Corrections

Federal Register
Vol. 54, No. 190
Tuesday, October 3, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. 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 AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-136]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Alfalfa Plants

Correction

In notice document 89-19242 beginning on page 33741 in the issue of Wednesday, August 16, 1989, make the following correction:

On page 33742, in the first column, in the 14th line, "introduction gener" should read "introduced gene".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 264

[Docket No. 90804-9204]

RIN 0648-9204

United States Standards for Grades of Frozen Fish Blocks

Correction

In proposed rule document 89-22208 beginning on page 38881 in the issue of Thursday, September 21, 1989, make the following corrections:

§ 264.104 [Corrected]

1. On page 38882, in the third column, in § 264.104 (b), in the third line, "§ 264.208" should read "§ 264.108".

2. On page 38883, in the third column, in § 264.104(e)(12), in the fifth line, "9.6s" should read "9.68".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TQ89-3-23-001]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

Correction

In notice document 89-22002 appearing on page 38554 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38554, in the first column, the docket heading should read as set forth above.

BILLING CODE 1505-01-D

[Docket No. TQ90-1-33-001]

El Paso Natural Gas Co.; Correction to Proposed Change in Rates

Correction

In notice document 89-22003 appearing on page 38554 in the issue of Tuesday, September 19, 1989, make the following correction:

On page 38554, in the second column, the docket heading should read as set forth above.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[AD-FRL-3620-5]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Chemical Manufacturing Process Vents, Industrial Solvent Use, Benzene Waste Operations, Benzene Transfer Operations, and Gasoline Marketing System

Correction

In proposed rule document 89-21415 beginning on page 38083 in the issue of Thursday, September 14, 1989, make the following corrections:

1. On page 38083, in the first column, under **DATES**, in the second paragraph, in the fourth line, "October 4, 1989" should read "October 11, 1989".

2. On page 38090, in the first column, the heading *B. Benzene Category Operations* should read *B. Benzene Transfer Operations*.

§ 61.355 [Corrected]

3. On page 38133, in the first column, in § 61.355(e)(8), in table 1, in the heading in the third column to the table, "t^i" should read "t^i".

4. On page 38134, in the third column, in § 61.355(p)(3)(v), in the equation, "100" should appear immediately to the right of the times sign.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960-AC07

Federal Old-Age, Survivors, and Disability Insurance; Supplemental Security Income for the Aged, Blind, and Disabled; Decisions by Administrative Law Judges in Cases Remanded by the Courts

Correction

In rule document 89-21447 beginning on page 37789 in the issue of Wednesday, September 13, 1989, make the following corrections:

§ 404.984 [Corrected]

1. On page 37792, in the third column, in § 404.984(a), in the 22nd line, remove the period between "either" and "make".

2. On page 37794, in the first column, the file line at the end of the document was omitted and should have appeared as follows:

[FR Doc. 89-21447 Filed 9-12-89; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

Correction

In notice document 89-18776 appearing on page 33092 in the issue of Friday, August 11, 1989, make the following correction:

On page 33092, in the second column, under "**Mount Diablo Meridian Nevada**", the numerical designation for each township should be followed by an "N."

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AD27

Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-level Radioactive Waste at a Geologic Respository

Correction

The page number for proposed rule document 89-22604 appearing in the issue of Tuesday, September 26, 1989, was incorrectly cited on page V of the table of contents. The page number should read "39387".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Tax on Certain Imported Substances; Notice of Filing of Petition

Correction

In notice document 89-21308 appearing on page 37757 in the issue of Tuesday, September 12, 1989, make the following correction:

In the third column, under "**SUPPLEMENTARY INFORMATION**", in the next to last paragraph, in the seventh line, "great" should read "graft".

BILLING CODE 1505-01-D

Federal Register

Tuesday
October 3, 1989

Part II

Department of Transportation

Federal Highway Administration

49 CFR Parts 383 and 391

Commercial Driver's License Standards; Disqualifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 391

[FHWA Docket No. MC-88-14]

RIN 2125-AC19

Commercial Driver's License Standards; Disqualifications

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is amending 49 CFR part 383 to define the serious traffic violations for which commercial motor vehicle operators may be disqualified for periods of 60 and 120 days under § 383.51. Specifically, the FHWA is defining these serious traffic violations to include a conviction for "excessive speeding," which is any speed of 15 miles per hour or more above the posted speed limit; "reckless driving"; "improper or erratic traffic lane changes"; "following the vehicle ahead too closely"; and, any other motor vehicle traffic control laws which arise in connection with a fatal traffic accident. The FHWA is also allowing States, under certain circumstances, to reduce a lifetime disqualification from driving a commercial motor vehicle (CMV) to ten years. This final rule also clarifies other issues pertaining to convictions and disqualifications of CMV drivers, and makes a conforming amendment to 49 CFR part 391 of the Federal Motor Carrier Safety Regulations.

EFFECTIVE DATE: November 2, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Jill L. Hochman, Chief, Standards Review Division, Office of Motor Carrier Standards, (202) 366-4001, or Mr. Paul Brennan, Office of the Chief Counsel, (202) 366-0834, 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, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

On October 27, 1986, the Commercial Motor Vehicle Safety Act of 1986, Title XII of Public Law 99-570 (the Act), was signed into law by the President. As a first step in implementing the requirements of the Act, a final rule and request for comments on "Commercial Driver Licensing Standards; Requirements and Penalties" was published in the **Federal Register** on June 1, 1987 (52 FR 20574), implementing the single license requirement, notification requirements, Federal disqualifications, and other provisions of the Act required to be effective on July 1, 1987.

The June 1, 1987 rule left several components under "serious traffic violations" undefined, and sought public comment on these areas. On January 31, 1989 the FHWA published a notice of proposed rulemaking (NPRM) (54 FR 5036) based on those comments, seeking to rectify the omissions and clarify other points of the June 1, 1987 rule. The FHWA received 60 responses to the NPRM; these are listed by category in Exhibit 1.

The final rule amends 49 CFR part 383, "Commercial Driver Licensing Standards; Requirements and Penalties," to clarify which violations will be defined as "serious traffic violations." It amends § 383.31 to clarify certain notification requirements, especially how such requirements would apply to casual, intermittent, or occasional drivers. Section 383.51, "Disqualification of Drivers," is modified to allow reduction of lifetime disqualifications under certain circumstances. Also, the final rule adds precision to the wording of other existing regulations pertaining to the disqualification of drivers in 49 CFR parts 383 and 391.

Each of these changes is discussed below in the context of the relevant public responses to the docket.

Exhibit 1—Respondents to the NPRM by Category

State agencies representing 14 States:	
Department of Motor Vehicles	11
State Police Departments	2
Other State Agencies	2
Total State Agencies	15
State Organizations (AAMVA)	1
Trucking Industry and related parties:	
Associations	6
Carriers	2
Unions	1
Total trucking-related	9
Bus Industry and related parties:	
Associations	1
Carriers	1
Unions	4
Total Bus-related	6
Individuals	17
Insurance Industry	8
Trade associations	2
Consultant	1
Public Association (AAA)	1
Total respondents	60

Definition of "Serious Traffic Violations"

Excessive Speeding

As demonstrated in Exhibit 2, the majority of respondents in most categories supported the definition of excessive speed proposed in the NPRM—15 miles per hour or more above the posted limit. In endorsing the FHWA's proposal, most respondents also favored a single standard which could be applied universally in all speed zones and under all conditions and situations. Several opposing views were, however, also presented for consideration.

EXHIBIT 2—RESPONDENTS' PROPOSED DEFINITIONS OF "EXCESSIVE SPEEDING"

	Number of respondents by category supporting		
	NPRM definition: 15 mph or more above posted speed limit	Definition more strict than NPRM	Definition less strict than NPRM
State Agencies	7	1	1
AAMVA	1		
Trucking Carriers and associations	5	1	2
Trucking Unions	1		
Bus Carriers and associations		1	1
Bus Unions			3
Trade Associations	2		
AAA		1	
Individual Drivers	3		2
Other Individuals	2		
Insurance Industry	1	6	
Totals	22	10	9

A motor carrier asserted that a "flat rate" concept of greater than 15 m.p.h. over the posted speed limit for excessive speed is not consistent with providing greater restriction for greater hazard. Claiming that areas that are posted with speed limits less than 55/65 m.p.h. are lower because excessive speed presents a greater danger, the respondent suggested that a standard based on percentage of increase over posted limits, specifically 20%, would provide a standard which is more representative of the risk factor at all speeds.

Another respondent from a bus transit company explained that many factors should influence the development of an appropriate definition for excessive speed. As an example, the respondent explained that a truck carrying hazardous materials loaded to 80,000 pounds, going 50 in a 35 m.p.h. zone should be considered to be traveling at an excessive speed. However, a bus or empty vehicle traveling at the same speed in the same speed zone may not be considered to be traveling at an excessive speed.

Other respondents recommended that maximum speed limits be included in the definition. The American Automobile Association (AAA) pointed out that in forty-one States which have a 65 m.p.h. maximum speed limit, the proposal would allow drivers to speed up to 80 m.p.h. before being charged with an excessive speeding violation. Thus, the AAA recommends a cap of 75 m.p.h. above which any speeding would be considered "excessive."

The majority of respondents reiterated the FHWA's belief that Congress intended the definition for "excessive speed" to be used to identify and penalize the most severe cases of speeding violations. Several respondents, however, maintain that any speed over the posted limit should be considered to be "excessive."

One commenter noted that no provision for appeal has been provided for those drivers with impeccable records who, quite inadvertently in many cases, are stopped for operating at 15 m.p.h. or more above the posted speed limit. The respondent suggested that the driver's record be taken into consideration before disqualifying him/her for two serious violations.

Although some of the alternatives offered by respondents may have merit, each one has related enforcement or administrative problems. For example, a standard which would change with posted limits would be confusing to drivers and to enforcement officials. The FHWA agrees with the overwhelming number of respondents who explained that anything other than a practical, straightforward definition would not be effective. To be practical, "excessive speed" needs to be defined in terms that are both easy to understand and practical to administer. Thus, the FHWA has elected to retain the proposed definition of "excessive speed" as any single conviction for any speed of 15 miles per hour or more, above the posted speed limit. This definition is not intended to supplant existing State cumulative point systems which continue to control the licensing privilege under existing administrative procedures. The concerns, therefore, expressed by commenters who believe that there would be no provisions for appeal or that conditions or special zones would no longer be considered will continue to be dealt within existing enforcement of State speeding convictions.

In retaining the proposed definition, the FHWA does not want to give the impression that other single speeding violations or that repeated violations of driving above the posted speed limit should be condoned because they may not be considered to be "excessive" according to the definition. On the contrary, the FHWA believes that all speeding violations—either driving above the post limit or driving too fast for conditions—pose a potential hazard and should continue to be strictly enforced by the States. While a more stringent, encompassing definition which includes a cap of 75 m.p.h. or a standard based on percentage above posted limits may appear to give more recognition to the greater potential dangers associated with the higher speeds, the FHWA agrees with the majority of respondents that a single definition would be more enforceable than a more intricate definition which incorporates other factors. However, States are free to establish more stringent definitions to address local or particular concerns. The comments submitted by the Owner-Operators Independent Drivers Association of America, Inc. (OOIDA) reflect the concerns expressed by majority of the respondents who objected to a multi-part definition for "excessive speed." The OOIDA wrote: "The Association feels strongly that the CMVSA must be interpreted by the FHWA in a simple and straightforward manner such that drivers are aware of the specific offenses for which they may be disqualified, as well as the penalties to be imposed. OOIDA feels that a situational definition that includes other factors in the definition of "excessive speed" would needlessly confuse the issue among drivers, and create a very cumbersome administrative process." Also, the single license provision of the Act will greatly reinforce the states' authority to assess points for speeding, since drivers can no longer spread convictions over several licenses. The points will add up and the likelihood that a driver who habitually speeds will lose his/her license will be greatly increased. Thus, all CMV drivers will be deterred from speeding, even at levels below the 15 m.p.h. standard. Furthermore, States may apply other charges to address local concerns or special conditions. For example, States apply charges, such as "reckless driving" in cases of speeding at less than 15 m.p.h. above the posted speed limit where weather, traffic, hazardous cargo or other conditions combine to constitute a willful or wanton disregard for safety. Such actions are not prohibited by this rulemaking.

In sum, the FHWA believes that when considered in conjunction with the current State penalty systems, the definition that has been adopted will fully satisfy the Act's goal to promote compliance with the posted speed limits and encourage drivers to use good judgement under all kinds of driving conditions.

Reckless Driving

Regarding the definition of "reckless driving," section 12019 of the Act states that: "reckless driving shall be as defined under State or local law." To promote uniformity and because a majority of the States are already using the Uniform Vehicle Code and Model Traffic Ordinance (UVCMTO) definition, the FHWA proposed to amend the definition of reckless driving to incorporate the language used in the UVCMTO, 1987 Edition, published by the National Committee on Uniform Traffic Laws and Ordinances. Such language states (in chapter 11, Rules of the Road, at section 11-901—Reckless Driving (a) that "any person who drives any vehicle in willful or wanton disregard for the safety of persons or property is guilty of reckless driving." The FHWA further proposed to amend the definition of "reckless driving" to clarify that it would include two additional traffic offenses, both of which are frequently associated with excessive speeding and/or reckless driving. These two additional offenses were:

1. Improper/erratic lane changes (Incorporating the concepts cited in the UVCMTO section 11-304 through section 11-306 and section 11-309); and

2. Following the vehicle ahead too closely (incorporating the concepts in the UVCMTO section 11-310).

The FHWA asked for comments on whether these two infractions should be listed separately as serious traffic violations instead of being included under "reckless driving." Of the 31 docket respondents who addressed this issue, of whom 12 represented State agencies, 23 (including 10 from State agencies) supported treating these two infractions as serious traffic violations either as part of "reckless driving" or as separate serious violations. However, most respondents stated that the inclusion of the two additional violations in the basic definition of "reckless driving" would overly complicate that definition and the manner in which existing State traffic codes are enforced and handled in the courts.

In opposition, several drivers, motor carriers, and union representatives asserted that the two additional violations should neither be included in the definition of "reckless driving" nor listed separately as serious violations. The Owner-Operators Independent Drivers Association of America contended that the two additional violations are relatively minor traffic infractions in the majority of cases in which they occur. They further claimed that since "following the vehicle ahead too closely" can be the equal fault of both vehicles, it would be unfair for a truck driver to be subject to a severe penalty for an infraction for which he/

she was only partly to blame. The International Brotherhood of Teamsters presented a similar argument for its recommendation against mentioning these additional violations in the rule.

Accident data available to FHWA show that these two violations are commonly attributed to commercial motor vehicle accidents in which human factors or driver error is cited as a casual factor. In a 1988 report entitled "Gearing Up for Safety: Motor Carrier Safety in a Competitive Enviornment," the Office of Technology Assessment (OTA) lists "following too closely" as a contributor in nearly 10 percent of the heavy truck accidents. The same report identifies "improper lane change" violations as major contributors in more than 13 percent of heavy truck accidents. The "Heavy Truck Safety Study" final report of the National Highway Traffic Safety Administration (NHTSA, 1987), explains that regardless of any improvements made to vehicle characteristics, to the roadways, or to other features of the operating environment to improve safety, the manner in which a vehicle is driven will always play a paramount role in the safe operation of the vehicle. The NHTSA report cites an analysis by the State of Ohio of crashes in which the truck driver was at fault. The analysis identifies "improper lane changes" and "following too closely" as the two most frequent driver errors contributing to the accident. On the basis of available accident data, and in light of the comments to the docket from State agencies which support including these violations because of their potential for causing serious accidents, the FHWA has concluded that "improper/erratic lane changes" and "following too closely" should be treated as serious violations for the purposes of the final rule.

The FHWA shares the concern of some of the respondents that enforcement officials may cite CMV drivers for these offenses when they are the equal fault of both drivers or the fault of noncommercial drivers. However, a CMV driver is not disqualified until he or she is convicted of the offense. The due process embodied in a conviction determination should prevent unfair or unfounded violations from becoming a conviction.

Finally, some of the respondents opposed including "improper/erratic lane changes" and "following too closely" as serious violations because of the resultant penalties. Under § 383.51, a CMV driver who is convicted a second time for a serious violation within a three-year period is disqualified for 60 days; the penalty for a third such violation in a three-year period is a 120 day disqualification. Given the potential importance of these penalties on a driver's employment and livelihood, the FHWA recognizes the possibility that more "improper/erratic lane changes" and "following too closely" traffic violations may be contested, resulting in lost time to drivers and an increased burden on the judicial system. The expected safety benefit, however, is considered countervailing, especially since these two types of violations are major contributors to accidents in which driver error is the casual factor. The penalties related to convictions for these violations are also considered by the FHWA to be appropriate.

In formulating the final definition for "reckless driving," the FHWA agrees with the numerous respondents who asserted that the two additional violations should be listed separately in order to minimize any administrative complications. Therefore, the definition of "reckless driving" in the final rule incorporates the UVCMTO wording regarding "willful or wanton disregard for the safety of persons or property." The other two items, "improper or erratic lane changes" and "following the vehicle ahead too closely" are included, however, as serious traffic violations. States may apply their existing corresponding violations to deal with situations involving improper/erratic lane changes and following the vehicle ahead too closely.

Lifetime Disqualifications

The FHWA proposed to amend § 383.51(b)(3)(v), to allow States the option of providing an opportunity for sanctioned drivers to apply for a reduction of their lifetime penalty only after they serve a minimum disqualification period of ten years, and only after they successfully complete a requisite rehabilitation program as determined by their State's driver licensing agency. The lifetime disqualification would not be expunged from the driver's record for any reason even after successful rehabilitation and reinstatement, and a third conviction of an offense under § 383.51(b) would lead to permanent disqualification for life. A CMV driver convicted of any felony involving the manufacture, distribution, or dispensing of controlled substances (under § 383.51(b)(2)(v)) will continue to be ineligible to apply for any reduction whatsoever of the lifetime disqualification, hence, permanently disqualified for life.

Most respondents on this issue supported the FHWA's proposal, which is adopted in the final rule. Several States and the American Association of Motor Vehicle Administrators (AAMVA), however, alerted the FHWA that other concerns related to the content and effectiveness of rehabilitation programs still need to be addressed. Since the States have until October 1, 1993, to begin enforcement of commercial driver qualifications, ample time remains for the States to develop, in concert, appropriate CMV driver rehabilitation programs. FHWA could then consider such State-developed programs in future rules. This approach is consistent with federalism considerations.

Section-by-Section Analysis

Items not discussed in detail in this section-by-section analysis are either highlighted as major issues above, adopted verbatim from the NPRM and discussed in its preamble, or of a nonsubstantive nature (for example, wording changes to conform with other items).

Section 383.1 Purpose and Scope

The wording changes in this section are for conformity with § 383.31, discussed below.

Section 383.5 Definitions

Disqualification. The FHWA has incorporated a definition for "disqualification" in the final rule in response to several requests that FHWA provide further clarification on how to apply the sanctions included in the Act and the implementing regulations. The FHWA agrees with the contention of the AAMVA's Model CDL Law Subcommittee that nothing in the Act or Federal rules prohibits the holder of a CDL, disqualified from driving a commercial motor vehicle, from driving a non-commercial motor vehicle, if he/she is otherwise legally eligible to do so. The FHWA further agrees with the Subcommittee that a CDL holder subject to a disqualification should not be allowed to operate a commercial motor vehicle under any circumstances during that period. The Act does not provide for any type of "limited" driving privilege for someone who is disqualified from operating a commercial motor vehicle.

In developing a definition for "disqualification," the FHWA recognized that procedures differ from State to State, and that the most effective way to impose the disqualification sanctions is to allow States to use their own current systems. States may impose the disqualification through a suspension, revocation, cancellation or any other means a State

determines to be appropriate, as long as the driver's privilege to operate a commercial motor vehicle is withdrawn in conformance with the Act. While the definition also provides for Federal disqualifications by the FHWA, the disqualification of drivers under the provisions of part 383 will be primarily the responsibility of the States through their existing driver's licensing mechanisms.

Employee. The FHWA noted in the NPRM that because the casual, intermittent or occasional type of driver has no "regular employer" per se, the regulations published on June 1, 1987, are unclear as to whom such casual, intermittent or occasional drivers should report their convictions and adverse actions against their driving privileges, as set forth in §§ 383.31 and 393.33. In response, the FHWA proposed to amend the definition of "Employee" to include all casual, intermittent or occasional type drivers, and to specify in § 383.31(b) that notification must be given to the "current" employer.

All the respondents to this issue agreed with FHWA's proposed definition, which has been incorporated in the final rule.

Section 383.31 Notification of Convictions for Driver Violations

The FHWA has made the following technical modifications to this section:

(1) Drivers must notify their licensing State and employer of "convictions" for violations of State or local motor vehicle traffic control laws (other than parking violations). Notification of the "violations" themselves is not required. This clarification, which is in keeping with due process, was endorsed by most commenters on this issue.

(2) The FHWA has replaced the term "State," as used in the June 1, 1987 rule, with the term "State or jurisdiction" in order to include convictions incurred in Canadian provinces and territories and other foreign jurisdictions which the FHWA recognizes, as testing drivers and issuing CDLs in accordance with or under standards similar to the standards of part 383. This change is consistent with the intent of the Act and incorporates concerns of AAMVA and several States that drivers licensed in the United States may fail to report their convictions by foreign jurisdictions to their employers and licensing States. In accordance with the commercial driver licensing reciprocity recently announced by the United States and Canada (at 54 FR 22392, May 23, 1989), the FHWA believes that foreign convictions must be reported in order to allow States to ascertain the driver's qualifications and fully implement the intent of the Act. (A conforming change has also been made to § 383.33.)

(3) Section 383.31 requires that CDL holders report their convictions irrespective of the type of vehicle in which the violation occurs. This requirement, however, is only explicit in § 383.31(c)(5) which specifies that the notification to the State and employer must state whether the violation was in a commercial motor vehicle. To provide further clarification and eliminate any doubt on the applicability of the notification requirements, FHWA has included language in § 383.31(a) and § 383.31(b) to make it explicit that the notifications apply to "any type of motor vehicle."

The FHWA does not have the authority to impose disqualifications, or to require States to impose disqualifications, on CDL holders who commit criminal or other offenses under § 383.51 in noncommercial vehicles. However, the purpose of requiring drivers to report such convictions in noncommercial vehicles is to provide additional information to States which may wish to consider such convictions in their licensing actions. (Also see discussion of self-reporting below.)

(4) As discussed above under the definition of "employee," notification is to be made to the "current employer." Conforming changes have been made in §§ 383.1 and 383.33. If a driver is not currently employed, he/she must still notify the State of licensure. One respondent from a State motor vehicle department recommended that the rule further clarify that intermittent and occasional drivers need to also notify their permanent employers. Since it is the current employer who is in a position to take immediate action (including the permanent employer), and since the addition of further subtleties to this section will make its enforcement more difficult, the FHWA has not adopted that suggestion.

Several respondent States questioned the need for and efficacy of any self-reporting of convictions by drivers to their licensing States. These States assert that they cannot legally impose sanctions against a driver until they receive formal notification about the conviction. Similar objections were expressed prior to the publication of the June 1, 1987, final rule, "Commerical Driver Licensing Standards: Requirements and Penalties." As noted in that rule, one purpose of requiring driver notification to the State is to alert a State of violations which may ultimately warrant the suspension, revocation, or disqualification of the driver's CDL. At this time, States are not required to impose sanctions based on the driver's informal notification. When the State-to-State reporting of convictions through the Commerical Driver's License Information System (CDLIS) is fully operational, the FHWA will consider elimination of this requirement.

Section 383.51 Disqualification of Drivers

Period of Disqualification

The FHWA has received several questions asking whether the period of time for which a driver may be disqualified is to begin on the date of the violation or the date of conviction. In the NPRM, the FHWA explained that, because the Act requires that drivers be disqualified when they are "found to have committed" certain offenses, the disqualification period should begin at the time when the driver is convicted of the disqualifying offense.

Several States and the AAMVA pointed out potential problems with the proposal that disqualification begin at the time of conviction. They asserted that, in many instances, the "conviction" is determined by a court or another State agency, and the motor vehicle agency responsible for taking action against the license is not notified of the conviction until sometime later. Others indicated that because of differences in the due process and appeals mechanisms among the various States, setting the disqualification starting point at the "time of conviction" is not manageable.

The FHWA is aware of the varying procedures used by the States in applying sanctions. The FHWA is also aware that under certain circumstances—i.e., when a driver is considered to be dangerous, or when the violation is severe enough—the courts are able to revoke the driver's driving privileges immediately upon conviction. On the other hand, the FHWA appreciates the administrative problems to which the AAMVA refers.

As a compromise between the practical reality adduced by the AAMVA and the expectations of the underlying legislation, the final rule omits the phrase "at the time of such conviction" from § 383.51 (b)(1) and (c)(1), and defers establishment of a time limit on when a State would begin the disqualification of drivers until the forthcoming rulemaking on State compliance under section 12009 of the Act. In the meantime, States should attach at least the same degree of urgency to CDL sanctions as they now do in similar instances. Without precluding States from using their

current penalty systems or from dealing with any due-process issues, the FHWA expects States to begin the disqualification process immediately upon conviction; and if circumstances warrant it, to provide an administrative mechanism whereby the CDL holder's driving privileges can also be taken away immediately upon conviction. In any event, whenever the disqualification period begins for a CDL sanction, States will still need to comply with sections 12009(a) (8) and (9) of the Act which specify that a State convicting a CMV operator of any traffic violation (other then a parking violation) must notify the State of license issuance within 10 days after such conviction; and that disqualifications must be reported to the CDLIS and to the State of license issuance within 10 days from the date of disqualification.

Leaving the Scene of an Accident

Because the driver of a large commercial motor vehicle may be involved in a minor accident of which he/she is genuinely unaware, the FHWA proposed to add "knowingly and willfully" to the disqualifying offense of "leaving the scene of an accident while operating a commercial motor vehicle."

Most respondents, including the States and the AAMVA, considered the addition of the "knowingly and willfully" qualifiers to be unnecessary, and to place a potentially unreasonable burden of proof on the States. Since the issues inherent in the words "knowingly and willfully" would undergo examination during the due process leading to a conviction, the FHWA has elected to eliminate "knowingly and willfully" from the proposed description of "leaving the scene of an accident." Section 383.51(b)(2)(iii) will therefore remain unchanged.

Lifetime Disqualification From Separate Incidents

In the NPRM, the FHWA proposed to clarify that the driver is disqualified for life if he or she is convicted for offenses which arise from two or more separate incidents.

All comments which addressed this issue agreed with this proposal, which is incorporated in § 383.51(b)(3)(iv) and applied by analogy to § 383.51(c)(2) (i) and (ii) dealing with serious traffic violations.

Section 383.73 State Procedure

All States currently have laws which deal with falsification of information on license documents. These laws, however, are not consistent. As part of the NPRM, the FHWA included a requirement that States must impose a penalty on a CDL applicant who is discovered by the State to have falsified information required for the CDL. The FHWA explained in the NPRM that it believes that a minimum level for such penalties need to be established to ensure similar treatment of CMV operators across the country. Such penalties would also help deter an applicant from attempting to get a second license or a new CDL during the time he/she is disqualified.

All respondents who provided information on this issue endorsed the proposed 60 day penalty. Several respondents indicated, however, that they currently have and will continue to impose stringent penalties, a policy which the FHWA endorses.

Thus, the FHWA has amended § 383.73(g) to provide minimum penalties of at least 60 days for those persons who knowingly falsify or evade submitting required information when applying for any CDL licensing action under §§ 383.71 and 383.73. States may apply the sanction either through a license suspension, revocation, cancellation, or disqualification.

The deadline for imposing the penalty (formerly "30 days after discovering the falsification") has been eliminated because it does not allow for due process and State administrative procedures.

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. Because of the public interest in the issue of commercial motor vehicle safety and the expected benefits of improved transportation safety, however, this action 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. For this reason, a full regulatory evaluation is not required. However, since an analysis of impacts, including economic factors, is necessarily involved in the preparation of related motor vehicle safety regulations, a regulatory evaluation has been prepared for this rulemaking action as well as other actions needed to implement the Commercial Motor Vehicle Safety Act of 1986. This evaluation addresses the provisions contained in this action and 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 significant part of the motor carrier industry and other employers covered by the Act are made up 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 regulatory evaluation/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 FHWA's August 1, 1986, ANPRM as well as the several other rulemaking notices required by the Act. 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 action.

For the foregoing reasons 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.

Federalism Impact

The FHWA has reviewed these changes to the Commercial Driver 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. Congress identified commercial motor vehicle safety as a matter of national importance and included requirements for a single license and driver disqualifications as part of the mandates in the Act.

In the Executive Order on Federalism, Executive Departments and agencies were directed 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 rule. Thus rule would limit the policy making discretion of the States only in narrow ways, and does so only to achieve the

national purposes of the act. For example, States would continue to have sole discretion as to whether or not to license any CMV operator and what specific procedures, tests, fees or penalty applications are applicable. Thus, 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.

Paperwork Reduction Act

The collection of information required by the final rule published on June 1, 1987, to implement the single license and certain reporting and notification requirements has been approved by the Office of Management and Budget (OMB No. 2125–0542). No additional burdens are expected to result from this rulemaking.

List of Subjects in 49 CFR Part 383

Commercial driver's license standards requirements and penalties, Highways and roads, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 20.217, motor carrier safety)

Issued on: September 22, 1989.

T.D. Larson,

Administrator.

In consideration of the foregoing, the FHWA hereby proposes to amend title 49, Code of Federal Regulations, subtitle B, chapter III, 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; and 49 CFR 1.48.

2. Section 383.1(b) (2) and (5) are revised as follows:

§ 383.1 Purpose and scope.

* * * * *

(b) * * *

(2) Requires a driver to notify the driver's current employer and the driver's State of domicile of certain convictions;

* * * * *

(5) Establishes periods of disqualification and penalties for those persons convicted of certain criminal and other offenses and serious traffic violations, or subject to any suspensions, revocations, or cancellations of certain driving privileges;

* * * * *

3. Section 383.5 is amended by adding one definition entitled "Disqualification", and by revising four other definitions and placing them in alphabetical order as follows:

§ 383.5 Definitions.

* * * * *

Controlled substance has the meaning such term has under section 102(6), of the Controlled Substances Act (21 U.S.C. 802(6)) and includes all substances listed on schedules I through V of 21 CFR part 1308, as they may be revised from time to time. Schedule I substances are identified in appendix D of this subchapter and schedules II through V are identified in appendix E of this subchapter.

* * * * *

Disqualification means either:

(a) The suspension, revocation, cancellation, or any other withdrawal by a State of a person's privileges to drive a commercial motor vehicle; or

(b) A determination by the FHWA, under the rules of practice for motor carrier safety contained in part 386 of this title, that a person is no longer qualified to operate a commercial motor vehicle under part 391; or

(c) The loss of qualification which automatically follows conviction of an offense listed in § 383.51.

* * * * *

Driver's license means a license issued by a State or other jurisdiction, to an individual which authorizes the individual to operate a motor vehicle on the highways.

* * * * *

Employee means any operator of a commercial motor vehicle, including full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors (while in the course of operating a commercial motor vehicle) who are either directly employed by or under lease to an employer.

* * * * *

Serious traffic violation means conviction, when operating a commercial motor vehicle, of:

(a) Excessive speeding, involving any single offense for any speed of 15 miles per hour or more above the posted speed limit;

(b) Reckless driving, as defined by State or local law or regulation, including but not limited to offenses of driving a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(c) Improper or erratic traffic lane changes;

(d) Following the vehicle ahead too closely; or

(e) A violation, arising in connection with a fatal accident, of State or local law relating to motor vehicle traffic control (other than a parking violation). (Serious traffic violations exclude vehicle weight and defect violations.)

* * * * *

4. Section 383.31 is amended by revising paragraphs (a), (b) and (c)(4) as follows:

§ 383.31 Notification of convictions for driver violations.

(a) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation) in a State or jurisdiction other than the one which issued his/her license, shall notify an official designated by the State or jurisdiction which issued such license, of such conviction. The notification must be made within 30 days after the date that the person has been convicted.

(b) Each person who operates a commercial motor vehicle, who has a commercial driver's license issued by a State or jurisdiction, and who is convicted of violating, in any type of motor vehicle, a State or local law relating to motor vehicle traffic control (other than a parking violation), shall notify his/her current employer of such conviction. The notification must be made within 30 days after the date that the person has been convicted. If the driver is not currently employed, he/she must notify the State or jurisdiction which issued the license according to § 383.31(a).

(c) * * *

(4) The specific criminal or other offense(s), serious traffic violation(s), and other violation(s) of State or local law relating to motor vehicle traffic control, for which the person was convicted and any suspension, revocation, or cancellation of certain

driving privileges which resulted from such conviction(s);

* * * * *

5. Section 383.33 is revised to read as follows:

§ 383.33 Notification of driver's license suspensions.

Each employee who has a driver's license suspended, revoked, or canceled by a State or jurisdiction, who loses the right to operate a commercial motor vehicle in a State or jurisdiction for any period or who is disqualified from operating a commercial motor vehicle for any period, shall notify his/her current employer of such suspension, revocation, cancellation, lost privilege, or disqualification. The notification must be made before the end of the business day following the day the employee received notice of the suspension, revocation, cancellation, lost privilege, or disqualification.

6. The subpart heading for subpart D is revised to read as follows:

Subpart D—Driver Disqualifications and Penalties

7. Section 383.51 is amended by revising paragraphs (b)(1), (b)(3) (i) through (v), and (c) (1) and (2), to read as follows:

§ 383.51 Disqualification of drivers.

* * * * *

(b) * * *

(1) *General rule.* A driver who is convicted of a disqualifying offense specified in paragraph (b)(2) of this section, is disqualified for the period of time specified in paragraph (b)(3) of this section, if the offense was committed while operating a commercial motor vehicle.

* * * * *

(3) * * *

(i) *First offenders.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of one year provided the vehicle was not transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(ii) *First offenders transporting hazardous materials.* A driver who is convicted of an offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, is disqualified for a period of three years if the vehicle was transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 U.S.C. App. 1801–1813).

(iii) *First offenders of controlled substance felonies.* A driver who is convicted of an offense described in paragraph (b)(2)(v) of this section, is disqualified for life.

(iv) *Subsequent Offenders.* A driver who is convicted of an offense described in paragraphs (b)(3)(i) through (b)(2)(iv) of this section, is disqualified for life if the driver had been convicted once before in a separate incident of any offense described in paragraphs (b)(2)(i) through (b)(2)(iv) of this section.

(v) Any driver disqualified for life under § 383.51(b)(3)(iv) of this paragraph, who has both voluntarily enrolled in and successfully completed, an appropriate rehabilitation program which meets the standards of his/her State's driver licensing agency, may apply to the licensing agency for reinstatement of his/her commercial driver's license. Such applicants shall not be eligible for reinstatement from the State unless and until such time as he/she has first served a minimum disqualification period of 10 years and has fully met the licensing State's standards for reinstatement of commercial motor vehicle driving privileges. Should a reinstated driver be subsequently convicted of another disqualifying offense, as specified in paragraphs (b)(2)(i) through (b)(2)(iv) of this section, he/she shall be permanently disqualified for life, and shall be ineligible to again apply for a reduction of the lifetime disqualification.

(c) * * *

(1) *General rule.* A driver who is convicted of serious traffic violations is disqualified for the period of time specified in paragraph (c)(2) of this section, if the offenses were committed while operating a commercial motor vehicle.

(2) *Duration of disqualification for serious traffic violations*—(i) *Second violation.* A driver who, during any 3-year period, is convicted of two serious traffic violations in separate incidents, is disqualified for a period of 60 days.

(ii) *Third violation.* A driver who, during any 3-year period, is convicted of three serious traffic violations in separate incidents, is disqualified for a period of 120 days.

* * * * *

8. Section 383.73(g) is revised to read as follows:

§ 383.73 State procedures.

* * * * *

(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 suspend, cancel, or revoke the person's CDL or his/her pending application, or disqualify the person from operating a commercial motor vehicle for a period of at least 60 consecutive days.

* * * * *

PART 391—QUALIFICATIONS OF DRIVERS

9. Section 391.15(c)(2)(iv) is revised to read as follows:

§ 391.15 Disqualification of drivers.

* * * * *

(c) * * *

(2) * * *

(iv) Leaving the scene of an accident while operating a commercial motor vehicle; or

* * * * *

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Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Issuance of Program Announcement, "Nonparticipating State Initiative"; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

Issuance of Program Announcement, "Nonparticipating State Initiative"

AGENCY: Office of Juvenile Justice and Delinquency Prevention.

ACTION: Notice of issuance of program announcement.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to the provisions of section 223(d) of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, 42 U.S.C. 5601 *et seq.*, as amended by the Juvenile Justice and Delinquency Prevention Amendments of 1988, subtitle F of title VII of Pub. L. 100–690, November 18, 1988 (hereinafter "Act") is issuing a program announcement and a solicitation for applications from states not participating in the Formula Grants Program established by Part B of the Act. Eligible applicants are limited to local public and private nonprofit agencies in nonparticipating States. Agencies in South Dakota and Wisconsin are currently eligible to receive funds. The amount available in South Dakota is up to $225,000, in Wisconsin, up to $838,000. If additional funds become available for other states, a notice will be placed in the **Federal Register** naming the state, the amount of funds available, and the deadline for submission of applications by agencies in that state.

I. Introduction and Background

A. Legislation

Pursuant to section 223(d) of the Act, the OJJDP Administrator must endeavor, under section 222(a) of the Act, to make the Formula Grants fund allotment of a State which chooses not to participate or loses its eligibility to participate in the Formula Grants Program available to local public and private nonprofit agencies within the nonparticipating State. Should a State choose not to participate or lose its eligibility to participate in OJJDP's Formula Grants Program, the OJJDP Administrator, pursuant to section 223(d) of the Act, must endeavor to make that nonparticipating State's formula grants fund allotment available to local public and private nonprofit agencies within the State pursuant to section 222(a) of the Act. The funds may be used only for the purpose(s) of achieving compliance with:

1. Section 223(a)(12)(A), which provides that juveniles shall not be placed in secure detention or correctional facilities if (1) they are charged with or have committed offenses that would not be criminal if committed by an adult, (2) they are charged with or have committed offenses which do not constitute violations of valid court orders, or (3) they are non-offenders such as dependent or neglected children;

2. Section 223(a)(13), which provides that juveniles alleged or found to be delinquent, status offenders, and non-offenders shall not be detained or confined in any institution in which they have regular contact with incarcerated adults convicted of crimes or awaiting trial on criminal charges; and

3. Section 223(a)(14), which provides that no juvenile shall be detained or confined in any jail or lockup for adults except criminal-type juvenile offenders awaiting an initial court appearance pursuant to an enforceable State law requiring such appearance within 24 hours after being taken into custody (excluding weekends and holidays) provided that such exceptions are limited to areas which:

a. Are outside a Metropolitan Statistical Area,

b. Have no existing acceptable alternative placements available, and

c. Provide for the sight and sound separation of juveniles and incarcerated adults.

B. Definition of Terms

1. *Adult jail.* A locked facility administered, by State, county, or local law enforcement and public or private correctional agencies. The purpose of such facility is to detain adults charged with violating criminal law pending trial. Facilities used to hold convicted adult criminal offenders, usually sentenced for less than one year, are also considered adult jails.

2. *Adult lockup.* Similar to an adult jail except that an adult lockup is generally a municipal or police facility of a temporary nature which does not hold persons after they have been formally charged.

3. *Criminal-type offender.* A juvenile offender who has been adjudicated for conduct which would, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

4. *Accused juvenile offender.* A juvenile on whom a petition has been filed in the juvenile court or other action has occurred alleging that such juvenile is a juvenile offender, (i.e., a criminal-type offender or a status offender), but no final adjudication has been made by the juvenile court.

5. *Adjudicated juvenile offender.* A juvenile who the juvenile court has determined through an adjudicative procedure is a juvenile offender, (i.e., a criminal-type offender or a status offender).

6. *Facility.* A place, an institution, a building or part thereof, a set of buildings or an area, whether or not enclosing a building or set of buildings, that is used for the lawful custody and treatment of juveniles and that may be owned and/or operated by public and private agencies.

7. *Juvenile offender.* An individual within a juvenile court's jurisdiction for purposes of adjudication and treatment based on age and offense limitations as defined by State law (i.e., a criminal-type offender or a status offender).

8. *Lawful custody.* The exercise of care, supervision and control over a juvenile offender or non-offender pursuant to the provisions of the law, a judicial order or decree.

9. *Local private nonprofit agency.* A private nonprofit agency or organization that provides services within an identifiable unit or a combination of units of general local government, but which is not under public supervision or control. No part of the net earnings of such a private nonprofit agency or organization inures or may lawfully inure to the benefit of any private shareholder or individual. In addition such an agency or organization has been held by the IRS to be tax-exempt under the provisions of section 501(c)(3) of the 1954 Internal Revenue Code.

10. *Local public agency.* Any unit of local government, combination of such units, or any department, agency, or instrumentality of any such unit or combination of such units.

11. *Non-offender.* A juvenile who is subject to the jurisdiction of the juvenile court—usually under abuse, dependency, or neglect statutes—for reasons other than legally prohibited conduct of the juvenile.

12. *Nonparticipating State.* A State which chooses not to submit a plan, fails to submit a plan, or submits a plan which does not meet the requirements of section 223 of the Act and thus is not participating in the Formula Grants Program authorized by part B of the Act for a particular fiscal year; or a State found ineligible to receive funds because of failure to achieve or maintain substantial or full compliance with a mandate of the Act.

13. *Secure.* As used to define a detention or correction facility this term describes residential facilities which

include construction fixtures designed to physically restrict the movements and activities of persons in custody such as locked rooms and buildings, fences, or other physical structures. It does not include facilities where physical restriction of movement or activity is provided solely through facility staff.

14. *Status offender.* A juvenile offender who has been charged with or adjudicated for conduct which would not, under the law of the jurisdiction in which the offense was committed, be a crime if committed by an adult.

15. *Valid Court Order.* The term means a court order given by a juvenile court judge to a juvenile who has been brought before the court and made subject to a court order. The use of the word "valid" permits the incarceration of juveniles for violation of a valid court order only if they received their full due process rights as guaranteed by the Constitution of the United States. The requirements for taking this exception can be found in the Formula Grants Regulation, 28 CFR 31.303(f), published in the **Federal Register** of June 20, 1985.

16. *State Program Coordinator.* The agency/organization selected by OJJDP to implement Stage 1 and 2 of this Initiative.

C. Problem Addressed

Many communities within the boundaries of the nonparticipating States have not been able to implement the mandates of the Act because the State has elected not to participate in the Formula Grants Program, has become ineligible to continue participation in the program, or has elected to withdraw from participation. State or local policies, failure to coordinate, concentrate and redirect existing resources, and/or the limited number of alternative resources available to communities have resulted in an overreliance on the use of jails, lockups and other secure facilities for criminal-type offenders, status offenders and non-offenders.

This over-reliance on secure facilities may be due to a number of problems such as:

1. A lack of coordination and cooperation among juvenile justice system agencies including schools, law enforcement, prosecution, the judiciary, corrections, public and private service providers, and local public interest groups, which contributes to the inappropriate placement of juveniles in jails and lockups.

2. A lack of public awareness and policies regarding the issues of juveniles in jails and lockups and the secure confinement of status offenders and non-offenders.

3. The lack of a flexible network of services and programs that is responsive to the local jurisdiction's needs and capabilities and focused upon jurisdictions with the most difficult barriers to overcome.

4. The lack of alternative services which can be sustained over time with local resources, inclusive but not limited to:

a. Supervision of juveniles in secure facilities that conforms to the requirements set forth in the Formula Grants Regulation, 28 CFR part 31, published in the **Federal Register** of August 8, 1989.

b. Intensive supervision in a child's home as a placement alternative.

c. Emergency foster care, shelter care, group care and independent living arrangements.

d. Crisis intervention services and shortterm residential crisis intervention programs that can be used for conflict mediation, emergency holding, and provision of emergency attention for youth with physical or emotional problems.

e. Objective intake criteria that are based upon a presumption of release, utilization of least restrictive alternatives, protection of the right to due process, and maintenance of a child's ties to the family and community.

f. Twenty-four (24) hour intake screening services.

II. Program Goals and Objectives

Pursuant to section 223(d) of the Act, the goal of this program is to assist nonparticipating states in developing a range of alternatives to secure confinement and revising associated policies and procedures and bring them into compliance with section 223(a)(12)(A); the deinstitutionalization of status offenders, section 223(a)(13), the separation of juveniles from adults in adult jails and lockups, and section 223(a)(14), the removal of juveniles from adult jails and lockups. To achieve this goal applicants must address the following objectives:

A. The removal of juveniles from adult jails and lockups through systemwide coordination, cooperation and concentration of existing and new resources to develop community juvenile service systems that provide viable alternatives to the use of adult jails and lockups.

B. The development of a statewide, flexible network of services and placement options for juvenile offenders and non-offenders that will provide such juveniles with supervision and control, give them protection from victimization and exploitation and hold them accountable for their offenses.

C. The development and implementation of objective intake criteria and operational policies and procedures that are consistent with nationally recognized standards and applicable to alleged juvenile offenders and non-offenders who are awaiting court appearance.

D. An enhanced capacity for parents, schools, police and other private and public youth serving agencies to resolve juveniles' problems without the use of jail and lockups. This includes, where appropriate, the coordination and interaction between public and private juvenile services.

E. An increased public awareness of the problems of juveniles in jails and lockups as well as the difficulties of status offenders and non-offenders in secure confinement, resulting in the development of public policies to address such problems.

III. Program Strategy

This program consists of two stages: (1) Assessment and Planning; and (2) Strategy Implementation. A single State Program Coordinator (SPC) will be selected through this program announcement to implement the program in each nonparticipating state. The SPC will develop a statewide strategy and provide funds and assistance to selected communities in developing and implementing comprehensive youth service systems focused on complying with the mandates of the JJDP Act.

An advisory committee that meets, to the degree appropriate, the provisions of section 223(a)(3) will be established for this program to provide comments and recommendations to the SPC regarding the program strategy and activities. At a minimum, a meeting of the advisory committee should be held at the beginning of stages 1 and 2 to brief them on the purpose and activities and determine their role in the program. Where appropriate, consideration should be given to appointing some of the persons who served effectively on the advisory board to each State's prior nonparticipating grantee, if any.

A. Stage 1: Assessment and Planning

The first stage of the program consists of an assessment of detention and incarceration legislation, policy, procedures and practices, and the development of a detailed, statewide, strategy to change these laws, policies, procedures, and/or practices to move the State toward compliance with subsections 223(a)(12)(A), 223(a)(13) and 223(a)(14). The strategy should provide for improving the supervision and

protection of status offenders and non-offenders in a non-secure setting as well as removing juveniles from adult jails and lockups. A major purpose of this stage is to establish a solid foundation of information and use it as the basis for developing a statewide strategy for implementing comprehensive community juvenile services systems.

1. The major activities of stage 1 consist of:

a. Establishing the advisory committee;

b. Developing the assessment plan;

c. Collecting information and data on laws, policies, procedures, practices and programs;

d. Preparing an assessment report; and

e. Developing an action plan.

2. The major products of stage 1 are:

a. An assessment plan that specifies each step of the first stage.

b. An assessment report that includes:

(1) Problem statement;

(2) Review of current legislation, policies, practices and programs pertaining to the detention and jailing of juveniles including alternative services;

(3) Data on the number and types of jails, lockups, juvenile detention facilities, and correctional facilities in which juveniles are placed;

(4) Data on the number and types of juveniles in juvenile detention facilities, correctional facilities and adult jails and lockups;

(5) An assessment of the needs of the juveniles involved in the State's juvenile justice system;

(6) Status of the State laws, policies, procedures and practices with regard to the deinstitutionalization of status offenders and non-offenders, the separation of juveniles from adults in adult jails and lockups and the removal of juveniles from jails and lock-ups;

(7) Identification of the needs that must be addressed to develop a statewide strategy for improving detention and incarceration practices and for bringing the State into compliance with the JJDP Act; and

(8) Specification of the State and local public and private resources available to support the implementation of the strategy.

c. A statewide strategy that specifies:

(1) Who will be involved in implementing the strategy;

(2) What the major activities will be and how they are related to the problems and needs identified during the assessment process;

(3) Where in the State the activities will be targeted;

(4) A schedule of strategy implementation;

(5) How the strategy will be implemented; and

(6) The project budget, including the detailed budget narrative.

B. Stage 2, Strategy Implementation

During stage 2 the strategy developed during stage 1 will be implemented. The SPC will contract with local public agencies and private nonprofit organizations within the State to support specific projects in local jurisdictions. These projects should emphasize the development and implementation of systemwide strategies for coordinating, concentrating and redirecting existing resources to improve services for the care and custody of juveniles and meet the mandates of the JJDP Act. Activities should promote a coordinated statewide effort. If projects were initiated under a previous non-participating State award, the SPC will need to review the projects funded under that award to determine what projects, if any, should be continued. The SPC will provide training and technical assistance to the projects to ensure their performance is consistent with, and enhances, the overall strategy.

1. The major activities of stage 2 consist of:

a. Preparing an RFP for local projects;

b. Reviewing applications, selecting finalists and making awards;

c. Convening project staff and advisory committee members to review strategy;

d. Providing training and technical assistance to projects supported under the initiative;

e. Developing and implementing a statewide public education program; and

f. Developing and implementing an assessment of the effectiveness of the overall program.

2. The major products of stage 2 are:

a. A Request for Proposals to implement the program strategy developed under Stage 1;

b. A plan for providing training and technical assistance to local projects and State agencies; and

c. An assessment report on the effectiveness of the program in meeting its goals and objectives.

IV. Dollar Amount and Duration

A. The project period for this program is three years from the date of award. The recipient in each of the nonparticipating States will be eligible for awards of up to the amount of that State's FY 1988 Formula Grant allocation for the initial one-year budget period unless the State has already received its FY 1988 Formula Grant allocation. Any State which has already received its FY 1988 Formula Grant Award will be eligible for an award of up to the amount of that State's FY 1989 Formula Grant allocation for the initial one-year budget period. The second and third year awards, if made, will each be for an amount not to exceed that State's Formula Grant allocations for the succeeding two fiscal years, respectively. Both the second and third 12-month assistance awards will be subject to the availability of Federal funds; a demonstration of satisfactory completion of identified objectives; satisfactory progress toward compliance with the provisions of sections 223(a)(12)(A), 223(a)(13), and 223(a)(14); and whether the State has or has not announced an intention of becoming a participating State.

Funds will be made available through a cooperative agreement. Financial support for the SPC (planning and administration costs) may not exceed 20% of the total award for the project period. The SPC will contract the remainder of the first-year award to local public and private nonprofit agencies to enable them to implement Stage 2 of the initiative. SPC financial support for the second and third-year awards, if any, will be negotiated with each recipient but should not exceed 20% of the award. Financial assistance provided under this program requires no matching contribution with the exception of construction funds as provided in this announcement.

B. One application will be selected for each of the nonparticipating States pursuant to the selection criteria established in this announcement, and consistent with the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The agency or organization selected as the SPC will not be eligible to receive, beyond the three-year project period, funds allocated pursuant to section 222(a) for purposes related to section 223(d).

C. No more than one-fourth of the funds received by a public or private organization for Stage 2 may be used for construction or renovation purposes. Use of funds for construction is limited to innovative, community-based facilities for less than 20 persons and must be approved in advance by OJJDP. All construction funds must be matched dollar-for-dollar, in cash, by the local jurisdiction. The SPC and the local jurisdiction and/or the private organization will be held accountable for adherence to section 294 of the Act and the requirements for construction programs as contained in the effective edition of the OJP Financial and Administrative Guide for Grants,

M7100.1. The erection of new buildings or the renovation of secure facilities is not permitted with funds acquired through this program.

V. Eligibility Criteria

Applications to serve as the SPC are invited from local public and private nonprofit agencies within the nonparticipating States that have knowledge and experience in developing and/or implementing programs and projects on a statewide basis at the local level.

To be eligible for consideration, the applicant must demonstrate in the application that it has experience in the following areas:

A. An understanding of the intent of the statutory mandates of the JJDP Act and the general approaches for implementing the mandates on the local level.

B. Knowledge of and experience with juvenile justice systems; local jails, lockups, and secure juvenile detention facilities; the specific problems, strategies, and program alternatives necessary to achieve the objectives of this program; and strategy development and implementation.

C. Capability to develop management and fiscal systems necessary for the proper administration of Federal funds.

D. Capability to fulfill the activities and responsibilities identified in the Program Strategy Section of this announcement.

E. Capability to work effectively with local and State elected public officials, key decision makers in the juvenile justice system and the boards of public and private youth service providers which exist within the State for the purposes of achieving the objectives of this program.

VI. Program Application Requirements

All applicants must submit a completed Application for Federal Assistance (Standard Form 424), including a program narrative, a detailed budget and a budget narrative. All applications must include the information outlined in this section of the solicitation (subsection VI).

In accordance with Executive Order 12549, 28 CFR 67.510, applicants must provide a certification that they have not been debarred (voluntarily or involuntarily) from the receipt of Federal funds. Form 4662/2, which will be supplied with the application information package, must be submitted with the application.

Applicants for this program must submit a copy of their application to the State Single Point of Contact (SPOC), if one has been established and if the State has selected this program to be covered in its review process. Applications must be submitted to the SPOC for review and comment at the same time they are submitted to OJP. Under the regulations, the State process has at least (30) days to comment on noncompeting continuation applications and at least sixty (60) days to comment on all other applications.

Applicants must provide a *Certification Regarding Drug-Free Workplace Requirements* which meets the requirements of the Drug Free Workplace Act of 1988 (Public Law 100–690, title V, subtitle D). Form 4061/3, which will be supplied with the application information package, must be submitted with the application.

When submitting applications that contain more than one organization, the relationships among the parties must be set forth in the application. As a general rule, organizations that describe their working relationship as primarily cooperative or collaborative when developing products and delivering services will be considered co-applicants. In the event of a co-applicant submission, one co-applicant must be designated the payee and, as such, will receive and disburse project funds and be responsible for the supervision and coordination of the activities of the other co-applicant. Under this arrangement, each organization would agree to be jointly and severally responsible for all project funds and services. Each co-applicant must sign the SF–424 and indicate their acceptance of the conditions of joint and several responsibility with the other co-applicant.

Applications that include non-competitive contracts for the provision of specific services must include a sole source justification for any procurement in excess of $25,000.

In addition to the requirements specified in the instructions for preparation of Standard Form 424, the following information must be included in the application:

A. Organizational Capability

Applicants must demonstrate that they are eligible to compete for this cooperative agreement on the basis of eligibility criteria established in this solicitation.

1. Organizational Experience

Applicants must concisely describe their organizational experience with respect to the eligibility criteria specified above. Applicants must demonstrate how their organizational experience and capabilities will enable them to achieve the goals and objectives of this initiative.

2. Capability of Working with Other Organizations in the State

Applicants must demonstrate that they have discussed this program with local and State elected public officials or their staffs, key decision makers in the juvenile justice system such as juvenile court judges, associations of those involved in juvenile justice, the boards of public and private youth service providers, and other groups whose cooperation or participation is necessary to the success of the program. The applicant must certify that it is able to obtain the necessary cooperation or participation.

3. Financial Capability

In addition to the assurances provided in Part V, Assurances (SF–424), applicants must also demonstrate that their organization has or can establish fiscal controls and accounting procedures which assure that Federal funds available under this announcement are disbursed and accounted for properly. Applicants who have not previously received federal funds will be asked to submit a copy of the Office of Justice Programs (OJP) Accounting System and Financial Capability Questionnaire (OJP Form 7120/1).

Copies of the form will be provided in the application kit and must be prepared and submitted along with the application. Other applicants may be requested to submit this form.

All questions are to be answered regardless of instructions (section C.I.B. note). The CPA certification is required only of those applicants who have not previously received Federal funding.

B. Program Goals

A succinct statement of your understanding of the goals and objectives of the program should be included. The application should also include a problem statement to include the following:

1. Discuss your understanding of: (a) The State's placement of juveniles in adult jails and lockups as well as status offenders and non-offenders in secure detention or correctional facilities and the issues surrounding the removal of such juveniles from the facilities, (b) State legislative, judicial and executive branch activities related to supervision and protection of status offenders and non-offenders and jail removal, and (c) programs, community services, organizations and planning approaches which can be used in an effort to

develop comprehensive community services and achieve the Act's mandates.

2. Discuss the anticipated major difficulties and problem areas in the management and implementation of Stage 1 activities, selection of jurisdictions for implementing Stage 2, management of Stage 2 activities, and coordination with OJJDP. This discussion of anticipated problems should also address potential or recommended approaches for their solution.

C. Program Strategy

Applicants should describe the proposed approach for achieving the goals and objectives of the program. A discussion of how each of the activities of both stages of the program will be accomplished and a description of the products to be prepared should be included.

D. Program Implementation Plan

Applicants should prepare a plan that outlines the major activities involved in implementing the program and describes how they will allocate available resources to implement the program and how the program will be managed. The plan must include an annotated organization chart that depicts the roles and responsibilities of the SPC and the public and private organizations that receive funds during Stage 2. The process for identifying, selecting, and awarding funds to these organizations must be described. The policies and procedures for managing the contracts and for monitoring and assessing the effectiveness of the overall program must be described.

E. Time-Task Plan

Applicants must develop a time-task plan for the 12-month project period, clearly identifying major milestones and products. This must include designation of organizational responsibility and a schedule for the completion of the activities and products identified in Section III, Program Strategy.

VII. Procedures and Criteria for Selection

All applications will be evaluated and rated based on the extent to which they meet the following weighted criteria. In general, all applications received will be reviewed in terms of their responsiveness to the program application requirements, organizational capability, the goals, objectives and program strategy described in this announcement, and thoroughness and innovation in responding to strategic issues in project implementation.

Applications will be evaluated by a peer review panel according to the OJJDP Competition and Peer Review Policy, 28 CFR part 34, subpart B, published August 2, 1985, at 50 FR 31366–31367. The selection criteria and their point values (weights) are as follows:

A. The statement of the problem to be addressed by the project is clear, concise and well justified. (5 Points)

B. The objectives of the proposed project are clearly defined. (10 Points)

C. The project design is sound and contains program elements directly linked to the achievement of project objectives. (15 Points)

D. Project Management (35 Points):

1. The project management structure is adequate to the successful conduct of the project. This criterion includes the adequacy and appropriateness of the activities and the project management structure, and the feasibility of the time task plan. (15 Points)

2. Highly qualified staff are identified to manage and implement the program including staff to be hired through contracts. This criterion includes the clarity and appropriateness of position descriptions, required qualifications and selection criteria relative to the specific functions set out in the Implementation Plan and the qualifications of existing staff demonstrated by their resumes. (20 Points)

E. Organizational capability is demonstrated at a level sufficient to successfully support the project. Applicants must evidence the following qualifications and experience: (35 Points)

1. The applicant demonstrates capability and diversified experiences in working with local jurisdictions to develop and implement plans and programs for youth and establishing services and policy changes at the local, regional and statewide level. (15 Points)

2. The applicant demonstrates an ability to establish effective relationships with the juvenile justice system and alternative service providers. (5 Points)

3. The applicant's key staff are experienced in providing diverse populations with technical expertise in substantive topics related to the development and implementation of plans. (5 Points)

4. The applicant demonstrates capability and expertise in maintaining and managing contracts where local agencies or jurisdictions will be implementing various projects, new policies, and different techniques. (10 Points)

F. The budget is complete, appropriate and cost-effective in relationship to the proposed strategy and tasks to be accomplished. (5 Points)

Applications will be evaluated by a peer review panel. The results of peer review will be a relative aggregate ranking of applications in the form of "Summary of Ratings." These will be based on numerical values assigned by individual peer reviewers. Peer review recommendations, in conjunction with the results of internal review and any necessary supplementary reviews, will assist the Administrator in considering competing applications and in selection of the application for funding. The final award decision will be made by the OJJDP Administrator.

VIII. Submission Requirements

This program announcement is a request for proposals from local public and private nonprofit agencies in those States currently not participating in the JJDP program.

Applicants must submit the original signed application and three copies to OJJDP. The necessary forms for applications will be provided upon request.

Applications must be received by mail or hand delivered to the OJJDP by 5:00 p.m. EST on October 15, 1989. (Or six (6) weeks after the date of publication in the Federal Register) Those applications sent by mail should be addressed to: SRAD/OJJDP, United States Department of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. Hand delivered applications must be taken to the SRAD, Room 768, 633 Indiana Avenue, NW., Washington, DC between the hours of 8:00 a.m. and 5:00 p.m. except Saturdays, Sundays or Federal holidays.

The OJJDP will notify applicants in writing of the receipt of their application. Subsequently, applicants will be notified by letter as to the decision made regarding whether or not their submission will be recommended for funding.

IX. Civil Rights Compliance

A. All recipients of OJJDP assistance, including any contractors, must comply with the nondiscrimination requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended; title VI of the Civil Rights Act of 1964; section 504 of the Rehabilitation Act of 1973 as amended; title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; and the Department of Justice Nondiscrimination Regulations (28 CFR part 42, subparts C, D, E, and G).

B. In the event a Federal or State court or Federal or State administrative agency makes a finding of

discrimination, after a due process hearing, on the grounds of race, color, religion, national origin or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC) of the Office of Justice Programs.

C. Applicants shall maintain and submit to OJJDP upon request timely, complete and accurate data establishing the fact that no person or persons will be or have been denied or prohibited from participation in, benefits of, or denied or prohibited from obtaining employment in connection with any program activity funded in whole or in part with funds made available under this program because of their race, national origin, sex, religion, handicap or age. In the case of any program under which a primary recipient of Federal funds extends financial assistance to any other recipient or contracts with any other person(s) or group(s), such other recipient, person(s) or group(s) shall also submit such compliance reports to the primary recipient as may be necessary to enable the primary recipient to assure its civil rights compliance obligations under a grant award.

X. Contact

For further information contact: Eric Peterson, Juvenile Justice Specialist, State Relations and Assistance Division, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, NW., Washington, DC 20531, (202) 724–5924.

Dated: September 19, 1989.

Terrence S. Donahue,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

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