with the definition of new source contained in section 403.3(k) of the general pretreatment regulations. As a result of today's correction, the PSNS sections of the pharmaceuticals effluent guidelines will be consistent with the general pretreatment regulations. The PSNS sections will also be consistent with PSNS sections in other recently promulgated effluent guidelines rules. Today's correction also ''renumbers'' (by revising or deleting) the labels for the PSNS sections. For example, if paragraph (d) is deleted, paragraph (e) is renamed as (d).

II. Administrative Requirements

Under Executive Order 12886 (58 FR 51735, October 4, 1993), this is not a ''significant regulatory action'' and, is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994).

Because this action is not subject to the notice-and-comment requirements under the Administrative Procedure Act, 5 U.S.C. 533, or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health and safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. This rule is not subject to the National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) because it does not involve any technical standards. This action contains no information collection requirements. Therefore, it is not subject to the Paperwork Reduction Act of 1980, 44 U.S.C. 1501, *et seq.* EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the **Federal Register** notice of September 21, 1998.

The revisions in this final rule are not substantive. These revisions add a clarifying abbreviation, delete four incorrect subsections of the rule, change parenthetical letters identifying two subsections and delete parenthetical letters identifying two other subsections. For this reason, EPA has determined that public participation in this action is unnecessary and constitutes good cause for issuing this rule without notice and comment. For the same reason, the Agency has determined that good cause exists to waive the requirement for a 30-day period before the amendments become effective. Therefore, the amendments are effective immediately.

The Congressional Review Act (CRA), 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. Section 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of September 2, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 439

Environmental protection, Reporting and recordkeeping requirements, Water pollution control.

Dated: August 25, 1999.

J. Charles Fox,

Assistant Administrator for Water.

For reasons set out in the preamble, part 439, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 439—PHARMACEUTICAL MANUFACTURING POINT SOURCE CATEGORY

1. The authority citation for part 439 continues to read:

Authority: Secs. 301, 304, 306, 307, 308, 402 and 501 of the Clean Water Act, as amended; 33 U.S.C. 1311, 1314, 1316, 1317, 1318, 1342, and 1361.

2. Section 439.1 is amended by adding paragraph (n) to read as follows:

§ 439.1 General definitions.

* * * * *

(n) The abbreviation Mg/L means milligrams per liter or parts per million (ppm).

§ 439.17 [Amended]

3. Section 439.17 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

4. Section 439.27 is amended by removing paragraph (b) and removing the paragraph designation from paragraph (a) and revising the newly designated introductory text before the table to read as follows:

§ 439.27 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart must achieve the following pretreatment standards:

* * * * *

§ 439.37 [Amended]

5. Section 439.37 is amended by removing paragraph (d) and redesignating paragraph (e) as (d).

§ 439.47 [Amended]

6. Section 439.47 is amended by removing the paragraph designation from paragraph (a) and by removing paragraph (b).

[FR Doc. 99–22745 Filed 9–1–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 383 and 384

[FHWA Docket No. FHWA–97–3103]

RIN 2125–AE28

Commercial Driver Disqualification Provision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA revises its regulations to require that commercial motor vehicle (CMV) drivers who are convicted of violating Federal, State, or local laws or regulations pertaining to railroad-highway grade crossings be disqualified from operating a CMV. Penalties also will be assessed against

employing motor carriers found to have knowingly allowed, permitted, authorized, or required a driver to operate a CMV in violation of laws or regulations pertaining to railroad-highway grade crossings. This final rule completes an action initiated in response to the requirements specified in section 403 of the ICC Termination Act (ICCTA) of 1995. The purpose of this action is to enhance the safety of CMV operations on our nation's highways.

EFFECTIVE DATE: October 4, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. David Goettee, Driver Division, Office of Motor Carrier Research and Standards, (202) 366–4001, or Mr. Charles Medalen, Office of the Chief Counsel, (202) 366–1354, 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 Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's web page at: http://www.access.gpo.gov/nara.

Background

This final rule completes action initiated under section 403 of the ICCTA (Pub. L. 104–88, 109 Stat. 803, 956, December 29, 1995, codified at 49 U.S.C. 31310(h) and 31311(a)(18)) to achieve safer CMV driver behavior when CMVs are crossing railroad-highway grade crossings. Section 403 amended the Commercial Motor Vehicle Safety Act (CMVSA) of 1986, Pub. L. 99–570, 100 Stat. 3207–170, by adding subsection (h) to 49 U.S.C. 31310. The amendment requires sanctions and penalties for CMV drivers who are convicted of violating laws or regulations pertaining to railroad-highway grade crossings.

The amendment also requires that monetary penalties be assessed against employers found to have knowingly allowed, permitted, authorized, or required an employee to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings. It requires States to adopt and enforce the Federal sanctions and penalties prescribed for CMV drivers and employing motor carriers who violate laws or regulations pertaining to railroad-highway grade crossings.

The FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 2, 1998, (63 FR 10180) to request comment on the proposed changes to 49 CFR Parts 383 and 384 in regard to violations of railroad-highway grade crossing by drivers operating CMVs. The comment period closed on May 1, 1998.

Discussion of Petitions

The FHWA received five petitions between April 23, 1998, and May 1, 1998, to extend the comment period for the NPRM. The FHWA has decided not to grant an extension because it believes the petitioners were given more than adequate time to provide additional data to the docket.

Shell Oil Products Company and Linden Bulk Transportation Company believed more time was necessary to examine this subject. In particular they wished to know if the proposed rule would apply only to the Federal regulations at 49 CFR 392.10 and 392.11, or if it would apply to all traffic laws of any jurisdiction. They also wanted to know what protection a motor carrier has in the event a driver violates such a law or regulation.

Textile Chemical Company asked the same questions as Shell and Linden. The Company also asked: ''If a carrier provides training under HM–126F requirements for drivers concerning railroad crossings and documents such training, would this action protect the carrier from violating the proposed 49 CFR 383.37(d), if no complicity in the violation was discovered?''

North American Transportation Consultants wanted the same information as requested by the Textile Chemical. They also asked whether railroad-highway grade crossing safety violations were required to be compatible with 49 CFR 392.10 and 392.11 to preserve uniformity. If so, would the FHWA establish a review system to approve or reject local laws covered under this proposal? They proposed to gather and submit information to the docket regarding various local laws and ordinances associated with railroad-highway grade crossing requirements, and asked that the comment period be extended at least 90 days to accomplish those tasks.

Decker Transport Company asked the same questions but inquired more specifically how local laws that conflict with the provisions of 49 CFR 392.10 would be handled. They proposed to gather and submit to the docket information concerning various local laws and ordinances associated with railroad-highway grade crossing requirements.

All five petitioners either wanted more time to collect data regarding variations in State and local laws and regulations regarding railroad-highway grade crossings, or additional information to help them understand the scope of the rulemaking. It is unclear to the FHWA how the data to be collected would be relevant to the specifications contained in the ICCTA of 1995. In any case, no such information was provided to the docket. The additional information requested in the petitions is given below in a question and answer format.

Question: What regulations and laws are included under the proposed new regulation?

Response: This final rule specifically covers convictions for six types of offenses, including failing to slow down, stop, check for clear track, obey traffic control devices or law enforcement officials. Also included are crossing without having sufficient undercarriage clearance or sufficient space on the other side to clear the track without stopping. It does not matter whether the offense involves Federal, State, or local laws or regulations regarding railroad-highway operations.

Question: Are there any proposed Federal fines for drivers who are convicted of such a violation?

Response: No. This rule follows the process established by the Commercial Motor Vehicle Safety Act of 1986. It sets a minimum disqualification period for a driver convicted of one of these six offenses. Any fines or penalties are left to the discretion of the convicting jurisdiction.

Due to the seriousness of this offense, Congress mandated that an employer be subject to a civil penalty of up to $10,000, if the employer knowingly allows, requires, permits, or authorizes a driver to violate laws or regulations pertaining to railroad-highway grade crossings.

Question: Will the FHWA establish a review system to achieve compatibility of State and local laws and regulations with 49 CFR 392.10 and 392.11 regarding railroad-highway grade crossing violations?

Response: The FHWA has a system under 49 CFR part 350 of the Federal Motor Carrier Safety Regulations (FMCSRs) that requires the States to have laws and regulations compatible with the Federal regulations. Under 49 CFR 350.15, States must certify annually that they are enforcing the FMCSRs or compatible State laws. Section 355.21 also requires States to review their laws for compatibility every year, and

§ 355.23 requires them to submit the results of the review along with the annual State Enforcement Plan. Failure to adopt State laws and regulations that are compatible with 49 CFR 392.10 and 392.11 can result in a loss of Motor Carrier Safety Assistance Program funds.

Failure of the States to adopt the penalties specified by 49 U.S.C. 31310(h) and this rule can result in the withholding of certain Federal-aid funds under 49 U.S.C. 31314 for not being in substantial compliance with the CDL program requirements.

Question: If a local law or regulation contradicts the provisions of 49 CFR 392.10, is that law or regulation covered by this rule?

Response: See the previous question. The answer to that question also applies to this one.

Question: If a driver violates a law or regulation, how is it determined if the employer is also in violation?

Response: As previously established in 49 CFR 383.37 for other employer responsibilities under the CDL program, it must be proven that the employer knowingly allowed, required, permitted, or authorized a driver to violate the law or regulation.

Question: Why isn't violation of a railroad-highway grade crossing law or regulation being included as an addition to the existing CDL serious traffic violations?

Response: These convictions have different conditions for disqualification as specified in the ICCTA. The offenses classified as serious traffic violations require a second conviction before a driver receives at least a 60-day disqualification. Under this rule, a conviction for a violation of any railroad-highway grade crossing law or regulation requires at least a 60-day disqualification for a first conviction.

Question: Why doesn't this rule address other railroad-grade crossing issues?

Response: This rule was developed only to carry out the statutory requirements in section 403 of the ICCTA.

The NPRM stated that comments received after the comment closing date would be filed in the docket and considered to the extent practicable in developing the final rule. No new data or comments were filed in the docket after the initial 23 submissions. The FHWA believes it has given the petitioners more than adequate time to provide their additional data since the docket closed on May 1, 1998. This is more time than a formal extension of the comment period would have provided. Based on this fact and the responses given above to questions raised by the petitioners, the FHWA has decided to deny the five petitioners' request for a formal extension of the comment period for the NPRM.

Discussion of Comments

List of Commenters

Comments to the docket on the NPRM were received from 23 States, individuals, companies, and organizations as follows:

Five States (Colorado Department of Public Safety, Missouri Department of Revenue, California Highway Patrol, Florida Department of Highway Safety, Wisconsin Department of Transportation);
Three individuals (Steven A. Tudor, E. Lowell Lewis, E. A. Brown);
Nine Companies (Decker Transport Company; Farmland Industries, Inc.; Federal Express Corporation; Grammer Industries, Inc.; Linden Bulk Transportation; National Railroad Passenger Corporation; Phibro-Tech; Shell Oil Products Company; Textile Chemical Company);
Four associations (American Trucking Associations (ATA), National Association of Railroad Passengers, Owner Operator Independent Drivers Association, Truckload Carriers Association);
One safety advocacy group (Advocates for Highway and Auto Safety); and
One consultant (North American Transportation Consultants).

Commenters in Favor of Rule

Three commenters (National Association of Railroad Passengers, Advocates for Highway and Auto Safety, and National Railroad Passenger Corporation (Amtrak)) strongly supported all the provisions of the rule.

Comments by Petitioners

The questions and issues raised by the five petitioners (Shell Oil Products Company, Linden Bulk Transportation Company, Textile Chemical Company, North American Transportation Consultants, Decker Transport Company) requesting an extension of the comment period are addressed in the ''Discussion of Petitions'' section of this preamble.

Proposal Too Broad

A significant concern raised by many of the commenters either directly through their comments or through their questions asking for clarification was that the wording of the offenses to be covered is too vague. For example, Decker Transport Company asked for clarification regarding which Federal and/or local regulations constitute a violation covered under this rule. It felt the language in the NPRM was too vague and open to abuse. Similar comments were expressed by the other commenters.

Farmland Industries, the Truckload Carriers Association, and ATA expressed concern about motor carriers being charged when drivers violated railroad-highway grade crossing laws or regulations. Farmland Industries stated that it would be unfair to apply penalties to motor carriers when drivers violate company policy requiring them to comply with railroad-highway grade crossing rules and regulations.

FHWA Response

The FHWA agrees with the commenters that the language defining a railroad-highway grade crossing violation needs to be more specific. The final rule therefore lists six offenses under § 383.51(e) that pertain to a railroad-highway grade crossing. The FHWA believes that this change will make the final rule more enforceable and more likely to achieve the intended legislative effect.

The FHWA does not agree that motor carriers are being treated unfairly under this rule. Motor carriers are treated the same as under the existing provisions of § 383.37 that cover offenses for using a disqualified driver, a driver with more than one license, or using a driver while he or she has been ordered out of service. The key wording in all of these offenses, including the new one for railroad-highway grade crossings, is that the motor carrier must ''. . . knowingly allow, require, permit, or authorize a driver to operate a CMV . . .'' A motor carrier is not guilty of a ''knowing'' violation simply because one of its drivers violates a railroad-highway grade crossing law or regulation. The penalty can only be imposed if it can be shown that the motor carrier knew, or should have known, of the driver's violation because it actually ordered or authorized him or her to ignore the grade crossing laws or regulations, or because the motor carrier, after learning of previous violations by drivers, failed to take action to prevent them from happening again.

Abandoned Tracks

Five commenters (Grammer Industries, Farmland Industries, E. Lowell Lewis, Truckload Carriers Association, ATA) expressed concern about the many abandoned railroad tracks around the country that are not marked as such with a sign. A driver could be disqualified for not stopping at

the grade crossing of these abandoned tracks. The commenters want the railroads or the Federal Railroad Administration to identify these abandoned tracks with highway signs.

FHWA Response

Under 49 CFR 392.10(b)(4), a railroad track is considered to be abandoned only if it is so signed. This rule makes the failure to stop at a grade crossing that is still considered to be active a CDL disqualifying offense. While the FHWA agrees that abandoned tracks should be so marked, the decision to declare tracks abandoned and erect a sign declaring them abandoned is a process involving the railroads and the States. This issue is outside of the scope of this rule.

Responsibilities of Railroads

Three commenters (Farmland Industries, Federal Express, Owner Operator Independent Drivers Association) expressed the concern that many of the problems at grade crossings are the responsibility of the railroads which should provide warning devices and better signing at all active grade crossings.

FHWA Response

This rule is only one part of a concerted effort to improve safety at railroad-highway grade crossings. Other actions are being implemented to provide better grade crossing safety through a cooperative effort of the FHWA, Federal Railroad Administration (FRA), National Highway Traffic Safety Administration, the railroads and public interest groups.

Just in the past five years, crashes have been reduced by 30 percent and fatalities by 33 percent through the closing of some at-grade railroad-highway crossings, grade separation of rails and highways, better engineering of highways, more effective signage, warning devices that use the latest technology such as four way gates, train-borne devices to provide audible and visual warning of the train's approach and public education programs.

Serious Traffic Violations

The Colorado Department of Public Safety and the Missouri Department of Revenue stated that violations of railroad-highway grade crossing laws and regulations should be included in the existing category of serious traffic violations rather than creating a new category of violations.

E. A. Brown, a Florida police officer, stated that railroad-highway safety grade crossing violations should be treated the same as other serious traffic safety violations because minor crossing violations are in fact less serious than a violation such as reckless driving.

FHWA Response

Convictions for serious traffic violations such as speeding in excess of 15 miles per hour over the posted speed limit, improper or erratic traffic lane changes, or following the vehicle ahead too closely only lead to a driver disqualification if two or more convictions occur in separate incidents. The ICCTA specifically requires disqualification upon a first conviction of a violation of railroad-highway grade crossing safety laws or regulations.

Grade crossing violations can cause death and injury on a large scale. The agency has therefore established a separate category of violations and sanctions that reflects the intent of Congress in the ICCTA by requiring a driver disqualification on the first conviction.

Traffic Jams and Rear-End Collisions

Grammer Industries stated that the growth of towns in the vicinity of railroad-highway grade crossings has created engineering problems. The commenter stated that when CMVs stop at a railroad-highway grade crossing, they create traffic jams. Both Grammer Industries and Farmland Industries felt that these vehicles, when stopped on the highway, cause rear-end collisions. The Truckload Carriers Association stated that slowing down or stopping at railroad-highway grade crossings could significantly disrupt the flow of traffic and be deadly.

The Truckload Carriers Association, ATA, and Federal Express Corporation support the elimination of a stopping requirement at all actively-controlled grade crossings.

The California Highway Patrol stated that requiring CMVs to stop or slow down at railroad-highway grade crossings poses a greater safety risk to the public.

The Owner Operator Independent Drivers Association (OOIDA) stated that the FHWA has failed to provide statistics on the number of rear-end collisions at railroad-highway grade crossings that were due to vehicles rear-ending CMVs that had stopped even though there was no train present. The OOIDA also believes that this final rule will increase the risk of rear-end collisions and gridlock because CMV drivers will be stopping at every railroad-highway crossing to protect their CDL.

FHWA Response

The FHWA is not entertaining any changes to 49 CFR 392.10 and 392.11 in this rulemaking. The ICCTA and this rule only require the States to impose sanctions and penalties for CMV operators convicted of violations of railroad-highway grade crossing laws or regulations which are at least as stringent as the requirements of this rulemaking.

This rulemaking will not increase the number of rear-end collisions since no changes are being made to the current railroad-highway grade crossings requirements for CMV drivers. Whether stopping at a railroad-highway grade crossing can be more of a safety problem than not stopping, was addressed in more detail in the June 18, 1998, final notice on ''Review of the Federal Motor Carrier Safety Regulations; Regulatory Removals and Substantive Amendments'' (63 FR 33254).

Current Prohibitions Adequate

The Colorado Department of Public Safety and the Missouri Department of Revenue believe that the existing requirements in 49 CFR 392.10 and 392.11 adequately address the railroad-highway grade crossing safety issue.

The California Highway Patrol (CHP) opposes any new requirements that would require the State of California to legislate stricter laws and harsher penalties against drivers who violate railroad-highway grade crossing laws and regulations and civil penalties against employers. Motor carriers transporting passengers or placarded hazardous materials are the only vehicles required to stop at railroad-highway grade crossings. The CHP believes the hazardous materials industry has the best safety record in California.

The Wisconsin Department of Transportation states that its data does not indicate that CMV drivers are over represented in crashes or citations issued involving railroad-highway grade crossings.

FHWA Response

The FHWA agrees that the existing Federal requirements in 49 CFR 392.10 and 392.11 adequately address the railroad-highway grade crossing safety issue, but only from the standpoint of prohibitions and their related fines; not sanctions and penalties. The minimum period of disqualification for a driver and the maximum fine to be levied against a motor carrier in this rule reflect FHWA's concern about the potentially severe safety consequences, including loss of life, that may result

from the violation of a railroad-highway grade crossing law or regulation. The FHWA believes most States currently have laws and regulations regarding violations at railroad-highway grade crossings by any driver, commercial or non-commercial, but that State law may only require fines. As is the case with other CDL disqualifying offenses, the CDL driver should be held to a higher standard than other drivers due to the potential for injuries and loss of life in a crash between a CMV and a train. The FHWA acknowledges that there are far more violations by non-CDL drivers at railroad-highway grade crossings, but the severity of a crash, in injuries, fatalities, and property damage, is far greater when a commercial vehicle is involved.

State Legislative Changes

The Missouri Department of Revenue states that because the rule does not follow the provisions of serious traffic violations, the State must pass new legislation. The Wisconsin Department of Transportation stated that this rule will require legislative and information system changes.

FHWA Response

The ICCTA requires disqualification upon a first conviction of a violation of railroad-highway grade crossing safety laws or regulations. For this reason, the FHWA cannot include these offenses under the serious traffic violation category which requires two convictions before a driver can be disqualified.

As discussed in the ''Substantial Compliance'' section of the preamble, the FHWA acknowledges that the complexity of revising State legislation and establishing procedures to incorporate the new requirements into existing systems will require time. The FHWA is therefore allowing three years after the effective date of the rule for the States to come into substantial compliance with these new requirements.

Severity of Sanctions and Penalties

The Owner Operator Independent Drivers Association strongly opposes the rulemaking because it will not substantially improve highway safety. The rule will have a substantial effect on small business owners. Owner-operators may have to defend themselves against a $10,000 fine because they are ''employers'' as well as drivers. They also stated that the penalties are too severe given the number or severity of collisions between trains and CMVs. Only a conviction for ignoring a railroad-highway safety grade crossing signal device should be disqualifying.

The Colorado Department of Public Safety stated that disqualification should not include a conviction for stopping too close to a railroad-highway grade crossing.

The Truckload Carriers Association stated that drivers who violate railroad-highway grade crossing laws or regulations after making a ''good faith'' effort to comply with such regulations should not be penalized.

The Florida Department of Highway Safety and Motor Vehicles stated that the penalties are too severe. This commenter believes drivers should only be subject to fines on a first offense, not a disqualification. Drivers should be disqualified for a second conviction.

Mr. E. Lowell Lewis stated that fines and duration of driver license disqualification are excessively high for a violation at an unmarked abandoned railroad-highway grade crossing.

Grammer Industries believes that the potential fines are out of proportion to other serious traffic violations. They stated that road rage is a more important problem and should be addressed instead of railroad-highway grade crossing violations.

E. A. Brown, a police officer, stated that the majority of railroad-highway safety grade crossing violations do not endanger safety.

The Owner Operator Independent Drivers Association stated that the combination of up to a $10,000 penalty as an employer for the first conviction, and the loss of revenue for the length of the disqualification as a driver, will put owner/operators out of business. Further, because they are owner/operators, it will be a hardship for them to be able to make a court appearance to defend themselves.

The Colorado Department of Public Safety believes that disqualification for disobeying a railroad-highway grade crossing requirement would cause drivers to plea bargain down to a non-serious offense.

The Advocates for Highway and Auto Safety (AHAS) recommend that a one year penalty be established for third and subsequent violations of railroad-highway grade crossings because of the especially severe nature of railroad-highway grade crossing violations. They also recommended that the time limit for compiling two or more convictions be increased from three to five years.

FHWA Response

As stated previously, the minimum period of disqualification and the maximum fine levied in this rule reflect the concern of the Congress and the FHWA about the potentially severe safety consequences, including loss of life, that may result from a violation of a railroad-highway grade crossing law or regulation. As discussed later in the Section Analysis under § 383.51, Disqualification of Drivers, the FHWA agrees with AHAS that the potentially severe consequences of this violation warrant a one year disqualification period for a third or subsequent conviction over a three year period.

This final rule requires a penalty of not more than $10,000 to be assessed against a motor carrier who is convicted of knowingly allowing a driver to commit a railroad-highway safety grade crossing violation. The rule allows for flexibility in assessing the penalty based on the severity of the offense and the circumstances involved in the incident. The FHWA believes that the issue of ''good faith effort'' and other mitigating circumstances should be left to the discretion of the judge or administrative hearing officer.

Changes to Current Regulations

The ATA state that the FHWA should eliminate the prohibition against changing gears while crossing railroad tracks. The ATA and Federal Express Corporation believe that the Agency should require States to change their railroad-highway grade crossing laws and regulations to be in conformity with the Federal requirements. Railroad-highway grade crossing regulations should be uniform for both CMVs and non-CMVs.

FHWA Response

All of the suggestions for changing current regulations related to railroad-highway grade crossings are outside of the scope of this rulemaking. The purpose of this rule is to implement the requirements of section 403 of the ICCTA.

If the commenters feel there is a need to change current regulations, they should submit to the FHWA a formal petition for rulemaking along with supporting documentation and justifications.

Substantial Compliance

Section 403(c) of the ICCTA , codified at 49 U.S.C. 31311(a)(18), adds to the list of conditions necessary to achieve substantial compliance, the adoption and enforcement of FHWA sanctions and penalties for violations of laws and regulations pertaining to railroad-highway grade crossings. Substantial compliance is required to avoid having apportioned Federal-aid highway funds withheld. The FHWA understands the complexity of revising State legislation

and establishing procedures to incorporate the new requirements into existing systems. The FHWA is therefore setting the deadline for achieving substantial compliance with this 23rd requirement for State participation in the CDL program as no later than three years after the effective date of this rule.

Federal Enforcement

While the States are being given up to 3 years to implement these new disqualifying offenses, the FHWA has the authority, and will continue to exercise its authority to subject drivers and motor carriers operating in interstate commerce to the appropriate civil or criminal penalties if they are found guilty of violating any of the Federal prohibitions defined in 49 CFR 392.10 and 392.11.

Section Analysis

Section 383.21 Number of Drivers' Licenses

Section 4011(b)(1) of the Transportation Equity Act for the 21st Century [Pub. L. 105–178, 112 Stat. 107, 407, June 9, 1998, codified at 49 U.S.C. 31302] removed the exception in § 383.21(b)(1) allowing a driver to hold more than one driver's license during the 10-day period beginning on the date the CDL is issued. This section is revised to reflect this change and to remove the obsolete exception in § 383.21(b)(2) allowing more than one driver's license if a State required it; that exception has been invalid since January 1, 1990.

Section 383.37 Employer Responsibilities

Section 403 of the ICCTA prescribes a more stringent penalty for employers who knowingly require or allow railroad-highway grade crossing violations than the existing sanctions imposed on employers using a driver while disqualified. Because there is no specific prohibition in the current regulation to which the prescribed sanction would apply, a provision is added to § 383.37 implementing this requirement.

Section 383.51 Disqualification of Drivers

Section 403 of the ICCTA requires the Secretary to establish by regulation, sanctions and penalties for drivers convicted of violating railroad-highway grade crossing laws or regulations.

While the ICCTA only refers in general to violations of laws and regulations pertaining to railroad-highway grade crossings, the FHWA, as explained earlier in this preamble, agrees with the commenters that the violations should be more specific, in keeping with the descriptions of other CDL major and serious traffic violations under 49 CFR 383.51. Six categories of violations are added to paragraph (e)(1) of this section to provide more specificity to the violations.

The ICCTA requires the penalty for a single violation to be not less than a 60-day disqualification, but is silent on how to treat subsequent convictions. Based on the precedents established for all other types of violations which apply a longer penalty for subsequent convictions, and the inherent authority to establish higher penalties for the violations described, 49 CFR 383.51 is amended to provide an increased period of disqualification for subsequent convictions.

Compared to other sanctions imposed in the CMVSA, violations at railroad-highway grade crossings rank higher than serious traffic violations, which require no sanction for a first conviction and disqualifications of not less than 60 days for the second conviction and not less than 120 days for a third or subsequent conviction. The FHWA initially believed a two tier sanctioning system with a minimum disqualification period of 60 days for a first conviction and 120 days for a second or subsequent conviction was a reasonable penalty structure for convictions of railroad-highway grade crossing violations. That was the proposal published in the NPRM. However, based on the severity of the railroad-highway grade crossing crashes involving commercial motor vehicles that have taken place in recent months, including the crashes in Illinois and Texas, the FHWA believes there is a need for a stronger penalty deterrent. As recommended by the Advocates for Highway and Auto Safety and the Federal Railroad Administration, the FHWA is revising the penalty structure to include a one year penalty for third and subsequent convictions for violations of railroad-highway grade crossing laws and regulations. The one year disqualification for a third conviction will bring the penalties more in line with the graduated penalty structure under 49 CFR 240.117 for railroad engineers who fail to comply with requirements for the safe operation of trains. These safety standards for railroad engineers are comparable to commercial motor vehicle driver requirements, including such offenses as failure to control a locomotive or train in accordance with a signal indication that requires a complete stop before proceeding, failure to adhere to speed limitations and occupying main track without proper authority.

The ICCTA is also silent regarding the time limit between first and subsequent violations. Referring again to the sanctions required for serious traffic violations in 49 U.S.C. 31310(e), which employ a three-year period, a three-year period is also set for these violations. A second conviction for a grade crossing violation in a CMV within a three-year period will result in a disqualification of at least 120 days and a third or subsequent conviction within a three-year period will result in a disqualification of at least one year.

Section 383.53 Penalties

The ICCTA amendment to 49 U.S.C. 31310 specifically provides that any motor carrier that knowingly allows, permits, authorizes, or requires a driver to operate a CMV in violation of a law or regulation pertaining to railroad-highway grade crossings must be subject to a civil penalty of not more than $10,000. This reflects congressional concern about the potentially disastrous consequences of illegally crossing a railroad track. The FHWA has therefore added a new paragraph (c) to the penalty provisions of 49 CFR 383.53 to incorporate this sanction.

Section 384.223 Railroad-Highway Grade Crossing Violation

As indicated in the ICCTA, the States are required to adopt and enforce the sanctions and penalties relating to violations of railroad-highway grade crossing laws or regulations codified in §§ 383.37, 383.51, and 383.53. A new § 384.223, Railroad-highway grade crossing violation, is added to part 384 as the 23rd substantial compliance requirement for State CDL programs. For State compliance purposes, existing laws or regulations applicable to violation of railroad-highway grade crossing restrictions, such as reckless driving or driving to endanger, will be acceptable provided a conviction for these offenses invokes at least the specified minimum disqualification periods.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or a significant regulation within the meaning of Department of Transportation regulatory policies and procedures.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the

FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA believes the actual imposition of these fines and disqualifications will be required only infrequently. This is based on the fact that the FHWA believes the overwhelming majority of motor carriers, including small carriers, currently instruct their drivers to comply with all safety related laws and regulations, including those pertaining to railroad-highway grade crossings. Further, the FHWA believes this final rule establishing driver disqualification and employer civil penalties will serve as a further deterrent for drivers and/or carriers who might otherwise have violated such laws or regulations. Accordingly, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995 and Executive Order 12875 (Enhancing the Intergovernmental Partnership)

This rule does not impose a Federal mandate resulting in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*).

Each of these final rule changes is a small incremental addition to an existing process. Drivers are already being disqualified as a matter of course when convicted of certain violations. This merely standardizes the minimum disqualification time drivers must receive for violating existing laws or regulations pertaining to railroad-highway grade crossings.

There is a potential one-time minor cost to States that need to modify existing laws to incorporate these standardized railroad-highway grade crossing provisions. The costs of being in substantial compliance with the provisions in this final rule are part of an existing State monitoring program, and therefore will have very little impact on ongoing State operations.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under E. O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it will have significant implications for Federalism.

The federalism implications of the CDL program were addressed in detail in the rule which established the initial minimum standards (53 FR 27628, Thursday, July 21, 1988). A summary of the points covered in that rule follows:

(a) The Congress determined that minimum Federal standards were required because medium and heavy trucks are involved in a disproportionately large percentage of fatal accidents. The States were carefully consulted in establishing the minimum standards adopted by the FHWA.

(b) The safety problem associated with CMVs is national in scope, requiring a consistent and reciprocal approach to licensing, which retained the basic role of the States in issuing licenses.

(c) The standards adopted deliberately allowed maximum flexibility to the States in implementation of this program.

Thus, it is certified that the specifications contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order, and they accord fully with the letter and spirit of the President's Federalism initiative.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This action does not contain information collection requirements for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520, that are not already approved for the CDL program and its associated commercial driver's license information system (CDLIS).

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 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 Parts 383 and 384

Commercial driver's license, Commercial motor vehicles, Motor carriers, Motor vehicle safety, and Railroad-highway grade crossing.

Issued on: August 25, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA hereby amends title 49, Code of Federal Regulations, Chapter III, parts 383 and 384 as set forth below.

PART 383—[AMENDED]

1. Revise the authority citation for 49 CFR part 383 to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

2. Revise § 383.21 to read as follows:

§ 383.21 Number of drivers' licenses.

No person who operates a commercial motor vehicle shall at any time have more than one driver's license.

3. Revise § 383.37 to read as follows:

§ 383.37 Employer responsibilities.

No employer may knowingly allow, require, permit, or authorize a driver to operate a CMV in the United States:

(a) During any period in which the driver has a CMV driver's license suspended, revoked, or canceled by a State, has lost the right to operate a CMV in a State, or has been disqualified from operating a CMV;

(b) During any period in which the driver has more than one CMV driver's license;

(c) During any period in which the driver, or the CMV he or she is driving, or the motor carrier operation, is subject to an out-of-service order; or

(d) In violation of a Federal, State, or local law or regulation pertaining to railroad-highway grade crossings.

4. Amend § 383.51, to redesignate paragraph (e) as paragraph (f), and to add a new paragraph (e) to read as follows:

§ 383.51. Disqualification of drivers.

* * * * *

(e) Disqualification for railroad-highway grade crossing violation—

(1) *General rule.* A driver who is convicted of operating a CMV in violation of a Federal, State, or local law or regulation pertaining to one of the following six offenses at a railroad-highway grade crossing must be disqualified for the period of time specified in paragraph (e)(2) of this section:

(i) For drivers who are not required to always stop, failing to slow down and check that the tracks are clear of an approaching train;

(ii) For drivers who are not required to always stop, failing to stop before reaching the crossing, if the tracks are not clear;

(iii) For drivers who are always required to stop, failing to stop before driving onto the crossing;

(iv) For all drivers, failing to have sufficient space to drive completely through the crossing without stopping;

(v) For all drivers, failing to obey a traffic control device or the directions of an enforcement official at the crossing;

(vi) For all drivers, failing to negotiate a crossing because of insufficient undercarriage clearance.

(2) *Duration of disqualification for railroad-highway grade crossing violation.—(i) First violation.* A driver must be disqualified for not less than 60 days if the driver is convicted of a first violation of a railroad-highway grade crossing violation.

(ii) *Second violation.* A driver must be disqualified for not less than 120 days if, during any three-year period, the driver is convicted of a second railroad-highway grade crossing violation in separate incidents.

(iii) *Third or subsequent violation.* A driver must be disqualified for not less than 1 year if, during any three-year period, the driver is convicted of a third or subsequent railroad-highway grade crossing violation in separate incidents.

* * * * *

5. Amend § 383.53 to add a new paragraph (c) to read as follows:

§ 383.53. Penalties.

* * * * *

(c) *Special penalties pertaining to railroad-highway grade crossing violations.* An employer who is convicted of a violation of § 383.37(d) must be subject to a civil penalty of not more than $10,000.

PART 384—[AMENDED]

6. The authority citation for 49 CFR part 384 continues to read as follows:

Authority: 49 U.S.C. 31136, 31301 *et seq.*, and 31502; and 49 CFR 1.48.

7. Add § 384.223 to read as follows:

§ 384.223 Railroad-highway grade crossing violation.

The State must have and enforce laws and/or regulations applicable to CMV drivers and their employers, as defined in § 383.5 of this title, which meet the minimum requirements of §§ 383.37(d), 383.51(e), and 383.53(c) of this title.

[FR Doc. 99–22900 Filed 9–1–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 080999K]

Atlantic Highly Migratory Species Fisheries; Bluefin Tuna Quota Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason quota adjustments.

SUMMARY: NMFS adjusts the 1999 Atlantic bluefin tuna (BFT) Angling and Longline category quotas and the Reserve category to account for underharvest and overharvest of these fishing category quotas during January 1 through May 31, 1999. These actions are being taken to prevent overharvest of the 1999 fishing category quotas for the affected fishing categories, to ensure maximum utilization of the quota while maintaining a fair distribution of fishing opportunities, and to be consistent with the Fishery Management Plan (FMP) for Atlantic Tunas, Sharks, and Swordfish.

DATES: Effective August 27, 1999, until May 31, 2000.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin, 978-281-9260.

SUPPLEMENTARY INFORMATION: Atlantic tunas are managed by the Secretary of Commerce (Secretary) under the dual authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). The authority to issue regulations has been delegated from the Secretary to the Assistant Administrator for Fisheries, NOAA. Within NMFS, daily responsibility for management of Atlantic Highly Migratory Species (HMS) fisheries rests with the Office of Sustainable Fisheries, and is administered by the HMS Management Division.

On January 20, 1999, NMFS proposed regulations to implement the draft Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP) and draft Amendment 1 to the Atlantic Billfish Fishery Management Plan (64 FR 3154). As part of these regulations NMFS proposed to change the way annual catch quotas are applied by changing the fishing year for Atlantic tunas from the calender year to a ''fishing year,'' beginning June 1 of one year and continuing through May 31 of the following year. The intent was to facilitate implementation of catch quota recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT) that are issued at its annual meeting in November. In past years, fishing activity for certain BFT categories would commence on January 1, before NMFS could issue a final rule to implement the ICCAT catch quota recommendation.

After the proposed change to the fishing year was published, specific quota allocations for the 1999 BFT fishery, to begin on June 1, 1999, were proposed in a supplement to the proposed rule (64 FR 9299, February 25, 1999). That supplemental proposal included a separate quota to cover fishing activity that would occur in the ''bridge'' or transition period of January 1 to May 31, 1999. Additionally, the supplemental rule proposed that any underharvest or overharvest from the bridge period would be added to or subtracted from the annual quota for the proposed new fishing year, to begin on June 1, 1999.

NMFS adopted the final HMS FMP, including the 1999 adjusted quotas and the bridge period quota, in April 1999. The final rule implementing the new fishing year was published on May 28, 1999 (64 FR 29090). Final BFT quota specifications for the new fishing year starting June 1 were published on June 3, 1999 (64 FR 29806) and quotas for the bridge period (January 1 to May 31, 1999) were published on July 13, 1999 (64 FR 37700).