the alternative method described in § 383.73(i) to achieve the objectives of the certifications in § 383.71(a), then the driver applicant shall satisfy such alternative methods as are applicable to him/her with respect to initial licensing,

license transfer, license renewal, and license upgrades.

§ 383.73 State procedures.

(a) Initial licensure. Prior to issuing a CDL to a person, a State shall:

(1) Require the driver applicant to certify, pass tests, and provide information as described in §§ 383.71(a)(1) through (6);

(2) Check that the vehicle in which the applicant takes his/her test is representative of the vehicle group the applicant has certified that he/she operates or expects to operate;

(3) Initiate and complete a check of the applicant's driving record to ensure that the person is not subject to any disqualification, suspensions, revocations, or cancellations as contained in § 383.51 and that the person does not have a driver's license from more than one State. The record check shall include but not be limited to the following:

(i) A check of the applicant's driving record as maintained by his/her current State of licensure, if any;

(ii) A check with the CDLIS to determine whether the driver applicant already has a CDL, whether the applicant's license has been suspended, revoked, or canceled, or if the applicant has been disqualified from operating a commercial motor vehicle; and

(iii) A check with the National Driver Register (NDR), when it is determined to be operational by the National Highway Traffic Safety Administrator, to determine whether the driver applicant has:

(A) Been disqualified from operating a motor vehicle (other than a commercial motor vehicle);

(B) Had a license (other than CDL) suspended, revoked, or canceled for cause in the 3-year period ending on the date of application; or

(C) Been convicted of any offenses contained in section 205(a)(3) of the National Drivers Register Act of 1982 (23 U.S.C. 401 note); and

(4) Require the driver applicant, if he/she has moved from another State, to surrender his/her driver's license issued by another State.

(b) *License transfers.* Prior to issuing a CDL to a person who has a CDL from another State, a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part;

(4) If such applicant wishes to retain a hazardous materials endorsement, ensure that the driver has, within the 2 years preceding the transfer, either:

(i) Passed the test for such endorsement specified in § 383.121; or

(ii) Successfully completed a hazardous materials test or training that is given by a third party and that is deemed by the State to substantially cover the same knowledge base as that described in § 383.121; and

(5) Obtain the CDL issued by the applicant's previous State of domicile.

(c) *License Renewals.* Prior to renewing any CDL a State shall:

(1) Require the driver applicant to make the certifications contained in § 383.71(a);

(2) Complete a check of the driver applicant's record as contained in § 383.73(a)(3);

(3) Request and receive updates of information specified in Subpart J of this part; and

(4) If such applicant wishes to retain a hazardous materials endorsement, require the driver to pass the test for such endorsement specified in § 383.121.

(d) *License upgrades.* Prior to issuing an upgrade of a CDL, a State shall:

(1) Require such driver applicant to provide certifications and pass tests as described in § 383.71(d); and

(2) Complete a check of the driver applicant's record as described in § 383.73(a)(3).

(e) *Nonresident CDL.* A State may issue a Nonresident CDL to a person domiciled in a foreign country if the Administrator has determined that the commercial motor vehicle testing and licensing standards in the foreign jurisdiction of domicile do not meet the standards contained in this part. State procedures for the issuance of a nonresident CDL, for any modifications thereto, and for notifications to the CDLIS shall at a minimum be identical to those pertaining to any other CDL, with the following exceptions:

(1) If the applicant is requesting a transfer of his/her Nonresident CDL, the State shall obtain the Nonresident CDL currently held by the applicant and issued by another State;

(2) The State shall add the word "Nonresident" to the face of the CDL, in accordance with § 383.153(b); and

(3) The State shall have established, prior to issuing any Nonresident CDL, the practical capability of disqualifying the holder of any Nonresident CDL, by withdrawing, suspending, canceling, and revoking his/her Nonresident CDL as if the Nonresident CDL were a CDL issued to a resident of the State.

(f) *License issuance.* After the State has completed the procedures described in § 383.73 (a), (b), (c), (d) or (e), it may issue a CDL to the driver applicant. The State shall notify the operator of the CDLIS of such issuance, transfer, renewal, or upgrade within the 10-day period beginning on the date of license issuance.

(g) *Penalties for false information.* If a State determines, in its check of an applicant's license status and record prior to issuing a CDL, or at any time after the CDL is issued, that the applicant has falsified information contained in Subpart J of this part or any of the certifications required in § 383.71(a), the State shall at a minimum, and within no more than 30 days after discovering the falsification, suspend, cancel, or revoke the person's CDL, or his/her pending application.

(h) *Reciprocity.* A State shall allow any person who has a valid CDL which is not suspended, revoked, or canceled, and who is not disqualified from operating a commercial motor vehicle, to operate a commercial motor vehicle in the State.

(i) *Alternative procedures.* A State may implement alternative procedures to the certification requirements of § 383.71(a) (1), (4), and (6), provided those procedures ensure that the driver meets the requirements of those paragraphs.

§ 383.75 Third party testing.

(a) *Third party tests.* A State may authorize a person (including another State, an employer, a private driver training facility or other private institution, or a department, agency or instrumentality of a local government) to administer the skills tests as specified in Subparts G and H of this part, if the following conditions are met:

(1) The tests given by the third party are the same as those which would otherwise be given by the State; and
(2) The third party as an agreement with the State containing, at a minimum, provisions that:

(i) Allow the FHWA, or its representative, and the State to conduct random examinations, inspections and audits without prior notice;

(ii) Require the State to conduct on-site inspections at least annually;

(iii) Require that all third party examiners meet the same qualification and training standards as State examiners, to the extent necessary to conduct skills tests in compliance with Subparts G and H;

(iv) Require that, at least on an annual basis, State employees take the tests actually administered by the third party as if the State employee were a test

applicant, or that States test a sample of drivers who were examined by the third party to compare pass/fail results; and

(v) Reserve unto the State the right to take prompt and appropriate remedial action against the third-party testers in the event that the third-party fails to comply with State or Federal standards for the CDL testing program, or with any other terms of the third-party contract.

(b) *Proof of testing by a third party.* A driver applicant who takes and passes driving tests administered by an authorized third party shall provide evidence to the State licensing agency that he/she has successfully passed the driving tests administered by the third party.

§ 383.77 Substitute for driving skills tests.

At the discretion of a State, the driving skill test as specified in § 383.113 may be waived for a CMV operator who is currently licensed at the time of his/her application for a CDL, and substituted with either an applicant's driving record and previous passage of an acceptable skills test, or an applicant's driving record in combination with certain driving experience. The State shall impose conditions and limitations to restrict the applicants from whom a State may accept alternative requirements for the skills test described in § 383.113. Such conditions must require at least the following:

(a) An applicant must certify that, during the two-year period immediately prior to applying for a CDL, he/she:

(1) Has not had more than one license (except in the instances specified in § 383.21(b));

(2) Has not had any license suspended, revoked, or canceled;

(3) Has not had any convictions for any type of motor vehicle for the disqualification offenses contained in § 383.51; and

(4) Has not had any violation of State or local law relating to motor vehicle traffic control (other than a parking violation) arising in connection with any traffic accident, and has no record of an accident in which he/she was at fault; and

(b) An applicant must provide evidence and certify that:

(1) He/she is regularly employed in a job requiring operation of a CMV, and that either:

(2) He/she has previously taken and passed a skills test given by a State with a classified licensing and testing system, and that the test was behind-the-wheel in a representative vehicle for that applicant's driver's license classification; or

(3) He/she has operated, for at least 2 years immediately preceding application for a CDL, a vehicle representative of the commercial motor vehicle the driver applicant operates or expects to operate.

Subpart F—Vehicle Groups and Endorsements

§ 383.91 Commercial motor vehicle groups.

(a) *Vehicle group descriptions.* Each driver applicant must possess and be tested on his/her knowledge and skills, described in Subpart G of this part, for the commercial motor vehicle group(s) for which he/she desires a CDL. The commercial motor vehicle groups are as follows:

(1) *Combination vehicle (Group A)*—Any combination of vehicles with a Gross Combination Weight Rating (GCWR) of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds.

(2) *Heavy Straight Vehicle (Group B)*—Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR.

(3) *Small Vehicle (Group C)*—Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group comprises vehicles designed to transport 16 or more passengers including the driver, and vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR Part 172, Subpart F).

(b) *Representative vehicle.* For purposes of taking the driving test in accordance with § 383.113, a representative vehicle for a given vehicle group contained in § 383.91(a), is any commercial motor vehicle which meets the definition of that vehicle group.

(c) *Relation between vehicle groups.* Each driver applicant who desires to operate in a different commercial motor vehicle group from the one which his/her CDL authorizes shall be required to retake and pass all related tests, except the following:

(1) A driver who has passed the knowledge and skills tests for a combination vehicle (Group A) may operate a heavy straight vehicle (Group B) or a small vehicle (Group C), provided that he/she possesses the requisite endorsement(s); and

(2) A driver who has passed the knowledge and skills tests for a heavy straight vehicle (Group B) may operate any small vehicle (Group C), provided that he/she possesses the requisite endorsement(s).

(d) *Vehicle group illustration.* Figure 1 illustrates typical vehicles within each of the vehicle groups defined in this section.

BILLING CODE 4910-22-M

Figure 1
VEHICLE GROUPS AS ESTABLISHED BY FHWA (SECTION 383.91)

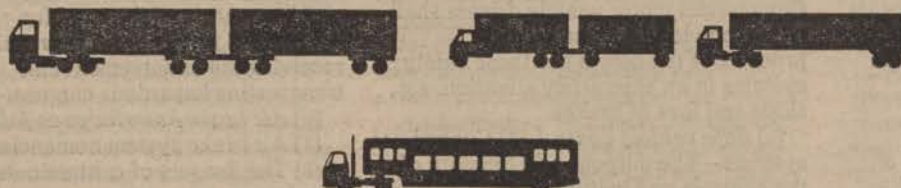
[Note: Certain types of vehicles, such as passenger and doubles/triples, will require an endorsement. Please consult text for particulars.]

Group:

***Description:**

- A** Any combination of vehicles with a GCWR of 26,001 or more pounds provided the GVWR of the vehicle(s) being towed is in excess of 10,000 pounds. (Holders of a Group A license may, with any appropriate endorsements, operate all vehicles within Groups B and C.)

Examples include but are not limited to:



- B** Any single vehicle with a GVWR of 26,001 or more pounds, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. (Holders of a Group B license may, with any appropriate endorsements, operate all vehicles within Group C.)

Examples include but are not limited to:



- C** Any single vehicle less than 26,001 pounds GVWR, or any such vehicle towing a vehicle not in excess of 10,000 pounds GVWR. This group applies to vehicles which are placarded for hazardous materials or designed to transport 16 or more persons, including the operator.

Examples include but are not limited to:



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

§ 383.93 Endorsements.

(a) *General.* In addition to taking and passing the knowledge and skills tests described in Subpart G of this part, all persons who operate or expect to operate the type(s) of motor vehicles described in paragraph (b) of this section shall take and pass specialized tests to obtain each endorsement. The State shall issue CDL endorsements only to drivers who successfully complete the tests.

(b) *Endorsement descriptions.* An operator must obtain State-issued endorsements to his/her CDL to operate commercial motor vehicles which are:

- (1) Double/triple trailers;
- (2) Passenger vehicles;
- (3) Tank vehicles; or
- (4) Required to be placarded for hazardous materials.

(c) *Endorsement testing requirements.* The following tests are required for the endorsements contained in paragraph (b) of this section:

- (1) *Double/Triple Trailers*—a knowledge test;
- (2) *Passenger*—a knowledge and a skills test;
- (3) *Tank vehicle*—a knowledge test; and
- (4) *Hazardous Materials*—a knowledge test.

§ 383.95 Air brake restrictions.

(a) If an applicant either fails the air brake component of the knowledge test, or performs the skills test in a vehicle not equipped with air brakes, the State shall indicate on the CDL, if issued, that the person is restricted from operating a CMV equipped with air brakes.

(b) For the purposes of the skills test and the restriction, air brakes shall include any braking system operating fully or partially on the air brake principle.

Subpart G—Required Knowledge and Skills**§ 383.110 General requirement.**

All drivers of commercial motor vehicles shall have knowledge and skills necessary to operate a commercial motor vehicle safely as contained in this subpart. A sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants is included in the appendix to this Subpart G.

§ 383.111 Required knowledge.

All commercial motor vehicle operators must have knowledge of the following general areas:

- (a) *Safe operations regulations.* Driver-related elements of the

regulations contained in 49 CFR Parts 391, 392, 393, 395, 396, and 397, such as: Motor vehicle inspection, repair, and maintenance requirements; procedures for safe vehicle operations; the effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation; the types of motor vehicles and cargoes subject to the requirements; and the effects of alcohol and drug use upon safe commercial motor vehicle operations.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) Basic control—The proper procedures for performing various basic maneuvers.

(3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions.

(4) Backing—The procedures and rules for various backing maneuvers.

(5) Visual search—The importance of proper visual search, and proper visual search methods.

(6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly.

(7) Speed Management—The importance of understanding the effects of speed.

(8) Space management—The procedures and techniques for controlling the space around the vehicle.

(9) Night operation—Preparations and procedures for night driving.

(10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions.

(11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards.

(12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers.

(13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, such as:* What constitutes hazardous material requiring an endorsement to transport; classes of hazardous materials; labeling/placarding requirements; and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) Air brake system nomenclature;

(2) The dangers of contaminated air supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are *unique* for performing vehicle safety inspections on combination vehicles.

§ 383.113 Required skills.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills should include the ability to start, to stop, and to move the vehicle forward and backward in a safe manner.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the safe driving skills for their vehicle group. These skills should include proper visual search methods, appropriate use of signals, speed control

for weather and traffic conditions, and ability to position the motor vehicle correctly when changing lanes or turning.

(c) *Air brake skills.* Except as provided in § 393.95, all applicants shall demonstrate the following skills with respect to inspection and operation of air brakes:

(1) *Pre-trip inspection skills.* Applicants shall demonstrate the skills necessary to conduct a pre-trip inspection which includes the ability to:

(i) Locate and verbally identify air brake operating controls and monitoring devices;

(ii) Determine the motor vehicle's brake system condition for proper adjustments and that air system connections between motor vehicles have been properly made and secured;

(iii) Inspect the low pressure warning device(s) to ensure that they will activate in emergency situations;

(iv) Ascertain, with the engine running, that the system maintains an adequate supply of compressed air;

(v) Determine that required minimum air pressure build up time is within acceptable limits and that required alarms and emergency devices automatically deactivate at the proper pressure level; and

(vi) Operationally check the brake system for proper performance.

(2) *Driving skills.* Applicants shall successfully complete the skills tests contained in § 383.113 in a representative vehicle equipped with air brakes.

(d) *Test area.* Skills tests shall be conducted in on-street conditions or under a combination of on-street and off-street conditions.

(e) *Simulation technology.* A State may utilize simulators to perform skills testing, but under no circumstances as a substitute for the required testing in on-street conditions.

§ 383.115 Requirements for double/triple trailers endorsement.

In order to obtain a Double/Triple Trailers endorsement each applicant must have knowledge covering:

(a) Procedures for assembly and hookup of the units;

(b) Proper placement of heaviest trailer;

(c) Handling and stability characteristics including off-tracking, response to steering, sensory feedback, braking, oscillatory sway, rollover in steady turns, yaw stability in steady turns; and

(d) Potential problems in traffic operations, including problems the motor vehicle creates for other motorists due to slower speeds on steep grades,

longer passing times, possibility for blocking entry of other motor vehicles on freeways, splash and spray impacts, aerodynamic buffeting, view blockages, and lateral placement.

§ 383.117 Requirements for passenger endorsement.

An applicant for the passenger endorsement must satisfy both of the following additional knowledge and skills test requirements.

(a) *Knowledge test.* All applicants for the passenger endorsement must have knowledge covering at least the following topics:

(1) Proper procedures for loading/unloading passengers;

(2) Proper use of emergency exits, including push-out windows;

(3) Proper responses to such emergency situations as fires and unruly passengers;

(4) Proper procedures at railroad crossings and drawbridges; and

(5) Proper braking procedures.

(b) *Skills test.* To obtain a passenger endorsement applicable to a specific vehicle group, an applicant must take his/her skills test in a passenger vehicle satisfying the requirements of that group as defined in § 383.91.

§ 383.119 Requirements for tank vehicle endorsement.

In order to obtain a Tank Vehicle Endorsement, each applicant must have knowledge covering the following:

(a) Causes, prevention, and effects of cargo surge on motor vehicle handling;

(b) Proper braking procedures for the motor vehicle when it is empty, full and partially full;

(c) Differences in handling of baffled/compartmental tank interiors versus non-baffled motor vehicles;

(d) Differences in tank vehicle type and construction;

(e) Differences in cargo surge for liquids of varying product densities;

(f) Effects of road grade and curvature on motor vehicle handling with filled, half-filled and empty tanks;

(g) Proper use of emergency systems; and

(h) For drivers of DOT specification tank vehicles, retest and marking requirements.

§ 383.121 Requirements for hazardous materials endorsement.

In order to obtain a Hazardous Material Endorsement each applicant must have such knowledge as is required of a driver of a hazardous materials laden vehicle, from information contained in 49 CFR Parts 171, 172, 173, 177, 178, and 397 on the following:

(a) Hazardous materials regulations including:

(1) Hazardous materials table;

(2) Shipping paper requirements;

(3) Marking;

(4) Labeling;

(5) Placarding requirements;

(6) Hazardous materials packaging;

(7) Hazardous materials definitions

and preparation;

(8) Other regulated material (e.g., ORM-D);

(9) Reporting hazardous materials accidents; and

(10) Tunnels and railroad crossings.

(b) Hazardous materials handling including:

(1) Forbidden Materials and Packages;

(2) Loading and Unloading Materials;

(3) Cargo Segregation;

(4) Passenger Carrying Buses and Hazardous Materials;

(5) Attendance of Motor Vehicles;

(6) Parking;

(7) Routes;

(8) Cargo Tanks; and

(9) "Safe Havens."

(c) Operation of emergency equipment including:

(1) Use of equipment to protect the public;

(2) Special precautions for equipment to be used in fires;

(3) Special precautions for use of emergency equipment when loading or unloading a hazardous materials laden motor vehicle; and

(4) Use of emergency equipment for tank vehicles.

(d) Emergency response procedures including:

(1) Special care and precautions for different types of accidents;

(2) Special precautions for driving near a fire and carrying hazardous materials, and smoking and carrying hazardous materials;

(3) Emergency procedures; and

(4) Existence of special requirements for transporting Class A and B explosives.

Appendix to Subpart G—Required Knowledge and Skills—Sample Guidelines

The following is a sample of the specific types of items which a State may wish to include in the knowledge and skills tests that it administers to CDL applicants. This appendix closely follows the framework of §§ 383.111 and 383.113. It is intended to provide more specific guidance and suggestion to States. Additional detail in this appendix is not binding and States may depart from it at their discretion provided their CDL program tests for the general areas of knowledge and skill specified in §§ 383.111 and 383.113.

Examples of specific knowledge elements

(a) *Safe operations regulations.* Driver-related elements of the following regulations:

(1) Motor vehicle inspection, repair, and maintenance requirements as contained in Parts 393 and 396 of this title;

(2) Procedures for safe vehicle operations as contained in Part 392 of this title;

(3) The effects of fatigue, poor vision, hearing, and general health upon safe commercial motor vehicle operation as contained in Parts 391, 392, and 395 of this title;

(4) The types of motor vehicles and cargoes subject to the requirements contained in Part 397 of this title; and

(5) The effects of alcohol and drug use upon safe commercial motor vehicle operations as contained in Parts 391 and 395 of this title.

(b) *Commercial motor vehicle safety control systems.* Proper use of the motor vehicle's safety system, including lights, horns, side and rear-view mirrors, proper mirror adjustments, fire extinguishers, symptoms of improper operation revealed through instruments, motor vehicle operation characteristics, and diagnosing malfunctions. Commercial motor vehicle drivers shall have knowledge on the correct procedures needed to use these safety systems in an emergency situation, e.g., skids and loss of brakes.

(c) *Safe vehicle control.* (1) Control systems—The purpose and function of the controls and instruments commonly found on commercial motor vehicles.

(2) Basic control—The proper procedures for performing various basic maneuvers, including:

(i) Starting, warming up, and shutting down the engine;

(ii) Putting the vehicle in motion and stopping;

(iii) Backing in a straight line; and

(iv) Turning the vehicle, e.g., basic rules, off-tracking, right/left turns and right curves.

(3) Shifting—The basic shifting rules and terms, as well as shift patterns and procedures for common transmissions, including:

(i) Key elements of shifting, e.g., controls, when to shift and double clutching;

(ii) Shift patterns and procedures; and

(iii) Consequences of improper shifting.

(4) Backing—The procedures and rules for various backing maneuvers, including:

(i) Backing principles and rules; and

(ii) Basic backing maneuvers, e.g., straight-line backing, and backing on a curved path.

(5) Visual search—The importance of proper visual search, and proper visual search methods, including:

(i) Seeing ahead and to the sides;

(ii) Use of mirrors; and

(iii) Seeing to the rear.

(6) Communication—The principles and procedures for proper communications and the hazards of failure to signal properly, including:

(i) Signaling intent, e.g., signaling when changing speed or direction in traffic;

(ii) Communicating presence, e.g., using horn or lights to signal presence; and

(iii) Misuse of communications.

(7) Speed Management—The importance of understanding the effects of speed, including:

(i) Speed and stopping distance;

(ii) Speed and surface conditions;

(iii) Speed and the shape of the road;

(iv) Speed and visibility; and

(v) Speed and traffic flow.

(8) Space management—The procedures and techniques for controlling the space around the vehicle, including:

(i) The importance of space management;

(ii) Space cushions, e.g., controlling space ahead/to the rear;

(iii) Space to the sides; and

(iv) Space for traffic gaps.

(9) Night operation—Preparations and procedures for night driving, including:

(i) Night driving factors, e.g., driver factors, (vision, glare, fatigue, inexperience), roadway factors, (low illumination, variation in illumination, familiarity with roads, other road users, especially drivers exhibiting erratic or improper driving), vehicle factors

(headlights, auxiliary lights, turn signals, windshields and mirrors); and

(ii) Night driving procedures, e.g., preparing to drive at night and driving at night.

(10) Extreme driving conditions—The basic information on operating in extreme driving conditions and the hazards that are encountered in extreme conditions, including:

(i) Adverse weather;

(ii) Hot weather; and

(iii) Mountain driving.

(11) Hazard perceptions—The basic information on hazard perception and clues for recognition of hazards, including:

(i) Importance of hazards recognition;

(ii) Road characteristics; and

(iii) Road user activities.

(12) Emergency maneuvers—The basic information concerning when and how to make emergency maneuvers, including:

(i) Evasive steering;

(ii) Emergency stop;

(iii) Off-road recovery;

(iv) Brake failure; and

(v) Blowouts.

(13) Skid control and recovery—The information on the causes and major types of skids, as well as the procedures for recovering from skids.

(d) *Relationship of cargo to vehicle control.* The principles and procedures for the proper handling of cargo, including:

(1) The importance of proper cargo handling, e.g., consequences of improperly secured cargo, drivers' responsibilities, Federal/State and local regulations.

(2) Principles of weight distribution.

(3) Principles and methods of cargo securement.

(e) *Vehicle inspections:* The objectives and proper procedures for performing vehicle safety inspections, as follows:

(1) The importance of periodic inspection and repair to vehicle safety and to prevention of enroute breakdowns.

(2) The effect of undiscovered malfunctions upon safety.

(3) What safety-related parts to look for when inspecting vehicles, e.g., fluid leaks, interference with visibility, bad tires, wheel and rim defects, braking system defects, steering system defects, suspension system defects, exhaust system defects, coupling system defects, and cargo problems.

(4) Pre-trip/enroute/post-trip inspection procedures.

(5) Reporting findings.

(f) *Hazardous materials knowledge, as follows:*

(1) What constitutes hazardous material requiring an endorsement to transport; and

(2) Classes of hazardous materials, labeling/placarding requirements, and the need for specialized training as a prerequisite to receiving the endorsement and transporting hazardous cargoes.

(g) *Air brake knowledge as follows:*

(1) General air brake system nomenclature;

(2) The dangers of contaminated air (dirt, moisture and oil) supply;

(3) Implications of severed or disconnected air lines between the power unit and the trailer(s);

(4) Implications of low air pressure readings;

(5) Procedures to conduct safe and accurate pre-trip inspections, including knowledge about:

(i) Automatic fail-safe devices;

(ii) System monitoring devices; and

(iii) Low pressure warning alarms.

(6) Procedures for conducting enroute and post-trip inspections of air actuated brake systems, including ability to detect defects which may cause the system to fail, including:

(i) Tests which indicate the amount of air loss from the braking system within a specified period, with and without the engine running; and

(ii) Tests which indicate the pressure levels at which the low air pressure warning devices and the tractor protection valve should activate.

(h) *Operators for the combination vehicle group shall also have knowledge of:*

(1) Coupling and uncoupling—The procedures for proper coupling and uncoupling a tractor to semi-trailer.

(2) Vehicle inspection—The objectives and proper procedures that are unique for performing vehicle safety inspections on combination vehicles.

Examples of Specific Skills Elements

These examples relate to paragraphs (a) and (b) of § 383.113 only.

(a) *Basic vehicle control skills.* All applicants for a CDL must possess and demonstrate the following basic motor vehicle control skills for each vehicle group which the driver operates or expects to operate. These skills shall include:

(1) Ability to start, warm-up, and shut down the engine;

(2) Ability to put the motor vehicle in motion and accelerate smoothly, forward and backward;

(3) Ability to bring the motor vehicle to a smooth stop;

(4) Ability to back the motor vehicle in a straight line, and check path and clearance while backing;

(5) Ability to position the motor vehicle to negotiate and then make left and right turns;

(6) Ability to shift as required and select appropriate gear for speed and highway conditions;

(7) Ability to back along a curved path; and

(8) Ability to observe the road and the behavior of other motor vehicles, particularly before changing speed and direction.

(b) *Safe driving skills.* All applicants for a CDL must possess and demonstrate the following safe driving skills for any vehicle group. These skills shall include:

(1) Ability to use proper visual search methods.

(2) Ability to signal appropriately when changing speed or direction in traffic.

(3) Ability to adjust speed to the configuration and condition of the roadway, weather and visibility conditions, traffic conditions, and motor vehicle, cargo and driver conditions;

(4) Ability to choose a safe gap for changing lanes, passing other vehicles, as well as for crossing or entering traffic;

(5) Ability to position the motor vehicle correctly before and during a turn to prevent other vehicles from passing on the wrong side as well as to prevent problems caused by off-tracking;

(6) Ability to maintain a safe following distance depending on the condition of the road, on visibility, and on vehicle weight; and

(7) Ability to adjust operation of the motor vehicle to prevailing weather conditions including speed selection, braking, direction changes and following distance to maintain control.

Subpart H—Tests

§ 383.131 Test procedures.

(a) *Driver information manuals.* Information on how to obtain a CDL and endorsements shall be included in manuals and made available by States to CDL applicants. All information provided to the applicant shall include the following:

(1) Information on the requirements described in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;

(2) Information on vehicle groups and endorsements as specified in Subpart F of this part;

(3) The substance of the knowledge and skills which drivers shall have as outlined in Subpart G of this part for the different vehicle groups and endorsements;

(4) Details of testing procedures, including the purpose of the tests, how to respond, any time limits for taking the test, and any other special procedures determined by the State of issuance; and

(5) Directions for taking the tests.

(b) *Examiner procedures.* A State shall provide to test examiners details on testing and any other State-imposed requirements in the examiner's manual, and shall ensure that examiners are qualified to administer tests on the basis of training and/or other experience. States shall provide standardized scoring sheets for the skills tests, as well as standardized driving instructions for

the applicants. Such examiners' manuals shall contain the following:

(1) Information on driver application procedures contained in § 383.71, State procedures described in § 383.73, and other appropriate driver information contained in Subpart E of this part;

(2) Details on information which must be given to the applicant;

(3) Details on how to conduct the tests;

(4) Scoring procedures and minimum passing scores;

(5) Information for selecting driving test routes;

(6) List of the skills to be tested;

(7) Instructions on where and how the skills will be tested;

(8) How performance of the skills will be scored; and

(9) Causes for automatic failure of skills tests.

§ 383.133 Testing methods.

(a) All tests shall be constructed in such a way as to determine if the applicant possesses the required knowledge and skills contained in Subpart G of this part for the type of motor vehicle or endorsement the applicant wishes to obtain.

(b) States shall develop their own specifications for the tests for each vehicle group and endorsement which must be at least as stringent as the Federal standards.

(c) States shall determine specific methods for scoring the knowledge and skills tests.

(d) Passing scores must meet those standards contained in § 383.135.

(e) Knowledge and skills tests shall be based solely on the information contained in the driver manuals referred to in § 383.131(a).

(f) Each knowledge test shall be valid and reliable so as to assure that driver applicants possess the knowledge required under § 383.111.

(g) Each basic knowledge test, i.e., the test covering the areas referred to in § 383.111 for the applicable vehicle group, shall contain at least 30 items, exclusive of the number of items testing air brake knowledge. Each endorsement knowledge test, and the air brake component of the basic knowledge test as described in § 383.111(g), shall contain a number of questions that is sufficient to test the driver applicant's knowledge of the required subject matter with validity and reliability.

(h) The skills tests shall have administrative procedures, designed to achieve interexaminer reliability, that are sufficient to ensure fairness of pass/fail rates.

§ 383.135 Minimum passing scores.

(a) The driver applicant must correctly answer at least 80 percent of the questions on each knowledge test in order to achieve a passing score on such knowledge test.

(b) To achieve a passing score on the skills test, the driver applicant must demonstrate that he/she can successfully perform all of the skills listed in § 383.113.

(c) If the driver applicant does not obey traffic laws, or causes an accident during the test, he/she shall automatically fail the test.

(d) The scoring of the basic knowledge and skills tests shall be adjusted as follows to allow for the air brake restriction (§ 383.95):

(1) If the applicant scores less than 80 percent on the air brake component of the basic knowledge test as described in § 383.111(g), the driver will have failed the air brake component and, if the driver is issued a CDL, an air brake restriction shall be indicated on the license; and

(2) If the applicant performs the skills test in a vehicle not equipped with air brakes, the driver will have omitted the air brake component as described in § 383.113(c) and, if the driver is issued a CDL, the air brake restriction shall be indicated on the license.

Subpart I—[Reserved]

Subpart J—Commercial Driver's License Document

§ 393.151 General.

The CDL shall be a document that is easy to recognize as a CDL. At a minimum, the document shall contain information specified in § 383.153.

§ 383.153 Information on the document and application.

(a) All CDLs shall contain the following information:

(1) The prominent statement that the license is a "Commercial Driver's License" or "CDL," except as specified in § 383.153(b).

(2) The full name, signature, and mailing address of the person to whom such license is issued;

(3) Physical and other information to identify and describe such person including date of birth (month, day, and year), sex, and height;

(4) Color photograph of the driver;

(5) The driver's State license number;

(6) The name of the State which issued the license;

(7) The date of issuance and the date of expiration of the license;

(8) The group or groups of commercial motor vehicle(s) that the driver is authorized to operate, indicated as follows:

- (i) A for Combination Vehicle;
- (ii) B for Heavy Straight Vehicle; and
- (iii) C for Small Vehicle.

(9) The endorsement(s) for which the driver has qualified, if any, indicated as follows:

- (i) T for double/triple trailers;
- (ii) P for passenger;
- (iii) N for tank vehicle;
- (iv) H for hazardous materials;
- (v) X for a combination of the tank vehicle and hazardous materials endorsements; and

(vi) At the discretion of the State, additional codes for additional groupings of endorsements, as long as each such discretionary code is fully explained on the front or back of the CDL document.

(b) If the CDL is a Nonresident CDL, it shall contain the prominent statement that the license is a "Nonresident Commercial Driver's License" or "Nonresident CDL." The word "Nonresident" must be conspicuously and unmistakably displayed, but may be noncontiguous with the words "Commercial Driver's License" or "CDL."

(c) If the State has issued the applicant an air brake restriction as

specified in § 383.95, that restriction must be indicated on the license.

(d) Except in the case of a Nonresident CDL:

(1) A driver applicant must provide his/her Social Security Number on the application of a CDL; and

(2) The State must provide the Social Security Number to the CDLIS.

§ 383.155 Tamperproofing requirements.

States shall make the CDL tamperproof to the maximum extent practicable. At a minimum, a State shall use the same tamperproof method used for noncommercial drivers' licenses.

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