

17 CFR Part 240

Securities.

Commodity Futures Trading Commission

In accordance with the foregoing, Title 17, Chapter I, of the Code of Federal Regulations is amended as follows:

PART 41—SECURITY FUTURES PRODUCTS

1. The authority citation for part 41 continues to read as follows:

Authority: Sections 206, 251, 252, Pub. L. 106-554, 114 Stat. 2763; 7 U.S.C. 1a, 2, 6f, 6j, 7a-2, 12a; 15 U.S.C. 78g(c)(2).

2. Section 41.11 is amended by revising paragraphs (a)(2)(ii) and (b)(2)(ii)(B) to read as follows:

§ 41.11 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

- (a) \* \* \*
(2) \* \* \*

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in § 242.600 that are common stock or depository shares.

- (b) \* \* \*
(2) \* \* \*
(ii) \* \* \*

(B) The 675 securities with the largest dollar value of ADTV shall be identified from the universe of all NMS securities as defined in § 242.600 that are common stock or depository shares.

\* \* \* \* \*

Dated: July 25, 2005.

By the Commodity Futures Trading Commission.

Jean A. Webb, Secretary.

Securities and Exchange Commission

In accordance with the foregoing, Title 17, Chapter II, of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 et seq.; and 18 U.S.C. 1350, unless otherwise noted.

\* \* \* \* \*

2. Section 240.3a55-1 is amended by revising paragraphs (a)(2)(ii) and (b)(2)(ii)(B) to read as follows:

§ 240.3a55-1 Method for determining market capitalization and dollar value of average daily trading volume; application of the definition of narrow-based security index.

- (a) \* \* \*
(2) \* \* \*

(ii) The 750 securities with the largest market capitalization shall be identified from the universe of all NMS securities as defined in § 242.600 of this chapter that are common stock or depository shares.

- (b) \* \* \*
(2) \* \* \*
(ii) \* \* \*

(B) The 675 securities with the largest dollar value of ADTV shall be identified from the universe of all NMS securities as defined in § 242.600 of this chapter that are common stock or depository shares.

\* \* \* \* \*

Dated: July 25, 2005.

By the Securities and Exchange Commission.

Margaret H. McFarland, Deputy Secretary.

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BILLING CODE 8010-01-P; 6351-01-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

23 CFR Part 1327

[Docket No. NHTSA-04-17326]

RIN 2127-AI45

Procedures for Participating in and Receiving Data From the National Driver Register Problem Driver Pointer System

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule amends the agency's National Driver Register (NDR) regulations to implement new reporting requirements mandated by the Motor Carrier Safety Improvement Act of 1999 (MCSIA). MCSIA amended the NDR Act to require that a State, before issuing or renewing a motor vehicle operator's license, must verify an individual's eligibility to receive a license through informational checks of both the NDR and the Commercial Driver's License Information System (CDLIS). The final

rule amends the NDR regulations to reflect this statutory change.

The final rule also provides an updated listing of the NDR reporting codes in the Appendix to reflect the codes that should be implemented by participating States by September 30, 2005. The final rule clarifies that pointer records reported to the NDR must only regard individuals who have been convicted or whose license has been denied, canceled, revoked, or suspended for one of the offenses identified in the Appendix. Finally, the final rule adds a definition for the term "employers or prospective employers of motor vehicle operators."

DATES: The final rule becomes effective on September 27, 2005.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Sean McLaurin, Chief, National Driver Register, NPO-124, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-4800. For legal issues: Mr. Roland (R.T.) Baumann III, Attorney-Advisor, Office of the Chief Counsel, NCC-113, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-1834.

SUPPLEMENTARY INFORMATION:

I. Background

On December 9, 1999, the Motor Carrier Safety Improvement Act (MCSIA) was signed into law (Pub. L. 106-159, Section 204), creating, in part, a new requirement for States participating in the National Driver Register (NDR). The requirement directed States to request from the Secretary of Transportation information from the NDR and the Commercial Driver License Information System (CDLIS) before issuing a motor vehicle operator's license to an individual or renewing such a license (49 U.S.C. 30304(e)).

In establishing this new requirement, Congress adopted the recommendation of a 1999 study directed by the Office of Motor Carriers of the Federal Highway Administration that reviewed the effectiveness of the Commercial Driver License (CDL) program and its general benefit to highway safety. The study indicated that the CDL program had been very successful in limiting commercial motor vehicle operators to a single license. However, the study also indicated that vulnerabilities continued to exist in enforcing the single license requirement. States that did not check the CDLIS when a CDL holder applied for a non-commercial driver's license (non-CDL) allowed a CDL holder to

apply for a second license without detection. In contravening the single license requirement under the Commercial Motor Vehicle Safety Act of 1986, a commercial motor vehicle operator had the opportunity to spread traffic-related violations among various driver licenses. In response to these concerns, the study recommended that all States modify their licensing procedures to require that all CDL and non-CDL applicants verify records against both the NDR and the CDLIS. (See Commercial Driver License Effectiveness Study, Volume Two, Technical Report, at 24 (Feb. 1999)).

## II. Notice of Proposed Rulemaking—Primary Changes

On March 31, 2004, the agency published a notice of proposed rulemaking (NPRM) in the **Federal Register** (69 FR 16853, Mar. 31, 2004), proposing to amend the NDR regulations to reflect the new requirement of MCSIA.

Under Section 30303(a) of Title 49, States are required to notify the Secretary of Transportation (by delegation, the NHTSA Administrator (49 CFR 1.51(e))) of their “intention to be bound by section 30304” of Title 49, with notification to be “in the form and way the Secretary prescribes by regulation.” (49 U.S.C. 30303(c)). In accordance with this statutory directive, the agency promulgated a regulation setting forth the conditions a State must satisfy to become a participant in the NDR. If the State is judged by the agency to be in compliance with the requirements of the NDR Act of 1982 and 23 CFR 1327.5, it is certified as a participating State. (23 CFR 1327.3(m) and 1327.4(a)). Under the existing system, all 50 States and the District of Columbia provided the required notification, and are currently considered active participants in the NDR.

The NPRM explained that these existing notifications did not account for the statutory changes to Section 30304 (see “Background” section above). With the MCSIA-mandated changes, the agency recognized that the earlier notifications no longer reflected an intention by the States to be bound by all provisions of the statutory reporting requirements. From statistical information that identified the type of inquiry submitted to the NDR system, the agency confirmed that as many as fifty percent of the currently participating States were not, in fact, following the amended provisions of Section 30304 that require a check of both the NDR and the CDLIS.

To address this situation, the NPRM proposed to amend 23 CFR 1327.4 to provide that, with each change to 49 U.S.C. 30304, a participating State may be required to submit a new notification to the agency, expressing its intent to be bound by all current requirements of Section 30304. New notifications would only be required when statutory changes affected the participating State’s reporting or inquiry requirements under Section 30304 of Title 49. The agency determined that MCSIA’s statutory changes were the first changes that necessitated a new notification since the creation of the PDPS. The NPRM also noted that statutory changes involving minor language adjustments or otherwise resulting in no substantive addition to the list of actions that must be carried out by a State to remain an active participant in the NDR would not necessitate a new notification. Under the agency’s proposal, a State that failed to provide the required notification would be subject to termination of its participating State status 90 days after receiving a request for a new notification from the agency.

The NPRM also proposed conforming amendments to 23 CFR 1327.5, to set forth the new statutory requirements for convenient reference. The proposed amendments followed the statutory changes made by MCSIA requiring the chief driver licensing official of a State to submit an inquiry to the NDR and the CDLIS before issuing any type of license. The NPRM clarified that issuance of a license includes, but is not limited to, any original, renewal, temporary, or duplicate license. In addition, the NPRM proposed to revise the definition of “participating State” under Section 1327.3(m) to conform to the new requirement that participating State status is contingent on the State’s compliance with Section 30304 of Title 49 of the United States Code and the agency’s implementing regulations.

## III. Notice of Proposed Rulemaking—Changes To Clarify or Update Information

### A. Proposed Amendment to Section 1327.3

The NPRM recognized that the current regulations use, but do not specifically define, the term “employers or prospective employers of motor vehicle operators.” The term is used to describe persons who employ individuals that may be subject to NDR checks. (See 23 CFR 1327.6(c)).

The NPRM proposed a definition for the term “employers or prospective employers of motor vehicle operators” that would include only those persons

who hire individuals to operate motor vehicles on a regular basis during the normal course of their employment. The proposed definition was intended to reduce burdens to employers by narrowing the class of employees subject to an NDR check. An employer that hired an individual to make regular business deliveries would be covered under this definition, whereas an employer that allowed an employee to use a company-owned vehicle or to rent a vehicle (and receive reimbursement) to attend a business conference or take an occasional business trip would not be covered. Employers meeting the definition of “employers or prospective employers of motor vehicle operators” would be allowed to receive NDR information regarding the types of employees covered by the definition, pursuant to the procedures outlined in the regulation.

### B. Proposed Amendment to 23 CFR Part 1327.5(a)

The NPRM proposed to add a paragraph in section 1327.5(a), clarifying that pointer records transmitted to the NDR must be based on the violation codes appearing in the Appendix. With this addition, these codes would serve as a comprehensive list of offenses the agency would deem to be proper grounds for establishing a pointer record regarding an individual. If an individual has not been convicted or the individual’s driver’s license has not been denied, canceled, revoked or suspended for an offense identified in these codes, a pointer record should not be transmitted to the NDR regarding that individual. The NPRM made clear that the agency would contact a participating State responsible for inclusion of a pointer record that is not based on the Appendix codes and request its removal from the NDR system.

### C. Proposed Amendment to Appendix A to 23 CFR Part 1327 and Conforming Amendment to 23 CFR 1327.3(g)

The NPRM proposed to amend Appendix A to Part 1327 to update the code list to be consistent with the current AAMVA Code Dictionary (ACD) reporting codes.<sup>1</sup> The NPRM also proposed to divide the Appendix into two parts to make it easy for a participating State to identify what codes correspond to “for cause” licensing actions and traffic offense

<sup>1</sup> The NPRM acknowledged that AAMVA is currently revising the ACD. As of the date of publication of this rule, the AAMVA’s revision process continues. When it is finalized, the agency will determine whether changes should be made to the Appendix as a result. Any proposed changes will be published in the **Federal Register**.

convictions. In conjunction with these changes, the agency proposed to revise the definition of “for cause” under Section 1327.3(g) to conform to the revised Appendix.

#### IV. Comments

The agency received 10 comments in response to the NPRM—six from State agencies and four from business/professional organizations. The State comments were submitted by the Driver License Division of the Texas Department of Public Safety (TXDPS); the Safety Administration of the Pennsylvania Department of Transportation (PennDOT); the New York State Department of Motor Vehicles (NYSDMV); the State of Washington Department of Licensing (WADOL); the Michigan Department of State (MDS); and the Driver Services Department of the Illinois Office of the Secretary of State (ILSS). The business/professional organization comments were submitted by the American Trucking Associations, Inc. (ATA); Advocates for Highway and Auto Safety (Advocates); the American Association of Motor Vehicle Administrators (AAMVA); and U.S. Investigations Services (USIS).

##### A. Proposed Amendments to Notification Requirement and Conforming Amendments

PennDOT asserted that Federal law does not allow the agency to require more than just an initial notification of a State’s intention to be bound by the reporting requirements of the NDR statute. According to PennDOT, nothing contained in the Federal statute gives the agency the authority to require multiple notifications.

The agency explained in the NPRM that the notifications provided by the States evidencing an intention to be bound by the reporting requirements predate the changes made by MCSIA. At this time, no State has certified its intention to be bound by the requirement to check the NDR and the CDLIS for all license issuances and renewals. The agency further explained in the NPRM that at least 50 percent of the States are not completing the checks required under the Act. Under these circumstances, the agency finds it necessary to create a mechanism for requesting new notifications from participating States. The NDR Act provides the Secretary of Transportation with specific authority to set the “form and way” of proper State notification by regulation (49 U.S.C. 30303(c)). This provision invests the Secretary with abundant discretion and we do not agree with the commenter that the

agency is prohibited from seeking new notifications when reporting requirements change. To avoid confusion and ensure that the terms “notification” and “certifying” are used in a consistent manner throughout, we have made slight revisions to the language of 23 CFR 1327.4(c)(1) and (d)(1) from those in the notice of proposed rulemaking and a conforming amendment to 23 CFR 1327.4(c)(2).

Additional comments centered on the MCSIA requirement to check the NDR and the CDLIS before issuing or renewing a motor vehicle operator’s license. PennDOT asserted that the requirement to submit an NDR check for a noncommercial license renewal would not further the interests of commercial motor vehicle safety. WADOL claimed that performing these additional checks would require extensive and costly programming changes. ILSS stated that it only accesses the NDR for applicants requesting a CDL or individuals being issued a first-time license. According to ILSS, to implement the MCSIA requirement, Illinois would have to amend current rules, policies, and procedures. Each of these commenters requested that the agency either delay implementation of the rule or withdraw the rule.

These comments represent a fundamental misunderstanding about the MCSIA requirements and the agency’s proposed regulation. The requirement to check the NDR and the CDLIS before the issuance or renewal of a motor vehicle operator’s license is a statutory requirement that took effect when MCSIA was enacted in 1999. With that enactment, Congress directed that NDR participating States complete these additional checks. The agency has no discretion to alter or extend the time for compliance with a statutory requirement. The reach of this part of the proposed rule is limited to implementing the statutory mandate.<sup>2</sup> Accordingly, we do not adopt the recommendation of these commenters. These statutory requirements should not come as a surprise to participating States. The agency is aware that the organization most closely aligned with the licensing department of individual States, the AAMVA, has been

<sup>2</sup> This portion of the final rule implements a Federal statutory provision that is considered self-executing and would be a requirement of any participating State without the need for a corresponding regulation. Although the agency is revising its regulation to note this change, we expect participating States to achieve full compliance with these types of statutory requirements on their own and without the need for regulatory changes in the future.

instructing its member States to comply with these requirements since 1999.

The agency received comments and questions from States about its proposed clarification that checks of the NDR and the CDLIS should be made for any original, renewal, temporary, or duplicate license. NYSDMV objected to the clarification and asserted that “states should have the ability to identify for themselves the issuance and renewal transactions that should require checks of the NDR and the CDLIS.” MDS asked whether the requirement covers all driver’s license applications and whether States can implement these record checks before the effective date of the final rule.

MCSIA intended to close loopholes that existed in licensing programs as a result of not checking both databases before issuing and before renewing a non-CDL license. The requirement to make these inquiries has been a statutory requirement of participating States since the enactment of MCSIA. From that point forward, States participating in the NDR should have been meeting all inquiry requirements. However, in response to the comments, the agency has decided to amend the regulation to make clearer the types of licensing transactions that must result in a check of the NDR and CDLIS databases. An inquiry of both databases must occur when there is either the issuance of an original driver’s license, a renewal of driving privileges, or any other licensing transaction that results in the granting or extension of driving privileges. Although this represents the minimum inquiry requirement to qualify as a participating State, the agency continues to encourage States to make a check of the NDR and CDLIS databases a routine part of every licensing transaction.

##### B. Proposed Revisions to Appendix

The agency received several comments related to the proposed revision to the Appendix. TXDPS and AAMVA pointed out that M09, a code for failure to obey railroad crossing restrictions, appeared only on the withdrawal list and, in error, was not included on the conviction list. The agency agrees with the commenters and has revised the Appendix to include the M09 code on the conviction list. The agency also has reviewed the entire Appendix and made additional changes as a result of ongoing efforts by AAMVA to revise the ACD. We anticipate that additional changes will be necessary as AAMVA works toward finalizing and implementing a revised set of ACD codes by September 30, 2005. Our expectation is that all participating

States will use the revised Appendix by this date as well. We will afford some flexibility for States to continue using the older codes up to the implementation deadline.

### C. Proposed Definition of Employer

The agency received one comment about its proposed definition of "employers or prospective employers of motor vehicle operators." Advocates claimed that the proposed definition was too vague to be helpful to States attempting to determine proper access for businesses and that the agency should adopt bright-line definitions for demarcating the class of employers who have both the right and the responsibility to check employee driving records. According to Advocates, the proposed definition would result in abuses by employers who improperly access current or prospective employees' driving records and employers who exploit the vagueness inherent in the definition to avoid the responsibility to check NDR records.

The proposed definition relates to a provision of statute granting permissive access to the NDR (49 U.S.C. 30305(b)(2)). The statutory provision does not create a duty for an employer of a motor vehicle operator to complete an NDR check. The term "employers or prospective employers of motor vehicle operators" has not been defined since the statute was created in 1982. Since that time, the agency has received informal requests for guidance concerning the types of employers that should be given access to the NDR. The proposed definition is an effort to provide that guidance. It is not intended to provide an exhaustive articulation of the types of work requirements that would permit an employer access.

The potential for abuse cited by the commenter is not apparent to the agency. The provision at issue concerns permissible access to the NDR—it does not create a responsibility to submit an NDR inquiry. In addition, regulatory procedures already in place require that any employer or prospective employer receive the consent of the employee before conducting an NDR check. Under these conditions, there appears little chance for employers to access improperly their employees' NDR records. The agency has determined that no changes to the proposed definition are necessary.

### D. General Implementation Issues

The agency received several questions from AAMVA regarding implementation of the MCSIA-mandated changes and the rulemaking changes in general.

AAMVA asked whether the PDPS will adopt messages added to CDLIS history transaction requests. The agency is planning to adapt the current structure of the PDPS reporting format to account for and accept information added to CDLIS history request transactions.

AAMVA also asked whether States would be required to complete a full-structured test and, in addition, complete a clean file of their existing submitted pointer records as a result of the rulemaking. (A full-structured test refers to the process of checking a State's ability to submit inquiries to and receive information from the NDR system without problems. A clean file refers to a State's complete removal of all submitted pointer records from the NDR system.) The agency believes that there would be only a small benefit if participating States complete a full-structured test or prepare a clean file at this time. Although the frequency and amount of inquiries will increase as State compliance with the statutory requirements rises, the basic inquiry and response function of the system is not changed by the rulemaking. The agency will continue to monitor State usage, and if service degradation is detected in a State, a full-structured test may be required. Also, if pointer records not based on the Appendix are routinely submitted to the agency by a participating State, the agency may require that State to complete a clean file as an assurance that statutory requirements are being met.

AAMVA inquired as to how the agency intends to ensure that jurisdictions use proper codes and add pointer records for only the required legal reasons. Although the agency has not formally stated in regulation its policy of removing pointer records not based on the NDR reporting codes until this rulemaking, the agency has enforced this policy in practice. Our expectation is that participating States will take care to use only appropriate codes. If a jurisdiction is contacted on multiple occasions due to the use of codes not appearing in the Appendix, the agency may require the jurisdiction to prepare a complete clean file of its submitted records.

### E. Federalism Concerns

The agency received one comment citing Federalism concerns. Specifically, PennDOT stated that the requirement to check the NDR for non-commercial license renewals usurps the traditional licensing authority of the State. Additionally, PennDOT asserted that the limitation on the types of suspensions reported to the NDR interferes with Pennsylvania's duties

under its own law to deny licensure to drivers with any type of suspension in another State.

Under Executive Order 13132, the agency may not issue a regulation with Federalism implications that imposes substantial direct compliance costs and that is not required by statute unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the proposed regulation. The agency also may not issue a regulation with Federalism implications that preempts State law unless the agency consults with State and local officials early in the process of developing the proposed regulation.

The requirement to check the NDR for non-commercial license renewals is a statutory requirement. The rulemaking does not alter this requirement or require that a participating State take actions different than those already required by the statute. Although the regulation requires that States submit new notifications acknowledging the requirements of participation in the NDR, the notification requirement does not preempt State law or set conditions on a State's licensing decision. The Federalism implications in Executive Order 13132 are not present in this situation.

Similarly, the content of the NDR database is governed by the statute. The NDR was never intended to address more than transportation-related issues. The statute provides access to States for the purpose of driver licensing, driver improvement, and transportation safety and limits reportable information to convictions for motor vehicle-related offenses and for cause license suspensions. Within this statutory framework, the agency's rule provides an updated Appendix that constitutes all violation information submitted to the NDR. Although participating States may not use the NDR system to share non-NDR information, the rule does not prevent States from using other mechanisms to submit and receive non-NDR information of their choosing. Nothing in this rule prevents Pennsylvania from maintaining any information necessary to comply with State law. Under these circumstances, the Federalism concerns referred to in Executive Order 13132 are not implicated.

### V. Statutory Basis for Final Rule

This final rule implements reporting requirements mandated by the Motor

Carrier Safety Improvement Act of 1999 (MCSIA) (Pub. L. 106–159, Section 204).

## VI. Regulatory Analyses and Notices

### *Executive Order 12988 (Civil Justice Reform)*

This final rule will not have any preemptive or retroactive effect. This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

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

Executive Order 12866, “Regulatory Planning and Review” (58 FR 51735, October 4, 1993) provides for making determinations on whether a regulatory action is “significant” and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The agency has considered the impact of the rulemaking action under Executive Order 12866 and determined that it is not significant. The rulemaking action is also treated as not significant under the Department of Transportation’s regulatory policies and procedures. OMB has not reviewed this notice under Executive Order 12866.

In this document, the agency revises the NDR implementing regulations to conform to specific statutory requirements. Checks are required of both the NDR and CDLIS databases before issuance or renewal of a motor vehicle operator’s license. Although the statutory requirements increase the number of inquiries that States are required to make and the number of responses they receive as a result, the agency believes that the additional checks and the revisions identified in this regulation will not have a significant economic effect on the States. The statutorily required checks of the CDLIS (in addition to the NDR) for renewals of CDLs and non-CDLs simply add another verification in a process that States already perform when first issuing a CDL. Additional maintenance fees associated with access to the CDLIS should not occur as States already pay a fee based on the number of CDL records on the CDLIS. The final rule also requires that States submit a new notification of an intention to be bound by the reporting requirements of the statute in the event of a significant statutory change. The process of signing and submitting a new notification will be a rare occurrence and will not result in significant costs to the States.

The agency believes that the impacts of this rulemaking will be minimal. Consequently, a full regulatory evaluation has not been prepared.

### *Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (Public Law 96–354, 5 U.S.C. 601–612) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The agency has considered the effects of this rulemaking action under the Regulatory Flexibility Act. Employers who hire motor vehicle operators may qualify as small businesses. This document, however, does not change the procedure that employers must use to request a driver license check of an employee or prospective employee. Employers would still be required to contact the respective State chief driver licensing official. Therefore, I hereby certify that the rulemaking action would not have a significant impact on a substantial number of small entities.

### *Paperwork Reduction Act*

There are reporting requirements contained in the regulation that the final rule amends that are considered to be information collection requirements, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR Part 1320. These requirements have been submitted previously to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3500, *et seq.*), through July 30, 2006 under OMB No. 2127–0001.

For the following reasons, nothing in this final rule adds to the collection of information burden that is approved by OMB under Clearance No. 2127–0001. Section 1327.5(a)(2) may reduce collection of information burdens on States because it includes new language clarifying the scope of the collection—that State are not to transmit reports on individuals unless that individual has had his or her motor vehicle operator’s license denied, canceled, revoked, or suspended for cause as represented by codes in Appendix A, Part I, or been convicted of a motor vehicle-related offense as represented by codes in Appendix, Part II. After Section 1327.5(a)(2) takes effect, States will be less likely to transmit reports that will ultimately not be included in the National Driver Register.

### *National Environmental Policy Act*

The agency has reviewed this rulemaking action for the purposes of the National Environmental Policy Act

(42 U.S.C. 4321, *et seq.*) and has determined that it would not have a significant impact on the quality of the human environment.

### *The Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more (adjusted annually for inflation) in any one year. In response to the proposed rule, a few States supplied cost estimates for compliance with the MCSIA requirement. Assuming the accuracy of these estimates and extrapolating the results to all participating States based on State population, the total cost to make checks of the CDLIS and the NDR before issuing or renewing a license would not result in expenditures that exceed \$100 million on an annual basis. This rule does not require an assessment under this law.

### *Executive Order 13132 (Federalism)*

Executive Order 13132 requires the agency to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications.” The Executive Order defines “policies that have Federalism implications” to include regulations that have “substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among various levels of government.”

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132 and has determined that the final rule does not have sufficient Federalism implications to warrant consultation with State and local officials or the preparation of a Federalism summary impact statement. Moreover, the final rule does not preempt any State law or regulation or affect the ability of States to discharge traditional State government functions. Section F (above), entitled “Federalism,” responds directly to a comment the agency received citing Federalism concerns.

*Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)*

The agency has analyzed this rulemaking action under Executive Order 13175, and believes that this final rule would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal law. Therefore, a tribal summary impact statement is not required.

*Plain Language*

Executive Order 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

- Have we organized the material to suit the public’s needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that is not clear?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
- Would more (but shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make this rulemaking easier to understand?

If you have any comments about the Plain Language implications of this final rule, please address them to the person listed in the **FOR FURTHER INFORMATION CONTACT** heading.

*Regulation Identifier Number (RIN)*

A regulation identifier number (RIN) is assigned to each regulatory section 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 section with the Unified Agenda.

**List of Subjects in 23 CFR Part 1327**

Highway safety, Intergovernmental relations, and Reporting and recordkeeping requirements

■ In consideration of the foregoing, the agency amends title 23 of CFR Part 1327 as follows:

**PART 1327—PROCEDURES FOR PARTICIPATING IN AND RECEIVING INFORMATION FROM THE NATIONAL DRIVER REGISTER PROBLEM DRIVER POINTER SYSTEM**

■ 1. The authority citation for part 1327 continues to read as follows:

**Authority:** Pub. L. 97–364, 96 Stat. 1740, as amended (49 U.S.C. 30301 *et seq.*); delegation of authority at 49 CFR 1.50.

■ 2. Amend § 1327.3 by redesignating paragraphs (g) through (x) as paragraphs (h) through (y) and by adding new paragraph (g) and revising newly redesignated paragraphs (h) and (n) to read as follows:

**§ 1327.3 Definitions.**

\* \* \* \* \*

(g) *Employers or Prospective Employers of Motor Vehicle Operators* means persons that hire one or more individuals to operate motor vehicles on a regular basis during their normal course of employment.

(h) *For Cause* as used in § 1327.5(a) means that an adverse action taken by a State against an individual was based on a violation listed in Appendix A, Part I, an Abridged Listing of the American Association of Motor Vehicle Administrators (AAMVA) Violations Exchange Code, which is used by the NDR for recording license denials and withdrawals.

\* \* \* \* \*

(n) *Participating State* means a State that has notified the agency of its intention to participate in the PDPS and has been certified by the agency as being in compliance with the requirements of Section 30304 of Title 49, United States Code and § 1327.5 of this part.

\* \* \* \* \*

■ 3. Amend § 1327.4 by revising paragraphs (c)(1) and (c)(2) and adding new paragraph (d) to read as follows:

**§ 1327.4 Certifications, termination and reinstatement procedures.**

\* \* \* \* \*

(c) *Reinstatement.* (1) The chief driver licensing official of a State that wishes to be reinstated as a participating State in the NDR under the PDPS shall send a letter notifying NHTSA that the State wishes to be reinstated as a participating State and certifying that the State intends to be bound by the requirements of Section 30304 of Title 49, United States Code and § 1327.5. The letter shall also describe the changes necessary to meet the statutory and regulatory requirements of PDPS.

(2) NHTSA will acknowledge receipt of the State’s notification within 20 days after receipt.

\* \* \* \* \*

(d) *New Notification.* (1) NHTSA may, in its discretion, require in writing that a participating State submit a new notification, certifying that it intends to be bound by the requirements of Section 30304 of Title 49, United States Code and § 1327.5. The agency will exercise its discretion to require this notification when statutory changes have altered a participating State’s reporting or inquiry requirements under Section 30304 of Title 49, United States Code.

(2) After receiving a written request from NHTSA under paragraph (d)(1) of this section, a participating State will have 90 days to submit the requested notification. If a participating State does not submit the requested notification within the 90-day time period, NHTSA will send a letter to the chief driver licensing official of a State canceling its status as a participating State.

■ 4. Amend § 1327.5 by redesignating paragraphs (a)(2) through (a)(4) as paragraphs (a)(3) through (a)(5) and adding new paragraph (a)(2) and by revising paragraph (b)(1) to read as follows:

**§ 1327.5 Conditions for becoming a participating State.**

(a) \* \* \*

(2) A report shall not be transmitted by the chief driver licensing official of a participating State, regarding an individual, unless that individual has had his or her motor vehicle operator’s license denied, canceled, revoked, or suspended for cause as represented by the codes in appendix A, part I, of this part, or been convicted of a motor vehicle-related offense as represented by the codes in appendix A, part II, of this part. Unless the report transmitted to the NDR is based on these codes, NHTSA will contact the participating State responsible for the record and request its removal from the NDR.

\* \* \* \* \*

(b) \* \* \*

(1) The chief driver licensing official of a participating State shall submit an inquiry to both the NDR and the Commercial Driver’s License Information System for each driver license applicant before issuing a license to that applicant. The issuance of a license includes but is not limited to any original, renewal, temporary, or duplicate license that results in a grant or extension of driving privileges in a participating State.

\* \* \* \* \*

■ 5. Revise Appendix A to part 1327 to read as follows:

**Appendix A to Part 1327—Abridged Listing of the American Association of Motor Vehicle Administrators Violations Exchange Code, Used by the NDR for Recording Driver License Denials, Withdrawals, and Convictions of Motor Vehicle-Related Offenses**

*Code*

**Part I—For Cause Withdrawals**

- A04 Driving under the influence of alcohol with BAC at or over .04
- A08 Driving under the influence of alcohol with BAC at or over .08
- A10 Driving under the influence of alcohol with BAC at or over .10
- A11 Driving under the influence of alcohol with BAC at or over \_\_\_\_ (detail field required)
- A12 Refused to submit to test for alcohol—Implied Consent Law
- A20 Driving under the influence of alcohol or drugs
- A21 Driving under the influence of alcohol
- A22 Driving under the influence of drugs
- A23 Driving under the influence of alcohol and drugs
- A24 Driving under the influence of medication not intended to intoxicate
- A25 Driving while impaired
- A26 Drinking alcohol while operating a vehicle
- A31 Illegal possession of alcohol
- A33 Illegal possession of drugs (controlled substances)
- A35 Possession of open alcohol container
- A41 Driver violation of ignition interlock or immobilization device
- A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance
- A60 Underage Convicted of Drinking and Driving at .02 or higher BAC
- A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC
- A90 Administrative Per Se for .10 BAC
- A94 Administrative Per Se for .04 BAC
- A98 Administrative Per Se for .08 BAC
- B01 Hit and run—failure to stop and render aid after accident
- B02 Hit and run—failure to stop and render aid after accident—Fatal accident
- B03 Hit and run—failure to stop and render aid after accident—Personal injury accident
- B04 Hit and run—failure to stop and render aid after accident—Property damage accident
- B05 Leaving accident scene before police arrive
- B06 Leaving accident scene before police arrive—Fatal accident
- B07 Leaving accident scene before police arrive—Personal injury accident
- B08 Leaving accident scene before police arrive—Property damage accident
- B14 Failure to reveal identity after fatal or personal injury accident
- B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard
- B20 Driving while license withdrawn
- B21 Driving while license barred
- B22 Driving while license canceled
- B23 Driving while license denied
- B24 Driving while license disqualified
- B25 Driving while license revoked
- B26 Driving while license suspended
- B27 General, driving while an out of service order is in effect (for violations not covered by B19)
- B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID
- B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)
- B56 Driving a CMV without obtaining a CDL
- B63 Failed to file future proof of financial responsibility
- B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)
- D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)
- D06 Misrepresentation of identity or other facts to obtain alcohol
- D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)
- D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)
- D27 Violate limited license conditions
- D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)
- D35 Failure to comply with financial responsibility law
- D38 Failure to post security or obtain release from liability
- D39 Unsatisfied judgment
- D45 Failure to appear for trial or court appearance
- D53 Failure to make required payment of fine and costs
- D56 Failure to answer a citation, pay fines, penalties and/or costs related to the original violation
- D72 Inability to control vehicle
- D74 Operating a motor vehicle improperly because of drowsiness
- D75 Operating a motor vehicle improperly due to physical or mental disability
- D78 Perjury about the operation of a motor vehicle
- E03 Operating without HAZMAT safety equipment as required by law
- F02 Child or youth restraint not used properly as required
- F03 Motorcycle safety equipment not used properly as required
- F04 Seat belt not used properly as required
- F05 Carrying unsecured passengers in open area of vehicle
- F06 Improper operation of or riding on a motorcycle
- M09 Failure to obey railroad crossing restrictions
- M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing
- M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train
- M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear
- M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing
- M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping
- M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance
- M80 Reckless, careless, or negligent driving
- M81 Careless driving
- M82 Inattentive driving
- M83 Negligent driving
- M84 Reckless driving
- S01 01–05 > Speed limit (detail optional)
- S06 06–10 > Speed limit (detail optional)
- S15 Speeding 15 mph or more above speed limit (detail optional)
- S16 16–20 > Speed limit (detail optional)
- S21 21–25 > Speed limit (detail optional)
- S26 26–30 > Speed limit (detail optional)
- S31 31–35 > Speed limit (detail optional)
- S36 36–40 > Speed limit (detail optional)
- S41 41+ > Speed limit (detail optional)
- S51 01–10 > Speed limit (detail optional)
- S71 21–30 > Speed limit (detail optional)
- S81 31–40 > Speed limit (detail optional)
- S91 41+ > Speed limit (detail optional)
- S92 Speeding—Speed limit and actual speed (detail required)
- S93 Speeding
- S94 *Prima Facie* speed violation or driving too fast for conditions
- S95 Speed contest (racing) on road open to traffic
- S97 Operating at erratic or suddenly changing speeds
- U01 Fleeing or evading police or roadblock
- U02 Resisting arrest
- U03 Using a motor vehicle in connection with a felony (not traffic offense)
- U05 Using a motor vehicle to aid and abet a felon
- U06 Vehicular assault
- U07 Vehicular homicide
- U08 Vehicular manslaughter
- U09 Negligent homicide while operating a CMV
- U10 Causing a fatality through the negligent operation of a CMV
- U31 Violation resulting in fatal accident
- W01 Accumulation of convictions (including point systems and/or being judged a habitual offender or violator)
- W14 Physical or mental disability
- W20 Unable to pass DL test(s) or meet qualifications
- W30 Two serious violations within three years
- W31 Three serious violations within three years
- W40 The accumulation of two or more major offenses
- W41 An additional major offense after reinstatement
- W50 The accumulation of two out-of-service order general violations (violations not covered by W51) within ten years
- W51 The accumulation of two out-of-service order violations within ten years

- while transporting 16 or more passengers, including the driver and/or transporting hazardous materials that require a placard
- W52 The accumulation of three or more out-of-service order violations within ten years
- W60 The accumulation of two RRGC violations within three years.
- W61 The accumulation of three or more RRGC violations within three years.
- W70 Imminent hazard

#### Part II—Convictions

- A04 Driving under the influence of alcohol with BAC at or over .04
- A08 Driving under the influence of alcohol with BAC at or over .08
- A10 Driving under the influence of alcohol with BAC at or over .10
- A11 Driving under the influence of alcohol with BAC at or over \_\_ (detail field required)
- A12 Refused to submit to test for alcohol—Implied Consent Law
- A20 Driving under the influence of alcohol or drugs
- A21 Driving under the influence of alcohol
- A22 Driving under the influence of drugs
- A23 Driving under the influence of alcohol and drugs
- A24 Driving under the influence of medication not intended to intoxicate
- A25 Driving while impaired
- A26 Drinking alcohol while operating a vehicle
- A31 Illegal possession of alcohol
- A33 Illegal possession of drugs (controlled substances)
- A35 Possession of open alcohol container
- A41 Driver violation of ignition interlock or immobilization device
- A50 Motor vehicle used in the commission of a felony involving the manufacturing, distributing, or dispensing of a controlled substance
- A60 Underage Convicted of Drinking and Driving at .02 or higher BAC
- A61 Underage Administrative Per Se—Drinking and Driving at .02 or higher BAC
- A90 Administrative Per Se for .10 BAC
- A94 Administrative Per Se for .04 BAC
- A98 Administrative Per Se for .08 BAC
- B01 Hit and run—failure to stop and render aid after accident
- B02 Hit and run—failure to stop and render aid after accident—Fatal accident
- B03 Hit and run—failure to stop and render aid after accident—Personal injury accident
- B04 Hit and run—failure to stop and render aid after accident—Property damage accident
- B05 Leaving accident scene before police arrive
- B06 Leaving accident scene before police arrive—Fatal accident
- B07 Leaving accident scene before police arrive—Personal injury accident
- B08 Leaving accident scene before police arrive—Property damage accident
- B14 Failure to reveal identity after fatal or personal injury accident
- B19 Driving while out of service order is in effect and transporting 16 or more passengers including the driver and/or transporting hazardous materials that require a placard

- B20 Driving while license withdrawn
- B21 Driving while license barred
- B22 Driving while license canceled
- B23 Driving while license denied
- B24 Driving while license disqualified
- B25 Driving while license revoked
- B26 Driving while license suspended
- B27 General, driving while an out of service order is in effect (for violations not covered by B19)
- B41 Possess or provide counterfeit or altered driver license (includes DL, CDL, and Instruction Permit) or ID
- B51 Expired or no driver license (includes DL, CDL, and Instruction Permit)
- B56 Driving a CMV without obtaining a CDL
- B91 Improper classification or endorsement on driver license (includes DL, CDL, and Instruction Permit)
- D02 Misrepresentation of identity or other facts on application for driver license (includes DL, CDL, and Instruction Permit)
- D06 Misrepresentation of identity or other facts to obtain alcohol
- D07 Possess multiple driver licenses (includes DL, CDL, and Instruction Permit)
- D16 Show or use improperly—Driver license (includes DL, CDL, and Instruction Permit)
- D27 Violate limited license conditions
- D29 Violate restrictions of driver license (includes DL, CDL, and Instruction Permit)
- D72 Inability to control vehicle
- D78 Perjury about the operation of a motor vehicle
- E03 Operating without HAZMAT safety equipment as required by law
- M09 Failure to obey railroad crossing restrictions
- M10 For all drivers, failure to obey a traffic control device or the directions of an enforcement official at a railroad-highway grade crossing
- M20 For drivers who are not required to always stop, failure to slow down at a railroad-highway grade crossing and check that tracks are clear of approaching train.
- M21 For drivers who are not required to always stop, failure to stop before reaching tracks at a railroad-highway grade crossing when the tracks are not clear
- M22 For drivers who are always required to stop, failure to stop as required before driving onto railroad-highway grade crossing
- M23 For all drivers, failing to have sufficient space to drive completely through the railroad-highway grade crossing without stopping
- M24 For all drivers, failing to negotiate a railroad-highway grade crossing because of insufficient undercarriage clearance
- M80 Reckless, careless, or negligent driving
- M81 Careless driving
- M82 Inattentive driving
- M83 Negligent driving
- M84 Reckless driving
- S95 Speed contest (racing) on road open to traffic
- U07 Vehicular homicide
- U08 Vehicular manslaughter
- U09 Negligent homicide while operating a CMV
- U10 Causing a fatality through the negligent operation of a CMV

- U31 Violation resulting in fatal accident

Issued on: July 25, 2005.

**Jeffrey W. Runge,**  
Administrator.

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## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Parts 1 and 301

[TD 9216]

RIN 1545–BD06

#### Treatment of a Stapled Foreign Corporation under Sections 269B and 367(b)

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Internal Revenue Code.

**DATES:** *Effective Date:* These regulations are effective on July 29, 2005.

*Applicability Dates:* For dates of applicability, see § 1.269B–1(g).

**FOR FURTHER INFORMATION CONTACT:** Richard L. Osborne at (202) 435–5230 or Robert W. Lorence at (202) 622–3918 (not toll-free numbers).

#### SUPPLEMENTARY INFORMATION:

##### Background

On September 7, 2004, the IRS and Treasury Department published in the **Federal Register** a notice of proposed rulemaking [REG–101282–04; 2004–42 I.R.B. 698; 69 FR 54067] under sections 269B and 367(b) of the Internal Revenue Code (Code). The proposed regulations provide guidance concerning the definition and tax treatment of a stapled foreign corporation, which generally is treated for tax purposes as a domestic corporation under section 269B of the Code. The proposed regulations are finalized here without modification.

##### Explanation of Provisions and Summary of Comments

Section 269B(a)(1) provides that, if a domestic corporation and a foreign corporation are stapled entities, the foreign corporation will be treated as a domestic corporation for U.S. Federal income tax purposes, unless otherwise provided in regulations. A domestic and a foreign corporation are stapled entities